

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

In re:

SUNPOWER CORPORATION, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-11649 (CTG)
)
) (Jointly Administered)
)
)
)
)
)
)

**REQUEST OF TOTALENERGIES DISTRIBUTED GENERATION USA, LLC FOR
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

TotalEnergies Distributed Generation USA, LLC (“TEDGUSA”), by and through its undersigned attorneys, submits this request seeking the allowance and payment of an administrative expense claim (the “Administrative Expense Request”) pursuant to section 503(b) of title 11 of the United States Code (the “Bankruptcy Code”) in the amount of \$14,302,029.95 (the “Administrative Expense Claim”) against Debtor SunPower Corporation, Systems (“Systems”). In support of this Administrative Expense Request, TEDGUSA respectfully states as follows.

JURISDICTION AND VENUE

1. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the “Court”) under 28 U.S.C. § 157 and the *Amended Standing*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: SunPower Corporation (8969); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition Holdco, Inc. (3335). The location of the Debtors' service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. TEDGUSA confirms its consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein is section 503(b)(1) of the Bankruptcy Code.

BACKGROUND

I. General Background

1. On August 5, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Prior to the Petition Date, on February 6, 2022, TotalEnergies Renewables USA, LLC (“TERUSA”) agreed to purchase from Systems, a wholly owned subsidiary of SunPower Corporation (“SunPower”), all of the issued and outstanding limited liability interests of TEDGUSA pursuant to the terms of an Equity Purchase Agreement (the “Equity Purchase Agreement”). Concurrently with the execution of the Equity Purchase Agreement, SunPower and TEDGUSA entered into a Reorganization Agreement pursuant to which SunPower and its affiliates, including Systems, agreed to assign certain contracts related to the Commercial and

Industrial solar business (the “C&I Business”) operated by Systems to TEDGUSA immediately prior to the closing of the Equity Purchase Agreement. The transaction closed on May 31, 2022.

3. Systems was contractually obligated to assign the contracts acquired by TERUSA within the time period set forth in the underlying transaction documents. At the time of closing, however, Systems had not assigned to TEDGUSA certain contracts between Systems and its customers (the “Remaining Contracts”). To provide for an orderly transition of TEDGUSA from Systems to TERUSA, on May 31, 2022, Systems and TEDGUSA entered into (a) the Agreement for Maintenance of Remaining Contracts (the “AMRC”), (b) the Technical Services and License Transition Agreement (the “TSLTA”), and (c) the Transition Services Agreement (the “TSA,” and, collectively with the AMRC and the TSLTA, the “Agreements”).²

4. TEDGUSA provided certain services (the “Services”) to Systems under the terms of the Agreements. Those Services included, but are not limited to, providing support services to Systems in connection with certain engineering, procurement, and construction agreements, operations and maintenance agreements, performance guarantee agreements, and savings guarantee agreements between Systems and its customers under the Remaining Contracts (the “Remaining Customers”). In exchange for providing the Services, TEDGUSA was entitled to compensation including payment of certain fees as set forth in the Agreements.

5. The primary transition Services provided by TEDGUSA to Systems as of the Petition Date involve the servicing of the Remaining Contracts. Under the Agreements, Systems is required to use “commercially reasonable efforts” to maintain the Remaining Contracts and TEDGUSA is required to provide, upon request, “administrative support, guidance and direction”

² The Agreements are attached to the *Declaration of Brian McDonald in Support of Motion of TotalEnergies Distributed Generation USA, LLC to Compel Rejection of Executory Contracts Under Section 365 of the Bankruptcy Code and Grant Related Relief* [Dkt. No. 297] (the “McDonald Declaration”) and incorporated herein by reference.

to Systems in connection with the Remaining Contracts. *See* AMRC §§ 2.1 and 2.2; TSLTA §§ 2.1.2 and 4.1. Systems, in turn, is responsible for sending invoices to all Remaining Customers and is required to promptly forward any amounts received on no less than a weekly basis. *See* AMRC §§ 4.1 and 4.2; TSLTA §§ 6.1 and 6.2. Importantly, Systems remains liable under the Remaining Contracts and remains liable to the Remaining Customers.

