

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

VWS Holdco, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 25-10979 (JKS)

(Jointly Administered)

Related to Docket Nos. 67, 139 and 152

**LIMITED OBJECTION OF ARCHAEA ENERGY TO DEBTORS' NOTICE OF  
POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS OR  
UNEXPIRED LEASES AND CURE AMOUNTS**

Archaea Energy (“**Archaea**”), by and through its undersigned counsel, files this limited objection and reservation of rights (the “**Limited Objection**”) to the Debtors’ *Notice of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts* [Docket No. 152] (the “**Cure Notice**”)<sup>2</sup> and respectfully states as follows:

**BACKGROUND**

1. On June 1, 2025 (the “**Petition Date**”), the above-captioned debtors (the “**Debtors**”) filed voluntary petitions for relief under title 11 of the United States Code (the “**Bankruptcy Code**”) and thereby commenced these cases (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number are as follows VWS Holdco, Inc. (5412) and Shoosmith Bros., Inc. (6914). The Debtors’ mailing address is P.O. Box 2770, Chesterfield, VA 23832.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Cure Notice.



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2. The Debtors own and operate the Shoosmith Sanitary Landfill (the “**Landfill**”), which is located in Chester, Virginia in Chesterfield County.

3. Prior to the Petition Date, Debtor Shoosmith Bros., Inc. (“**Shoosmith**”) and Archaea<sup>3</sup> entered into certain agreements related to the Landfill and the purchase and sale of gases generated at the Landfill (the “**Landfill Gas**”), as more fully set forth below:

- (a) That certain Landfill Gas Purchase Agreement, dated as of September 5, 2002 (as subsequently amended, the “**2002 LFG Purchase Agreement**”), pursuant to which Archaea purchases Landfill Gas from the Landfill for use at Archaea’s electric facility (the “**LFGTE Facility**”);
- (b) That certain Site Lease Agreement, dated as of September 5, 2002 (as subsequently amended, the “**Site Lease Agreement**”), pursuant to which Archaea leases a portion of the Landfill for its LFGTE Facility; and
- (c) That certain Landfill Gas Purchase Agreement, dated as of April 14, 2021 (as subsequently amended, the “**2021 LFG Purchase Agreement**”, and collectively with the 2002 LFG Purchase Agreement and Site Lease Agreement, the “**Archaea Agreements**”)<sup>4</sup>, pursuant to which debtor Shoosmith Bros., Inc. purchases Landfill Gas from Archaea.

4. Pursuant to the 2021 LFG Purchase Agreement, for all months during the Delivery Term (as defined in Section 8.2) Archaea agreed to sell to Shoosmith, and Shoosmith agreed to purchase from Archaea, a quantity of Landfill Gas equal to the quantity of Landfill Gas received by Archaea from Shoosmith pursuant to the 2002 LFG Purchase Agreement (the “**Monthly LFG Quantity**”) for such month.

5. As consideration for the sale of the Monthly LFG Quantity, for each month of the Delivery Term, Shoosmith agreed to pay to Archaea a fixed amount of one hundred twenty-six

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<sup>3</sup> Archaea is a successor to Industrial Power Generating Company, LLC, and Industrial Power Generating Corporation.

<sup>4</sup> Upon information and belief, copies of the Archaea Agreements are in the possession of the Debtors and their counsel and are not attached hereto due to their voluminous nature and inclusion of commercially sensitive information. Archaea reserves all rights to introduce copies of the agreements at any hearing in connection with this Objection or any proposed sale of the Debtors’ assets.

thousand six hundred eighty-two dollars and twenty cents (\$126,682.20) each month (the “**Monthly Fixed Payment**”).

6. Pursuant to Section 2.2.1, if Shoosmith fails to make any payment under any invoice within fifteen (15) days of the due date, Archaea has the right to suspend all future deliveries of LFG until such overdue payment obligations are satisfied. In addition, pursuant to section 2.2.2 of the 2021 LFG Purchase Agreement, such late payments accrue interest at the prime rate of CitiBank, N.A. as published by the Wall Street Journal on the 2<sup>nd</sup> business day of each calendar month.

7. As of the filing of this Limited Objection, the Debtors currently owe Archaea \$1,013,457.60, plus interest, consisting of the following outstanding monthly payment obligations under the 2021 LFG Purchase Agreement:

December 1, 2024	\$126,682.20
January 1, 2025	\$126,682.20
February 1, 2025	\$126,682.20
March 1, 2025	\$126,682.20
April 1, 2025	\$126,682.20
May 1, 2025	\$126,682.20
June 1, 2025	\$126,682.20
July 1, 2025	\$126,682.20
<b>TOTAL:</b>	<b>\$1,013,457.60</b>

8. On July 1, 2025, the Court entered the *Order (A) Authorizing and Approving Bidding Procedures in Connection with the Sale of the Debtors’ Assets, (B) Approving Process for Designation of Stalking Horse Bidder and Provision of Bid Protections, (C) Scheduling the*

*Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief* [Docket No. 139] (the “**Bid Procedures Order**”).

9. The Bid Procedures Order established procedures regarding the assumption and assignment of executory contracts proposed to be assumed and assigned by the Debtors to a Successful Bidder (as defined therein) pursuant to sections 365(b) and (f) of the Bankruptcy Code in connection with a sale.

