

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TEMPLAR ENERGY LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11441 (BLS)

(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE FILING
UNDER SEAL OF PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTER**

The above-captioned affiliated debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (this Motion”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) for (a) an order substantially in the form attached hereto as Exhibit A (the “Proposed Order”) (i) authorizing the Debtors to file under seal the fee letter by and among certain of the Debtors and Bank of America, N.A. (“Bank of America”), in its capacity as DIP Agent (as defined in the fee letter that is attached as Exhibit 1 to the *Notice of Filing of Proposed Debtor-in-Possession Financing Fee Letter Under Seal*, filed contemporaneously herewith; and (ii) directing that such fee letter remains under seal and confidential and not be made available to anyone without the prior written consent of the Debtors or Bank of America, or further order of the Court, and respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Templar Energy LLC (4719), TE Holdcorp, LLC (6730), TE Holdings, LLC (3115), TE Holdings II, LLC (N/A), Templar Operating LLC (0810), Templar Midstream LLC (3275), and TE Holdings Management LLC (7467). The address of the Debtors’ corporate headquarters is 4700 Gaillardia Parkway, Suite 200, Oklahoma City, Oklahoma 73142.



JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are in sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d).

GENERAL BACKGROUND

3. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these Chapter 11 Cases and no request has been made for the appointment of a trustee or an examiner.

4. Information regarding the Debtors' business, capital structure, and the circumstances leading to these Chapter 11 Cases is set forth in the *Declaration of Brian Simmons in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [D.I. 3], which is incorporated herein by reference.,

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an Order: (i) authorizing the Debtors to file under seal the fee letter (the “Fee Letter”) by and among the Debtors and Bank of America, N.A., in its capacity as DIP Agent, a copy of which is attached as Exhibit 1 to the *Notice of Filing of Confidential Proposed Debtor-in-Possession Financing Fee Letter Under Seal*, filed contemporaneously herewith. The Debtors propose providing a copy of the Fee Letter to the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) on a strictly confidential basis and to counsel and financial advisors to any statutory committee appointed in these Chapter 11 Cases on a strictly confidential and “professionals’ eyes only” basis.

BASIS FOR RELIEF

6. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Moreover, pursuant to section 107(b)(1) of the Bankruptcy Code the Court may authorize the Debtors to file the Fee Letter under seal by permitting the issuance of an order that protects entities from potential harm that may result from the disclosure of certain confidential information. *See* 11 U.S.C. § 107(b). Specifically, Section 107(b) provides in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may —

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b).

7. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may

make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018.

8. Further, Rule 9018-1(d) of the Local Rules provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(d).

9. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, Section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in Section 107(b), “the court is required to protect a requesting party and has no discretion to deny the application.” *Id.* at 27. Moreover, the resulting order should be broad (i.e., “any order which justice requires”). *In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 9018. Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *Glob. Crossing*, 295 B.R. 724.

10. Confidential commercial information is information that, if disclosed, would result in “unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Orion*

Pictures, 21 F.3d at 27). Commercial information, however, need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Orion Pictures*, 21 F.3d at 28.

11. Fees paid by a borrower in connection with financing would not typically be something that Bank of America, or any other similarly situated lender, agent, or arranger would disclose. Given the totality of the circumstances, however, including the Debtors' recognition of the importance of the Court's review of the Fee Letter, recognition that a certain degree of transparency and public scrutiny is a necessary part of the bankruptcy process, and balancing these interests with the need to protect confidential and proprietary commercial information, the Debtors propose to file a copy of the Fee Letter with the Court under seal and to share a copy of the Fee Letter with (a) the U.S. Trustee on a strictly confidential basis and (b) counsel and financial advisors to any statutory committee appointed in these Chapter 11 Cases on a strict confidential and "professionals' eyes only" basis.

