

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

IN RE:	:	
	:	
	:	Chapter 11
	:	
	:	Case No. 15-12670 (MFW)
SWIFT ENERGY COMPANY, <i>et al.</i> ,	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
	:	<b>Sale Hearing: February 1, 2016, at 11:30 AM</b>
	:	<b>Objection Due: January 25, 2016, at 4:00 PM</b>
	:	
	:	<b>Related Docket No. 83</b>

---

**OBJECTION BY THE UNITED STATES TO THE DEBTORS' SALE MOTION**

The United States, on behalf of the Department of Interior (“Interior”), through the Office of Natural Resources Revenue (“ONRR”) and the Bureau of Land Management (“BLM”), hereby objects to the Debtors’ Motion For an Order (A) Approving the Sale of Certain of the Debtors' Louisiana Assets, (B) Approving the Assumption, Assignment and Sale of Certain Contracts and Unexpired Leases, and (C) Granting Related Relief (“Sale Motion”) (DE 83). In support of this Objection, the United States respectfully states as follows:

**BACKGROUND**

1. On December 31, 2015, the Debtors filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the District of Delaware.
2. On January 11, 2016, the Debtors filed the Sale Motion.
3. It is unclear whether the assets to be sold pursuant to the Sale Motion include federal interests. The Sale Motion does not identify any Interior or other federal interests as



interests that are being sold. Interior has requested information from the Debtors about whether the sale includes federal interests and the Debtors have responded that they do not think that such interests are being assigned. However, Interior's preliminary research indicates that Swift Energy Operating, Inc., has at least twenty-five leases with Interior located on property in Louisiana.

4. The United States objects to the lack of notice provided by the Sale Motion process. The United States does not have an adequate amount of time to research its records to independently determine the impact, if any, the Sale Motion has on federal interests. Interior is diligently searching its records and its records reflect that the Debtors have a multitude of federal agreements with the government ("Agreements"). This objection is based on the best information presently available.

5. At all relevant times, Interior was and is the agency of the United States charged, *inter alia*, with discretionary authority over the management of oil and gas rights on federal land. Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 181 et. seq. and other applicable Acts.

**ASSUMPTION AND ASSIGNMENT OF INTERESTS IN FEDERAL LANDS**

6. Paragraph 11 of the Sale Motion provides in pertinent part that the transfer and assignment of the sale assets shall be effectuated on the terms set forth in the Purchase and Sale Agreement and the order approving the Sale Motion ("Order") shall not be restricted or prohibited, notwithstanding any alleged approval rights, consent rights, preferential purchase rights, rights of purchase or similar rights with respect to the Debtors' transfer, sale, vesting assumption and/or assignment of the sale assets. Moreover, paragraph 21 of the Sale Motion provides in pertinent part that each and every federal governmental agency or department is directed to accept any and all documents and instruments necessary and appropriate to

consummate the transactions contemplated by the Purchase and Sale Agreement and the Order. To the extent the Sale Motion directs the transference of federal interests, the Sale Motion is objectionable because it does not acknowledge or address the requirement that the Debtors obtain the consent of the United States to transfer such interest.

7. Section 365(b) of the Bankruptcy Code provides that a debtor-in-possession may not assume an executory contract or unexpired lease in default unless the debtor-in-possession: (1) cures the default or provides adequate assurance of a prompt cure; (2) compensates the non-debtor party to the contract or lease for the pecuniary loss suffered from the default or provides adequate assurance of future performance under the contract or lease. 11 U.S.C. § 365(b)(1)(A)-(C). Further, the debtor may not assume or assign any executory contract or unexpired lease of the debtor if applicable law excuses the other party from accepting performance from other than the debtor and such party does not consent to such assumption or assignment. 11 U.S.C. § 365(c)(1)(A) & (B). Finally, “[n]otwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property . . . proposed to be . . . sold . . . the court shall . . . prohibit or condition such sale . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

8. Consistent with the Bankruptcy Code, the MLA provides that no federal lease may be assigned or sublet or otherwise transferred without the consent of the Secretary of Interior. 30 U.S.C. § 187(a). The agencies’ regulations require specific approval for assumption and assignment of federal oil and gas interests. The BLM regulations, 43 C.F.R. § 3106.1, also require approval of assignments or transfers of leases and agreements. Prerequisites to such approval include, but are not limited to, the payment of the actual cure amounts, the cure of existing contract and lease defaults, the assumption of decommissioning obligations, and the

posting of appropriate bonds or other security and the qualification of the assignee to hold a lease or other agreement.

The United States objects to the Sale Motion because it is not consistent with federal law. The Assignment of Contracts Act provides that a party to a federal contract may not transfer the contract or any interest in the contract. 41 U.S.C. § 6305. Under this Act, debtors may not assign or assume a contract with the United States without first obtaining its consent. *In re West Electronics, Inc.*, 852 F.2d 79, 83 (3d Cir. 1988).

9. Accordingly, the Debtors may not assign any of their interests in the federal oil and gas leases without the specific approval of the Secretary of Interior. And such approval is contingent upon the Debtor meeting all of the regulatory criteria for such consent, *inter alia*, cure of any and all lease/contract defaults, adequate financial assurances relating to bonds, etc., and assumption of all obligations, including audit and decommissioning obligations. If the Agreements are being sold, the Debtors have not met the requirements for the Secretary's approval and assignment of the Agreements.

