IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re Optim Energy, LLC, *et al.*, Debtors.[1]	Chapter 11 Case No. 14-10262 (BLS) (Jointly Administered) **RE: D.I. 845**

NOTICE OF FILING OF DISCLOSURE STATEMENT RESPONSE CHART IN CONNECTION WITH DEBTORS' OMNIBUS REPLY TO OBJECTIONS TO DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) APPROVING THE DISCLOSURE STATEMENT, (B) APPROVING THE SOLICITATION PROCEDURES, (C) APPROVING THE FORM OF BALLOTS AND NOTICES IN CONNECTION THEREWITH, (D) ESTABLISHING THE PLAN AND CONFIRMATION SCHEDULE AND (E) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on April 17, 2015, the debtors and debtors in possession in the above-captioned cases (the "Debtors") filed the *Debtors' Omnibus Reply to Objections to Debtors' Motion for Entry of an Order (A) Approving the Disclosure Statement, (B) Approving the Solicitation Procedures, (C) Approving the Form of Ballots and Notices in Connection Therewith, (D) Establishing the Plan Confirmation Schedule and (E) Granting Related Relief* (D.I. 845) (the "Reply").[2]

PLEASE TAKE FURTHER NOTICE that in accordance with the Reply, the Debtors hereby file the Disclosure Statement Response Chart of unresolved objections to the Disclosure Statement. The Disclosure Statement Response Chart is attached hereto as **Exhibit A**.

[1] The Debtors in these chapter 11 cases are: Optim Energy, LLC; OEM 1, LLC; Optim Energy Cedar Bayou 4, LLC; Optim Energy Altura Cogen, LLC; Optim Energy Marketing, LLC; Optim Energy Generation, LLC; Optim Energy Twin Oaks GP, LLC; Optim Energy Twin Oaks, LP. The Debtors' main corporate and mailing address for purposes of these chapter 11 cases is: c/o Competitive Power Ventures, Inc., 8403 Colesville Road, Suite 915, Silver Spring, MD 20910.

[2] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Reply.

Dated: April 21, 2015
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ William M. Alleman, Jr.
Robert J. Dehney (No. 3578)
William M. Alleman, Jr. (No. 5449)
1201 North Market Street, 16th Floor
P.O. Box 1347
Wilmington, Delaware 19899
Telephone: (302) 658-9200
Facsimile: (302) 658-3989
rdehney@mnat.com
walleman@mnat.com

-and-

BRACEWELL & GIULIANI LLP

Kurt Mayr (admitted *pro hac vice*)
Mark Dendinger (admitted *pro hac vice*)
City Place I, 34th Floor
185 Asylum Street
Hartford, Connecticut 06103
Telephone: (860) 947-9000
Facsimile: (800) 404-3970
Kurt.Mayr@bgllp.com
Mark.Dendinger@bgllp.com

-and-

Robert G. Burns (admitted *pro hac vice*)
1251 Avenue of Americas, 49th Floor
New York, New York 10020-1104
Telephone: (212) 508-6100
Facsimile: (800) 404-3970
Robert.Burns@bgllp.com

Counsel For The Debtors And Debtors In Possession

Exhibit A

Disclosure Statement Response Chart

BLACKSTONE ADEQUACY OBJECTIONS	
Information / Disclosure Request	**Additional Disclosures in Response to Blackstone's Objections**
Sale Process: "The Debtors have failed to provide answers to the questions posed in Walnut Creek's Statement in response to the Bidding Procedures Motion [D.I. 811] with regards to the sale process, such as why potential bidders are required to acquire both gas assets through a purchase of the equity of Reorganized Optim Energy Generation. Walnut Creek seeks full disclosure of the remaining questions posed in the statement. *See* Ex. A, 12-13, 20. Additionally, Walnut Creek has requested disclosures regarding the treatment of executory contracts and unexpired leases in the sale process. *See* Ex. A, § 5.09." (*See* Walnut Creek Obj., ¶ 36)	With respect to Walnut Creek's questions posed in its Statement, the Debtors refer to and incorporate paragraphs 27-30 of *Debtors' Omnibus Reply To Limited Objection And Statement Regarding Debtors' Motion To Approve Bidding Procedures* [D.I. 841]. With respect to the treatment of executory contracts and unexpired leases in the sale process, the Debtors' current intention regarding assumption or rejection of Executory Contracts and Unexpired Leases is already discussed in the Disclosure Statement. Section 12.01 of the Disclosure Statement, as filed, provides: "Except as otherwise expressly provided in (a) the Subplans for the Reorganizing Debtors, (b) the Plan Supplement, or (c) any other filing made before the Confirmation Hearing, all Executory Contracts and Unexpired Leases of the Reorganizing Debtors [including the Altura Cogen Agreements, if applicable] shall be cured and assumed by the applicable Reorganized Debtor(s) as of the Effective Date in accordance with, and subject to the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code; provided, however, that Section 8.01 of the Plan shall not apply to any Executory Contract and Unexpired Lease of a Reorganizing Debtor that expired or terminated pursuant to its own terms prior to the Petition Date." (*See* Disclosure Statement, § 12.01) In addition, Section 12.02 of the Disclosure Statement, as filed, provides: " Except as otherwise expressly provided in (a) the Subplans for the Liquidating Debtors, (b) the Plan Supplement, or (c) any other filing made before the Confirmation Hearing, all Executory Contracts and Unexpired Leases of the Liquidating Debtors shall be deemed rejected

