Docket #0687 Date Filed: 08/08/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 25-16137 (MBK)
	.	Chapter 11
POWIN, LLC, et al,	.	(Jointly Administered)
	.	
	.	U.S. Courthouse
Debtors.	.	402 East State Street
	.	Trenton, NJ 08608
	.	
	.	August 6, 2025
. . . . .	.	11:00 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors:	Dentons US LLP By: TANIA M. MOYRON, ESQ. VAN C. DURRER, II, ESQ. 1221 Avenue of the Americas Ste. 25th Floor New York, NY 10020 Togut, Segal & Segal LLP By: FRANK A. OSWALD, ESQ. One Penn Plaza Suite 3335 New York, NY 10119
For Ace Engineering:	Sherman Silverstein By: ARTHUR ABRAMOWITZ, ESQ. East Gate Corporate Center 308 Harper Drive, Suite 200 Moorestown, NJ 08057
Audio Operator:	Wendy Quiles

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (Cont'd):

For Lu Pacific Properties, LLC:	Archer & Greiner, P.C. By: NATASHA M. SONGONUGA, ESQ. 300 Delaware Avenue Suite 1100 Wilmington, DE 19801-1670
For Honeywell International Inc.:	Rabinowitz, Lubetkin & Tully, LLC By: JEFFREY A. COOPER, ESQ. 293 Eisenhower Parkway Suite 100 Livingston, NJ 07039
	Adams & Reese By: SCOTT ROBERT CHEATHAM, ESQ. 701 Poydras Street Suite 4500 New Orleans, LA 70139
For the U.S. Trustee:	Office of the U.S. Trustee By: LAUREN BIELSKIE, ESQ. One Newark Center Suite 2100 Newark, NJ 07102
For Mainfreight Inc.:	Benesch, Friedlander, Coplan & Aronoff By: KEVIN CAPUZZI, ESQ. 411 Hackensack Avenue, 3rd Floor Suite 801 Hackensack, NJ 07601
For FlexGen Power Systems, LLC:	Latham & Watkins, LLP By: JEFFREY T. MISPAGEL, ESQ. 355 South Grand Avenue Suite 100 Los Angeles, CA 90071-1560
For Longroad Development Company, LLC, et al.:	Mayer Brown By: JOAQUIN M. C de BACA, ESQ. 1221 Avenue of the Americas New York, NY 10020-1001
For Stem, Inc.:	Greenberg Traurig, LLP By: ALAN J. BRODY, ESQ. 500 Campus Drive Suite 400 Florham Park, NJ 07932

APPEARANCES (Cont'd):

For EDF Power Solutions, Inc. and esVolta:	Orrick, Herrington & Sutcliffe LLP By: LORRAINE McGOWEN, ESQ. 51 West 52nd Street New York, NY 10019-6142
For Ad Hoc Customer Group:	Vinson & Elkins LLP By: LAUREN R. KANZER, ESQ. The Grace Building 1114 Avenue of the Americas 32nd Floor New York, NY 10036
For Spark Power Renewables and THI, Inc.:	Stark & Stark By: TIMOTHY P. DUGGAN, ESQ. 100 American Metro Boulevard Hamilton Township, NJ 08619
For Solar Carver 1, LLC, et al.:	Riker Danzig LLP By: JOSEPH L. SCHWARTZ, ESQ. 7 Giralda Farms Suite 250 Madison, NJ 07940
For Keyframe Capital Partners, L.P.:	Faegre Drinker Biddle & Reath LLP By: MICHAEL P. POMPEO, ESQ. 1177 Avenue of the Americas 41st Floor New York, NY 10036

TELEPHONIC APPEARANCES:

For Specified Technologies, Inc.:	Fox Rothschild LLP By: AGOSTINO A. ZAMMIELLO, ESQ. 49 Market Street Morristown, NJ 07960
For Ulinda Park Projectco, et al.:	Weil, Gotshal & Manges By: KEVIN BOSTEL, ESQ. 767 Fifth Avenue New York, NY 10153
For Ameresco, Inc. and Kupono Solar, LLC:	Troutman Pepper Locke LLP By: TORI L. REMINGTON, ESQ. Hercules Plaza, Suite 1000 1313 N. Market Street, P.O. Box 1709 Wilmington, DE 09899-1709

- - -

THE COURT: All right. This is Judge Kaplan, and we'll begin our somewhat long agenda on Powin. I'll remind those who are viewing and participating remotely, if you wish to be heard, make sure you use the raise hand function. I'll also remind those who are sitting in court, and counsel, please, to assist the recording and the transcript, if we could have you announce -- give your appearance when you rise to speak and when you're speaking.

Otherwise, I'm ready to see what you all -- we had a schedule. Now, you'll let me know what adjustments are to be made, if any.

MS. MOYRON: Thank you, Your Honor. Good morning. Tania Moyron of Dentons on behalf of Powin. And thank you for the brief adjournment this morning. And you are correct, it is a long agenda, Your Honor.

And currently there are at least ten lawyers in one of your chamber's conference rooms continuing to reach an agreement. And we are hopeful that we will reach an agreement. Counsel needs to call their client in order to try to get sign-off. So, we would like, Your Honor, another 30 minutes. We apologize for the request. But, we do think that it'll likely obviate testimony and the long hearing today, so we would like another 30 minutes, Your Honor.

THE COURT: How could I say no to that? That's fine. It's -- I guess it's 11 o'clock now.

MS. MOYRON: Yes.

THE COURT: Rather than doing this again, do we think it's 30 minutes? Should we -- will that suffice? Do we say an hour? And then we're going to bump up into when I have to give everybody lunch. Come back in 30 minutes, you think will suffice?

MS. MOYRON: I think that will suffice, Your Honor.

THE COURT: All right. Then let chambers know. Mr. Abramowitz, I see you standing.

MR. ABRAMOWITZ: Yes. Is Mr. Capuzzi in court? I see him. Yes. We want to approach the court bench for one second, Your Honor.

THE COURT: Sure.

(Attorney discussion)

MR. ABRAMOWITZ: Your Honor, we'll defer to the -- it's tied into the overall --

THE COURT: The other issues?

MR. ABRAMOWITZ: Yes. Thank you. Okay.

THE COURT: All right. Counsel, good morning.

MS. SONGONUGA: Good morning, Your Honor. For the record, Natasha Songonuga of Archer & Greiner, counsel to Lu Pacific Properties, LLC, who is the landlord of the debtor's property, located in Oregon.

Your Honor, I actually have a flight to Canada that I have to catch. So, we filed a non-waiver of rights and

reservation of rights to the notice of assume -- the subcontracts. And I just wanted to put the reservations on the record today, Your Honor, before I have to run to catch a flight.

THE COURT: That's fine.

