

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

PROTERRA INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23–11120 (BLS)

(Jointly Administered)

Related to Docket No. 1039

Hearing Date: March 5, 2024 at 10:00 a.m. (ET)

Objection Deadline: February 27, 2024 at 4:00 p.m. (ET)

**LIMITED OBJECTION OF GS OPERATING, LLC
D/B/A GEXPRO SERVICES TO DEBTORS' FOURTH
AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
FOR PROTERRA INC. AND ITS DEBTOR AFFILIATE**

GS Operating, LLC d/b/a Gexpro Services ("Gexpro"), by its counsel, respectfully represents as follows with respect to the *Fourth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc and its Debtor Affiliate* [Docket No. 1039] (the "Plan"):

BACKGROUND

1. Before this bankruptcy, Gexpro and Debtor Proterra Operating Company, Inc. ("Proterra Operating") entered into the certain Product Supply Agreement dated January 24, 2022, as amended on November 18, 2022 (the "Product Supply Agreement"). Pursuant to the Product Supply Agreement, Gexpro supplied electrical materials, fasteners, and chemicals ("Electrical Supplies") to Proterra Operating.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc. (9565); and Proterra Operating Company, Inc. (8469). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.



2. Under the Product Supply Agreement, Proterra Operating has sixty (60) days in which to dispute (and pay) invoices issued thereunder. It provides:

Unless otherwise specified in this Agreement, payment for Products shall be sixty (60) days following Buyer's receipt of invoice; provided, however, Buyer shall have the right within such sixty (60) day period to dispute any invoice if Buyer has a good faith basis to believe such invoice is not accurate, and in such event, the Parties agree to work together in good faith to resolve such disputed invoice (or any portion thereof).

3. Post-bankruptcy Gexpro continued to provide Electrical Supplies to Debtors.

4. On August 24, 2023, Gexpro filed (i) *Motion of GS Operating, LLC d/b/a Gexpro Services for Allowance and Payment of Administrative Expense Claim Under 11 U.S.C. 503(b)(9)* [Docket No. 122], (ii) *Motion of GS Operating, LLC d/b/a Gexpro Services to Compel Assumption or Rejection of Executory Contract* [Docket No. 123], and (iii) *Limited Objection of GS Operating, LLC d/b/a Gexpro Services to Debtors' Motion for Entry of an Order Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of Liens* [Docket No. 121]. By agreement with the Debtors Gexpro adjourned the hearings on its motions pending further developments with respect to Debtors' on-going efforts to sell some or all of their assets.²

5. On November 29, 2023, the Court entered the *Order (A) Authorizing and Approving the Debtors' Entry Into the Asset Purchase Agreement, (B) Authorizing the Sale of the Debtors' Powered Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. 664] (the "Volvo Sale Order") pursuant to which the Court approved the Debtors' sale of certain assets (the "Volvo Sale

² Ultimately, Gexpro and the Debtors resolved the motions and objection referenced in this paragraph through language in the Volvo Sale Order (as described below). Accordingly, Gexpro withdrew the motions and objection after the sale closed. See Docket No. 971 (Notice of Withdrawal).

Transaction”) to Volvo Battery Solutions LLC (“Volvo”) and authorized Debtors to close the Volvo Sale Transaction. The Product Supply Agreement was among the executory contracts proposed to be assumed and assigned to Volvo as part of the Volvo Sale Transaction.

6. Pursuant to the Volvo Sale Order, upon payment of the cure amount, which “shall consist of all (a) prepetition unpaid amounts due and owing to Gexpro and (b) postpetition unpaid amounts due and owing to Gexpro, in each case as agreed by the parties or as determined by the Court, (i) Gexpro shall use reasonable efforts to promptly remove all liens it may have filed against the Debtors, the Debtors’ assets and the property of the Debtors’ landlords . . . and (ii) the following pleadings shall be deemed withdrawn: Docket Nos. 120, 121, 122, 123, 240, 241, and 360.” Volvo Sale Order ¶ 32.

7. The Volvo Sale Transaction closed on February 1, 2024, and the Product Supply Agreement was assumed and assigned to Volvo pursuant to the authority contained in the Volvo Sale Order. *See* Docket No. 968 (Notice of Proterra Powered Sale Closing).