6. The Services provided by TEDGUSA in respect of the Remaining Contracts included: (a) engineering, procurement, and construction of photovoltaic systems and battery storage systems (the “EPC Services”); (b) repairing photovoltaic systems and battery storage systems that are subject to warranties Systems provided to its Remaining Customers under the Remaining Contracts; (c) monitoring, maintaining, and repairing photovoltaic systems and battery storage systems owned by the Remaining Customers (together (b) and (c), the “O&M Services”); and (d) administrative support for performance guarantee agreements and savings guarantee agreements between Systems and the Remaining Customers.

7. Prior to the Petition Date, Systems breached its obligations under the Agreements. Among other things, it failed to pay amounts due to TEDGUSA, failed to invoice many of its Remaining Customers, failed to enforce payment terms, and did not forward the amounts that were paid by the Remaining Customers to TEDGUSA as required by the Agreements. This has resulted in TEDGUSA incurring losses of approximately \$26,936,018 prior to the Petition Date. *See* McDonald Decl., ¶ 6. Moreover, Systems’ breaches of contract under the Agreements continued on a post-petition basis while TEDGUSA continued to perform.

8. Shortly after the Petition Date, TEDGUSA, through its counsel, informed Systems that, absent immediate rejection of the Agreements, it would be required to expend significant money and resources to provide the Services under the Agreements to Systems. TEDGUSA also

informed Systems that TEDGUSA did not believe that Systems would be able to assume the Agreements because it was in the process of liquidating and unable to perform its obligations under the Agreements. And importantly, it would not be able to cure the existing defaults under the Agreements. TEDGUSA requested that Systems immediately reject the Agreements so that Systems could avoid incurring the substantial administrative expenses TEDGUSA anticipated would soon be incurred. Despite TEDGUSA's clear request for rejection, Systems did not timely respond or take any action in response to TEDGUSA's request. Indeed, both counsel for TEDGUSA and TEDGUSA executives made multiple attempts to cause Systems to reject the Agreements, only to be stonewalled. Systems' delays were costly.

9. Faced with Systems' unwillingness to engage, on August 30, 2024, TEDGUSA filed the *Motion of TotalEnergies Distributed Generation USA, LLC to Compel Rejection of Executory Contracts Under Section 365 of the Bankruptcy Code and Grant Related Relief* [Dkt. No. 296] (the "Motion") and the McDonald Declaration seeking entry of an order compelling Systems to reject the Agreements.

10. Nearly a month later, Systems finally stipulated to the rejection of the Agreements to resolve the Motion. On September 23, 2024 (the "Rejection Date"), the Bankruptcy Court entered an *Order Approving Stipulation Regarding Rejection of Contracts by and Between Debtor SunPower Corporation, Systems and TotalEnergies Distributed Generation USA, LLC* [Dkt. No. 599] (the "Order"). The Agreements were deemed rejected upon entry of the Order.

11. Between the Petition Date and the Rejection Date, Systems accrued \$14,302,029.95 of administrative expense obligations that are now due and owing to TEDGUSA under the Agreements. Attached as **Exhibit A** is detailed chart providing support for this Administrative

Expense Claim. The expenses detailed in **Exhibit A** can be categorized into five different types of claims for Services provided by TEDGUSA under the Agreements:

