IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
EXTRACTION OIL & GAS, INC.,	
Plaintiff,	
v.	Adv. Proc. No. 20-50833 (CSS)
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC,	**RE: D.I. 655 & 656**
Defendants.	**Objection Deadline:** **At or Before the Hearing**
	Hearing Date: **September 30, 2020, at 10:00 a.m. (ET)**

MOTION TO FILE UNDER SEAL (A) OBJECTION OF DJ SOUTH GATHERING, LLC, AND OF PLATTE RIVER MIDSTREAM, LLC, TO DEBTORS' SECOND OMNIBUS MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING REJECTION OF UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND EXECUTORY CONTRACTS EFFECTIVE AS OF THE DATES SPECIFIED HEREIN AND (II) GRANTING RELATED RELIEF AND (B) PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC'S RESPONSE IN OPPOSITION TO EXTRACTION OIL & GAS, INC.'S MOTION FOR SUMMARY JUDGMENT

Platte River Midstream, LLC and DJ South Gathering, LLC (individually, a "Company" and, together with Platte River Holdings, LLC, the "Companies"), creditors and parties-in-interest in the above-captioned cases (the "Chapter 11 Cases") of the above-captioned debtors and

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: MTE Holdings LLC (7894); MTE Partners LLC (1158); Olam Energy Resources I LLC (0770); MDC Energy LLC (9140); MDC Texas Operator LLC (1087); Ward I, LLC (6817); and MDC Reeves Energy LLC (3644). The Debtors' address is 280 East 96th Street, Suite 210, Indianapolis, Indiana 46240.

debtors in possession (collectively, the "Debtors" or the "Plaintiffs") and defendants (individually, a "Defendant" and collectively, the "Defendants") in the above-captioned adversary proceeding brought by the Debtors (the "Adversary Proceeding"), hereby move (the "Motion") for entry of an order substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the Companies to file under seal (a) *Objection of DJ South Gathering, LLC, and of Platte River Midstream, LLC, to Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified [T]herein and (II) Granting Related Relief* [D.I. 655 & 656] (including certain exhibits thereto, the "Objection") and (b) *Platte River Midstream, LLC and DJ South Gathering, LLC's Response in Opposition to Extraction Oil & Gas, Inc.'s Motion for Summary Judgment* [Adv. D.I. 21] (including certain exhibits thereto, the "Response Brief"). In support of this Motion, the Companies respectfully state as follows:

BACKGROUND

1. As more fully set forth in the Objection and the Response Brief, both of which are fully incorporated as if set forth herein, on June 14, 2020, the Debtors commenced the Chapter 11 Cases by each filing a petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered. *See* D.I. 79.

2. On August 11, 2020, the Debtors filed the *Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief*

[D.I. 412] (the "Motion to Reject"), which seeks to reject, *inter alia*, the TSAs[2] between the Debtors and the Companies.

3. On August 25, 2020, the Debtors commenced this Adversary Proceeding by filing the *Complaint for Declaratory Judgment* [Adv. D.I. 1] (the "Complaint") seeking, in connection with the Chapter 11 Cases, a declaration that certain covenants contained in the TSAs do not "run with the land." Complaint ¶¶ 39, 48.

4. On August 25, 2020, the Debtors filed the *Plaintiff's Motion for Summary Judgment* [Adv. D.I. 3] (the "Motion for Summary Judgment"), seeking entry of an order granting summary judgment in favor of the Debtors on the Complaint. Motion for Summary Judgment ¶ 1. On August 25, 2020, the Debtors filed a brief, including certain accompanying exhibits, in support of the Motion for Summary Judgment [Adv. D.I. 4, 5].

5. On September 18, 2020, the Companies filed the Response Brief in opposition to the Motion for Summary Judgment. The Response Brief was filed under seal.

6. On September 18, 2020, the Companies also filed the Objection, objecting to the relief requested in the Motion to Reject. The Objection was filed under seal.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, rule 9018 of the Federal Rules of Bankruptcy Procedure (the

[2] Capitalized terms not defined herein are used as in the Objection and the Response Brief, as applicable.