8. On February 2, 2024, Debtors paid \$810,054.45 to Gexpro, which was the amount Debtors and Gexpro agreed represented the pre-bankruptcy amounts due and owing under the Product Supply Agreement.

9. Gexpro continued to provide Electrical Supplies under the Product Supply Agreement to the Debtors up to and including February 1, 2024. Debtors have advised Gexpro that unpaid post-bankruptcy amounts due under the Product Supply Agreement incurred up to the closing of the Volvo Sale Transaction would be paid by Debtors in the ordinary course of business, and Debtors have made ordinary course payments to Gexpro after closing of the Volvo Sale Transaction, in accordance with the agreement memorialized in the Volvo Sale Order. Based on Debtors’ representation to pay Gexpro’s postpetition amounts in the ordinary course of business,

Gexpro has taken the appropriate steps to remove its liens against Debtors and Debtors' landlords in California and South Carolina and withdrew certain pleadings from the Court's docket, as required under the Volvo Sale Order.

10. As shown on the Statement attached hereto as **Exhibit A**, Electrical Supplies provided to Debtors post-bankruptcy by Gexpro under the Product Supply Agreement through February 1, 2024, remain unpaid as of the date of this limited objection in the aggregate amount of at least \$111,102.88. All of the invoices referenced in **Exhibit A** were provided by Gexpro to Debtors in the ordinary course of business and have due dates from February 27, 2024 to April 1, 2024.

11. To date Debtors have not lodged any disputes as to any of the invoices identified on **Exhibit A**. It is possible that all of such invoices will become finally due and payable in the ordinary course before the Plan Effective Date (but Gexpro does not have any information on when the Effective Date is anticipated to occur). Of course, the Product Supply Agreement does not prevent payment of undisputed invoices sooner than 60 days from issuance.

PLAN TERMS WITH RESPECT TO ADMINISTRATIVE EXPENSES CLAIMS³

12. Although Gexpro's ordinary course administrative claim should be paid in the ordinary course, and all by April 1st at the latest, the Plan provisions relating to allowance and payment of administrative claims provide an unwarranted, potential loophole which if unaddressed could impact the timely payment of Gexpro's administrative claim which should be paid in full in a few weeks. Gexpro understands that the Plan provisions relating to administrative claims are customary and may be reasonable and necessary for certain administrative claims, but submits they are not so in respect of Gexpro's claim.

³ Capitalized terms not defined herein have the meanings given to them in the Plan.

13. First, although Plan Article II.A.1 provides that administrative claims can be paid on the date the obligation comes due in the ordinary course of business such is not mandatory and it also provides for payment on the Effective Date or on later Distribution Dates. The provision also incorporates the concept of the administrative claim being “Allowed” which, of course, requires the absence of objection or a Court order for allowance. The Plan allows filing of claim objections for 180 days after the Plan Effective Date. Thus, theoretically, payment of Gexpro’s ordinary course administrative claim, which is due and payable no later than April 1, 2024, could extend well into the last couple months of 2024 (assuming a motion to extend the claim objection deadline is not filed).

14. Second, Plan Article II.A.1, goes on to provide that Holders of administrative expense claims “shall file with the Claims Agent and serve on the Distribution Trustee requests for payment, in writing, that together with supporting documents, substantially comply with the Bankruptcy Code and Bankruptcy Rules so as to actually be received on or before the Administrative Claims Bar Date”, which is “the first Business Day that is 30 days following the Effective Date.” *See* Plan at Article I.A.2.

15. In short, under the Plan, and simply because of these timing constructs, a claim that should be paid in the ordinary course within the next few weeks may inappropriately be caught up in a process that could extend payment for many months. If plan confirmation were to occur in April and not in March, then Gexpro, consistent with Debtors’ good faith promise to pay in the ordinary course (which has been kept to the date of this pleading; and is consistent with the parties’ business relationship since commencement of the chapter 11 cases), would have been paid before the deadline to object to confirmation. In effect, if Debtors for some reason do not pay the **Exhibit A** invoices in the ordinary course, then the Plan could convert the 60 day terms under the assumed

Product Supply Agreement to 270 day (or more) terms and also introduce a new payor that Gexpro has no relationship with—the Distribution Trust—into the mix. That result is inequitable under the circumstances and contrary to bankruptcy policy requiring debtors in chapter 11 cases to pay their on-going ordinary course expenses as and when they come due.