- A. Monies Received After the Petition Date that Systems Failed to Forward to TEDGUSA as Required by the Agreements.** This category includes amounts that were paid to Systems post-petition under Remaining Contracts that Systems was required to forward to TEDGUSA under the Agreements, but did not. Failure to pay such funds to TEDGUSA was a breach of the Agreement and a conversion of funds owed to it thereunder. These amounts constitute an administrative claim and should be paid to TEDGUSA.
- B. Subcontractor Costs for O&M Services that TEDGUSA was Required to Provide under the Agreements.** Systems hired subcontractors to provide O&M Services to its Remaining Customers. Under the Agreements, one of the Services TEDGUSA was required to provide Systems was managing those subcontractors. This category includes post-petition amounts that TEDGUSA was or will be required to pay subcontractors to provide O&M Services to Systems' customers under the Remaining Contracts from the Petition Date through the Rejection Date. These amounts constitute an administrative claim and should be paid to TEDGUSA.
- C. Fees for O&M Services that TEDGUSA was Required to Provide under the Agreements.** This category includes amounts owed to TEDGUSA under the Agreements for assisting Systems by providing O&M Services under the Remaining Contracts from the Petition Date through the Rejection Date. Under the Agreements, Systems is responsible for sending invoices to all Remaining Customers and enforcing payment terms. Systems failed to do so after the Petition Date. These amounts constitute an administrative claim and should be paid to TEDGUSA.
- D. Subcontractor Costs for EPC Services that TEDGUSA was Required to Provide under the Agreements.** Systems hired subcontractors to provide portions of the EPC Services to its Remaining Customers. Under the Agreements, one of the Services TEDGUSA was required to provide Systems was managing those subcontractors. This category includes post-petition amounts that TEDGUSA was or will be required to pay subcontractors to provide EPC Services to Systems' customers under the Remaining Contracts from the Petition Date through the Rejection Date. These amounts constitute an administrative claim and should be paid to TEDGUSA.
- E. Fees for EPC Services that TEDGUSA was Required to Provide under the Agreements.** This category includes amounts owed to TEDGUSA under the Agreements for assisting Systems by providing EPC Services under the Remaining Contracts from the Petition Date through the Rejection Date. Under the Agreements, Systems is responsible for sending invoices to all Remaining Customers and enforcing payment terms, including when construction milestones are reached. Systems failed to do so after the Petition Date. Systems could cure this amount by

invoicing its customers and paying any amounts received to TEDGUSA. In the interest of clarity, some of the amounts that were required to be invoiced post-petition in this category relate to both pre and post-petition work done by TEDGUSA. These amounts constitute an administrative claim and should be paid to TEDGUSA.

12. TEDGUSA has significant concern that if it does not assert its administrative claim at this time and the Debtors' proposed plan of reorganization is confirmed, the Debtors will distribute all of their cash and be unable to pay the Administrative Expense Claim requested in this Administrative Expense Request. TEDGUSA believes that the amount of the Administrative Expense Claim is accurate to the best of its knowledge, however, because of the short two week period between the work performed and this Administrative Expense Request, it is possible that additional invoices may be received that increase the amount of the Administrative Expense Claim. TEDGUSA reserves the right to supplement this Administrative Expense Request to the extent it determines it is entitled to additional amounts or discovers additional supporting documentation.

RELIEF REQUESTED

13. By this Administrative Expense Request, TEDGUSA seeks to notify the Debtors and request payment of TEDGUSA's Administrative Expense Claim in the amount of \$14,302,029.95.

14. Section 503(b)(1) of the Bankruptcy Code provides administrative expense priority to "the actual, necessary costs and expenses of preserving the estate" 11 U.S.C. § 503(b)(1). The Supreme Court has found that "actual and necessary costs should include costs ordinarily incident to operation of a business, and not be limited to costs without which rehabilitation would be impossible." *See Reading Co. v. Brown*, 391 U.S. 471, 484 (1968).

15. To qualify for administrative priority, an expense must (i) arise from a post-petition transaction with the debtor-in-possession, and (ii) must be beneficial to the debtor-in-possession in the operation of the business. *In re Marcal Paper Mills, Inc.*, 650 F.3d 311, 314–15 (3d Cir.

2011) (citing *Calpine Corp. v. O'Brien Env't Energy, Inc. (In re O'Brien Env't Energy, Inc.)*, 181 F.3d 527, 532-33 (3d Cir. 1999)). The claimant seeking administrative expense priority must demonstrate that “the costs and fees for which it seeks payment provided an actual benefit to the estate and that such costs and expenses were necessary to preserve the value of the estate assets.” See *In re ID Liquidation One, LLC*, 503 B.R. 392, 399 (Bankr. D. Del. 2013) (citation and internal quotation marks omitted). Courts have discretion to determine the timing of payment of administrative expenses, weighing prejudice to the debtor, hardship to the claimant, and potential detriment to other creditors. See *In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005).