12. The terms of the Fee Letter are the product of extensive, good-faith, arms'-length negotiations, and the Debtors agreed to keep those terms confidential. Bank of America has advised the Debtors that the Fee Letter contains closely guarded, proprietary commercial information that is highly sensitive to Bank of America. Disclosure of the terms of the Fee Letter would cause substantial harm to Bank of America, creating an unfair advantage to its competitors and would violate the Debtors' agreement to maintain the Fee Letter's confidentiality.

13. The fees provided in the Fee Letter are intended to compensate Bank of America for the large, sophisticated team of credit, financial, marketing, legal, and other experts necessary to assist with structuring and administering the DIP Facility. The Fee Letter contains proprietary information describing the fees to be paid in connection with arranging and administering the DIP Facility, which information is customarily considered by Bank of America, specifically, and the

commercial lending industry, in general, to be highly sensitive and confidential information not typically disclosed to the public or made available to other competing financial institutions. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of the Fee Letter be kept confidential so that competitors may not use the information contained therein to gain a strategic advantage in the marketplace. Moreover, a broad publication of the Fee Letter would not facilitate evaluation of the financing and would be materially harmful to the business of Bank of America. Accordingly, the Debtors respectfully submit that cause exists to file the Fee Letter under seal.

14. In addition, it is common practice for financial institutions and borrowers to execute fee letters such as the Fee Letter on a confidential basis. Courts in this district have authorized the filing of similar confidential financing documents under seal in other chapter 11 cases. *See, e.g., In re CTI Foods, LLC*, Case No. 19-10497 (CSS) (Bankr. D. Del. Mar. 12, 2019) [D.I. 68] (authorizing the debtors to file DIP fee letters under seal); *In re Checkout Holdings Corp.*, Case No. 18-12794 (KG) (Bankr. D. Del. Jan. 1, 2019) [D.I. 221] (same); *In re Velocity Holding Co., Inc.*, Case No. 17-12442 (KJC) (Bankr. D. Del. Nov. 30, 2017) [D.I. 116] (same); *In re GST Autoleather, Inc.*, Case No. 17-12100 (LSS) (Bankr. D. Del. Oct. 5, 2017) [D.I. 72] (authorizing debtors to file under seal DIP financing commitment and fee letters); *In re Optima Specialty Steel, Inc.*, Case No. 16-12789 (KJC) (Bankr. D. Del. Dec. 15, 2016) [D.I. 899] (granting debtors' request to file exit financing commitment fee letter under seal).

NOTICE

15. Notice of this Motion has been or will be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the DIP Agent and RBL Agent (i) Morgan, Lewis & Bockius LLP and (ii) Richards, Layton & Finger, P.A.; and (d) all parties that have filed

a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court (a) grant this Motion and the relief requested herein; (b) enter the Proposed Order attached hereto; and (c) grant such other and further relief as is just and proper.

Dated: June 1, 2020
Wilmington, Delaware

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*Proposed Co-Counsel to the Debtors and
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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TEMPLAR ENERGY LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-11441 (BLS)

(Jointly Administered)

Ref. Docket No. 13__

**ORDER AUTHORIZING THE FILING UNDER SEAL OF
PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTER**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of an order (the “Order”) pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), authorizing the Debtors to file the Fee Letter under seal, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the

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² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to file the Fee Letter under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).
3. The Fee Letter is confidential and shall remain under seal, and shall not be made available to anyone, except that copies of the Fee Letter shall be provided to the Court, the Clerk of the Court, the U.S. Trustee, and to counsel and financial advisors to any statutory committee appointed in these cases (the "Committee Professionals"), and as further directed by order of this Court. The U.S. Trustee shall keep the Fee Letter and the terms thereof strictly confidential, and the Committee Professionals shall keep the Fee Letter and the terms thereof strictly confidential and on a "professionals' eyes only" basis.
4. Any party who receives the Fee Letter in accordance with this Order shall not disclose or otherwise disseminate such Fee Letter, or the information contained therein, to any other person or entity.
5. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all actions necessary and appropriate to carry out the relief granted in this Order.

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