#### **DEBTORS' POTENTIAL DECOMMISSIONING OBLIGATIONS**

10. Pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 *et seq.* (MLA), and the Mineral Leasing Act for Acquired Lands of 1947, 30 U.S.C. §§ 351 *et seq.*, the regulations enacted pursuant thereto, notices to lessees, the terms of the leases and other applicable provisions of the law, the Debtors are obligated to protect and conserve the natural resources of the federal lands, as well as private lands where mineral rights have been retained by the federal government. These obligations include, but are not limited to, the obligations to: (1) timely and completely plug all wells; (2) environmentally reclaim the lease area(s); (3) restore any water or lands that are adversely affected by the lease operations; (4) remedy all

environmental problems in existence at the lease area(s); and (5) to submit a surety bond or personal bond accompanied by negotiable Treasury securities, cashier's check, certified check, certificate of deposit, or irrevocable letter of credit in an amount deemed adequate by the United States to ensure compliance with the law; MLA; 43 C.F.R. § 3104.1, 43 C.F.R. § 3104.2, 43 C.F.R. § 3104.3, 43 C.F.R. § 3104.5(b); 43 C.F.R. § 3106.6-1. These obligations to ensure compliance with the lease terms, including protection of the environment, are known as decommissioning or plugging and abandonment ("P&A") obligations.

11. Decommissioning obligations arise when there is an approved application to drill (APD) on the lease or there is an unplugged well on the lease. 43 C.F.R. § 3106.6-1. Lessees, owners of operating rights, and all holders of a right-of-way are responsible for meeting these obligations as the obligations accrue and until each obligation is met. 43 C.F.R. § 3106.6-1. Pursuant to the terms of the lease instruments and the regulations, performance of these obligations, however, is generally not due until production is abandoned or the lease expires. 43 C.F.R. § 3106.7-6.

12. The Agreements are executory contracts and/or leases subject to section 365 of the Bankruptcy Code. See 11 U.S.C. § 365; 30 U.S.C. § 223 (describing oil and gas leases); *see In re Aurora Oil & Gas Corp.*, 439 B.R. 674, 680 (Bankr. W.D. Mich. 2010) (held that, as a matter of federal law, certain Michigan oil and gas leases constitute leases under Section 365).

13. Section 365 of the Bankruptcy Code applies to the federal oil and gas leases and contracts, and therefore, the Debtors, or any other buyer or assignee, must assume all obligations, including, *inter alia*, the decommissioning obligations under oil and gas leases and contracts.

### **DEBTOR'S MONETARY DEFAULTS AND CURE AMOUNTS**

14. The Debtors may seek to assign various federal oil and gas interests and to do so, must cure its outstanding debts, if any, with the United States. Interior objects to the Sale Motion to the extent any of its interests are assigned without payment of the appropriate cure amount. Pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1966 (RSFA), 30 U.S.C. § 1701 et. seq., the regulations enacted pursuant thereto, terms of the leases and contracts, and other applicable provisions of law, the Debtors are liable for payment of royalties, rents, fees and other obligations, and for the maintenance of records relating to their oil and gas leases for six years unless the Secretary directs otherwise. *Id.* § 1712 -13. Correspondingly, the Secretary is required to audit and reconcile leases of oil and gas. *Id.* at § 1711. This duty has been delegated to ONRR.

15. The United States objects to the Sale Motion to the extent it fails to recognize the rights of the United States to: (1) require consent and adequate cure prior to the assignment of the Agreements under section 365 of the Bankruptcy Code; and (2) requires compliance with financial assurance, decommissioning, audit and other associated obligations of the federal leases and contracts and other non-bankruptcy law.

WHEREFORE, the United States respectfully requests that the Court deny the Sale Motion to the extent the Debtors purport to transfer any federal interests without complying with applicable non-bankruptcy laws and grant such other and further relief as the Court deems necessary and just.

CHARLES M. OBERLY, III  
United States Attorney

By: /s/ Ellen W. Slights  
Ellen W. Slights  
Assistant United States Attorney  
Delaware State Bar No. 2782  
1007 Orange Street, Suite 700  
P.O. Box 2046  
Wilmington, DE 19899-2046

Dated: January 22, 2016

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

IN RE:	:	
	:	
	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> ,	:	Case No. 15-12670 (MFW)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	
	:	<b>Sale Hearing: February 1, 2016, at 11:30 AM</b>
	:	<b>Objection Due: January 25, 2016, at 4:00 PM</b>
	:	
	:	<b>Related Docket No. 83</b>

---

**AFFIDAVIT OF SERVICE**

I HEREBY CERTIFY that a copy of this OBJECTION BY THE UNITED STATES TO THE DEBTORS' SALE MOTION was served on January 22, 2016, on the electronic service list and on the following in the manner indicated below at the following address:

Swift Energy Company 17001 Northchase Drive, Ste. 100 Houston, TX 77060 Attn: Office of the General Counsel <a href="mailto:jschmaltz@alvarezandmarsal.com">jschmaltz@alvarezandmarsal.com</a> (via e-mail)
Jones, Day, Reavis & Pogue 2727 N. Harwood Street Dallas, TX 75201-1515 Attn: Paul Green, Esq. <a href="mailto:pmgreen@jonesday.com">pmgreen@jonesday.com</a> (via E-mail)



Richards Layton & Finger, P.A.  
One Rodney Square  
920 N. King St  
Wilmington, DE 19801  
Attn: Zachary I. Shapiro  
[shapiro@rlf.com](mailto:shapiro@rlf.com)  
(via E-mail)

Office of the United States Trustee  
844 King Street, Ste 2207  
Wilmington, DE 19801  
Attn: Natalie M. Cox, Esq.  
[natalie.cox@usdoj.gov](mailto:natalie.cox@usdoj.gov)  
(via E-mail)

/s/ Marissa Ballasy  
Marissa Ballasy

January 22, 2016