MS. SONGONUGA: Will that be okay? Okay. So, again, Your Honor, for the record, Natasha Songonuga of Archer and Greiner for Lu Pacific Properties, LLC. Your Honor, the client is the landlord for the property located in Oregon. This is where the debtor stores lithium battery, as well as testing the batteries. There's a significant amount of batteries stored on the property.

And so we filed a non-waiver and reservation of rights. We do not object to the cure amount. But, specifically, Your Honor, we filed the reservation of rights just to put on the record that on July 7th, the landlord was allowed access to the premises to conduct a health and safety inspection. There was a letter sent by counsel to the landlord outlining a number of health and safety concerns, Your Honor. And that was attached to the reservation of rights, and that's Docket Number 523.

There are a number of issues listed, including lack of sufficient staffing, other health inspection and code violations. As I stand here today, Your Honor, I learned yesterday that the client and the proposed purchaser have been

in communications and are discussing the outstanding issues, but have not reached any resolution on those issues.

And so I merely wanted to make it clear to the Court that we still reserve the rights under the lease, not only to inspect -- to continue to inspect, but to have the purchaser and the debtors bring the property up to code should the parties not be able to come to consensus on that.

THE COURT: Fair enough. All right. Noted. Have a safe travels.

MS. SONGONUGA: Thank you, Your Honor.

THE COURT: Mr. Cooper?

MR. COOPER: Thank you, Judge. Jeffrey Cooper, Rabinowitz, Lubetkin & Tully. And together with Scott Cheatham, Adams & Reese, counsel for Honeywell International. I rise, Judge, just to let Your Honor know that we are representing one of, I think many, the licensees whose agreements are being -- proposed to be rejected today.

And my understanding is that the discussions that are ongoing with the people for Mayor Brown and so forth often go to our issues. We have not been involved with those negotiations. But, very specifically, we need to deal with the issues of the 365(n) relief, both temporarily and going forward, and specifically with regard to a certain operating system called Cobalt, which I understand is integral to the operation of the licenses.

And it seems to me, a controlling argument at a later time, that the code and 365(n) envisions that these, if you will, ancillary contracts that go to implement the license are included in the term of embodiment, not unlike in the real estate context, the term apartment 2 with regard to 365(h).

So, I just wanted to raise the issue so the parties know that we're here. Hopefully the resolution will be able to be something that's applicable to our client as well. But, we have an independent interest in making sure that it's resolved today.

THE COURT: All right. Thank you, Mr. Cooper.

MR. COOPER: Thank you, Judge.

MS. MOYRON: Thank you, Your Honor. With those comments being made, perhaps I'm going to take you up, Your Honor, on your suggestion that we do this for -- maybe adjourn for an hour, and then we come back. And we're happy to speak with counsel, and Mr. Kane, the CEO, is here. And, again, these are issues that we are trying to resolve, and so --

THE COURT: Why don't we adjourn 'til noon, then we'll discuss -- see where you're at, see what our schedule will be.

MS. MOYRON: Perfect.

THE COURT: And what we have to accomplish for the rest of the day.

MS. MOYRON: Perfect.

THE COURT: All right?

MS. MOYRON: Thank you, Your Honor.

THE COURT: Thank you, counsel.

MS. MOYRON: Thank you.

THE COURT: We are adjourned.

(Off the record)

THE COURT: All right. We are ready to go. Welcome back, everyone. It's Judge Kaplan on the Powin matters. Mr. Durrer?

MR. DURRER: Good afternoon, Your Honor. Van Durrer, Dentons, for the debtors, the Powin debtors. I'm going to give a brief statement and then turn over the podium to Mr. Oswald to walk through the uncontested matters. But, in fairness and, thank you, I should say at the outset, for the time. I think it's been well used.

Powin, as you know, Your Honor, has dozens of customers. Those customers are very focused on their 365(n) rights. We've been working throughout the last many days and this morning to develop a framework that everybody's comfortable with. That process remains ongoing. We do hope to conclude it soon.

But, we thought that while we had everybody, that we would proceed with those uncontested matters, with Your Honor's permission, and we'll keep working. And then, you know, we will still probably need some time. But, the design is to have

those -- the framework for those 365(n) rights resolved. The framework, not the details. And then the sale as well. The sale will be subject to those rights. And, again, I don't want to presume anything, but that's the game plan.

So, with that, I'll turn it over to Mr. Oswald.

THE COURT: So, the Court will hear the lease issues, the licensing issues, with the sale motion. You're not going to do one without the other at this juncture?

MR. DURRER: They're very closely related. Yes, Your Honor.

THE COURT: Okay. And so, we're going to -- we'll address the other matters on the agenda?

MR. DURRER: Yes, Your Honor.

THE COURT: Sounds good.

MR. DURRER: Thank you very much.

THE COURT: Thank you.

MR. OSWALD: Thank you, Your Honor. Frank Oswald, Togut, Segal & Segal, co-counsel for the debtors. Again, I appreciate the Court's patience today. We do have a few uncontested matters on the calendar. I'll just go in order of the agenda, if that's okay with the Court?

THE COURT: All right.

MR. OSWALD: These are matters that teed up. The first one, dealing with a specific lease and landlord issue. We had agreed with that landlord to turn back possession at the

end of June, and ultimately entered into a stipulation with the lessor reflecting a rejection date of June 30.

We had some minimal office equipment and furnishings in the premises, which we've deemed abandoned to the landlord. I shared that stipulation with counsel for the Committee and U.S. Trustee. They're okay with the form of order. No objections were submitted. And we filed a certificate of no objection at Docket Number 623.

So, if that stipulation is satisfactory to the Court, we'd respectfully request that it be so ordered.

THE COURT: All right. So then, we're not getting another order? We're just going to so order the stipulation?

MR. OSWALD: Yes.

THE COURT: All right. And I reviewed it on the docket. Wendy, this is Docket 214, is the motion. The Court approves the rejection on the lease pursuant to the terms of the stipulation.

MR. OSWALD: Thank you. Item 2, Your Honor, was our motion to -- for an interim and final order regarding the payment of accrued pre-petition taxes, which had not yet come due. That was at Docket Entry 99. Your Honor entered the interim order previously.

We've submitted a form of final order. Again, reviewed that in advance with Committee counsel, the U.S. Trustee. They're satisfied with the form of that order. No

other objections or responses were filed.

And I believe we have -- earlier today, it's not reflected on the agenda, but I think earlier we did get a certificate of no objection on file. I just don't have that docket number handy.

THE COURT: Here. Let me see what -- 652, I believe. All right. The Court approves.

MR. OSWALD: Thank you. Item 3 on the agenda, Your Honor, deals with the standard motion for the utilities, adequate assurance. And that was at Docket Entry 112. Your Honor entered the interim order. We have since established an escrow account for the utility deposit funds.

