Docket #0409 Date Filed: 10/16/2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re: PROTERRA INC., *et al.*[1], Debtors.	Chapter 11 Case No. 23-11120 (BLS) (Jointly Administered) **Re: D.I. Nos. 279 and 384**

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY'S LIMITED OBJECTION TO DEBTOR'S NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) PROPOSED CURE AMOUNTS AND JOINDER IN BROWARD COUNTY OBJECTION

Capital Metropolitan Transportation Authority ("CapMetro") hereby files its Limited Objection to the Debtor's Notice of (i) Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (ii) Proposed Cure Amounts [D.I. 279] (the "Notice"), and would respectfully show the Court as follows:

1. CapMetro joins in and incorporates herein by reference the Limited Objection filed by Broward County [D.I. 384] on October 16, 2023.

2. In addition to the Limited Objection filed by Broward County, CapMetro objects to the schedule of contracts attached as Exhibit A to the Notice (the "Schedule").

3. The Schedule contains 33 line-items with respect to alleged contracts between the Debtors and CapMetro.

4. However, there are only 3 contracts between the Debtors and CapMetro: (i) Contract No. 200417; (ii) Contract No. 200744; and Contract No. 500013. There are also two

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

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standalone purchase orders that aren't part of the above contracts but are themselves executory contracts: (i) Purchase Order No. 404463; and (ii) Purchase Order No. 600022.

5. Most of the items on the Schedule are modifications to a contract or simply a part of a bigger contract (e.g., exhibits to a contract). For example, Contract No. 200744 has been modified or amended 10 times. The Schedule separates out each modification individually on line nos. 299, 300, 306, 307, 309, 310, 315, 324, 325, 326, and 327. *See* D.I. 279 at 12. However, these modifications are not stand-alone agreements with the Debtors; they are merely amendments to and included within Contract No. 200744.

6. The Debtor's Schedule suggests that the Debtors or a potential purchaser may assume or reject any of the 33 line-items associated with CapMetro in the Schedule. However, assumption or rejection of almost all of the 33 line-items in the Schedule would potentially result in a partial assumption or rejection of Contract Nos. 200417, 200744, and 500013.

7. "Under the Bankruptcy Code, a trustee may elect to reject or assume its obligations under an executory contract. This election is an all-or-nothing proposition–either the whole contract is assumed or the entire contract is rejected." *In re CellNet Data Sys., Inc*., 327 F.3d 242, 249 (3d Cir. 2003) (citing (11 U.S.C. § 365(a)).

8. Here, the only items that should be listed in the Schedule that are related to CapMetro are: (i) Contract No. 200417; (ii) Contract No. 200744; (iii) Contract No. 500013; (iv) Purchase Order No. 404463; and (v) Purchase Order No. 600022.

9. Every other document identified in the Schedule with respect to CapMetro is merely a component of one of the above contracts and must be assumed or rejected with the entirety of the contract they relate to. Otherwise, the Debtors would be allowed to pick and choose

which parts of a contract they wish to assume and which they wish to reject, which is impermissible.

10. In addition, the Schedule fails to include cure costs for liquidated damages for 8 chargers that the Debtors have not delivered on time to CapMetro. The liquidated damages are currently $497,929.84 and continue to accrue at the rate of $312.77 per unit, per day.

11. In addition, CapMetro may have cure claims with respect to warranty claims against the Debtors that are not yet identified or identifiable. CapMetro objects to the Schedule to the extent the Debtors are attempting to cut off any potential warranty claims that CapMetro may have for buses, parts, batteries, chargers, and other items it purchased from the Debtors.

WHEREFORE, CapMetro respectfully files this limited objection and objects to the Debtors' Schedule: (i) to the extent it can be interpreted as a partial assumption or rejection of a contract; (ii) to the extent the Debtors are attempting to individually assume or reject any of the documents identified in the Schedule with respect to CapMetro, other than Contract Nos. 200417, 200744, and 500013 and Purchase Order Nos. 404463 and 600022 in their respective entirety; (iii) to include cure costs of $497,929.84 for liquidated damages relating to delayed delivery of batteries; and (iv) to include any potential warranty claims that CapMetro may have against the Debtors for buses, parts, batteries, chargers, and other items CapMetro purchased from the Debtors.

[Signature Page Follows]

Dated: October 16, 2023
Wilmington, Delaware

SAUL EWING LLP

/s/ Evan T. Miller

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CERTIFICATE OF SERVICE

I, Evan T. Miller, hereby certify that on October 16, 2023, I caused a true and correct copy of the foregoing *Capital Metropolitan Transportation Authority's Limited Objection to Debtor's Notice of (I) Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (II) Proposed Cure Amounts and Joinder in Broward County Objection* to be electronically filed and served through the Court's CM/ECF system upon all registered participants, and additionally served via electronic mail upon the parties listed below.

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