	by the applicable Liquidating Debtor(s) as of the Effective Date in accordance with, and subject to the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code; provided, however, that Section 8.02 of the Plan shall not apply to any Executory Contract and Unexpired Lease of a Liquidating Debtor that expired or terminated pursuant to its own terms prior to the Petition Date." (*Id.* at § 12.02) There are additional provisions in the ARTICLE XII of the Disclosure Statement related to payment of proposed Cure Costs (*Id.* at § 12.04), treatment of Rejection Damages Claims ((*Id.* at § 12.05) and other matters. **The Debtors submit the above disclosure should adequately address Walnut Creek's concerns.**
Claims Detail: "The Debtors have failed to adequately disclose details related to the classes of claims and interests, as well as the treatment of such classes. For example, the Debtors do not explain how proofs of claim filed compare to the Debtors' books and records, nor do the Debtors adequately explain why they consider Class CB 4 and Class AC 4 Claims to be impaired. Walnut Creek has requested these additional disclosures, and others related to determining whether any classes are vacant, and better understanding the universe of claims asserted against the Debtors. *See* Ex. A, n.5, §§ 7.02(d), 7.03(d), 7.04(d), 8.02(d)-(e), 8.03(d), 8.04(d), 8.05(d), 8.06(d)-(e)." (*Id.*)	Estimated Claim Amounts and Estimated % Recoveries Under the Plan are already discussed in the Disclosure Statement. (*Id* at § 1.01) Nevertheless, to address Walnut Creek's objection to lack of disclosure on this point, the Debtors have proposed adding the following disclosure to ARTICLES VII and VIII of the Disclosure Statement: • "(ii) *Amounts*: The Debtors believe there are no holders of Class OG 4 Allowed General Unsecured Claims against Optim Generation (other than the holders of the Class OG 4 Allowed Pre-Petition Secured Parties Deficiency Claim). " (*Id* at § 7.02(d)) • "(ii) *Amounts*: The Debtors estimate that there will be approximately two (2) holders of Class CB 4 Allowed General Unsecured Claims against Cedar Bayou (other than a holder of a Class CB 4 Allowed Pre-Petition Secured Parties Deficiency Claim) with $400,000-

	$500,000 in Claims." (*Id* at § 7.03(d)) • "(ii) *Amounts*: The Debtors estimate that there will be approximately sixty (60) to seventy (70) holders of Class AC 4 Allowed General Unsecured Claims against Altura Cogen (other than a holder of a Class CB 4 Allowed Pre-Petition Secured Parties Deficiency Claim) with $800,000-$900,000 in Claims." (*Id* at § 7.03(d)) • "(ii) *Amounts*: The Debtors believe there are no holders of Class OE 4 Allowed General Unsecured Claims against Optim Energy (other than the holders of the Class OE 4 Allowed Pre-Petition Secured Parties Deficiency Claim)." (*Id* at § 8.02(d)) • "(ii) *Amounts*: The Debtors believe there are approximately five (5) to ten (10) holders of Class OE 5 Allowed Convenience Class Claims against Optim Energy (before taking into account any holders that elect to have their Class OE 4 Claims treated as Class OE 5 Claims) in the aggregate amount of approximately $20,000." (*Id* at § 8.02(e)) • "(ii) *Amounts*: The Debtors believe there are no holders of Class OM 4 Allowed General Unsecured Claims against Optim Marketing (other than the holders of the Class OM 4 Allowed Pre-Petition Secured Parties Deficiency Claim)." (*Id* at § 8.03(d)) • "(ii) *Amounts*: The Debtors believe there are no holders of Class OEM 4 Allowed General Unsecured Claims against OEM (other than the holders of a Class OM 4 Allowed Pre-Petition Secured Parties Deficiency Claim)." (*Id* at § 8.04(d))