The form of final order, likewise, is the other motion shared with the U.S. Trustee, counsel to the Committee. They had no issue with that order. No other responses were received. We filed a certificate of no objection at Docket Number 387.

If that form of order is satisfactory to the Court, we ask that it be entered at your convenience.

THE COURT: All right. Just for the record, I think the certificate of no objection is 653.

MR. OSWALD: Item 4, Your Honor, was a customer settlement. Again, the Court dealt with something similar at the last hearing. This is known as the Idaho Power 9019 Settlement. The motion was filed at Docket 355. Objection

deadline was July 30. No objections or responses were filed.

Again, the settlement was reviewed in advance with Committee counsel. Form of order also reviewed and signed off by Committee counsel, as well as the U.S. Trustee. We have filed a certificate of no objection, again, earlier today. I know the agenda doesn't reflect the number, but I think that came in within the last couple of hours.

THE COURT: All right. So, will we be getting a new order or --

MR. OSWALD: Yes.

THE COURT: All right. And let me just check one thing on this. There was also a, I think, an application to seal the company -- the settlement.

MR. OSWALD: Yes, yes. I'm sorry, Your Honor. We did have the application sealed. Reviewed that as well with Committee counsel and the U.S. Trustee. No objections to that.

THE COURT: All right. The Court will grant the motion to seal, and we'll grant -- and grant approval of the settlement, and await the submission of the order.

MR. OSWALD: Thank you, Your Honor. The next item, Item 5, is our motion to implement a KERP and KEIP program. I think that it's one of the leanest programs that I've seen certainly in quite some time. And we do know that oftentimes these motions bring concerns of the -- of the creditors and the U.S. Trustee. Pleased to say that this one has not.

I know the U.S. Trustee counsel would like to put a statement on the record. But, in substance, no objections to this motion. The employees, from the executives down, as you know, how active this case has been, has really been working tirelessly both pre-petition and since we filed the case. And so we're very grateful for all of their time and services.

With that, maybe I will turn it over to the U.S. Trustee for their statement. But, there are no objections to this motion and the form of order is satisfactory to the Committee and the U.S. Trustee.

THE COURT: All right. Thank you. Here I was looking on the screen for Ms. Bielskie. You're here.

MS. BIELSKIE: You had to check, Your Honor.

THE COURT: Live.

MS. BIELSKIE: Good afternoon. Lauren Bielskie with the Office of the United States Trustee. As counsel stated, Your Honor, the U.S. Trustee did not object to the pending KERP and KEIP motion. Counsel did provide our office with additional information, including the titles of the individuals that are subject to the KERP.

And I just want to be on the record saying, Your Honor, that our decision not to object was based on the facts and circumstances of this case, including the relative dollar amounts, and should not be construed by any party as a policy change by the U.S. Trustee, precedent for future cases, or

anything more than a determination on this particular motion. And that's all, Your Honor.

THE COURT: For wanting for other cases. Okay.

MS. BIELSKIE: Thank you.

THE COURT: Thank you. Motion is granted.

MR. OSWALD: Thank you, Your Honor. I believe that takes care of the uncontested matters.

While I'm up, Your Honor, just as a housekeeping measure, I would like to let the Court know, if you haven't seen it, we did file timely last month our schedules and statements. The U.S. Trustee conducted an extensive first meeting of creditors. Closed that meeting, subject to our providing some additional information.

We're working with the Committee currently on a motion to have a claims bar date set. We'd like to move ahead quickly with that. We'll share with the U.S. Trustee. We've already got a form of customized claim form in the works. And we'll also share it with the clerk.

And so, you'll see that in hopefully short order following the sale, and hopefully we get that sale approved and closed. We'll move quickly to get the bar date entered, and then move to a plan. So, I just wanted to let the Court know that.

THE COURT: All right. Thank you for the update. Just one matter. We also had as an adjourned matter, the

Mainfreight, we'll call it, the motion.

MR. CAPUZZI: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. CAPUZZI: For the record, Kevin Capuzzi, Benesch, Friedlander, Coplan & Aronoff, counsel for the Mainfreight entities. Your Honor, the Mainfreight motion is reflected at Item 10 of the agenda.

THE COURT: Correct.

MR. CAPUZZI: It is adjourned with the consent of the debtors, BHER and Ace, who were all of the responding parties. We're hoping to use the time between now and September 3rd to have some business discussions. And if not, we'll be back to you on the 3rd. While I'm up here, Your Honor --

THE COURT: Yes?

MR. CAPUZZI: -- one of the three sale orders is the Mainfreight sale order. There's no objection to that one, so I'm wondering, is there any reason why we can't take that up now? Okay.

THE COURT: Exasperation noted.

(Laughter)

UNIDENTIFIED ATTORNEY: There's plenty enough to go around.

MR. CAPUZZI: Can we put our stipulation on the record, at least, that resolves Mr. Abramowitz's limited objection? That was the only objection to the Mainfreight

order.

THE COURT: I don't have a problem if you want to put something on the record so you could free up counsel to go elsewhere.

MR. CAPUZZI: Yeah, it's -- it's not going to be earth shattering.

THE COURT: Go ahead.

MR. CAPUZZI: So, Your Honor, just to set the stage. The sale in this case resulted in three different sale orders. One for not to seal the debtor's funder, but to the stalking horse purchaser, Mainfreight credit bidded on a certain lot --

THE COURT: Right.

MR. CAPUZZI: -- of assets which were subject to Mainfreight's possessor in maritime liens. Those do not involve any of the goods that relate to the BHER goods that are subject to the motion that we've adjourned. These are totally separate debtor owned goods that we credit bidded on and we're the winning bidder.

So, that -- that proposed order was uploaded at Docket Number 608. It was Exhibit B to that. And the only objection or response was by Ace, who Mr. Abramowitz represents.

THE COURT: All right.

MR. ABRAMOWITZ: Thank you, Your Honor. Ace is not objecting to Mainfreight's purchase, but does reserve its

rights. And does not waive any rights stemming from its reclamation claims for assets purchased in the sale. So, that's the extent of our stipulation. But, I just felt -- I appreciate the Court allowing us to put it on an expedited basis.

THE COURT: Not a problem.

MR. ABRAMOWITZ: Thank you.

THE COURT: Thank you. All right. Then we'll take -- so, the game plan, how much time anticipate? What are your thoughts?

MR. OSWALD: Shall we say two o'clock, Your Honor?

THE COURT: You could say two o'clock. If that's enough, that's fine for me. If it looks like more, rather than reconvening, just reach out to my chambers.

UNIDENTIFIED ATTORNEY: Will do, Your Honor.

THE COURT: Okay?

UNIDENTIFIED ATTORNEY: Thank you so much.

THE COURT: All right. Thanks. We'll be back at two o'clock.

MR. ABRAMOWITZ: Thank you, Your Honor.

THE COURT: You're welcome.

