

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

ENVIVA INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10453 (BKF)

(Jointly Administered)

**ROCKWELL AUTOMATION INC.'S OBJECTION TO AMENDED JOINT
CHAPTER 11 PLAN OF REORGANIZATION OF ENVIVA INC. AND ITS
DEBTOR AFFILIATES & DEBTORS' CURE NOTICES OF ASSUMED
EXECUTORY CONTRACTS**

Rockwell Automation Inc. ("Rockwell") hereby files this *Objection* (the "Objection") to the (i) *Notice of Cure of Assumed Executory Contract or Unexpired Lease* dated October 23, 2024; (ii) *Notice of Filing of Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization² of Enviva Inc. and its Debtor Affiliates* (collectively, the "Debtors") [Docket No. 1251]; (iii) *Notice of Cure of Assumed Executory Contract or Unexpired Lease* dated November 5, 2024; and (iv) *Notice of Filing of First Amended Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and its Debtor Affiliates* [Docket No. 1283] (collectively, the "Cure Notice"). In support of its Objection, Rockwell respectfully submits the following:

¹ Due to the large number of Debtors in these jointly administered chapter 11 cases, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors' claims and noticing agent at www.veritaglobal.net/enviva. The location of the Debtors' corporate headquarters is: 7500 Old Georgetown Road, Suite 1400, Bethesda, MD 20814.

² The *Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and its Debtor Affiliates* (the "Plan") is located at Docket No. 1150. Unless otherwise defined herein, capitalized terms shall have the meaning ascribed to them as set forth in the Plan.



BACKGROUND

A. The Product Purchase Agreement

1. Rockwell and Debtor Enviva Pellets Epes, LLC (“Enviva”), an affiliated Debtor in these Chapter 11 Cases, are parties to a Product Purchase Agreement dated March 20, 2023 (the “Agreement”).

2. Under the Agreement Enviva owed Rockwell a total of \$318,801.63 in unpaid invoices (the “Cure Amount”), as reflected below:

Customer name	Account	Document Number	Assignment	Document Date	Net due date	Amount in doc. curr.	Document currency
Enviva Pellets Epes LLC	1476294						
		9027817276	EPEPON0000192	4/24/2024	5/24/2024	278,308.20	USD
		9027845181	9027845181	4/30/2024	5/30/2024	6,385.00	USD
		9027885576	EPEPON0000192	5/9/2024	6/8/2024	26,577.74	USD
		9028550198	79453	9/23/2024	10/23/2024	7,530.69	USD

3. A copy of these invoices are attached as **Exhibit A**.

B. Proposed Assumption of the Product Purchase Agreement

4. On October 23, 2024, the Debtors filed their *Notice of Filing of Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1251] (the “Plan Supplement”). In the Plan Supplement, the Agreement is listed as an executory contract, with no cure amount, to be assumed by the Debtors. *See* Plan Supplement, at ECF pg. 51 of 123.

5. On November 5, 2024, the Debtors filed their *Notice of Filing of First Amended Plan Supplement for the Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates* [Docket No. 1283] (the “Amended Plan Supplement”). In the Amended Plan Supplement, the Agreement is listed as an executory contract, with no cure amount, to be assumed by the Debtors. *See* Amended Plan Supplement, at ECF pgs. 58 and 84 of 105.

OBJECTION

6. “An executory contract may not be assumed when the debtor is in default unless the debtor takes the remedial steps specified in section 365(b)(1).” *U.S., Dep’t of Air Force v. Carolina Parachute Corp.*, 907 F.2d 1469, 1475 (4th Cir. 1990).

7. Section 365(b)(1) of the Bankruptcy Code conditions the Debtors’ assumption of the Agreement as follows:

(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

8. Further, “[w]hen a debtor in possession assumes an executory contract, it takes the ‘contracts *cum onere*, that is, subject to existing burdens.’” *Carolina Parachute Corp.*, 907 F.2d at 1475 (quoting *In re Chicago, R.I. & Pac. R.R.*, 860 F.2d 267, 272 (7th Cir. 1988)). That is, “a debtor may not assume the favorable aspects of a contract . . . and reject the unfavorable aspects of the same contract.” *Id.* (quoting *Lee v. Schweiker*, 739 F.2d 870, 876 (3d Cir. 1984)).

9. Accordingly, the Debtors are prohibited from assuming the Agreement unless the Debtors (a) pay Rockwell the Cure Amount that is due and owing in full, (b) assume the Agreement *cum onere*, and (c) satisfy all conditions set forth in the Agreement.

RESERVATION OF RIGHTS

10. Rockwell reserves all rights it may have under the Agreement and any applicable law, including without limitation, the right to supplement or amend this Objection to assert any additional amounts due and owing under the Agreement or to assert any further objection related to the proposed assumption of the Agreement.

WHEREFORE, Rockwell respectfully requests that this Court enter an order: (i) conditioning the Debtors' assumption of the Agreement upon the Debtors (a) paying Rockwell the Cure Amount that is due and owing in full, (b) assuming the Agreement *cum onere*, and (c) satisfying all conditions set forth in the Agreement; and (ii) granting Rockwell any and such other and further relief as the Court deems just and proper.