16. The Supreme Court has stated that if the debtor in possession elects to continue to receive benefits from a counterparty to an executory contract pending a decision to reject or assume the contract, the debtor in possession is obligated to pay for the reasonable value of those services, which depending on the circumstances of a particular contract may be the amount specified in the contract. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984); see also *In re ID Liquidation One, LLC*, 503 B.R. at 392.

17. Courts in this district have followed *Bildisco* and held that “administrative expense priority is available to contract parties when the debtor enjoys the benefits of the contract pending assumption or rejection” and that pending rejection, a debtor must pay the “reasonable value of services received.” *In re ID Liquidation One, LLC*, 503 B.R. at 392 (citing *Bildisco*, 465 U.S. and 531); see also *In re Smurfit-Stone Container Corp.*, 425 B.R. 735, 741 (Bankr. D. Del. 2010) (same); *In re Continental Airlines, Inc.*, 146 B.R. 520, 526–27 (Bankr. D. Del. 1992) (holding

“aircraft lessor was entitled to immediate payment of administrative expenses because debtor retained the aircraft and used it in its business without paying rent postpetition”).

18. A court in this district also held that allegations of a post-petition breach of contract by a debtor in bankruptcy are appropriately dealt with via the administrative claims process. *See In re J & M Sales, Inc.*, No. 18-11801 (JTD), 2020 WL 1237914, at *4 (Bankr. D. Del. Mar. 13, 2020) (citing *In re United Trucking Service, Inc.*, 851 F.2d 159, 162 (6th Cir. 1988) (finding that a post-petition breach of contract prior to assumption or rejection of an executory contract by a chapter 11 debtor is properly treated as an administrative expense); *see also In re Hayes Lemmerz Intern., Inc.*, 340 B.R. 461 (Bankr. D. Del. 2006) (holding that an equipment lessor’s claim for damages that it sustained as result of a debtor’s post-petition breach of terms of its equipment leases in failing to return equipment was not claim for “rejection damages,” but rather an administrative expense claim).

19. Similarly, the Supreme Court held that a post-petition tort committed by a debtor within the course and scope of its continued operation of the estate’s business may, itself, be considered a cost of doing business and entitled to administrative expense priority. *See Continental Airlines*, 148 B.R. at 214 (citing *Reading Co. v. Brown*, 391 U.S. 471, 477 (1968)). The *Reading* doctrine allows for post-petition tort claims, such as conversion claims, to be allowed as administrative expenses “if those claims arise from actions related to the preservation of a debtor’s estate despite having no discernable benefit to the estate.” *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 173 (3d Cir. 2012), *as corrected* (Oct. 25, 2012). The Supreme Court in *Reading* stated that “actual and necessary costs” include costs ordinarily incident to operation of a business and are not “limited to costs without which rehabilitation would be impossible.” *Reading Co.*, 391 U.S. at 483. Courts have also applied the *Reading* doctrine “even

where there is ‘no discernible benefit to the debtor estate’ if ‘fundamental fairness’ requires that the claimant’s right take precedence over others.” *In re Women First Healthcare, Inc.*, 332 B.R. 115, 123 (Bankr. D. Del. 2005) (quoting *In re Hemingway Transp., Inc.*, 993 F.2d 915, 929 n. 17 (1st Cir.1993)) (holding fundamental fairness mandates that a stalking horse bidder be allowed an administrative expense claim for the debtor’s negligent misrepresentation).

20. As set forth on **Exhibit A**, the Services giving rise to the Administrative Expense Claim were all performed post-petition or were part of damages that arose from a post-petition breach of contract by Systems. Given the voluminous size of the supporting documents, detailed information on the dates the Services were provided will be made available upon reasonable request. Upon TEDGUSA providing the Services post-petition, Systems was obligated to pay TEDGUSA the Administrative Expense Claim in the amounts incurred by TEDGUSA to provide such Services. TEDGUSA provided a benefit to the Debtors’ estates by performing under the Agreements and providing services required to be provided by Systems to its Remaining Customers. Absent TEDGUSA’s performance, Systems would have defaulted on its obligations under the Remaining Contracts. The Debtors, consequentially, avoided the incurrence of post-petition damage claims against the Debtors from Systems’ customers. Systems was informed of the fact that TEDGUSA was incurring substantial expenses for its benefit and that it could avoid such expenses by rejecting the Agreements or otherwise instructing TEDGUSA not to perform Services post-petition. It did not do so. Instead of promptly acting, Systems delayed, causing TEDGUSA to incur expenses and fees that benefitted the Debtors’ estates.