(Recess)

THE COURT: We are back. It's 3:30. Mr. Durrer?

MR. DURRER: Good afternoon, Your Honor. Van Durrer, Dentons, on behalf of the debtors. Let me give you the order

of go here. First of all, we're going to start with Item Number 6 on the agenda. The agenda is Docket 645. Item Number 6 is the debtor's omnibus rejection motion, which is Docket 88. The plan, Your Honor, and then we'll -- we'll turn to the sale stuff.

With respect to the rejection motion, there's been a ton of very construction conversations. We are very, very close. The plan is that we do have a general agreement on the rejection framework. I'll use that word again from this morning, or early this afternoon. And our design would be to submit a proposed form of order on the rejection motion close of business tomorrow.

We want to give everybody one more chance to look through it. Because there's a lot of people that are here. There's a lot of people that have been on Zoom and on e-mail. I just want to make sure that everybody gets a look. But, in broad strokes, it appears to be generally agreed.

Now, let me give you some high level components of that. And then I'm going to invite other stakeholders to come forward and give their views, which hopefully will be largely consistent with what I'm about to tell you.

So, first of all, the debtors are not seeking rejection today. We're seeking rejection effect -- you know, we had originally filed this as a nunc pro tunc.

THE COURT: Nunc pro tunc. Right.

MR. DURRER: We're seeking rejection effective as of the closing, or such earlier date that parties agree to. But, it won't be earlier than the closing, which is presently contemplated for Monday, August 11.

The parties who have filed adequate protection or motions to compel 365(n) rights, those motions will be continued to September 3rd, which is our next omnibus hearing. But, if people have an emergency, they know how to contact chambers and Your Honor. Hopefully we won't have any emergencies, but people have their rights to pursue that.

The rejection order will carve out -- there was a provision in the rejection order that said there's no adequate protection issue, because the contracts are rejected. That will carve out those continuing motions to compel/adequate protection motions.

In addition, and this is really important, the motion will reserve, as will any sale order, irrelevant to intellectual property, the rejection order will reserve all 365(n) rights. We've included additional language, because people have different views about what is covered. But, the high level point that everybody needs to grasp is, whatever 365(n) rights you have, they're preserved.

We actually made a lot of progress in defining what 365(n) rights are and are not. But, for today, that is a TBD. If we work it out in the order and there's more clarity, great.

If not, that'll be for another day.

Parties have also expressed some concerns about continuity in the post-closing period. I think it's helpful for Your Honor to hear that from our buyer, FlexGen, in the context of this. It's more relevant to the sale. But, my vision is, let's just do it once.

So, I'm going to invite FlexGen's counsel to say what they're going to say about continuity issues. And then I'll let people chime in on issues that are important to them from a 365(n) perspective. And then I think we're good on rejection.

But, with that, Jeff. So, Mr. Mispagel from Latham & Watkins is here for FlexGen. He's going to speak to continuity. And then I think Mr. Sedebach (phonetic) --

THE COURT: Good afternoon, counsel. Just let me have -- for those who are coming up to the podium, appearances.

MR. MISPAGEL: Good afternoon, Your Honor. I guess Mr. Durrer already introduced me. But, for the record, Jeff Mispagel from Latham & Watkins on behalf of FlexGen, the debtor's DIP lender and proposed purchaser. Your Honor, FlexGen fully intends to provide customers with continuity of service, including access to Cobalt and AWS and continued services from the ROC, which is remote operations center.

FlexGen looks forward to providing services to the debtor's customers, that is why FlexGen is acquiring the assets to be acquired under the APA. And FlexGen expects to negotiate

agreements with customers, likely short-term to start, with an eye towards longer term agreements, so that FlexGen can continue to provide services to the debtor's customers following the closing of the sale and hopefully for a long time after that.

As Mr. Durrer noted, there have been some disputes regarding what -- what counterparties are entitled to under Section 365(n) of the Bankruptcy Code. One thing to make clear, Your Honor, is that FlexGen is not seeking to override Section 365(n) rights, and the proposed sale order and the asset purchase agreement make that clear.

But, as debtor's counsel also noted, 365 disputes -- or 365(n) disputes are going to be continued until September 3rd. And in the interim, we want it to be clear that FlexGen does not think it is obligated to provide services to customers between now and September 3rd, whether that's by, you know, under 365(n) or otherwise. But, FlexGen does intend to and will provide services to customers through September 3rd while we wait for those disputes to be heard.

THE COURT: All right. Thank you. Thank you for putting it on the record.

MR. MISPAGEL: Thank you, Your Honor.

THE COURT: Now, we'll hear from others who wish to be heard. Good afternoon.

MR. C de BACA: Good afternoon, Your Honor. Joaquin

C de Baca from Mayer Brown. And Mayer Brown represents certain projects owned by Longroad Development Company, LLC, certain projects owned by Leeward Renewable Energy, LLC, and DTE Electric Company.

And, Your Honor, the reason that Mr. Durrer's explanation of why this -- the proposed order works for us today is because it reflects, I think, what we have been saying in our papers in terms of the way 365(n) is supposed to work in terms of what licensees are entitled to, both prior to rejection and after rejection, (n)(4) and (n)(3) of Section 365.

And what that means is that there are things we are entitled to prior to rejection. And I think that it hopefully came across clearly in our papers when this was fully briefed. We don't think there's any ambiguity about that, at all. And I should note also that the reason this is so important is -- is a lot of what is not visible in the papers is that all this goes to the operation of physical plants.

This IP is more than just an idea in a hard drive somewhere. This stuff goes to our customer's ability to make sure that their projects stay fully operational, there's not portions of them that go down. There's real money at issue here, as these things are operational -- are or not. And that is what's at stake in terms of whether this IP gets handed over, and how quickly it gets handed over.

So, that means under (n)(4), in particular, that -- and I think that you'll see as you'll see in the order, and as a result of the fact that contracts are not being rejected nunc pro tunc, there are things that need to be handed over now. I think that -- that's -- that is simply the way the statute operates. I think that as a result of the discussions we've had today, that's where we're landing.

But, what that means is, that if we don't get things after today, and I understand people need to go back and examine what they -- what, you know, the -- essentially sort through their differences to what they think is covered here. But, nonetheless, if we don't start getting those things, they're, you know, those projects aren't going to be able to operate. There's going to be loss as a result of that. And we think the Court should be aware of that.

And also, if this continues to be a contested issue, we are going to be back here very, very quickly. This is -- this continues to be an emergency basis, and we cannot let it linger. This has to be -- the IP has to start flying.

THE COURT: All right. Thank you, counsel. Mr. Cooper?

MR. COOPER: Thank you, Judge. Jeffrey Cooper, Rabinowitz, Lubetkin & Tully, together with Adams & Reese, for Honeywell. Your Honor, we understand the proposed language and understand we're going to have a chance to be able to look at

the order and make suggestions as -- through tomorrow to get it before Your Honor.

