

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

In re:) Chapter 11
)
PROTERRA, INC., <i>et al.</i> ,) Case No.: 23-11120 (BLS)
)
Debtors.) (Jointly Administered)
)
) Re: Docket Nos. 528, 529, 586

**MIAMI-DADE COUNTY’S JOINDER TO BROWARD COUNTY’S LIMITED
OBJECTION AND REQUEST FOR ADEQUATE ASSURANCE OF FUTURE
PERFORMANCE REGARDING DEBTOR’S PROPOSED SALE OF TRANSIT ASSETS
AND ASSIGNMENT OF CONTRACTS TO PHOENIX MOTOR, INC.**

Miami-Dade County Department of Transportation and Public Works (“County”), by and through undersigned counsel, joins Broward County in its *Limited Objection and Request for Adequate Assurance* [ECF 586] in response to the *Debtors’ Notice of (A) Successful Bidder Regarding Debtors’ (I) Transit Assets etc.* [ECF 529] and *Second Amended Notice of (I) Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases etc.* [ECF 528], as such arguments are applicable to Miami-Dade County’s contracts, and respectfully represents as follows:

Summary of Relief Sought

Miami-Dade County seeks adequate assurance that the Debtors’ proposed buyer of its Transit assets, Phoenix Motor, Inc. (“Phoenix”), can perform on the Debtors’ warranty obligations owed to the County. The County purchased 69 battery-electric transit buses and charging systems. Numerous of these buses have proven unreliable with nearly half the fleet out of service.

The Debtors have proposed to assume and assign to Phoenix the two contracts Miami-Dade entered with the Debtors. Specifically, in 2019, the Debtors were awarded two separate



contracts with Miami-Dade County valued at over \$72,000,000.00: the first to purchase 69 battery-electric transit buses and charging systems (RFP No. 00456), and the second to purchase new replacement parts and services for these buses (FB-01316) (“Miami-Dade Contracts”).

Miami-Dade County joins with Broward County in its petition under 11 U.S.C. § 365(f)(2)(B) that: (i) Phoenix be required to post a letter of credit or performance bond to ensure that it can meet its obligations under the Miami-Dade Contracts; (ii) if the Court determines that the record does not yet support requiring a letter of credit or bond, the Court should postpone adjudication of the Debtors proposed sale and assignment until the County has had time to learn more about Phoenix’s ability to perform; (iii) the Debtors properly identify the two Miami-Dade Contracts in its next assumption notice;¹ (iv) neither the Debtors nor Phoenix shall sever warranty obligations from the other rights and obligations under the Miami-Dade Contracts;² and (v) the Court preserve the County’s right to object to any assumption/assignment based upon illegality under applicable federal, state, and county ordinances and other local laws.

WHEREFORE for the same reasons stated by Broward County, Miami-Dade County respectfully asks this Court to require than any orders approving the proposed sale of the Transit assets and assignment of the Miami-Dade Contracts be contingent upon adequate assurance in the form of a letter credit or bond to ensure performance of the warranty obligations; and preserve the County’s rights to object to: (i) the Debtors’ characterization of the contracts between the County and Proterra; (ii) Phoenix’s ineligibility to be a government contract under Florida or federal law; or (iii) any attempt to sever Proterra’s warranty obligations from the Miami-Dade Contracts.

¹ As with Broward County, Miami-Dade County has conferred with Debtors’ counsel and believes we all agree that the Miami-Dade Contracts consist of two contracts, and not the various purchase orders listed in the Second Amended Notice of Potential Assumption at ECF No. 528.

² Also like Broward County, Miami-Dade County has reached agreement with Debtors’ counsel to address this issue.

Dated: November 21, 2023

ARMSTRONG TEASDALE LLP

/s/ Eric M. Suttty

Eric M. Suttty (No. 4007)
1007 North Market Street
Wilmington, DE 19801
Telephone: (302) 416-9671
Email: esuttty@atllp.com

-and-

GERALDINE BONZON-KEENAN
Miami-Dade County Attorney

By: Ileana Cruz

Assistant County Attorney
Florida Bar No. 419140
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
Telephone: (305) 375-5151
E-Mail: cao.bkc@miamidade.gov
Direct E-Mail: ileanac@miamidade.gov

*Counsel for Miami-Dade County Department of
Transportation and Public Works*

CERTIFICATE OF SERVICE

I, Eric M. Suttly, counsel to Miami-Dade County, Florida, hereby certifies that on November 21, 2023, a true and correct copy of *Miami-Dade County's Joinder to Broward County's Limited Objection and Request for Adequate Assurance of Future Performance Regarding Debtor's Proposed Sale of Transit Assets and Assignment of Contracts to Phoenix Motor, Inc.* was served by email and CM/ECF upon the parties below:

Pauline K. Morgan, Esquire
Andrew L. Magaziner, Esquire
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
pmorgan@ycst.com
amagaziner@ycst.com

Linda J. Casey, Esquire
Office of the United States Trustee
844 King Street, Suite 2207, Lockbox #35
Wilmington, DE 19801
linda.casey@usdoj.gov

Paul M. Basta, Esquire
Robert A. Britton, Esquire
Joshua Esses, Esquire
Paul, Weis, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
pbasta@paulweiss.com
rbritton@paulweiss.com
resses@paulweiss.com

Eric Monzo, Esquire
Brya Keilson, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
emonzo@morrisjames.com
bkeilson@morrisjames.com

Jeffrey Cohen, Esquire
Eric Chafetz, Esquire
Jordana Renert, Esquire
Keara Waldron, Esquire
Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, NY 10020
jcohen@lowenstein.com
echafetz@lowenstein.com
jrenert@lowenstein.com
kwaldron@lowenstein.com

Mark Hastings
Phoenix Motor, Inc.
markh@phoenixmotorscars.com

Albert Kass
Kurtzman Carson Consultant, LLC
ECFpleadings @kccllc.com

Dated: November 21, 2023

ARMSTRONG TEASDALE LLP

/s/ Eric M. Sully

Eric M. Sully (No. 4007)
1007 North Market Street, 3rd Floor
Wilmington, DE 19801
Telephone: (302) 416-9667
Email: esully@atllp.com

-and-

Geraldine Bonzon-Kennan, Esquire
Miami Dade County Attorney
Ileana Cruz, Assistant County Attorney
Florida Bar No. 419140
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
Email: cao.bkc@miamidade.gov
ileanac@miamidade.gov

*Counsel for Miami-Dade County
Department of Transportation and Public
Works*