IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	Case No. 16-12700 (CSS)
LA PALOMA GENERATING COMPANY, LLC, et al.,	:	Hearing Date: Oct. 30, 2017 at 10:00am (E.T.)
	:	Obj. Deadline: Oct. 23, 2017 at 4:00pm (E.T.)
Debtors. [1]	:	
	:	**Re: Docket Nos. 666, 674, 802**

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' SUPPLEMENTAL OBJECTION TO THE JOINT CHAPTER 11 PLAN FOR LA PALOMA GENERATING COMPANY, LLC, ET AL.

The Official Committee of Unsecured Creditors (the "Committee") of La Paloma Generating Company, LLC, et al., debtors and debtors-in-possession ("Debtors"), by and through its counsel, Brinkman Portillo Ronk, APC and The Rosner Law Group LLC, hereby further objects (the "Supplemental Objection") to the *Joint Chapter 11 Plan for La Paloma Generating Company, LLC, et al.* (the "Plan") [D.I. 674] and the *Notice of Service of "Notice of Correction of Clerical Error on Ballot for Voting to Accept or Reject the Joint Chapter 11 Plan for La Paloma Generating Company, LLC* et al." (the "Ballot Notice") [D.I. 802]. The Committee has already filed an Objection to the Plan (the "Objection"), which appears on the docket at number 788, and which the Committee fully incorporates herein. In support of this Supplemental Objection, the Committee respectfully states as follows[2]:

[1] The Debtors in these cases, along with the reported last four digits of each Debtor's federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The Debtors report the address of the Debtors' corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington DC 20006.

[2] Capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to them in the Plan, Disclosure Statement, Objection and/or Ballot Notice, as applicable.

I. INTRODUCTION

In addition to the reasons already set forth in the Objection, the Debtors' proposed Plan is not confirmable for the following reasons:

1. The Ballots solicited to creditors contained an improper, material modification that was not approved by the Court;
2. The Debtor engaged in an improper, non-Court-approved resolicitation procedure on a prejudicially short timeframe; and
3. The Plan contains an unconfirmable limit on and delay in payment of administrative fees.

II. SUPPLEMENTAL OBJECTIONS

A. THE MODIFICATION TO THE BALLOTS THAT WERE SOLICITED WAS MATERIAL

1. The Ballot Notice reports that the Ballots sent out to creditors in classes 4, 5A, 5B, and 5C contained a provision informing creditors that they, instead of the holders of First Lien Claims, would be granted broad, in-depth releases of any and all claims that could possibly be held against them in connection with the Debtors.

2. A modification is "'material if there is a substantial likelihood that a reasonable [creditor] would consider it important in deciding how to vote.'" In re Crowthers McCall Pattern, Inc., 120 B.R. 279, 300 (Bankr. S.D.N.Y. 1990) (quoting TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976)). If the solicitation materials are "materially erroneous or inadequate, the Court simply cannot make the finding required by section 1129(a)(2)." Id.

3. It is key that the Ballots did not identify the holders of First Lien Claims as getting released. These are the parties against whom the Debtors and creditors potentially hold the largest claims. Not disclosing that the holders of First Lien Claims were getting broad

releases could well have influenced certain creditors due to the potentially large value of claims against them.

4. The Debtors admitted the materiality of their error in the Ballots when they resolicited votes from creditors who received incorrect information. Where errors or modifications are "mere clarifications of or technical amendments to the Plan," no additional disclosure or resolicitation of votes is required. In re Western Asbestos Co., 313 B.R. 456, 472 (Bankr. N.D. Cal. 2004).

B. THE DEBTORS' RESOLICITATION PROCEDURE WAS IMPROPER AND CANNOT SUPPORT THE DEBTORS' THIRD-PARTY RELEASES

5. The resolicitation procedures used by the Debtors were entirely improper. Any resolicitation of votes must be done through procedures approved by the Court in advance. See Federal Rule of Bankruptcy Procedure 3019. There is no provision in the Bankruptcy Rules or Code allowing for a debtor to resolicit votes on its own initiative.

6. The Debtors' unapproved resolicitation procedure in this case gave creditors only three days to consider new information and possibly change their votes. As the Debtors themselves have admitted, there is no longer any need for haste in this case as the November 1, 2017 deadline will come and go no matter the outcome of the Confirmation Hearing. See D.I. 770. There was no justification for the Debtors to take it upon themselves to devise a new resolicitation procedure without Court approval.