But, we had a couple specific thoughts. One of the things that we had talked about was that -- and I think this is probably fine with the buyer, that the services and the continuity will be as currently provided to each of the various licensees. So, the idea is that whatever's now in existence will just continue going forward. And I think that was probably acceptable.

With regard to the language of saying the continuity lasts until September 3rd, we've got a problem with that. Only because right now there's a hearing scheduled on Nov -- I'm sorry, on September 3rd, to hear some of the underlying issues that is what's included within the intellectual property, what's the concept of embodiment, whether the source codes go with it or not. All those things we hope to work out in the interim.

But, if we don't, we need to have the continuity go through either in agreement of the parties or further order from Your Honor. Perhaps the hearing won't be held on the 3rd, perhaps something else might happen. But, as I understand the way that these things work, the services that we provide to our customers includes things like air conditioning and things like that, that we really can't not have.

So, I had -- the language I had suggested was until

agreement of the parties or an order of the Court. I don't know if that's acceptable. That's what I'm going to suggest we put in the language for tomorrow in the proposed order.

And with regard to the underlying issues that come before Your Honor, again, we are -- we may be able to agree with those. Right now, among the issues that's out there, is what, I think we as bankruptcy lawyers, are calling services, which may not actually be intellectual property. And we're trying to work that out as to whether the actual IT plus the embodiment is -- is all that's required by 365(n) or whether there's some other requirement. And secondarily, whether the payments being made now for royalties and other things include these services.

But, I just highlight that to say that those are issues that I'm very confident we can work out in the interim. But, we do need to have the continuity last until either we agree or Your Honor rules one way or the other. Thank you.

THE COURT: All right. Fair enough.

MR. BRODY: Good afternoon, Your Honor. Alan Brody, Greenberg Traurig, on behalf of Stem, Inc. Stem, Inc. is also a customer who uses very much the same as Mr. Cooper has said with his client. Your Honor, we echo exactly what Mr. Cooper has stated. But, I want to be specific as to one item, which is the continuity of service, which include the access to the software, Colbalt and HW. The parties are going to try

to work everything out prior to September 3rd and that is the hopes and I think it's good to be able to put this off through another date, but yet hold everybody's feet to the fire with the September 3rd date, keeping -- allowing the customers to continue with the access, to the extent they already have, to continue with an access.

But just as Mr. Cooper had mentioned, want to make it clear that if for some reason the parties cannot work things out and we come before Your Honor, the customers are not agreeing that September 3rd is the cutoff date for access. So that's why Mr. Cooper was asking for September 3rd or any other order that the Court gives. Again, we hope to work it out, but we just want Your Honor to know that September 3rd is not a cutoff date from the view of the customers. Thank you.

THE COURT: Fair enough. Thank you, Mr. Brody. Counsel?

MS. McGOWEN: Good afternoon, Your Honor, I'm Lorraine McGowen from Orrick Herrington on behalf of EsVolta, LLC and EDF Power Solutions. And like the other gentlemen before you, we represent customers who rely on this intellectual properly and we hope to resolve the issues regarding access, particularly to Cobalt and AWS, as has been mentioned. It is critical for the operation of the systems and for public safety because if the systems don't work, then the systems will be in danger of fire and other grid issues.

In addition, Your Honor, in our limited objections on behalf of EsVolta and EDF, we noted a number of other requests for resourcing assistance. We understand based on discussions with counsel for the debtor that a number of our issues will be addressed in the order, the rejection order that's being circulated. That includes access to books and records, the access to warehouses to the extent permissible so that our client that purchased a number of equipment and spare parts can retrieve those spare parts and equipment and also access to the assignment of warranties to the extent that that's permissible.

And then, lastly, Your Honor, the debtors noted that they provided a number of technical assistance to other customers. I believe the debtors have agreed to provide that to our clients and others.

THE COURT: All right. Thank you. Thank you, counsel.

MS. KANZER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. KANZER: Lauren Kanzer of Vinson & Elkins on behalf of an Ad Hoc Customer Group. My group includes Lonestar Solar, Idaho Power and West Warwick. As everyone else has expressed, my clients are customers of the debtors, licensees of intellectual property and they filed a number of pleadings in these cases aimed at ensuring their rights under 365(n) are preserved and protected, including a motion for adequate

protection. That was filed at Docket Number 297.

As Mr. Durrer noted, we'll be adjourning that consensually until September 3rd, but reserving rights to come back earlier if we can't reach resolution with the debtors and with FlexGen. I think that's all I had, Your Honor.

THE COURT: All right.

MS. KANZER: Thank you.

THE COURT: Thank you.

MR. DUGGAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. DUGGAN: Timothy Duggan of Stark & Stark on behalf of Spark Power Renewables. We have a very limited objection to EDF and EsVolta. Two minutes ago, they asked for an assignment and transfer of the --

THE COURT: Warranties.

MR. DUGGAN: -- unidentified warranties. There's no assumption and assignment here. To the extent the contract with my client ultimately gets assumed and warranties are part of it, we can have at it. But to have the rejection conditioned upon an assignment of a collateral agreement, we have no privity with these people.

If they believe they're third-party beneficiaries or they have some sort of State Court rights, they can have at it. But it's not a party here and we'd like to make sure that that's not going to be included in the rejection order, some

sort of assignment of these warranty claims.

THE COURT: All right. Thank you. Fair enough. Mr. Schwartz.

MR. SCHWARTZ: Thank you, Your Honor. For the record, Your Honor, Joseph Schwartz, Riker Danzig, on behalf of Solar Carver 1, LLC and Solar Carver 3, LLC. Your Honor, I rise not because I am a counter party that with respect to 365(n) or not because I'm objecting to the rejection motion. But, instead, I just wanted to point out a few things to Your Honor. My clients are parties to two different contracts with the debtors. They're both called battery supply -- battery equipment supply agreements. They were entered into back in 2021.

The schedule that's attached to the rejection motion talks about energy storage agreements and it talks about that those agreements relate to two separate projects, one in Rochester, one in Tremont. I don't know whether or not those two agreements are my client's agreements. It's unclear. But the debtors then filed at Docket Number 446 a notice of potentially assumed contacts, as Your Honor I'm sure is well aware. And on that notice, the debtor lists two battery equipment supply agreements with my client.

And so we have two separate notices, one of potentially a rejection of these contacts, again, not clear if they're the same contracts. Then we have a potentially assumed

assumption of those two contracts. And so my client was confused as a result of that, reached out to the debtors, tried to engage with the debtors concerning the debtors' intentions and hasn't received any sort of satisfaction with respect to that outreach.

