

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

In re: : Chapter 11  
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TEMPLAR ENERGY LLC, *et al.*, : Case No. 20-11441 (BLS)  
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Debtors. : **Hearing Date: July 14, 2020, at 10:30 a.m.**  
: **Confirmation Objection: July 7, 2020, at 4:00 p.m.**  
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**PROTECTIVE OBJECTION BY THE UNITED STATES TO DEBTORS’ MOTION FOR ENTRY OF ORDERS (A) (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (II) APPROVING BID PROTECTIONS, (III) SCHEDULING A SALE HEARING AND OBJECTION DEADLINES WITH RESPECT TO THE SALE, (IV) SCHEDULING AN AUCTION, (V) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND AUCTION, (VI) APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VII) GRANTING RELATED RELIEF; AND (B) (I) APPROVING THE SALE OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

The United States, on behalf of its Department of Interior (“DOI”), files this protective objection to the Debtors’ Motion for Entry of Orders (A) (I) Approving Bidding Procedures for the Sale of All or Substantially all of the Debtors’ Assets, (II) Approving Bid Protections, (III) Scheduling a Sale Hearing and Objection Deadlines with Respect to the Sale, (IV) Scheduling an Auction, (V) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief; and (B) (I) Approving The Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (“Sale Motion”).



[Docket No. 47]. In support of its objection, the United States avers as follows:

**BACKGROUND**

1. On June 1, 2020, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. [Docket No. 1].

2. On June 1, 2020, the Debtors filed their Joint Prepackaged Chapter 11 Plan of Reorganization (“Plan”). On July 2, 2020, the United States filed an objection to the Plan. [Docket No. 157].

3. On June 1, 2020, the Debtors filed the Sale Motion.

4. On June 16, 2020, the Debtors filed the Motion to Extend Deadline to File Schedules or Provide Required Information (“Waiver Motion”). [Docket No. 88]. The Debtors recognized in the Waiver Motion that the purpose of filing Schedules and Statements is to provide notice to creditors and to disclose information about the Debtors to the holders of Claims. The Debtors represented that in these cases, the benefits of filing the Schedules and Statements are heavily outweighed by their costs. [Waiver Motion, ¶ 11]. The Debtors alleged that requiring them to complete the Schedules and Statements would be time consuming, distracting to the Debtors’ advisors and management, and costly to the Debtors’ estates. On June 29, 2020, the Bankruptcy Court issued the Order Conditionally Waiving the Requirement to File Schedules and Statements (“Waiver Order”). [Docket No. 144]. The Waiver Order provides that the requirement that the Debtors file the Schedules and Statements is permanently waived effective upon the date of confirmation of the Plan, provided confirmation occurs on or before August 17, 2020. [Waiver Order, ¶ 3].

5. On June 23, 2020, the Debtors filed the Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts (“Assumption

Notice”). [Docket No. 103]. The Assumption Notice does not list any federal contracts or leases.

6. Without the benefit of the Debtors’ Schedules and Statements, the United States is still researching its interests in, and claims against, the Debtors. Preliminary information reflects that the DOI is party to at least thirty-five leases with the Debtors and Bureau of Indian Affairs records indicate that the Debtors may have trust oil and gas leases on allotted or Tribal land (collectively, “DOI Leases”).

7. On June 30, 2020, the Debtors filed the Proposed Order (A) Approving the Sale of the Debtors Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Lease, and (C) Granting Related Relief (“Sale Order”). [Docket No. 153].

**OBJECTION**

8. To the extent the Debtors are seeking to assume or assign the DOI Leases, the United States objects to the Sale Motion on the grounds of lack of adequate notice. The United States further objects to the assignment procedures utilized by the Debtors as inadequate, insufficient and inappropriate under the circumstances.

9. The Sale Order provides in pertinent part:

Any provisions in any Assumed Contracts that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti-assignment provisions that are void, and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and the assignment to the Buyer of the Assumed Contracts have been satisfied. [Sale Order, ¶ 28].

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Upon the Closing, the Buyer will be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts and the Debtors and their estates will be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts. [Sale Order, ¶ 30].

