

**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)
)	
)	Ref. Docket No. 7

**DECLARATION OF JUSTIN D. PUGH
IN SUPPORT OF DEBTORS' MOTION
FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION
EMPLOYEE WAGES AND BENEFITS, AND (II) GRANTING RELATED RELIEF**

I, Justin D. Pugh, under penalty of perjury, declare as follows:

1. I am a Senior Managing Director of FTI Consulting, Inc. ("FTI"). I am over the age of 18, and I am authorized to submit this declaration (the "Declaration") on behalf of the Debtors in support of the relief requested by the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Certain Prepetition Employee Wages and Benefits, and (II) Granting Related Relief* [Docket No. 7] (the "Motion").²

2. Except as otherwise indicated, the statements in this Declaration are based on: (a) my personal knowledge of the Debtors' operations; (b) my review of relevant documents; (c) information provided to me by employees of FTI working under my supervision; (d) information provided to me by, or through discussion with, members of the Debtors' management team, other employees, or the Debtors' other advisors; and/or (e) my general

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 Terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



experience and knowledge. I have reviewed the Motion and am familiar with the relief the Debtors' request therein. If called to testify, I could and would testify to each of the facts and opinions set forth herein.

Professional Background and Qualifications

3. I have more than twelve 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 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.

4. 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.

5. I am a founding member of the Power, Renewables, and Energy Transition ("PRET") practice at FTI, a team dedicated to servicing the power industry. Through my involvement with the PRET team, I have served as a chief restructuring officer for entities involved in both power generation and in the power supply chain, led a utility scale powerplant through a chapter 11 process, advised numerous owners of thermal powerplants through out-of-court balance sheet restructurings, served as an expert witness in several disputes related to the power industry,

served as a board advisor on restructurings across the power value chain, and operated in interim management capacities for owners of companies associated with the energy transition.

6. The Debtors engaged FTI on or around June 23, 2023. Pursuant to its engagement letter (as amended by that certain engagement contract between the Debtors and FTI, effective as of August 7, 2023), FTI has provided my services as chief transformation officer (“CTO”) and certain additional personnel to the Debtors.³ FTI has, among other things, advised the Debtors about the development of strategic options and contingency planning for potential chapter 11 cases. I have been centrally involved in this engagement from its inception. Throughout FTI’s engagement, and in my role as CTO, I have become familiar with the Debtors’ Compensation and Benefits Programs, and well as their Employees and their roles.

7. 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.

The Programs

8. As described more fully in the Motion, the Debtors seek the Court’s authority to continue an informal non-executive severance program (the “Informal Non-Executive Severance

³ On August 17, 2023, the Debtors filed the *Debtors’ Motion for Entry of an Order Authorizing the Debtors to (I) Employ and Retain FTI Consulting, Inc. to Provide the Debtors a Chief Transformation Officer and Certain Additional Personnel; and (II) Designate Justin D. Pugh as Chief Transformation Officer for the Debtors, Effective as of the Petition Date* [Docket No. 99].

Program”) and annual cash bonus programs (the “Annual Cash Bonus Programs,” and together with the Informal Non-Executive Severance Program, the “Programs”) to certain non-executive Employees (the “Eligible Employees”).

9. Approximately 213 Employees are eligible to receive bonuses under the Annual Cash Bonus Programs. The Annual Cash Bonus Programs are comprised of the Proterra Short-Term Incentive Plan and the Proterra Sales Incentive Plan. Historically, Employees at the manager level or higher, including members of the Debtors’ executive leadership team, were eligible for bonuses under the Proterra Short-Term Incentive Plan. In connection with the Debtors’ bankruptcy filing, the Debtors determined that they would not continue to make any bonus payments to members of the Debtors’ executive leadership team under Short-Term Incentive Program.⁴ The Proterra Sales Incentive Plan is offered to all Employees in direct sales roles, other than the Debtors’ executive leadership team.

10. Bonuses earned pursuant to the Annual Cash Bonus Programs vary based on, among other factors, the performance of the applicable Employee. For performance year 2022, with respect to the Proterra Sales Incentive Plan, bonuses ranged between \$1,440 and \$56,700, and for the Short-Term Incentive Plan, for bonuses paid to individuals not on the Debtors’ executive leadership team, ranged between \$933 and \$75,800.⁵

11. Bonuses earned pursuant to the Annual Cash Bonus Programs are remitted annually, and, subject to approval by the Boards, bonuses for performance year 2023 are scheduled to be paid by March 15, 2024. The Annual Cash Bonus Programs are designed to motivate the

⁴ Similarly, the Debtors determined that they would not make any payments to the Vice President and Chief Accounting Officer (“CAO”) under the Short-Term Incentive Program, although this individual is not a member of the Debtors’ executive leadership team.