7. It is clear that the Federal Energy Regulatory Commission ("FERC") will not approve the sale of the Debtors before the November 1, 2017 CARB deadline. The Debtors knew this for some time prior to informing any other parties in the interest or the Court. Yet the Debtors are continuing on their completely unnecessary expedited timeline despite that no urgency is need in this case. The Committee suspects that the Debtors are aggressively pursuing

confirmation in a bid to keep the Committee off-balance and uninformed to the maximum possible extent. It seems that the Debtors' continued rush is in bad faith.

8. The Court can rectify this error in the Plan and Ballot Notice by striking any provision of the Plan that was solicited with false, misleading information. In this case, only the third-party releases were affected by the incorrect solicitation materials, so they should be stricken from the Plan. Additionally, where unapproved solicitation materials are distributed to creditors without bad faith, as the Committee assumes they were in this case[3], the "punishment should be inflicted upon those who caused the problem, namely, counsel for debtor." In re Cramer, Inc., 100 B.R. 63, 67 (Bankr. D. Kan. 1989). The Committee requests that counsel to the Debtors not be permitted to seek reimbursement for their fees incurred in connection with the preparation and issuance of the Ballot Notice and related materials. Id

C. THE PLAN CONTAINS AN UNCONFIRMABLE LIMIT ON ADMINISTRATIVE FEES

9. The Plan contains a provision that limits the fees and expenses that can be charged to the estate by Committee professionals as administrative claims. In particular, the Plan states that "the amount of Cash that may be used from the Professional Fee Escrow to pay Committee Fees and Expenses, shall not exceed $250,000, *less* any amounts that are paid on account of Committee Fees and Expenses prior to the Effective Date." Plan § I(A)(1.82), p.10.

10. In Section II(2.1) of the Plan, the Debtors claim that all Allowed Administrative Claims will be paid in full on the Effective Date. Yet, the Committee fees and expenses, which should all be administrative expenses under the Bankruptcy Code, are limited and set to be paid,

[3] While the Committee suspects that the Debtors are trying to rush to confirmation in a bad faith attempt to keep parties in interest uninformed, the Committee does not believe that the error on the Ballots that were distributed to creditors was specifically made in bad faith or intentionally.

if at all, at some point long after the Effective Date. 11 U.S.C. §§ 330, 503. All proper Allowed Administrative Claims must be paid in full by the Debtors as mandated by the Code.

11. The Plan provides that fees and expenses billed by professionals to the Committee that exceed $250,000 are to be paid first "from recoveries by the holders of the First Lien Claims, if any, pursuant to enforcement of the Intercreditor Agreement" and second "from distributions of Remaining Cash to holders of Liquidating Trust Interests." Id. [emphasis added]. Both of these categories of funds are to be paid to the holders of unsecured claims if not to Committee counsel. These are also categories whose size and amount will be determined at some point long after the Effective Date, when additional litigation is completed. It is against the Bankruptcy Code for the Debtors to impose artificial budgetary and time restrictions on the payment of Administrative fees.

12. The general unsecured creditors are, in essence, being punished by the Debtors for retaining counsel to protect their rights. The United States Trustee appointed the Committee in this case and the Bankruptcy Code gives the Committee the right to retain counsel. 11 U.S.C. § 1103. The Debtors do not have the right or authority to penalize the general unsecured creditors for exercising their Court-approved right to counsel. In taking the Committee Professionals' pay out of funds earmarked for general unsecured creditors, the Debtors do just that.

13. Neither of the Committee Professionals that has been retained and Court approved has agreed to any limit on its compensation or delay in payment of its administrative fees. The Debtor must pay all Allowed Administrative Claims in full on the Effective Date.

14. This objection can be remedied by the removal of the cap on Committee Professionals' fees and expenses and payment in full of those fees and expenses by the Debtors in the same manner as payment of other Allowed Administrative Claims.

III. CONCLUSION

WHEREFORE, the Committee objects to the Plan for the reasons stated in the Objection and above and respectfully requests that the Court deny confirmation of the Plan or, in the alternative, remedy the Plan as provided above, and grant such other and further relief as is just and proper.

Dated: October 26, 2017
Wilmington, Delaware

Respectfully submitted,

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