21. Importantly, TEDGUSA’s performance was critical to preserving the value of the estate. Systems is obligated to provide services to its Remaining Customers. Failure to do so after the Petition Date could have resulted in significant and substantial administrative expenses to be

incurred by Systems directly. Instead, TEDGUSA provided support services under the Agreements to Systems resulting in TEDGUSA incurring costs that should be borne by Systems on a post-petition basis.

22. In addition, Systems breached the Agreements post-petition. Although Systems refused to excuse TEDGUSA from performing under the Agreements, Systems failed to invoice its Remaining Customers, failed to enforce payment terms, and did not forward the amounts that were paid by the Remaining Customers to TEDGUSA as required by the Agreements. These post-petition breaches constitute administrative expense claims. Moreover, Systems' failure to forward amounts received was not only a violation of the Agreements, but an act of conversion giving rise to an administrative expense claim. The Administrative Expense Claim requested herein should be allowed.

RESERVATION OF RIGHTS

23. This request for payment of its Administrative Expense Claim is not and shall not be deemed: (a) a waiver, release, or limitation of the rights of TEDGUSA against any other entity or person liable for all or any part of the Administrative Expense Claim asserted herein; (b) an election of remedies which waives or otherwise affects any other remedy; (c) a waiver of any past, present, or future Default or Event of Default (as defined in the Agreements); (d) a waiver of any rights to fees, indemnity, costs, and expenses under the Agreements, the Equity Purchase Agreement or otherwise; or (e) a waiver of TEDGUSA's right to assert additional claims that are not subject to administrative expense status in accordance with the *Amended and Superseding Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar*

Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Approving Form and Manner of Notice Thereof.

24. This Administrative Expense Request is without prejudice to any and all rights, claims, and defenses available to TEDGUSA under the Bankruptcy Code or otherwise. TEDGUSA expressly preserves all procedural and substantive defenses with respect to any claim that may be asserted against TEDGUSA.

NOTICE

25. TEDGUSA will provide notice of this Administrative Expense Request to:

(a) counsel to the Debtors; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Official Committee of Unsecured Creditors; (d) the office of the attorney general for each of the states in which the Debtors operate; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the United States Department of Justice; (i) counsel to the First Lien Agent; (j) counsel to the Second Lien Agent; (k) the L/C Secured Party; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002.

Dated: October 11, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Brett M. Haywood

POTTER ANDERSON & CORROON LLP

M. Blake Cleary (No. 3614)
Brett M. Haywood (No. 6166)
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: bcleary@potteranderson.com
bhaywood@potteranderson.com

-and-

WHITE & CASE LLP

Aaron Colodny (admitted *pro hac vice*)
Roberto Kampfner (admitted *pro hac vice*)
555 South Flower Street
Suite 2700
Los Angeles, California 90071
Telephone: (213) 620-7700
Email: aaron.colodny@whitecase.com
rkampfner@whitecase.com

*Counsel to TotalEnergies Distributed Generation
USA, LLC*

Exhibit A

Supporting Detail for Administrative Expense Claim

Category		Amount
A.	Monies Received by Systems for Services Provided by TEDGUSA Not Transferred by Systems to TEDGUSA	\$98,827.89
B.	Subcontractor Costs for Operations & Maintenance Services Provided by TEDGUSA	\$915,244.39
C.	Fees for Operation & Maintenance Services Provided by TEDGUSA	\$1,194,761.99
D.	Subcontractor Costs for Engineering, Procurement, and Construction Services Provided by TEDGUSA	\$1,125,934.71
E.	Fees for Engineering, Procurement, and Construction Services Provided by TEDGUSA	\$10,967,260.97
Total Administrative Expense Claim		\$14,302,029.95