To the extent the Debtors are seeking to assume and assign the DOI Leases through the Sale Motion, the United States objects to the assumption, transfer, sale or other assignment of the DOI Leases, or any other interests of the United States, unless and until the Debtors and the buyer have complied with the terms of the respective agreements and all applicable non-bankruptcy law. Sections 363 and 365 of the Bankruptcy Code, upon which the Debtors' sale process primarily relies, do not preempt non-bankruptcy law. Under 11 U.S.C. § 365(c)(1), the Debtors "may not assume or assign any executory contract or unexpired lease of the debtor....if applicable law excuses such a party, other than the debtor, to such a contract or lease from accepting performance from or rendering performance to any entity other than the debtor or the debtor in possession...."

It is imperative to preserve the Government's ability to determine with whom to contract and the United States does not consent to any attempt by the Debtors to alter its rights. In re West Electronics, Inc., 852 F.2d 79, 83 (3d Cir. 1988). The DOI Leases must be assumed *cum onere*, with all benefits and burdens including, among other things, the preservation of any audit and compliance review rights that may reveal additional unpaid or underpaid amounts owing by the Debtors to the DOI under the DOI Leases that must be cured in full by the Debtors, subject to any defenses and rights that the parties may have under applicable non-bankruptcy laws and regulations. The DOI Leases cannot vest in the Debtors free and clear of their *continuing* liability for any and all decommissioning, reclamation and/or plugging and abandonment obligations that have accrued under the DOI Leases and applicable laws, including the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* ("MLA"), the Mineral Leasing Act for Acquired Lands, 30 U.S.C.

§§ 351 *et seq.* (“MLAAL”), the Act of March 3, 1909, 25 U.S.C. § 396 (the “1909 Act”) and the Indian Mineral Leasing Act, 25 U.S.C. §§ 396a-g (“IMLA”), as applicable, their respective implementing regulations and any other statutes and regulations that apply to federal and/or Indian oil and gas lessees.

10. The United States objects to the setting of any arbitrary zero cure amount with respect to the DOI Leases or any other federal interest. To the extent that the Debtors seek to assume their interests in the DOI Leases, the Debtors must first cure any defaults owing for unpaid rents or royalties under the DOI Leases.

11. The United States objects to retention by the Bankruptcy Court of exclusive jurisdiction over any matters relating to or arising from the implementation of the Sale Order in violation of 28 U.S.C. § 1334(b), which provides for concurrent jurisdiction. [Sale Order, ¶ 48].

12. The United States objects to impermissible expansion of the scope of Section 525 of the Bankruptcy Code. [Sale Order, ¶ 14].

13. The United States objects to the provisions in the Sale Order making the sale effective and enforceable immediately upon entry of the Sale Order. [Sale Order ¶¶ D and 45]. By including the waiver of the stays imposed by Bankruptcy Rules 6004(h) and 6006(d) and 7062, the Debtors are attempting to circumvent the appeal rights of the United States. Pursuant to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure, unless otherwise ordered by the Court, there is an automatic fourteen-day stay imposed from the date of the entry of the order. Under the Debtors’ proposed scheme, if the United States is unable to immediately obtain a hearing before the appropriate Court to seek a stay, its appeal may be contended to be moot. Particularly in light of the fact that the appellant in this case would be a government agency, with a chain of command

to be consulted, this unilateral ability of the Debtors and the purchaser to truncate the stay period would be unfair and prejudicial to the United States.

**CONCLUSION**

**WHEREFORE**, the United States respectfully requests that the Court deny the Sale Motion as it relates to the DOI Leases, or any other federal interest, and grant such other and further relief as the Court deems necessary and just.

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Dated: July 7, 2020

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**AFFIDAVIT OF SERVICE**

I, Shane Macas, an employee in the Office of the United States Attorney for the District of Delaware, hereby attest that on July 7, 2020, I caused to be served a copy of the **PROTECTIVE OBJECTION BY THE UNITED STATES TO DEBTORS' MOTION FOR ENTRY OF ORDERS (A) (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) APPROVING BID PROTECTIONS, (III) SCHEDULING A SALE HEARING AND OBJECTION DEADLINES WITH RESPECT TO THE SALE, (IV) SCHEDULING AN AUCTION, (V) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND AUCTION, (VI) APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VII) GRANTING RELATED RELIEF; AND (B) (I) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED**

**LEASES, AND (III) GRANTING RELATED RELIEF** by electronic service on the registered parties via the Court's CM/ECF system and upon the following parties:

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