But, more importantly, Your Honor, the two battery equipment supply agreements that I'm talking about both pertain to my client's purchase of substantial equipment. My client paid approximately $10 million in exchange for these large pieces of equipment. The pieces of equipment were never installed and delivered and commissioned at my client's buildings. But, nonetheless, we believe and we're not sure that those pieces of equipment are part of the sale.

And so, the sale motion is, obviously, not, you know, we're not talking about that right now. That's Agenda Item Number 9. But what I don't want to see happen here is that the debtors get a rejection order entered and then later claim that somehow the rejection order somehow divested my client of title to these two pieces of equipment and at the same time try to sell that equipment for which the debtor doesn't have a title to the buyer.

And so, you know, again, I rise to preserve my rights with respect to rejection. You're going to hear from me again with respect to the sale motion because it's our position, Your Honor, and I submit that the debtors can't sell something that

they don't have title to. Title is vested in my client. And the debtors have not, while the debtors may contest title, the debtors have not procedurally brought any kind of action to bring to Your Honor's attention where title properly vests and lies.

Those two contracts are not even before the Court. They've never been attached to any pleadings before the Court. There's no adversary proceeding or any other proceeding that's pending before the Court. And so Your Honor doesn't have enough information to make that kind of determination here today. But, again, the debtors can't sell something that they don't own and that's black-letter law.

THE COURT: All right. Well, it's too late in the day to hear you again on that. I just heard you. So --

MR. SCHWARTZ: No, that's -- and that's fine, Your Honor.

THE COURT: Let's see how they respond.

MR. SCHWARTZ: Okay.

THE COURT: I appreciate it. Thank you.

MR. SCHWARTZ: Thank you, Your Honor.

THE COURT: One thing's been clear, Mr. Durrer, on September 3rd, I don't -- you've accomplished and gone through quite a bit in this long day today. I don't think you all could have gotten where you are even at this juncture without everybody being in the room, so-to-speak.

MR. DURRER: Oh, 1,000 percent agree with that, Your Honor.

THE COURT: So, September 3rd I'm going to have in-court appearances unless everything is wrapped up in a bow --

MR. DURRER: Oh, we agree.

THE COURT: -- without any issues.

MR. DURRER: Yeah, thank you, Your Honor.

THE COURT: It's scheduled now for 11:30, but that ship has sailed. We'll put it back to ten o'clock. Okay.

MR. DURRER: Understood, Your Honor. And in response to the comments made on behalf of Solar Carver, and apologies that this didn't happen during the course of the long day, we are not, there's no design to leverage the rejection motion to accomplish something in the sale. That's clear. We are seeking to reject those contracts to the extent they remain executory.

And then we have agreed, no pun intended, to carve out the Solar Carver alleged assets from the sale today. If we can reach an agreement, great. But for purposes of the sale today, they're carved out.

THE COURT: Okay. Thank you.

MR. DURRER: Thank you.

THE COURT: I don't see any raised hands remotely. I see somebody -- did you want to be heard again, counsel?

MR. MISPAGEL: I do, Your Honor.

THE COURT: Okay.

MR. MISPAGEL: Just one point in response.

THE COURT: Sure.

MR. MISPAGEL: For the record, again, Jeff Mispagel from Latham & Watkins on behalf of FlexGen. I guess two points. One is just to echo what some of the others had said which is that we are hopeful that resolutions can be reached. We hope there can be agreements as to what 365(n) requires. We hope there can be agreements between our client and customers regarding agreements going forward.

The other point is just in terms of continuing to provide services, when the end date for that would be, we're agreeing right now to provide services through September 3rd. Come September 3rd, the Court thinks it's fair and equitable to order, you know, an extension, we'll comply with that. But we would hope that the Court also understands that we can't just continue to provide services indefinitely.

THE COURT: Understood.

MR. MISPAGEL: Thank you, Your Honor.

THE COURT: All right. Thank you. So, with that, is it fair for the Court to mark the rejection motion, Docket Document 88, as an order to be submitted?

MR. DURRER: Yes, Your Honor.

THE COURT: Okay. And I know there's a gulf to get

there, but and, obviously --

MR. DURRER: It's a chasm, it's not a gulf.

THE COURT: Chasm. If there's a need and the Court is available, if it comes down to some language, the Court would certainly participate in any call just to get us over the hump, over the line, rather, on that issue.

MR. DURRER: Thank you, Your Honor.

THE COURT: All right.

MR. DURRER: So, as part of that presentation, Your Honor, Items 7 and 8 are adjourned to September 3rd, that is the group represented by Mr. C de Baca at Docket Number 117, and then the group represented by Ms. Kanzer, Docket Number 297.

THE COURT: Correct.

MR. DURRER: And that brings up to the sale hearing on Docket -- or I'm sorry, Agenda Item Number 9, Docket 413.

THE COURT: All right. Thank you.

MR. DURRER: Okay. So, just briefly, Your Honor, and then we're going to tag team this a little bit so your indulgence is there. As Your Honor knows, at the last hearing, Your Honor approved the bidding procedures, we had a stalking horse bid submitted by Mr. Mispagel's client, FlexGen. That was the only bid with respect to those assets at the July 30 auction.

But as a consequence of pursuing the sale of

substantiality assets, getting the bidding procedures approved, the outreach that Curon (phonetic) performed on behalf of the company, the diligence efforts, all that jazz, we did end up with a couple of additional proposals for assets that were not part of the FlexGen stalking horse APA. Those included the Mainfreight credit bid. Mainfreight, you'll recall, Your Honor, is represented by Mr. Capuzzi and he put some items on the record, so I'm going to cede the podium to him in a moment.

And then, in addition, there was some equity, there's an equity interest that a non-debtor, Powin EKS Selco (phonetic) owns. We did receive a bid for that. We made that bid available to parties at the July 30 auction. That was made available to everyone in attendance, including FlexGen, including our DIP lender, including Mainfreight and others. No one elected to advance a bid higher than the Hitachi proposal to purchase the EKS equity.

So, that, plus the Mainfreight transaction, plus the FlexGen transaction is what we're proposing that Your Honor approve today now. Again, the only transaction among those that impacts the debtors' intellectual property is the FlexGen proposal and the FlexGen proposed sale order does include language that makes it clear that all 365(n) rights are preserved. In addition, the FlexGen stalking horse APA states that that transaction is subject to Section 365(n) rights, as well.

So, with that, I'll start maybe with Mr. Capuzzi if he wants to say anything more about the Mainfreight transaction and then we'll go to the EKS and finish up with FlexGen --

THE COURT: Great.

MR. DURRER: -- if that's okay, Your Honor.

THE COURT: Thank you. Mr. Capuzzi.

MR. CAPUZZI: Thank you, Your Honor. Again, for the record, Kevin Capuzzi, Benesch Friedlander, counsel for the Mainfreight entities. Your Honor, as Mr. Durrer noted, Mainfreight was the successful bidder through a credit bid for certain goods owned by the debtors that are subject to Mainfreight's maritime and possessory lien rights.