	• "(ii) *Amounts*: The Debtors believe there are no holders of Class TOGP 4 Allowed General Unsecured Claims against TOGP (other than the holders of the Class OM 4 Allowed Pre-Petition Secured Parties Deficiency Claim)." (*Id* at § 8.05(d)) • "(ii) *Amounts*: The Debtors estimate that there will be approximately five (5) to ten (10) holders of Class TOLP 4 Allowed General Unsecured Claims against TOLP (other than a holder of a Class TOLP 4 Allowed Pre-Petition Secured Parties Deficiency Claim) with $120,000-$150,000 in Claims." (*Id* at § 8.06(d)) and • "(ii) *Amounts*: The Debtors believe there are approximately forty (40) to fifty (50) holders of Class OE 5 Allowed Convenience Class Claims against TOLP (before taking into account any holders that elect to have their Class TOLP 4 Claims treated as Class TOLP 5 Claims) in the aggregate amount of $90,000-$120,000." (*Id* at § 8.06(e)) **The Debtors submit the above disclosure should adequately address Walnut Creek's concerns.**
Classification Detail: "The Debtors have failed to provide an explanation for the creation of three subsets of general unsecured claims under Subplan OE and Subplan TOLP. Particularly, the Disclosure Statement does not offer any explanation as to why Walnut Creek's claims are classified separately from other general unsecured claims, or why a class of convenience claims is needed at Subplan OE and Subplan TOLP (and no other Subplan). Walnut Creek has requested that the Debtors provide explanations for these classification	The Debtors have already provided disclosure regarding the treatment of General Unsecured Claims under the Subplan OE and Subplan TOLP. (*See* Disclosure Statement, §§ 8.01 and 8.02) The Debtors submit no additional information is necessary as a disclosure matter. Nevertheless, to address Walnut Creek's objection to lack of disclosure on this point, the Debtors have proposed adding the following disclosure to the Disclosure Statement:

decisions. *See* Ex. A, n. 6, §§ 2.01, 20.01." (*Id.*)	"**Section 2.01. Classification Under the Plan** Under section 1122(a) of the Bankruptcy Code, a chapter 11 plan may place a claim or equity interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. To determine whether claims are substantially similar, the proper focus is on the legal character of the claim as it relates to the assets of the debtor. Thus, the question is whether the claims in a class have the same or similar legal status in relation to the assets of the debtor. Under section 1122(b) of the Bankruptcy Code, a chapter 11 plan may designate a separate class of claims for all unsecured claims that are less than or reduced to an amount approved by the Bankruptcy Court. This class of claims is often referred to as a "convenience class" and is utilized by debtors when a separate class of unsecured claims is reasonable and necessary for administrative convenience." (*Id* at § 2.01) and "(x) Walnut Creek Confirmation Objection Risk Factors Walnut Creek has indicated that it intends to object to Confirmation of the Plan on various grounds, including, without limitation, that the release provisions and exculpation provisions are improper, that classification of its Claims and the use of convenience classes are improper, and section 1129(a)(10) of the Bankruptcy Code will not be met [D.I. 831]. The Debtors disagree with Walnut Creek's positions, but such objections will be reviewed by the Bankruptcy Court at the Confirmation Hearing if Walnut Creek files those and/or other objections to Confirmation." (*Id* at § 20.01) **The Debtors submit the above disclosure should adequately address Walnut Creek's**