Dated: November 6, 2024

Respectfully submitted,

FOLEY & LARDNER LLP

By: /s/ Susan Poll Klaessy
Susan Poll Klaessy (VSB No. 87021)
3000 K Street, N.W., Suite 600
Washington, D.C. 20007-5109
Telephone: 312.832.4500
Facsimile: 312.832.4700
Email: spollklaessy@foley.com

AND

Holland N. O'Neil (TX 14864700)
(*pending pro hac vice*)
Foley & Lardner LLP
2021 McKinney Avenue, Suite 1600
Dallas, TX 75201
Telephone: 214.999.4961
Email: honeil@foley.com

Attorneys for Rockwell Automation Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, a copy of *Rockwell Automation Inc.'s Objection to Amended Joint Chapter 11 Plan of Reorganization of Enviva Inc. and Its Debtor Affiliates & Debtors' Cure Notices of Assumed Executory Contracts* was filed and served via the Court's Electronic Case Filing System on all parties receiving such notification.

/s/ Susan Poll Klaessy
Susan Poll Klaessy

EXHIBIT A



Debit Memo
Original
Debit Memo No:9027817276
Debit Memo Date:04/24/2024
PO # : **EPEPON0000192**
Page: 1 of 1

Ship To: Enviva Pellets Epes LLC 785 Port Epes Hwy Epes, AL 35460 USA	Sold To: Cust ID: 1476294 Enviva Pellets Epes LLC Bethesda, MD 20814 USA	Bill To: Enviva Pellets Epes LLC 785 Port Epes Hwy Epes, AL 35460 USA	Remit To: Rockwell Automation, Inc. P.O. Box 371125M Pittsburgh, PA 15251 Mellon Bank, N.A. Swift BIC Number: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
For questions regarding this invoice, call the Rockwell Automation Service Center at: 888 382-1583		Payment Terms: Net 30 Days Cash Discount: Net due \$0.00 if paid by (disc of \$0.00) else \$278,308.20	
Shipping Marks:	Bill of Lading:	Shipped Via:	Shipping Terms: -
Comments: MV order 6505738341_ Enviva EPes, Greenfield Project Rev L			

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000400	1.000 EA	1.000 EA	MVD-CO REVISION-Revision Charges Shipped From: Milwaukee Shipped To: Epes Reference Invoice: 9027817276 (04/25/2024) RA Order: 6505813443 Customer PO: EPEPON0000192/000400 30% Upon Shipment for items 401, 501, 701, 801, 1001, 1101	\$278,308.20	0.00%	278,308.20	278,308.20
			Total Net:				\$278,308.20
			Shipping and Handling:				\$0.00
			Tax Applied To:				\$0.00
			Invoice Total:				\$278,308.20

Enviva Pellets Epes LLC
785 Port Epes Hwy
Epes, AL 35460



Debit Memo
Original
Debit Memo No:9027845181
Debit Memo Date:04/30/2024
PO # : **EPEPON0000192**
Page: 1 of 2

Ship To: VOLTA LLC 1616 Gears rd HOUSTON, TX 77067 USA	Sold To: Cust ID: 1476294 Enviva Pellets Epes LLC Bethesda, MD 20814 USA	Bill To: Enviva Pellets Epes LLC 7272 Wisconsin Ave Ste 1800 Bethesda, MD 20814 USA	Remit To: Rockwell Automation, Inc. P.O. Box 371125M Pittsburgh, PA 15251 Mellon Bank, N.A. Swift BIC Number: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
For questions regarding this invoice, call the Rockwell Automation Service Center at: 888 382-1583		Payment Terms: Net 30 Days Cash Discount: Net due \$0.00 if paid by (disc of \$0.00) else \$6,385.00	
Shipping Marks:	Bill of Lading:	Shipped Via:	Shipping Terms: -
Comments: Reference Nr. PO79453-7/PO79453-11			

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000100	1.000 EA	1.000 EA	MCC2100-UNIT-ENG Enviva IO -2100M-DKC-32TGM 10885630044177 S6505845888I000100 Shipped From: Tecate Shipped To: Epes Reference Invoice: 9027845181 (05/01/2024) RA Order: 6505845888 Customer PO: EPEPON0000192/000100 Reference Nr. PO79453-7/PO79453-11	\$5,885.00	0.00%	5,885.00	5,885.00

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000200	1.000 EA	1.000 EA	FREIGHT LV2100 FREIGHT LV2100 Shipped From: Richland Center Shipped To: Epes Reference Invoice: 9027845181 (05/01/2024) RA Order: 6505845888 Customer PO: EPEPON0000192/000200	\$500.00	0.00%	500.00	500.00
			Total Net:				\$6,385.00
			Shipping and Handling:				\$0.00
			Tax Applied To:				\$0.00
			Invoice Total:				\$6,385.00

