

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	
	)	Chapter 11
PROTERRA INC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-11120 (____)
	)	
Debtors.	)	(Joint Administration Requested)

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**DECLARATION OF JUSTIN D. PUGH  
IN SUPPORT OF DEBTORS’ MOTION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE  
DEBTORS TO REJECT THE TPI AGREEMENT, EFFECTIVE AS  
OF THE PETITION DATE, AND (II) GRANTING RELATED RELIEF**

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Pursuant to 28 U.S.C. § 1746, I, Justin D. Pugh, do hereby declare, under penalty:

1. I am a Senior Managing Director of FTI Consulting, Inc. (“FTI”). I am over the age of 18, and I am authorized by each of the Debtors to submit this declaration (the “Declaration”) on behalf of the Debtors in support of the relief requested in the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Reject the TPI Agreement, Effective as of the Petition Date, and (II) Granting Related Relief* (the “TPI Agreement Rejection Motion”), filed contemporaneously herewith.<sup>2</sup>

2. I have more than 12 years of experience in the restructuring industry, which has consisted of a broad range of corporate recovery services and interim management roles. My restructuring experience includes operating and managing

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<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: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning given to them in the TPI Rejection Motion.



businesses in and out of court, conducting and managing sales and liquidations of assets and business interests, advising boards of directors on countless restructuring issues, developing and adjudicating claims, managing and assisting in litigation, negotiating settlements, and administering claims-payment structures in a variety of cases. My industry specializations include power generation, renewable energy, manufacturing, retail, real estate, and financial services.

3. I hold a Bachelor of Science in Finance from Louisiana Tech University, a Master of Science in Finance and Mathematics from Louisiana State University, and a Master of Business Administration in Finance and Corporate Accounting from the University of Rochester. I am also a Chartered Financial Analyst and a Certified Public Accountant (accredited in business valuation), and I hold Series 7, 63, and 79 licenses.

4. I have been one of the principal individuals at FTI responsible for its engagement by the Debtors, and on August 7, 2023, I was appointed as the Chief Transformation Officer of the Debtors. Except as otherwise indicated herein, all statements and facts set forth in this Declaration are based upon: (a) my personal knowledge of the Debtors' operations and finances based on information provided by the Debtors or their advisors during the course of FTI's engagement with the Debtors; (b) my review of relevant documents, including information provided by other parties; (c) information provided to me by, or discussions with, employees of FTI, in each case based on the information described in (a), (b), and (d) of this paragraph; (d) information provided to me or other employees of FTI by, or discussions with, the members of the Debtors' management team or its other advisors; and/or (e) my personal involvement in the events at issue.

5. FTI's engagement by the Debtors began on or around June 23, 2023. Pursuant to its current engagement letter (the "FTI Engagement Letter"), FTI has provided restructuring advisory services to the Debtors and its counsel, including in connection with the development of strategic options and contingency planning for a potential chapter 11 case. I have been centrally involved in this engagement from its inception.

6. FTI is a global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal operational, political & regulatory, reputational and transactional. FTI employs 7,600 employees in 31 countries with extensive experience providing multidisciplinary solutions to complex challenges and opportunities. Specifically, the restructuring and turnaround experts at FTI help clients stabilize finances and operations to reassure all parties in interest that proactive steps are being taken to preserve and enhance value. These FTI professionals assist companies with liquidity management, operational improvement, capital solutions, and turnarounds and restructurings, among other services.

7. FTI's personnel have assisted and advised debtors, creditors, bondholders, investors, and other entities in numerous chapter 11 cases, including those of similar size and complexity to the Chapter 11 Cases. FTI's personnel have also worked on numerous chapter 11 cases filed within this district, including the following recent cases: *In re Boxed, Inc.*, Case No. 23-10397 (BLS) (Bankr. D. Del. Apr. 2, 2023); *In re Reverse Mortgage Investment Trust Inc.*, Case No. 22-11225 (MFW) (Bankr. D. Del. Mar. 20, 2023); *In re RS FIT NW LLC (f/k/a 24 Hour Fitness Worldwide, Inc.)*, Case No. 20-11558 (KBO) (Bankr. D. Del. July 13, 2020); *In re GCX Limited*, Case No. 19-12031 (CSS) (Bankr. D. Del. Nov. 4, 2019); *In re Zohar III, Corp.*, Case No. 18-10512 (Bankr. D. Del.