⁵ This range does not include bonuses paid to individuals on the Debtors’ executive leadership team or to the CAO for performance year 2022.

Employees eligible for bonuses under these programs. Bonuses under the Annual Cash Bonus Programs are paid only upon an Employee achieving successful sales, operational, or financial outcomes.

12. The Debtors also, in their discretion, offer severance under the Informal Non-Executive Severance Program to Employees that sit below the executive leadership team upon their termination. The Debtors do not offer severance to the Employees on the Debtors' executive leadership team through the Informal Non-Executive Severance Program.⁶ The Informal Non-Executive Severance Program is not documented in a formal policy but is offered, if at all, to non-executive, severed employees on a case-by-case basis. Historically, payments under the Informal Non-Executive Severance Program have varied. The Debtors have offered severance of between one and two weeks of an Employee's base salary for each year that Employee has worked for the Debtors, though when offering two weeks' severance, the Debtors have at times capped payments at twelve years of the Employee's tenure. Though this also varies, for Employees at the vice president level, the Debtors have offered between approximately two and three months of the Employee's base salary as a severance payment.

13. I believe that the Programs are critical to maintaining an engaged, motivated workforce and to maximizing the value of the Debtors' estates during these Chapter 11 Cases. As described above, the Annual Cash Bonus Programs are designed to improve the Debtors' economic performance and business outcomes. As such, I believe the Annual Cash Bonus Programs are an important tool to both motivate the Debtors' Employees and to improve the value of the Debtors' business. Further, continuing the Informal Non-Executive Severance Program not only allows the

⁶ As described in the Motion, the Debtors historically offered severance benefits to its executive leadership team through the Executive Employee Severance Agreements. The Debtors have not sought to pay any prepetition or postpetition claims under the Executive Employee Severance Agreements.

Debtors to attract and retain talent in a highly competitive labor market, it also sends an important signal to the Debtors' workforce that the Debtors are able to continue their prepetition compensation practices in the ordinary course. Since the Petition Date, over twenty of the Debtors' Employees have resigned, and the Debtors are rightfully concerned about the risk of attrition of their workforce. I believe that the Debtors' ability to continue the Programs, among the Debtors' other Compensation and Benefits Programs, will help to maintain morale and to mitigate uncertainty among the Debtors' workforce during this critical stage of the Debtors' Chapter 11 Cases.

Non-Insider Status of Eligible Employees

14. Based upon both my own personal understanding as well as discussions that I have had with the Debtors' legal counsel, I believe that none of the Eligible Employees are considered "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. Although, as described above, the Debtors historically offered bonus payments to the Debtors' executive leadership team and the CAO under the Short-Term Incentive Plan, the Debtors will not, and do not seek authority to, continue making payments to these individuals under the Short-Term Incentive Program. Thus, the Debtors' executive leadership team and the CAO are not "Eligible Employees" for purposes of this Declaration.

15. As is typical for an organization of the Debtors' size and scope, the Debtors operate pursuant to an organizational structure that allows them to efficiently develop and execute corporate strategy. The Debtors' executive leadership team is responsible for overseeing and managing the various functional groups critical to the operation of the Debtors' business. Members of the Debtors' executive leadership team include the Chief Executive Officer and executives who all report directly to the Chief Executive Officer.

16. The Eligible Employees all sit below the executive leadership team in the Debtors' corporate structure and, at the most senior levels, report to either (a) a senior leader within their respective department; (b) to a member of the executive leadership team; or (c) to another Employee, who, in turn, reports to a member of the executive leadership team.

17. Although some of the Eligible Employees hold titles such as "vice president," or "director," I do not believe such titles confer insider status upon the Eligible Employees. First, none of the Eligible Employees are officers elected or appointed by the Boards, or have been appointed as officers for purposes of section 16(b) of the Securities Exchange Act. Second, none of the Eligible Employees have discretionary control over budgeting decisions. Third, all Eligible Employees must seek authority before taking any significant action relating to strategic decision-making, corporate policy changes, or asset disposition. Fourth, none of the Eligible Employees are members of the Boards or the executive leadership team, report to the Boards, or participate in the Debtors' corporate governance. Finally, the Eligible Employees do not have any say or input on payments they receive under the Programs other than through the successful performance of their day-to-day job responsibilities.

18. For these reasons, I believe that none of the Eligible Employees are "insiders" within the meaning of section 101(31) of the Bankruptcy Code.

[Signature page follows.]

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 information, knowledge and belief.

Executed on September 5, 2023

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