

*Ordered*  
*William J. Juman*  
*1/30/2012*

**RECEIVED**

**JAN 30 2012**  
*jc ct*

**US BANKRUPTCY COURT  
DISTRICT OF UTAH**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

In re

RENEWABLE ENERGY DEVELOPMENT  
CORPORATION,

Debtor.

Bankruptcy No. 11-38145 (WTT)

Chapter 7

**ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (B) WAIVING THE 14 DAY STAY OTHERWISE APPLICABLE UNDER BANKRUPTCY RULES 6004 AND 6006, AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The Court has considered the Trustee's motion for an order (a) approving bid procedures for the sale of the Debtor's assets<sup>1</sup>, (b) authorizing the sale of the Debtor's assets free and clear of liens, claims, encumbrances and interests, (c) waiving the 14 day stay otherwise applicable under Bankruptcy Rules 6004 and 6006, and (d) authorizing the assumption and assignment of executory contracts and unexpired leases (Docket No. 12) (the "Motion"). It appears from the Certificate of Service on file that the Motion, together with notice of the Motion, were served on all creditors and parties in interest included on the mailing matrix in this case. The notice of hearing required that any objections to the Motion must have been filed with the Court no later

<sup>1</sup> Previously, on January 18, 2012, the Court entered an Order approving bid procedures for the sale of the Debtor's assets, reserving remaining aspects of the Motion for a later date.  
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than 12:00 p.m. on January 27, 2012. (The Court has received no objections to the Motion before this objection deadline.) The Court further finds that George Hofmann, in his capacity as Chapter 7 Trustee (the "Trustee") of Renewable Energy Development Corporation (the "Debtor"), has established good cause to grant the relief sought through the Motion. Accordingly, it is hereby

FOUND AND DETERMINED AS FOLLOWS:<sup>2</sup>

This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). Venue of this case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Proper, timely, adequate and sufficient notice of the Motion has been provided in accordance with Bankruptcy Code §§ 102(1) and 363 and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure to (i) the Office of the United States Trustee, and (ii) all parties in interest on the mailing matrix in the above-captioned case. Such notice was reasonable, sufficient, and appropriate under the circumstances. No further notice of the Motion is or shall be required.

C. The Stalking Horse Bid<sup>3</sup> (the "Purchase Agreement") was negotiated, proposed and entered into by the Trustee and Sustainable Power Group, LLC or its assigns ("SPG" or the "Buyer") in good faith, and from arm's length bargaining positions. Neither the Trustee nor the Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided under Bankruptcy Code § 363(n). The

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<sup>2</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. Bankruptcy Rule 7052.

<sup>3</sup> Unless otherwise defined, capitalized terms used in this Order shall have the meanings ascribed to them in the Motion.

Buyer is a good faith purchaser under Bankruptcy Code § 363(m) and, as such, is entitled to all the protections afforded thereby.

D. The consideration provided by the Buyer for the SPG Assets is (i) fair and reasonable, (ii) is the highest and/or best offer for the SPG Assets, (iii) will provide a greater recovery for creditors of the estate than would be provided by any other practical alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and applicable non-bankruptcy law.

E. The transfer of the SPG Assets to the Buyer will be a legal, valid, and effective transfer, and will vest the Buyer with all rights, title and interest of the Trustee in the SPG Assets, free and clear of all liens and claims (as those terms are defined by the Purchase Agreement and the Bankruptcy Code, collectively "Liens"), except to the extent provided for in the Purchase Agreement.

F. The Trustee may sell the SPG Assets free and clear of all Liens because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those holders of Liens who did not object to the Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). Those holders of Liens who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, if any, attach to the proceeds of the sale ultimately attributable to the SPG Assets against or in which they claim or may claim a Lien.

G. Cause exists to waive the automatic 14 day stay otherwise applicable under Bankruptcy Rules 6004(h) and 6006(d). The Purchase Agreement sets the Closing Date to occur no later than January 31, 2012. SPG bargained for this Closing

Date. Accordingly, the 14 day stay would prevent the closing from going forward as scheduled. If the closing is postponed, the sale may be lost, interest would continue to accrue on claims against the estate, and the value of the Assets is likely to decrease.

H. The Trustee may assume and assign the Assumed Contracts under Bankruptcy Code § 365. There are no defaults existing under any of the Assumed Contracts. In addition, the Trustee demonstrated adequate assurance of future performance by adducing facts in support of the financial wherewithal of the Buyer, its industry experience, and its willingness and ability to perform under the Assumed Contracts.

NOW THEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted.
2. The following is deleted from subparagraph (c) of the definition of Assets in the Purchase Agreement: "the Option Agreement for Rooftop Lease with Prudential REIT (together with any other intangible assets related to the Prudential contract and project, including, without limitation, all buildings, structures, fixtures and other improvements situated thereon or attached thereto)." No interest of the estate, if any, in the Option Agreement for Rooftop Lease with Prudential REIT, or any rights related thereto, is being sold and transferred pursuant to this Order.
3. Except as modified by this Order, the Purchase Agreement, and all of the terms and conditions thereof, is hereby approved. Pursuant to Bankruptcy Code § 363(b), the Trustee is hereby authorized and directed to consummate the sale contemplated by the Purchase Agreement.

4. The Trustee is authorized and directed to execute and deliver, and is empowered to perform under, consummate and implement, the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer or reducing to possession, the SPG Assets, or as may be necessary or appropriate to the performance of the Purchase Agreement.

5. Except to the extent provided for in the Purchase Agreement, pursuant to Bankruptcy Code §§ 105(a) and 363(f) the SPG Assets shall be transferred to the Buyer free and clear of any Liens (as defined in the Asset Purchase Agreement and the Bankruptcy Code) of any kind whatsoever, with all such Liens to attach to the net proceeds of the sale in the order of their priority, with the same validity, force and effect which they now have as against the Property, subject to any claims and defenses the Trustee may possess with respect thereto.

6. This Court retains jurisdiction to enforce and implement the terms and provisions of the Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, including, but not limited to, retaining jurisdiction to (a) compel delivery of the SPG Assets to the Buyer, (b) compel delivery of the purchase price or performance of other obligations owed to the Trustee, (c) resolve any disputes arising under or related to the Purchase Agreement, and (d) interpret, implement, and enforce the provisions of this Order.

7. The transactions contemplated by the Purchase Agreement are undertaken by the Buyer in good faith, as that term is used in Bankruptcy Code § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Purchase Agreement shall not affect the validity of the sale to the Buyer, unless such authorization is duly stayed pending such appeal prior to the closing under the Purchase Agreement. The Buyer is a purchaser in good faith of the SPG Assets, and the Buyer is entitled to all of the protections afforded by Bankruptcy Code § 363(m).

8. The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor's estate, the Debtor, the Trustee, the Buyer, and their respective affiliates, successors, and assigns, and any affected third parties including, but not limited to, all persons asserting Liens in the SPG Assets.

9. For cause shown, the fourteen day stay otherwise imposed by Federal Rules of Bankruptcy Procedure 6004(h) and 6006 is hereby waived.

10. The assumption and assignment of the Assumed Contracts under the Purchase Agreement is hereby approved.

**--- END OF ORDER ---**

**DESIGNATION OF PARTIES TO BE SERVED**

The undersigned hereby designates the following parties to be served a copy of the foregoing **ORDER (A) AUTHORIZING THE SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (B) WAIVING THE 14 DAY STAY OTHERWISE APPLICABLE UNDER BANKRUPTCY RULES 6004 AND 6006, AND (C) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES:**

**By U.S. Mail, first-class, postage prepaid to the following:**

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/s/ George Hofmann