"Bankruptcy Rules"), and rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

9. The Companies consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

AVERMENT PURSUANT TO LOCAL RULE 9018-1(d)

10. In accordance with Local Rule 9018-1(d)(iv)(a), the Companies submit that they and the Debtors are the Holders of Confidentiality Rights (as defined in Local Rule 9018-1(d)), and the information contained in the Objection and the Response Brief, as the Proposed Sealed Documents under Local Rule 9018-1(d), must remain sealed from public view.

11. Delaware counsel to the Companies certifies that they are conferring with counsel to the Debtors in good faith to reach agreement concerning what information contained in the Proposed Sealed Documents must remain sealed from public view. As of the time of the filing of this motion, however, that conferral process has not yet concluded. Furthermore, the Companies certify that they will file the (a) *Notice of Filing of Proposed Redacted Version of Objection of DJ South Gathering, LLC, and of Platte River Midstream, LLC, to Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified [T]herein and (II) Granting Related Relief* and (b) *Notice of Filing of Proposed Redacted Version of Platte River Midstream, LLC and DJ South Gathering, LLC's Response in Opposition to Extraction Oil & Gas, Inc.'s Motion for Summary Judgment* once that conferral process has concluded.

RELIEF REQUESTED

12. By this Motion, the Companies respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**: (i) authorizing the Companies to file the Objection under seal in the Chapter 11 Cases, subject to the Companies making further redactions, and not make the unredacted version of the Objection available to any parties except for (a) the Court, (b) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), and (c) the Debtors; (ii) authorizing the Companies to file the Response Brief under seal in the Adversary Proceeding, subject to the Companies making further redactions, and not make the unredacted version of the Response Brief available to any parties except for (a) the Court, (b) the U.S. Trustee, and (c) the Debtors; and (iii) granting such other and further relief as the Court deems just and proper.

BASIS FOR RELIEF

13. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 107(b) requires the Bankruptcy Court to protect confidential commercial information from public disclosure. 11 U.S.C. § 107(b) ("On request of a party in interest, the bankruptcy court *shall* . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . ." (emphasis added)). Once the Bankruptcy Court determines that an entity is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, such as confidential commercial information, "the court is required to protect a requesting interested party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994).

14. Courts have held that protection under section 107(b) of the Bankruptcy Code must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Id.* at 28 (finding that the use of the disjunctive in section 107(b)(1) "neither equates 'trade secret' with 'commercial information' nor requires the latter to reflect the same level of confidentiality as the former"). Further, in contrast with Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate "good cause." *Id.* Nor does it require a finding of "extraordinary circumstance or compelling need." *Id.* at 27.

15. Rather, a party seeking the protection of section 107(b) of the Bankruptcy Code need only demonstrate that the information is "confidential" and "commercial" in nature. *Id.* Commercial information refers to information that would enable competitors of an entity to gain an unfair advantage against that entity. *Id.* at 26–28 (holding that a license agreement authorizing a licensee "to reproduce, manufacture, distribute, and sell videocassettes of three films" contained confidential commercial information); *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury"). Once it is established that the subject information qualifies as "commercial information" under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing*, 295 B.R. at 725.

16. Sufficient cause exists for the Court to grant the relief requested in this Motion. The TSAs and certain of the other exhibits, which are attached to both the Objection and the Response Brief and portions of which are quoted in both the Objection and the Response Brief,

are documents containing confidential, commercial information. Certain of these exhibits were documents produced during the discovery process between the Debtors and the Companies in connection with the Adversary Proceeding and designated as confidential or highly confidential materials pursuant to a confidentiality agreement between the Debtors and the Companies. This information is precisely the information protected by section 107(b) of the Bankruptcy Code.

17. Accordingly, the Companies respectfully request authority to file, under seal, unredacted versions of the Objection and the Response Brief, as well as redacted versions of the Objection and the Response Brief.

NOTICE

18. Notice of this Motion has been provided to the following parties: (i) counsel to the Debtors; and (ii) the U.S. Trustee. The Companies submit that, in light of the nature of the relief requested, no other further notice need be given.