Enviva Pellets Epes LLC
7272 Wisconsin Ave Ste 1800
Bethesda, MD 20814



1201 South Second Street
Milwaukee, WI 53204-2496
USA

Debit Memo

Original

Debit Memo No:9027885576

Debit Memo Date:05/09/2024

PO # : **EPEPON0000192**

Page: 1 of 3

Ship To:
VOLTA LLC
1616 GEARS RD
HOUSTON, TX 77067
USA

Sold To:
Cust ID: 1476294
Enviva Pellets Epes LLC
Bethesda, MD 20814
USA

Bill To:
Enviva Pellets Epes LLC
7272 Wisconsin Ave Ste 1800
Bethesda, MD 20814
USA

Remit To:
Rockwell Automation, Inc.
P.O. Box 371125M
Pittsburgh, PA 15251
Mellon Bank, N.A.
Swift BIC Number: [REDACTED]
ABA: [REDACTED] ACCT: [REDACTED]

For questions regarding this invoice,
call the Rockwell Automation Service Center at: 888 382-1583

Payment Terms: Net 30 Days
Cash Discount: Net due \$0.00 if paid by (disc of \$0.00) else \$26,577.74

Shipping Marks:

Bill of Lading:

Shipped Via:

Shipping Terms:
-

Comments:
Rebill for LVMCC 6505822185

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000001	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000001	\$3,019.25	11.00%	3,019.25	3,019.25
000002	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000002	\$3,144.25	11.00%	3,144.25	3,144.25

Seller hereby certifies that the above goods and services were produced or performed in compliance with all applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under section 14 thereof. Except as otherwise expressly indicated on this document or as separately agreed to in writing, this transaction is subject exclusively to Seller's general terms and conditions of sale as posted on Seller's web site at www.rockwellautomation.com/termsofsale



Rockwell Automation, Inc.
1201 South Second Street
Milwaukee, WI 53204-2496
USA

Exhibit(s) A Page 8 of 12

Sold To:
Cust ID: 1476294
Enviva Pellets Epes LLC
Bethesda, MD 20814
USA

Debit Memo

Original

Debit Memo No:9027885576

Debit Memo Date:05/09/2024

PO # : **EPEPON0000192**

Page: 2 of 3

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000003	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000003	\$7,045.50	11.00%	7,045.50	7,045.50
000004	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000004	\$3,019.25	11.00%	3,019.25	3,019.25
000005	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000005	\$3,144.25	11.00%	3,144.25	3,144.25
000006	1.000 EA	1.000 EA	MCC2100-UNIT-ENG 2100 LVMCC Engineenred Unit 10885630044177 Shipped From: Guadalupe Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000006	\$7,045.50	11.00%	7,045.50	7,045.50

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000007	1.000 EA	1.000 EA	FREIGHT LV2100 FREIGHT LV2100 Shipped From: Richland Center Shipped To: HOUSTON Reference Invoice: 9027885576 (05/09/2024) RA Order: 6505992552 Customer PO: EPEPON0000192/000007	\$159.74	0.00%	159.74	159.74
			Total Net:				\$26,577.74
			Shipping and Handling:				\$0.00
			Tax Applied To:				\$0.00
			Invoice Total:				\$26,577.74

Enviva Pellets Epes LLC
7272 Wisconsin Ave Ste 1800
Bethesda, MD 20814



Debit Memo

Original

Debit Memo No:9028550198

Debit Memo Date:09/23/2024

PO # : **79453**

Page: 1 of 1

Ship To:
Enviva Pellets Epes LLC
785 Port Epes Hwy
Epes, AL 35460
USA

Sold To:
Cust ID: 1476294
Enviva Pellets Epes LLC
Bethesda, MD 20814
USA

Bill To:
Enviva Pellets Epes LLC
7272 Wisconsin Ave Ste 1800
Bethesda, MD 20814
USA

Remit To:
Rockwell Automation, Inc.
P.O. Box 371125M
Pittsburgh, PA 15251
Mellon Bank, N.A.
Swift BIC Number: [REDACTED]
ABA: [REDACTED] ACCT: [REDACTED]

For questions regarding this invoice,
call the Rockwell Automation Service Center at: 888 382-1583

Payment Terms: Net 30 Days
Cash Discount: Net due \$0.00 if paid by (disc of \$0.00) else \$7,530.69

Shipping Marks:

Bill of Lading:
1015780498

Shipped Via:
FXNL

Shipping Terms:
2002 - Prepaid and Billed

Comments:

Item	Order Qty	Ship Qty	Part Number & Description	List Each	Disc/Surch	Net Each	Extended
000100	1.000 EA	1.000 EA	MCC2100-UNIT-ENG Enviva - L-2163VB-065HKB-14DA2R3-14DFAJT 10885630044177 S6506024328I000100 Delivery Note: 8050847059 Shipped From: Richland Center Shipped To: Epes Reference Invoice: 9028550198 (09/24/2024) RA Order: 6506024328 Customer PO: 79453/000100	\$7,431.68	0.00%	7,431.68	7,431.68
			Total Net:				\$7,431.68
			Shipping and Handling:				\$99.01
			Tax Applied To:				\$0.00
			Invoice Total:				\$7,530.69

Enviva Pellets Epes LLC
7272 Wisconsin Ave Ste 1800
Bethesda, MD 20814