	concerns.
Impaired Accepting Class: "The Debtors have failed to adequately disclose the risks that the Court may not confirm one or more of the Subplans for failing to comply with the requirements of the Bankruptcy Code, including the possibility that the Court determines that: (i) the Subplan lacks an impaired, accepting class necessary to satisfy section 1129(a)(10) or (ii) Walnut Creek's claims should not be separately classified from other unsecured creditors, those Subplans would also fail to satisfy (a)(10). Walnut Creek has requested that the Debtors include additional details in the "Risk Factors" section of the Disclosure Statement to explain these confirmation risks. *See* Ex. A, §§ 7.01, 8.01, 20.01." (*Id.*)	The Debtors have already provided adequate disclosure regarding classification. (*Id.* at §§ 7.01 and 8.01) Nevertheless, to address Walnut Creek's objection to lack of disclosure on this point, the Debtors have proposed adding the following disclosure to the Disclosure Statement: "(x) Walnut Creek Confirmation Objection Risk Factors Walnut Creek has indicated that it intends to object to Confirmation of the Plan on various grounds, including, without limitation, that the release provisions and exculpation provisions are improper, that classification of its Claims and the use of convenience classes are improper, and section 1129(a)(10) of the Bankruptcy Code will not be met [D.I. 831]. The Debtors disagree with Walnut Creek's positions, but such objections will be reviewed by the Bankruptcy Court at the Confirmation Hearing if Walnut Creek files those and/or other objections to Confirmation." (*Id* at § 20.01) **The Debtors submit the above disclosure should adequately address Walnut Creek's concerns.**
Avoidance Actions: "The Debtors have failed to provide adequate information with respect to avoidance actions. The Disclosure Statement states that avoidance action shall be waived and released. *See* Disclosure Statement §§ 10.12; 11.07; 20.03. Similarly, Walnut Creek has requested that the Debtors disclose the analysis that was undertaken in evaluating avoidance actions, including dollar amounts in controversy, the merits of the claims, and possible defenses. *See* Ex. A, §§ 10.12, 11.07, 20.03." (*Id.*)	The Debtors have provided disclosure regarding treatment of Avoidance Actions. (*Id.* at §§ 10.12, 11.07 and 20.03) Nevertheless, to address Walnut Creek's objection to lack of disclosure on this point, the Debtors have proposed adding the following disclosure to the Disclosure Statement: "The Debtors have completed analysis regarding any potential Avoidance Actions of the Reorganizing Debtors and have no intention of pursuing any such Avoidance Actions if there is no Sale. Part of the rationale

	is holders of Allowed Claims against the Reorganizing Debtors are being paid 100% on account such Allowed Claims. In essence, the Pre-Petition Secured Parties would be funding litigation to clawback Cash that the Debtors would be required to pay back pursuant to the provisions of the Subplans for the Reorganizing Debtors. If there is a Sale, the Debtors anticipate the Purchaser will request all Avoidance Actions of the Reorganizing Debtors to be waived and released, so as not to have vendors and other parties with whom the Purchaser wants to continue doing business sued." (*Id* at § 10.12(a)) and "Pursuant to the order approving the sale of the Twin Oaks Plant, Avoidance Actions were excluded from the list of purchased assets under the asset purchase agreement [D.I. 481]. The Debtors have completed analysis regarding any potential Avoidance Actions of the Liquidating Debtors and have no intention of pursuing any such Avoidance Actions. The Debtors believe there are no other Avoidance Actions of the Liquidating Debtors that are worth pursuing. Any proceeds from Avoidance Actions, if pursued, would be subject to the DIP Lenders' and Pre-Petition Secured Parties' superpriority Administrative Claims covering the DIP Obligations and Adequate Protection Obligations under the Final DIP Order and other Administrative Claims (including Professional Fees) being owed, such that the Debtors believe there would be no amounts available from potential Avoidance Action recoveries that could benefit unsecured Creditors of any of the Liquidating Debtors." (*Id* at § 11.07(a)) **The Debtors submit the above disclosure should adequately address Walnut Creek's concerns.**
Intercompany Claims: "The Debtors have failed to provide adequate information with	The Debtors have provided disclosure regarding treatment of Intercompany Claims.

respect intercompany claims, other than to note in the Disclosure Statement that intercompany claims will be cancelled. *See* Disclosure Statement §§ 19.07; 20.04. Walnut Creek has requested that Debtors identify each of the intercompany claims and their corresponding amounts among and across the multiple Debtor entities. *See* Ex. A, §§ 19.07, 20.04." (*Id.*)	(*Id.* at §§ 19.07 and 20.04). Nevertheless, to address Walnut Creek's objection to lack of disclosure on this point, the Debtors have proposed adding the following disclosure to the Disclosure Statement: "Intercompany Claims are subject to the Liens of the DIP Lender and Pre-Petition Secured Parties. Moreover, because all Debtors are jointly and severally liable for the obligations arising under the Pre-Petition Reimbursement Agreement and the DIP Facility, the settlement of Intercompany Claims would not have any impact on the recoveries of the holders of Claims against any Debtor." (*Id.* at § 19.07) **The Debtors submit the above disclosure should adequately address Walnut Creek's concerns.**