16. Thus, out of caution given the timing issues here, while assuming that Debtors will in fact pay in the ordinary course, Gexpro is lodging this limited objection to the Plan.

RELIEF REQUESTED

17. Generally, administrative expense claims must be paid in full in cash as a condition to confirmation. 11 U.S.C. § 1129(a)(9)(A) (“with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, *on the effective date of the plan*, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim”) (emphasis added). Gexpro’s administrative expense claims should be paid on or before the Plan Effective Date in accordance with the Bankruptcy Code, which is consistent with the payment of other administrative expenses under the Plan.⁴ Gexpro submits it would be inequitable and improper for its post-bankruptcy claims to endure a lengthy process that may be reasonable and necessary for unanticipated or legitimately contested administrative expense claims but is not appropriate for claims under a contract that has been assumed and assigned and under which Debtors had been paying obligations without significant dispute up to assumption and assignment and after.

18. At a minimum, Gexpro requests that Debtors include language in the confirmation order to reflect the agreement set forth in the Volvo Sale Order—to pay Gexpro its postpetition administrative expense claims in the ordinary course of business, notwithstanding any provisions

⁴ For example, “Restructuring Expenses,” which consist of the prepetition and postpetition “reasonable and documented” fees and expenses of the First Lien Professionals and the Second Lien Professionals must be paid as a condition to the Effective Date.

in the Plan or proposed confirmation order to the contrary. The Plan should not permit Debtors to deviate from the terms of the Volvo Sale Order, and the agreement reached between Gexpro and Debtors regarding Gexpro's postpetition administrative claims.

WHEREFORE, Gexpro respectfully objects to confirmation of the Plan and requests such relief as the Court deems just and proper.

Dated: February 27, 2024

SAUL EWING LLP

/s/ John D. Demmy

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EXHIBIT A

Post-Petition Statement of Account

Invoice Number	Bill of Lading	Invoice Date	Due Date	Invoice Amount	Invoice Balance	Purchase Order	Sales Order	Category	Customer Name
24US0811085	C100995712	1/4/2024	3/4/2024	28,430.22	28,430.22	51210-400	S2028640	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0812110	C100998001	1/8/2024	3/8/2024	143.80	143.80	DEVGEM826761	S2022218	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0812409	C100998000	1/8/2024	3/8/2024	6,940.68	6,940.68	51210-400	S2030062	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0816004	C101001675	1/17/2024	3/17/2024	87.00	87.00	DEVGVB826788	S2028001	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0816170	C101000662	1/17/2024	3/17/2024	15,950.28	15,950.28	51210-400	S2034448	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0818509	C101005512	1/22/2024	3/22/2024	31,900.56	31,900.56	51210-400	S2039297	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0823498	C100997680	2/1/2024	4/1/2024	24,400.56	24,400.56	66330-400	S1995031	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0823499	C100996231	2/1/2024	4/1/2024	2,768.78	2,768.78	51210-400	S2029388	Current	PROTERRA OPERATING C- LOCTITE DIP
24US0823867	C101013097	2/1/2024	4/1/2024	481.00	481.00	DEVGVB826976	S2036686	Current	PROTERRA OPERATING C- LOCTITE DIP

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CERTIFICATE OF SERVICE

I, John D. Demmy, hereby certify that on February 27, 2024, I caused a copy of the foregoing *Limited Objection of GS Operating, LLC d/b/a Gexpro Services to Debtors' Fourth Amended Joint Chapter 11 Plan of Reorganization for Proterra Inc. and Its Debtor Affiliate* to be filed electronically with the Court and served through the Court's CM/ECF system upon all registered electronic filers appearing in this case, and on the parties on the attached Service List in the manner indicated therein.

SAUL EWING LLP

By: */s/ John D. Demmy*

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