June 11, 2018); *In re SFX Entertainment, Inc.*, Case No. 16-10238 (Bankr. D. Del. Mar. 3, 2016); *In re Fresh & Easy, LLC*, Case No. 15-12220 (Bankr. D. Del. Nov. 20, 2015); *In re Corinthian Colleges, Inc.*, Case No. 15-10952 (Bankr. D. Del. May 27, 2015); *In re Mineral Park, Inc.*, Case No. 14- 11996 (Bankr. D. Del. Sept. 23, 2014); *In re FCC Holdings, Inc.*, Case No. 14-11987 (Bankr. D. Del. Sept. 22, 2014).

**I. The Debtors' Decision to Reject the TPI Agreement**

8. It is my understanding that a chapter 11 debtor's decision to reject an executory contract is evaluated under the "business judgment" test, under which this decision will be affirmed if the debtor can show that rejection will benefit its estate. I believe that the terms of the TPI Agreement, the Debtors' historical inability to meet the TPI Agreement's requirements and forecasted supply needs, and objectives in these chapter 11 cases all serve as compelling evidence that rejection of the TPI Agreement will benefit the Debtors' estates, and as such, that the relief sought in the TPI Agreement Rejection Motion should be granted.

9. The TPI Agreement contains minimum purchase order requirements, and imposes penalties on the Debtors on an annual basis for each period during which the Debtors do not meet those requirements. These penalties are calculated on a per-unit basis, increasing for each unit by which the Debtors fall short of the order requirements.

10. The Debtors have historically been unable to meet these requirements, and have thus incurred substantial penalties. For example, I understand that the Debtors were required to pay approximately \$3.0 million in liquidated penalties under the TPI Agreement in 2022. While I understand that the Debtors have evaluated strategies

to increase production specifically to meet these minimum purchase requirements, these strategies were deemed cost-prohibitive due to supply chain difficulties and associated cost inefficiencies. Furthermore, the annual order requirements increase year-over-year under the TPI Agreement, making these annual requirements more difficult to meet over time and imposing potentially progressively larger penalties in the event that the Debtors fail to meet them.

11. Given the penalties imposed on the Debtors under the TPI Agreement historically, the Debtors have sought, and been able to obtain, modifications to the TPI Agreement which lower these minimum purchase requirements. However, it is my opinion that, even with these lower requirements, the minimum purchase quantities required under the TPI Agreements pose the risk of substantial penalties. Given the substantial cost and likelihood of these penalties, it is my opinion that there is no net benefit in retaining the TPI Agreement at this time. Additionally, I have been informed that under the Bankruptcy Code, continued performance by the Debtors under the TPI Agreement on a postpetition basis could potentially give rise to administrative expense claims, and so I believe that rejecting the TPI Agreement now, at the outset of the Debtors' chapter 11 cases, is in the best interest of the Debtors' estates.

12. Furthermore, I understand that burdensome, restrictive contract liabilities associated with the Debtors' Proterra Transit business line frustrated the Debtors' prepetition sale efforts, and it is my opinion that the issues identified above with respect to the TPI Agreement, in its current form, are emblematic of the contract-related issues that gave investors pause during this prepetition process. After evaluating the TPI Agreement in the context of the Debtors' business and goals in these chapter 11 cases, it is my opinion

that rejecting the TPI Agreement will help to preserve and maximize the value of the Debtors' business, improve the marketability of the Debtors' Proterra Transit business line, and accordingly generate value for the Debtors' stakeholders.

13. As such, I believe that the relief sought in the TPI Agreement Rejection Motion is in the best interests of the Debtors' estates as required under what I understand the relevant standard to be, and so should be granted.

*[Remainder of page intentionally blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: August 7, 2023  
Denver, Colorado

/s/ Justin D. Pugh  
Justin Pugh  
Senior Managing Director  
FTI Consulting, Inc.