The goods in which Mainfreight credit bidded do not include any of the goods that are in the West Virginia laydown yard related to the BHER Project which is subject to a separate motion pending before Your Honor, nor does it include any goods located in two warehouses in Australia that were part of a private sale that Your Honor approved earlier in these cases. It's pretty much everything else.

Your Honor, there were no objections received with respect to the Mainfreight sale, other than the limited objection and reservation of rights that was put on the record earlier this morning by Mr. Abramowitz's client, Ace Engineering, who I understand is simply reserving rights, vis-a-vis, the debtors. They allege certain administrative

claims and other rights against the debtors, but they are not opposed to the free and clear sale of the Mainfreight goods to Mainfreight.

So, with that, Your Honor, I believe the Mainfreight proposed order, which is Exhibit B to Docket Number 608, is unopposed and we would ask Your Honor to enter it.

THE COURT: All right. Thank you, counsel.

MR. CAPUZZI: Thank you.

THE COURT: Let me turn, and I probably was remiss even with respect to the rejection motion, did the Committee want to take a position or make a statement, be heard? And then, obviously, on this piece, as well.

MR. AULET: Good morning or good afternoon, Your Honor. It's been a long day. Kenneth Aulet of Brown Rudnick for the Committee. We have no objection, as you would expect, to the rejection compromise that was announced given that, you know, I confirmed with the debtors that that's not imposing additional costs on the estate that are going to diminish the recoveries to my constituents.

I will say, look, I understand the issues the customers have. But these cases are not, are looking at a very low recovery at this point to unsecured creditors. And so while we are certainly hopeful that all those issues can be resolved, we will be quite vehement against any attempt to further pick unsecured creditors' pockets who are out 300

million for the benefit of those customers.

As to the Mainfreight sale, the Committee is supportive of the Mainfreight sale, as well.

THE COURT: All right.

MR. AULET: And I think you'll hear the same for the subsequent sales. But I'll be happy to address those at the appropriate time.

THE COURT: Great. Thank you. Anyone else wish to be heard?

(No audible response)

THE COURT: Hearing and seeing no one, motion will be granted. Do we have -- now is that order that's submitted the final version or does the language have to be tweaked?

MR. MISPAGEL: Your Honor, the version that was submitted and hopefully uploaded to Your Honor at Docket Number 608, Exhibit B, is the final version. There were no further changes to that.

THE COURT: All right. If we have problems, we'll reach out.

MR. MISPAGEL: Thank you.

THE COURT: Thank you.

MR. DURRER: So, Your Honor, the next on the list, Your Honor, Van Durrer for the debtors, is that Hitachi purchase of the Powin EKS Selco. That, just to be clear, that order has also been presented. There's no controversy or other

changes. Because that's a non-debtor, the order's a little different from the traditional free and clear order. It authorizes us to undertake the transaction and cause that non-debtor to perform.

So, it's a little different than what you might be used to. But, otherwise, it approves the relief. And, as I noted moments ago, there were no other higher or better bids offered at the auction or otherwise.

THE COURT: Are there any -- does anybody wish to raise any issues or concerns?

(No audible response)

THE COURT: Motion will be granted as to the EKS interest and in favor of Hitachi. Thank you. That brings us to FlexGen.

MR. DURRER: That brings us to, Your Honor, the proposed sale to the stalking horse bidder FlexGen. As noted, Your Honor, the order will contain language explicitly preserving the rights under Section 365(n). In addition, there are two objections raised, one by a customer Leeward and another by the customer Solar Carver that Your Honor already heard about that have expressed the view that some of the assets proposed to be sold to FlexGen are, in fact, their assets and not the debtors' assets.

As a consequence, we've agreed to include language in the order that those assets are carved out unless the parties

otherwise agree. So, if we reach an accommodation, we don't need to come back to Your Honor. If we believe that the accommodation would otherwise require further disclosure and approval, obviously, we'll do that. But we don't expect that. But if we need it, we'll do that. But, otherwise, we are asking for the FlexGen transaction to be approved.

THE COURT: All right. Now, the FlexGen transaction includes a smaller credit bid if I'm correct and assumption of liabilities?

MR. DURRER: So, yes, Your Honor. There is -- it was the original amount was $38 million and change. Because FlexGen is also our DIP lender, they're entitled to credit bid the portion of the DIP loan. And then there are specifically delineated assumptions of liabilities. I won't walk you through the APA in gory detail, but trust me when I say that the APA is very specific about what is assumed and what's not assumed and what's sold and what's not sold. So I'll let the document speak for itself, but, yes.

THE COURT: All right. Thank you, Mr. Durrer. Does anybody wish to be heard? Mr. Duggan?

MR. DUGGAN: Thank you, Your Honor. Timothy Duggan of Stark & Stark on behalf of THI Inc. I think this objection was resolved. On the debtors' schedules, there was some deposits and prepayments listed as assets on Schedule B that are tied into certain contracts. We just want to make sure

that those are not being sold and we're going to have a problem, an estoppel argument of, hey, why didn't you object at the time.

So, I don't know if the debtors consider them as cash and cash is not being sold, but when you have a security, in essence, a license deposit, as well as prepayments of the tune about $250,000 because they're listed on Schedule B, we just want to make sure they're carved out and not being sold to the extent they're considered cash or something else and that we wouldn't be estopped down the road if somebody tried to collect them because they don't exist.

THE COURT: I was going to say, I think you took the position in the papers they don't exist.

MR. DUGGAN: Yes. Thank you.

THE COURT: Mr. Durrer?

MR. DURRER: Yeah, that's correct, Your Honor, and we're not selling cash. And I was remiss. I should have mentioned, Your Honor, that there were a hand -- there was a cure notice process. At this time, you know, FlexGen has not identified any contracts to be assumed and assigned. So, we're not litigating any cure issues today because they may be completely unnecessary if that changes because FlexGen does retain rights to tweak that assumption of silent schedule.

We'll, obviously, come back to Your Honor, but we don't anticipate, well, certainly not we're dealing with any

cure today. But if we do, we'll come back and make that clear to everybody.

THE COURT: All right. Thank you. Thank you, counsel.

MS. McGOWEN: Your Honor, Lorraine McGowen again from Orrick on behalf of EsVolta and EDF. We filed a limited objection and notice of lien and reservation of rights, Docket Numbers 558 and 559, on behalf of EsVolta and EDF noting that pursuant to our contracts, both of those customers had purchased certain goods and equipment, including replacement parts, and asserted liens associated with that. So to the -- and that notice was in connection with the sale to FlexGen.

So, to the extent that the FlexGen order proposes to sell property that our clients have already purchased, we would argue again that that's not property of the estate and should not be part of the sale order.

THE COURT: All right. Thank you. Counsel?

