

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

In re:)	
)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹)	Case No. 23-11120 (BLS)
)	
Debtors.)	(Jointly Administered)
)	
)	Re: Docket Nos. 6 & 63

**FINAL ORDER (I)
PROHIBITING UTILITY COMPANIES
FROM DISCONTINUING, ALTERING, OR
REFUSING SERVICE, (II) DEEMING UTILITY COMPANIES
TO HAVE ADEQUATE ASSURANCE OF FUTURE PAYMENT,
(III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS
FOR ADDITIONAL ASSURANCE, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors² for entry of a final order (this “Final Order”) (a) prohibiting utility companies from discontinuing, altering, or refusing service to the Debtors on account of prepetition invoices, (b) deeming the utility companies to have received adequate assurance of future payment, (c) establishing procedures for resolving requests for additional assurance of payment, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay on a timely basis, in accordance with their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to the Debtors after the Petition Date.
3. Subject to the Adequate Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Adequate Assurance Deposit, as a condition to the Debtors receiving such Utility Services; *provided* that no Utility Company will be bound by the terms of this Final Order until such Utility Company receives notice of this Final Order.

Subject to the terms of this Final Order, as adequate assurance for the payment of Utility Services, the Debtors shall make a cash deposit of an amount of approximately \$133,088

which satisfies, on an aggregate basis, the estimated costs for Utility Services provided by each Utility Company on the Utility Company List for 50% of one month, calculated based on the Debtors' estimated average payments over the three month period prior to the Petition Date (the "Adequate Assurance Deposit"), into a segregated account of the Debtors (the "Adequate Assurance Deposit Account") under the Debtors' control for the benefit of Utility Companies, except those Utility Companies that agree in writing to a lesser amount. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. No liens shall attach to the Adequate Assurance Deposit Account, except as to any reversionary interest of the Debtors.

6. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

7. The following Adequate Assurance Procedures are hereby approved on an final basis:

- (a) If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an request (an "Additional Assurance Request") upon (i) the Debtors, 1815 Rollins Road, Burlingame, California 94010 (Attn: Kerri Howard (email: khoward@proterra.com)); (ii) proposed co-counsel to the Debtors (1) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019 (Attn: Robert Britton and Michael Colarossi (emails: rbritton@paulweiss.com and mcolarossi@paulweiss.com)) and (2) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Shella Borovinskaya (email: sborovinskaya@ycst.com)); (iii) proposed counsel for the Official Committee of Unsecured Creditors (the "Committee"), Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, New York 10020, Attention: Jeffrey L. Cohen (jcohen@lowenstein.com), Eric S. Chafetz (echafetz@lowenstein.com); and Jordana L. Renert

(jrenert@lowenstein.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn Eric Monzo (emonzo@morrisjames.com) and Brya Keilson (bkeilson@morrisjames.com); (iv) counsel to the First Lien Agent, Holland & Knight, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201, Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com); and (v) counsel to the Second Lien Agent, Sidley Austin LLP, 787 Seventh Ave, New York, NY 10019, Attn: Thomas R. Califano (tom.califano@sidley.com) and Dennis M. Twomey (dtwomey@sidley.com) (collectively, the “Notice Parties”);

- (b) Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Company; and (v) identify and explain the basis of the Utility Company’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code;
- (c) Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (b) above, the Debtors shall promptly negotiate with such Utility Company to resolve such Utility Company’s Additional Assurance Request;
- (d) If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company (each, an “Adequate Assurance Dispute”), the Debtors shall, upon reasonable notice, schedule the matter for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (a “Determination Hearing”);
- (e) Pending resolution of any such Adequate Assurance Dispute, any such Utility Company shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the chapter 11 cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- (f) The Debtors may, in their discretion, resolve any Adequate Assurance Dispute by mutual agreement with the requesting Utility Company upon notice to the Committee, the First Lien Agent, and the Second Lien Agent, but without further notice to the Court or any other party-in-interest and may, in connection with any such agreement, provide a Utility Company with additional adequate

assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent the Debtors believe that such additional assurance is reasonable in the exercise of their business judgment and the Debtors may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Company's estimated two-week utility expense; and

- (g) The portion of the Adequate Assurance Deposit attributable to each Utility Company may be returned to the Debtors, without further order of the Court, on the earlier of (i) the reconciliation and payment by the Debtors of the Utility Company's final invoice following the Debtors' termination of Utility Services from such Utility Company, provided that such Utility Company does not dispute that it has been paid in full for post-petition services and (ii) the effective date of any chapter 11 plan in these chapter 11 cases.

8. The Debtors are authorized to add Additional Utility Companies to the Utility Service list; *provided* that promptly upon the discovery of an Additional Utility Company, the Debtors will increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Debtors' estimated average monthly payment for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services; *provided, further*, that no Additional Utility Company will be bound by the terms of this Final Order until such Additional Utility Company receives notice of this Final Order.

9. Prior to terminating or assigning any services of Waste Management of South Carolina ("WM") including, but not limited to, all WM accounts, Debtors shall provide notice of such termination or assignment in writing, including by e-mail, to: (i) counsel of record for WM, attention: Rachel B. Mersky, Esq., Monzack Mersky and Browder, PA, 1201 N. Orange Street, Suite 400, Wilmington, DE 1980, (email: rmersky@monlaw.com), and (ii) Waste Management, attention: Jacquelyn E. Hatfield-Mills, Waste Management, 800 Capitol Ste. 3000, Houston, TX 77002 (email: jmills@wm.com). The notice of termination or assignment shall include: (a) the

date of termination or assignment; and (b) the location at which services are being terminated or assigned as defined in the agreement or invoice between WM and Debtors. If Debtors fail to provide notice as provided for herein, Debtors shall remain administratively obligated for the costs and expense of services provided by WM to such location until the date WM receives actual notice that WM's services to the Debtor at a particular location is or has been terminated or assigned.

Notwithstanding the relief granted herein and any actions taken pursuant to such relief,¹⁰ nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.
12.

This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: September 5th, 2023
Wilmington, Delaware


BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE