

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

In re:	Chapter 11
Nikola Corporation., <i>et al.</i> , ¹	Case No. 25-10258 (TMH)
Debtors.	(Jointly Administered)
	Related D.I. 15, 138

**PLUG POWER INC.’S LIMITED OBJECTION AND RESERVATION OF RIGHTS
WITH RESPECT TO (I) DEBTORS’ SALE MOTION AND (II) DEBTORS’ NOTICE
OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION
WITH SALE OF SUBSTANTIALLY ALL ASSETS**

Plug Power Inc. (“Plug Power”), by and through its undersigned counsel, hereby files this limited objection and reservation of rights (the “Objection”), with respect to (i) the *Debtors’ Motion for Entry of Orders (I)(A) Approving the Bid Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Authorizing the Debtors to Designate One or More Stalking Horse Bidders and to Provide Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving the Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [D.I. 15] (the “Sale Motion”); and (ii) the *Debtors’ Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale of Substantially*

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Nikola Corporation (registered to do business in California as Nikola Truck Manufacturing Corporation) (1153); Nikola Properties, LLC (3648); Nikola Subsidiary Corporation (1876); Nikola Motor Company LLC (0193); Nikola Energy Company LLC (0706); Nikola Powersports LLC (6771); Free Form Factory Inc. (2510); Nikola H2 2081 W Placentia Lane LLC (N/A); 4141 E Broadway Road LLC (N/A); and Nikola Desert Logistics LLC (N/A). The Debtors’ headquarters are located at 4141 East Broadway Road, Phoenix, AZ 85040.

All Assets [D.I. 138] (the “Assumption Notice”), filed by Nikola Corporation (“Nikola”) and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”). In support of this Objection, Plug Power respectfully states as follows:

BACKGROUND

1. Plug Power is a global leader in hydrogen fuel-supply solutions. Among other things, Plug Power manufactures, leases, and sells mobile refuelers that transport and supply liquid hydrogen fuels, as well as stationary storage tanks, high pressure tube trailers, cryogenic mobile trailers, and other equipment.

2. Prior to the Petition Date (defined below) Plug Power or its affiliates entered into various transactions with the Debtors and the Debtors’ chosen financing companies for certain refuelers and related equipment, and repair and upgrade work performed in connection therewith, including those transactions identified below.

A. Modern Lease Transaction.

3. On December 28, 2023, Plug Power entered into that certain Equipment Purchase Agreement (the “Equipment Purchase Agreement”) with MGFH2, LLC (“Modern”), under which, among other things, Plug Power manufactured and sold, and Modern purchased four (4) Plug Power LH2 Liquid Hydrogen Mobile Refuelers (the “Modern Equipment”) for an aggregate price of \$14,000,000.²

4. On December 29, 2023, Nikola entered into that certain Master Equipment Lease Agreement with Modern with respect to lease of the Modern Equipment by Modern to Nikola (the “Master Equipment Lease Agreement”).

² The vin nos. for these refuelers are: (i) 1K9XL5337PL351607; (ii) 1K9XL5337PL351608; (iii) 1K9XL5337PL351609; and (iv) 1K9XL5337PL351610.

5. On December 29, 2023, Plug Power entered into that certain Master Warranty and Service Agreement (as may be amended from time to time) (the “Warranty Agreement”), under which, among other things, Plug Power agreed to provide certain services to Nikola, including correct maintenance to remedy certain defects to the Modern Equipment and provide regularly required preventative maintenance, as further described therein. The Warranty Agreement is governed by Texas law.

B. Other Transactions.

6. On March 31, 2023, Nikola executed Purchase Order 4500001989 for one (1) LH2 transport trailer for a total purchase price of \$1,512,000.00. Plug Power issued a final invoice (INV6709) on February 29, 2024. The remaining unpaid balance on such LH2 transport trailer is \$880,000.00.

7. On June 30, 2024, Nikola executed Purchase Orders 4500005823 and 4500005824, for a total of (2) Portable Refueler Trailers with a base purchase price of \$2,484,000.00. Plug Power issued invoices INV7060 and INV7061 for each trailer on June 28, 2024, with a total amount of \$2,527,638.89 per trailer. The total amount of \$5,055,277.78 for such two trailers remains unpaid.

8. On September 26, 2024, Nikola executed Purchase Order 4500006687 for one (1) Portable Refueler Trailer with a base purchase price of \$3,500,000.00. On October 4, 2024, Plug Power issued an invoice for such equipment with a total amount of \$3,561,487.97. The total amount of \$3,561,487.97 for such trailer remains unpaid. The aforementioned Nikola Purchase Orders are collectively referred to as the “Purchase Orders” and the Plug Power Invoices are collectively referred to as the “Invoices”. The equipment subject to the Purchase Orders and

Invoices is collectively referred to as the “Other Equipment” and, together with the Modern Equipment, the “Equipment”.³

9. Prior to the Petition Date (defined below), various disputes arose among Plug Power, Modern, and Nikola over certain of the Equipment, the Warranty Agreement, and Master Lease Agreement, among other things. Upon information and belief, Nikola stopped making payments to Modern under the Master Lease Agreement, claiming a right to setoff amounts allegedly due from Plug Power under other agreements. Additionally, Modern has not paid Plug Power for the Modern Equipment that was subsequently leased by Modern to Nikola. Finally, by letter dated December 31, 2024, Plug Power demanded that Nikola pay Plug Power \$9,496,765.45 in connection with the Invoices and Purchase Orders, which Nikola has failed to do.

10. Upon information and belief, Nikola has acknowledged that title to certain of the Equipment that is subject to the Purchase Orders and Invoices is held by Plug Power, including Equipment referred to as PP07, PP08 and PP09 (the “Plug Power Owned Equipment”).

11. Additionally, upon information and belief, Plug Power is currently in possession of certain pieces of the Equipment (including PP003 (refueler), PP004 (refueler), and PP008 (trailer)) for purposes of making or having made improvements and repairs on such Equipment (the “Possessed Equipment”). Upon information and belief, to date, the Debtors have failed to remit payment to Plug Power for Plug Power’s work on such Equipment.

12. On February 19, 2025 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

³ Upon information and belief, the Equipment can be identified using the following Nikola unit numbers: PP001, PP002, PP003, PP004, PP007, PP008 and PP009, and/or Plug Power unit numbers: LH2-80003 (SP0175), LH2-80004 (SP0176), LH2-80007 (SP0183), LH2-80008 (SP0184), LH2-80010 (SP0194), LH2-80009 (SP0193), LH2-80012 (SP0185), and LH2-182006.

13. On the same day, the Debtors filed the Sale Motion. On March 7, 2025, the Court entered the Bidding Procedures Order in connection with the Sale Motion [D.I. 133], which, among other things, set the objection deadline for Sale Objections and Cure Objections for April 4, 2025 at 4:00 p.m. (ET). On March 11, 2025, the Debtors filed the Assumption Notice.

14. The Assumption Notice lists the following purported agreements relevant to this Objection:

Ref #	Counterparty Name	Nikola Debtor Entity	Agreement Type	Cure Amount
348	MGFH2 LLC	Nikola Corporation	Lease Agreement	\$0
349	MGFH2 LLC	Nikola Corporation	Lease Agreement	\$0
402	Plug Power Inc	Nikola Corporation	Acquisition Agreement	\$253,887
403	Plug Power Inc	Nikola Corporation	Services Agreement	\$0
404	Plug Power Inc	Nikola Corporation	Services Agreement	\$0
405	Plug Project Holding Co LLC	Nikola Corporation	Supply Agreement	\$0

The Assumption Notice also includes a footnote with respect to Nos. 403 and 404, stating, “(1) Cure amount represents the consolidated prepetition balances by vendor; counterparties with multiple contracts will only have one cure balance listed.”

15. Plug Power files this Objection in an abundance of caution, as it is currently unclear whether the Debtors are seeking to sell all of the Equipment free and clear of and contrary to Plug Power’s liens, claims, and interest in the Equipment, and to preserve its rights under section 365 of the Bankruptcy Code with respect to the Plug Power Agreements listed in the Assumption Notice (the “Plug Power Agreements”) given, *inter alia*, the vagueness as to which actual Plug Power Agreements the Assumption Notice refers and the proper cure amount for each.

LIMITED OBJECTION

A. The Debtors may not sell the Equipment free and clear of Plug Power’s liens, claims, interests, and encumbrances.

16. Through the Sale Motion, the Debtors propose to sell all or substantially all of the Debtors’ assets free and clear of all liens, claims, interests, and encumbrances under section 363(f) of the Bankruptcy Code, and to assume and assign certain executory contracts and unexpired leases under section 365 of the Bankruptcy Code. *See* Sale Mot., ¶¶ 68–78. However, it is axiomatic that a debtor cannot sell property that does not constitute property of the estate under section 541 of the Bankruptcy Code. Rather, section 363 of the Bankruptcy Code provides that a debtor or trustee may sell *property of the estate* outside of the ordinary course free and clear of all claims, liens, encumbrances, and other interests. 11 U.S.C. §§ 363(b)(1), (f) (emphasis added). Additionally, pursuant to section 363(f) of the Bankruptcy Code, the Debtors cannot sell any of the Debtors’ assets that are subject to Plug Power’s liens or interests without satisfying at least one of subsections (1)–(5).

17. First, as to the Plug Power Owned Equipment, the Debtors cannot sell property owned by Plug Power. Second, applicable Texas law, Plug Power holds statutory liens on certain of the Equipment to secure payment for work performed thereon. *See, e.g.,* Tex. Prop. Code §§ 53.021, 70.001 *et. seq.* (2023). Plug Power may also have setoff rights under various of the agreements. Plug Power objects to the Debtor’s proposed sale to the extent that it seeks to transfer assets free and clear of Plug Power’s ownership, setoff, and/or lien rights.

18. It is not clear from the Motion whether the Debtors seek to sell some or all of the Equipment. Accordingly, Plug Power files this Objection to preserve its rights with respect to any attempt by the Debtors to sell the Equipment free and clear of Plug Power’s liens, claims and interests in the Equipment.

B. To the extent the Debtors seek to assume and assign the Plug Power Agreements, the Debtors, or any successful buyer must pay the correct cure amount in full.

19. As noted above, the Assumption Notice lists several purported contracts with Plug Power, but it provides limited information as to which actual agreements those listed refer. Further, the footnote accompanying certain of those agreements provides ambiguity as to the universe of agreements the Debtors actually seek to assume and assign and the cure amount(s) with respect thereto. For the avoidance of doubt, Plug Power reserves its rights with respect to the assumption and assignment of any of these agreements that are non-binding, non-executory, or otherwise subject to consent rights under section 365 or applicable law.

20. Plug Power is in the process of reconciling its books and records against the information provided in the Assumption Notice. However, in an abundance of caution, Plug Power hereby objects and reserves its rights with respect to the actual assumption and assignment of such listed agreements and the cure amounts in connection therewith and asserts that the correct amount due from Nikola under its various agreements with Plug Power is not less than **\$9,496,765.45**.

21. Plug Power will endeavor to work with the Debtors to resolve this matter amicably, to the extent necessary.

RESERVATION OF RIGHTS

22. Plug Power expressly reserves any and all rights and remedies, and nothing in this Objection is intended to or shall be deemed to be a waiver of any rights, claims, remedies, or other interests, with respect to the Plug Power Agreements, the Equipment, and the Sale to the extent the Debtors seek to sell the Equipment through the Sale Motion or related sale documents free and clear of Plug Power's rights, claims, liens and interests in the Equipment and the Plug Power Agreements.

23. Plug Power additionally reserves all rights (i) to assert any and all claims, proofs of claim, applications for administrative expense, (ii) under section 365 of the Bankruptcy Code; (iii) to seek relief from the automatic stay to enforce its rights under the Plug Power Agreements, and to file an adversary proceeding in connection therewith, as needed; (iv) to amend, supplement, or modify this Objection, including to amend, supplement or modify this Objection following the conclusion of any auction and the filing of a notice of successful bidder to include, among other things, a demand for adequate assurance of future performance from any successful bidder in accordance with section 365 of the Bankruptcy Code; and (v) to object to any future or amended Assumption Notice filed by the Debtors in connection with the Sale Motion or any plan filed in these chapter 11 cases.

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Dated: April 4, 2025
Wilmington, Delaware

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