MR. POMPEO: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. POMPEO: Michael Pompeo on behalf of Faegre, Drinker, Biddle & Reath on behalf of Keyframe, pre-petition lender. You asked a question about the credit bid.

THE COURT: Right.

MR. POMPEO: Just to state the obvious, Your Honor, pre-petition obligations will be paid off as a part of this

sale and it's a part of Paragraph 35 of the proposed form of order.

THE COURT: All right. Thank you.

MR. POMPEO: Okay.

THE COURT: Mr. Schwartz.

MR. SCHWARTZ: Thank you, Your Honor. Joseph Schwartz, Riker Danzig. This time is I stand on behalf of a different client. My client is Front Range-Midway Solar Project, LLC. We have two contracts with the debtor. We filed a response and our response is found at Docket Number 446.

I heard Mr. Durrer and my response was generally directed towards cure and I understand that cure is not an issue for today. We raised another issue which was that we have two contracts, one of which was terminated pre-petition and I also heard Mr. Durrer when he said that the buyer reserves the right to designate which contracts they want to assume or take by way of assignment. But I just want to reserve rights and make sure that nothing is affecting my client here today.

THE COURT: Fair enough.

MR. SCHWARTZ: Thank you, Your Honor.

THE COURT: Thank you. Today's been a lesson for interns and law clerks on, you know, the meaning of reservation of rights in all capacities. All right. Anyone else wish to be heard? Oh, I see a lot of raised hands on the screen. Mr.

Aulet, do you, on behalf of the Committee, before I turn to the screen?

MR. AULET: Yes, Your Honor. The Committee is supportive of the FlexGen sale. I think the auction result as a whole was better than expected, but unfortunately this particular portion was not. I would just rise again to say while we support the sale at this point, you know, these cases are looking very rough for unsecured creditors.

The debtors came in with over $300 million of unpaid trade vendors and the Committee is going to be very focused in the days and weeks ahead on finding out exactly how that came to be and what can be done to increase the quite meager recoveries that unsecured creditors are looking at as a result of this sale. But this sale is critical to getting to that point. And so the Committee supports the approval of this -- of all three transactions, Your Honor.

THE COURT: Understood and thank you, Mr. Aulet. Let me turn to those who are appearing remotely. In no particular order, Mr. Zammiello.

MR. ZAMMIELLO: Good afternoon, Your Honor, Agostino Zammiello from Fox Rothschild on behalf of Specified Technologies, Inc. Can you hear me okay?

THE COURT: I can. Thank you.

MR. ZAMMIELLO: Perfect. Your Honor we filed a reservation of rights to the debtors' notice of winning bidders

found at Docket Number 662. The debtors and Specified Technologies are parties to a master supply agreement or MSA. The MSA was not previously listed on the notice of potentially assumed executory contracts that was previously filed by the debtors. And we simply want to reserve our right to the extent FlexGen or another party seeks to assume the MSA.

Specified Technologies reserves its right to assert any objection related to the assumption and assignment of the agreement, including but not limited to, receiving notice, objecting to the notice, cure amount or any sort of adequate assurance.

THE COURT: All right. Thank you.

MR. ZAMMIELLO: Thank you, Your Honor.

THE COURT: Noted. Mr. Bostel.

MR. BOSTEL: Good afternoon, Your Honor, Kevin Bostel, Weil, Gotshal & Manges, on behalf of Munmorah Battery ProjectCo and Ulinda Park ProjectCo. Your Honor, as you're aware, our clients reached a settlement with the debtors with respect to certain claims relating to pre-petition agreements between the parties. Under the settlement, which was approved at Docket Number 283, the project group was to receive transfer of certain assets, inventory and the restatement of a license.

We had intended on closing that deal well in advance of the sale. But, unfortunately, some of the conditions remained outstanding until late last night. The original APA

filed didn't carve out those assets and we were concerned that, you know, some of those assets may inadvertently be transferred or there could be confusion as to those going with the sale.

Fortunately, we were able to resolve and get language in the order that resolved our concerns which is found at Paragraph 36. And we did, in fact, close on the settlement deal late last night. So, we're all resolved with the inclusion of the language in Paragraph 36 and we'd just like to thank the debtors and FlexGen for working with us through that up until late last night.

THE COURT: All right. Thank you, counsel. Ms. Remington.

MS. REMINGTON: Good afternoon, Your Honor, Tori Remington, Troutman, Pepper, Locke, on behalf of Ameresco, Inc. and Kupono Solar, LLC. Your Honor, we were a party that filed a cure objection a NDI 555. We understand today that the cure objections to the extent agreements are assumed and assigned will be heard at a later date. However, prior to the hearing today, we reached agreed to language with counsel to the debtors with respect to language we wanted to be included on a record.

That language is to the extent that any contract with Ameresco, Inc. or Kupono Solar, LLC for which there is a disputed cure amount is designated as an assumed contract. Such disputed cure amounts shall be resolved unless otherwise

resolved by agreement of the debtors and the Ameresco entities at a further hearing before the Court scheduled on at least 14 days notice to the debtors and the Ameresco entities.

We just wanted to put that on the record, Your Honor. Thank you.

THE COURT: All right. Thank you. Is there anyone else who wishes to be heard?

(No audible response)

THE COURT: All right. Then, at this juncture, the Court appreciates the work that has been undertaken by debtors' counsel and the cooperation of those who have filed limited objections. The Court notes various carveouts that are going to be included in the order language protecting 365(n) rights, the deferral of consideration of cure amounts to another date.

There's no question for the Court, as the Committee has noted, that the sale satisfies the Abbotts Dairies requirements, is certainly beneficial to the estate for fair value given the process that to which there has been no objection raised as far as soliciting interest and the sale process, the auction process itself. I assume, and I have no reason not to, grant 363(m) protections to the bidder and I also assume, although I don't have the language in front of me, that there are various 6006 waivers --

UNIDENTIFIED ATTORNEY: Yes, Your Honor.

THE COURT: -- 14-day waivers. The Court will grant

those and the Court will -- I'm not going to got through the litany of 363(b) and (f) requirements. They've been satisfied, they've been -- there's recitations of those in the supporting briefs and the Court adopts.

Again, I appreciate the long day and the long nights that preceded it and days. And we're making progress. So with that, are there any other issues parties want to address? So this, the sale order is going to be approved and that's an order to be submitted. You'll reach out for chambers, again, likewise if there are any issues, reach out for chambers and we'll see what we can do.

Our next gathering together is on September 3rd, as discussed, at ten o'clock. Other than that, thank you, all.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: Take care.

* * * * *

C E R T I F I C A T I O N

We, KIM WEBER and KELLI R. PHILBURN, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Kim Weber

KIM WEBER

/s/ Kelli Philburn

KELLI R. PHILBURN

J&J COURT TRANSCRIBERS, INC. DATE: August 8, 2025