10. On July 7, 2025, the Debtors filed the Cure Notice. Exhibit 1 to the Cure Notice identified the Archaea Agreements as being subject to potential assumption in these Chapter 11 Cases as follows:

DEBTORS	COUNTERPARTY	CONTRACT DESCRIPTION	CURE AMOUNT
Shoosmith Bros., Inc.	Industrial Power Generating Corporation c/o Archaea Energy	Landfill Gas Purchase Agreement dated September 5, 2002 (including all amendments, modifications, supplements, exhibits, and any other operative documents related to such Landfill Gas Purchase Agreement)	\$0.00
Shoosmith Bros., Inc.	Industrial Power Generating Corporation c/o Archaea Energy	Site Lease Agreement dated September 5, 2002 (including all amendments, modifications, supplements, exhibits, and any other operative documents related to such Site Lease Agreement)	\$0.00
Shoosmith Bros., Inc.	Industrial Power Generating Corporation c/o Archaea Energy	Landfill Gas Purchase Agreement dated April 14, 2021 (including all amendments, modifications, supplements, exhibits, and any other operative documents related to such Landfill Gas Purchase Agreement)	\$506,728.80

### **LIMITED OBJECTION**

11. Archaea does not generally object to the proposed assumption and assignment of the Archaea Agreements, subject to demonstration that the party that assumes the Archaea Agreements satisfies the requirement of section 365 of the Bankruptcy Code to demonstrate adequate assurance of future performance of the Archaea Agreements.

12. Archaea does object to the proposed assumption and assignment, because the cure amount the Debtors assert in the Cure Notice as the amount necessary to comply with section 365(b)(1) of the Bankruptcy Code is incorrect. As set forth above, the Debtors currently owe Archaea \$1,013,457.60, plus interest, in connection with the 2021 LFG Purchase Agreement, inclusive of post-petition amounts for June and July that the Debtors have failed to render. Amounts continue to accrue under the 2021 LFG Purchase Agreement, with no amounts set in the Debtors' DIP budget to pay for the Monthly LFG Quantity.

13. Section 365(b)(1)(A) of the Bankruptcy Code provides that a trustee may not assume an executory contract "unless, at the time of assumption of such contract or lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure" any monetary defaults under the contract or lease. Moreover, a contract may not be assumed unless the trustee "provides adequate assurance of future performance." *Id.* § 365(b)(1)(C).

14. While the term "adequate assurance of future performance" is not defined in the Bankruptcy Code, it has been noted that "what constitutes adequate assurance of future performance must be determined by consideration of the facts of the proposed assumption." *See Cinicola v. Scharffenberger*, 248 F.3d 110 n. 10 (3d Cir. 2001). Relying on the meaning of "adequate assurance" applied under the Uniform Commercial Code, courts have held that the adequacy of the assurance must be based on "commercial reasonableness." *See In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009).

15. Based on the requirements of section 365 of the Bankruptcy Code, the Debtors must cure all defaults as of the effective date of actual assumption, as well as provide adequate assurance of future performance. *See In re Ionosphere Clubs, Inc.*, 85 F.3d 992 (2nd Cir. 1996). Here, Debtors' attempt to assume the Archaea Agreements without paying the full cure amount of \$1,013,457.60 violates section 365 of the Bankruptcy Code.

### **RESERVATION OF RIGHTS**

16. Archaea expressly reserves all of its rights to supplement, modify, or amend this Limited Objection and make such other and further objections to the Cure Notice, Bid Procedures Order, or any assumption and assignment of the Archaea Agreements. Nothing set forth herein shall constitute a waiver, discharge or disallowance of any and all rights, claims, causes of action and defenses that Archaea has asserted, or may assert, with respect to any claim against the Debtors. In addition, nothing set forth herein shall be construed as a waiver, release, discharge or disallowance of any and all administrative claims Archaea may have against the Debtors.

17. Archaea reserves all rights to assert claims for breach of the Debtors' obligations under the respective Archaea Agreements. Archaea is still researching its records and reserves its right to amend or supplement this Limited Objection prior to or at the hearing.

### **CONCLUSION**

**WHEREFORE**, Archaea respectfully requests that this Court enter an order (i) conditioning the entry of any order assuming and assigning the Archaea Agreements on payment of the correct cure amount, plus additional amounts accruing under the Archaea Agreements, through and including the effective date of assumption and assignment, as set forth herein; (ii) reserving Archaea's right to require the ultimate purchaser to provide requisite proof of adequate assurance

of future performance; and (iii) granting Archaea such other and further relief as this Court deems just and proper.

Dated: July 18, 2025.  
Wilmington, Delaware

**CHIPMAN BROWN CICERO & COLE, LLP**

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*Counsel to Archaea Energy*

**CERTIFICATE OF SERVICE**

I, William E. Chipman, Jr., hereby certify that on July 18, 2025, a true and correct copy of the *Limited Objection of Archaea Energy to Debtors' Notice of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts* (the “**Objection**”) was served electronically upon the parties entered in the Court’s electronic case filing system. Further, on July 18, 2025, I caused the Objection to be served on the parties listed on the attached service list *via* electronic mail.

/s/ William E. Chipman, Jr.  
William E. Chipman, Jr. (No. 3818)



**SERVICE LIST**

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