CONCLUSION

WHEREFORE, the Companies respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as the Court may deem just and proper.

[Remainder of Page Intentionally Left Blank]

Dated: September 23, 2020
Wilmington, Delaware

/s/ Brett S. Turlington

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EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXTRACTION OIL & GAS, INC., *et al.*,[1]	Case No. 20-11548 (CSS)
Debtors.	(Jointly Administered)
EXTRACTION OIL & GAS, INC.,	
Plaintiff,	Adv. Proc. No. 20-50833 (CSS)
v.	
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC,	
Defendants.	**RE: D.I. __**

ORDER AUTHORIZING PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC TO FILE UNDER SEAL (A) OBJECTION OF DJ SOUTH GATHERING, LLC, AND OF PLATTE RIVER MIDSTREAM, LLC, TO DEBTORS' SECOND OMNIBUS MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING REJECTION OF UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND EXECUTORY CONTRACTS EFFECTIVE AS OF THE DATES SPECIFIED [T]HEREIN AND (II) GRANTING RELATED RELIEF AND (B) PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC'S RESPONSE IN OPPOSITION TO EXTRACTION OIL & GAS, INC.'S MOTION FOR SUMMARY JUDGMENT

Upon the motion ("Motion")[2] of Platte River Midstream, LLC and DJ South Gathering, LLC (individually, a "Company" and, together with Platte River Holdings, LLC, the

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: MTE Holdings LLC (7894); MTE Partners LLC (1158); Olam Energy Resources I LLC (0770); MDC Energy LLC (9140); MDC Texas Operator LLC (1087); Ward I, LLC (6817); and MDC Reeves Energy LLC (3644). The Debtors' address is 280 East 96th Street, Suite 210, Indianapolis, Indiana 46240.

"Companies"), creditors and parties-in-interest in the above-captioned cases (the "Chapter 11 Cases") of the above-captioned debtors and debtors in possession (collectively, the "Debtors" or the "Plaintiffs") and defendants (individually, a "Defendant" and collectively, the "Defendants") in the above-captioned adversary proceeding brought by the Debtors (the "Adversary Proceeding"), for entry of an order (this "Order") authorizing the Companies to file under seal (a) *Objection of DJ South Gathering, LLC, and of Platte River Midstream, LLC, to Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified [T]herein and (II) Granting Related Relief* [D.I. 655 & 656] (including certain exhibits thereto, the "Objection") and (b) *Platte River Midstream, LLC and DJ South Gathering, LLC's Response in Opposition to Extraction Oil & Gas, Inc.'s Motion for Summary Judgment* [Adv. D.I. 21] (including certain exhibits thereto, the "Response Brief"); and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion has been provided under the circumstances; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT

1. The Motion is GRANTED as set forth herein.

2. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(d), the Companies are authorized to file an unredacted copy of the Objection under seal, subject to the Companies making further redactions.

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[2] Capitalized terms not defined herein are used as defined in the Motion.

3. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(d), the Companies are authorized to file an unredacted copy of the Response Brief under seal, subject to the Companies making further redactions.

4. Unredacted copies of the Objection and the Response Brief shall not be made available to anyone except for this Court, the U.S. Trustee, and the Debtors.

5. The Companies are authorized to file on this Court's docket and to serve on the necessary parties a redacted copy of the Objection and the Response Brief.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction to hear and decide any dispute related to or arising from this Order.

Dated: _____, 2020
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
CHIEF UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I, Brett S. Turlington, certify that I am not less than 18 years of age, and that service of the foregoing *Motion to File Under Seal (A) Objection of DJ South Gathering, LLC, and of Platte River Midstream, LLC, to Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief and (B) Platte River Midstream, LLC and DJ South Gathering, LLC's Response in Opposition to Extraction Oil & Gas, Inc.'s Motion for Summary Judgment* was caused to be made on September 23, 2020, in the manner indicated upon the entities identified below.

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Date: September 23, 2020

/s/ Brett S. Turlington
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