IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TONOPAH SOLAR ENERGY, LLC,[1]	Case No. 26-10060 (JKS)
Debtor.	**Related D.I.: 220, 221**

DEBTOR'S OBJECTION TO
CMB'S MOTION TO APPOINT CHAPTER 11 TRUSTEE

The above-captioned debtor and debtor in possession (the "Debtor"), by and through its undersigned counsel, hereby files this objection (the "Objection") to the *[Amended] Motion of CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC for Entry of an Order Appointing a Chapter 11 Trustee* [D.I. 221] (the "Motion"). In support of this Objection, the Debtor respectfully states as follows:[2]

PRELIMINARY STATEMENT

1. The Debtor and its management have acted at all times with the utmost integrity and consistent with their fiduciary duties. Prior to filing this case, the Debtor appointed two fully independent, experienced and well-qualified managers to its board. The board then established a committee comprised of the independent managers (the "Special Committee") to conduct a rigorous prepetition investigation. The Special Committee retained Morris Nichols Arsht & Tunnell LLP ("Morris Nichols"), as counsel, and Teneo Capital LLC ("Teneo"), as financial advisor, to investigate the Debtor's prepetition loans and transactions with affiliates since 2020

[1] The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Box 1071, Tonopah, NV 89049.

[2] A detailed description of the Debtor and its business, including the facts and circumstances giving rise to the Debtor's chapter 11 case, is set forth in the *Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition and First Day Motions* [D.I. 12] (the "First Day Declaration"), which is incorporated herein by reference. Capitalized terms used but not otherwise defined in this Objection have the meaning given to them in the First Day Declaration or the Combined Disclosure Statement and Plan [D.I. 229, 230] (the "Plan"), as applicable.

(the "Independent Investigation"), when the Debtor emerged from its first bankruptcy case with broad Debtor releases.[3]

2. The Independent Investigation was extensive: the Special Committee's advisors conducted formal interviews and reviewed, among other things, (i) all documents in connection with the prepetition loan agreement approved by the 2020 Confirmation Order, (ii) more than 51,000 transactions in the Debtor's general ledger, (iii) all board governance materials from confirmation of the 2020 Plan through June 30, 2025, and (iv) all invoices, financial statements, and budgets related to the O&M Agreement dating from confirmation of the 2020 Plan through June 30, 2025. This was no cursory review; it was an unfettered, comprehensive investigation performed by independent fiduciaries with no ties to the Debtor's management or its affiliates.

3. Since emerging from the 2020 Chapter 11 Case, the only material insider "transactions" have been (1) the flow of tens of millions of dollars *into* the Debtor by affiliates to fund the Debtor's operations and to ensure that all trade creditors were paid in full and not negatively affected by the Debtor's financial distress, and (2) payments by the Debtor under the Court-approved O&M Agreement, all but $15,000 per month[4] of which are passthrough costs on account of personnel that operate the power plant.

4. The Debtor's affiliates supported the Debtor through its distress. Money consistently flowed *into the Debtor* from the insiders through loans and substantial equity infusions. Even after the Debtor fully drew down on its $64 million prepetition line of credit, its affiliates continued to provide support by infusing more than $50 million in additional equity.

[3] Current ownership acquired 100 percent control of the Debtor under the reorganization plan that Judge Owens confirmed in 2020, and that Plan released all claims of the Debtor against the "Cobra" parties as to which CMB is concerned as well as the Debtor's management.

[4] The $15,000 per month is on account of board-approved management fees, which were approved by the Court in the 2020 Chapter 11 Case when it approved the O&M Agreement.

Instead, other than the payment of interest from December 2020 through October 2023 on the loans made by CDF, the Debtor's transfers to insiders consisted almost exclusively of periodic reimbursement for labor expenses.

5. Based on the Independent Investigation, the Special Committee concluded that the Debtor's prepetition loans are secured, valid and, other than with respect to certain *de minimis* or non-existing asset classes, fully perfected. More importantly, the Independent Investigation did not identify any transactions involving the Debtor, CDF, Cobra,[5] and their respective successors or affiliates or any other events that would give rise to claims or causes of action against insiders. There is no evidence of improper conduct because there wasn't any.

6. The conclusions of the Independent Investigation are entitled to deference and should not be second-guessed unless CMB can overcome the presumptions of the business judgment rule—which it can't. Even if the Debtor had not appointed independent managers and the Independent Investigation had not been conducted, that alone would not constitute cause to appoint a trustee; at most, it would increase the level of scrutiny applied in reviewing insider transactions, which were appropriate in any event. Here, however, heightened scrutiny is unnecessary, because the Debtor did exactly what it should have done, and the results speak for themselves.

7. Against this backdrop of prudent and proper fiduciary conduct, CMB,[6] a disgruntled litigation party and longtime antagonist of the Debtor and its affiliates, seeks to invoke

[5] As used in this Objection Cobra means collectively, (i) ACS Servicios Comunicaciones y Energía S.L.1, (ii) Cobra Thermosolar Plants, Inc., and (iii) Cobra Energy Investment, LLC.

[6] CMB is a contingent, unliquidated, and disputed litigation counterparty that filed three duplicative and speculative claims against the Debtor. *See* Claim Nos. 10000, 10001, 10002; *see also Debtor's First (Substantive) Omnibus Objection to Proofs of Claim filed by CMB Infra. Investment Group IX, LP; CMB Infra. Investment Group XI, LP; and CMB Export, LLC* [D.I. 231]. CMB has lost at every stage in its non-bankruptcy litigation crusade: it lost twice in the Delaware Court of Chancery; it lost in its *qui tam* action (an action that the U.S. Department of Justice continues to support dismissal of before the Ninth Circuit); it lost in Nevada District Court; it lost in arbitration. CMB's Motion

one of the most draconian remedies available under the Bankruptcy Code—the removal of the Debtor as debtor-in-possession—in favor of appointing a chapter 11 trustee. Such a remedy is appropriate only in rare and exceptional circumstances, none of which are present. The Debtor and its management have behaved as the Court would and should expect for prudent estate fiduciaries. CMB cannot meet its heavy burden to overcome the presumption that a chapter 11 debtor should be permitted to remain in possession, and it cannot justify the extraordinary remedy of appointing a trustee.

8. What is the misconduct that CMB alleges supports this draconian remedy? Nothing more than vague "concerns." CMB points to the purchase price achieved in the Debtor's sale process as some kind of indicator that a fraudulent conveyance may have occurred at some point in history. But comparing projections against an actual market test does not prove misconduct or that any fraudulent transfers occurred. Even a steep difference between 2020 projections and value realized from a sale process falls well short of actual, clear and convincing evidence to support the appointment of a chapter 11 trustee. Instead, the record is clear: as detailed in the First Day Declaration, the Debtor's financial position reflects the combined effect of well-documented operational challenges affecting the power plant's production capacity and the corresponding reduction in PPA-generated revenue—not any improper insider conduct. These factors limited the Debtor's ability to operate profitably, and the Debtor's affiliates have gone out of pocket again and again to keep the company afloat. The purchase price reflects the reality of the Debtor's operations. If CMB were right, appointment of a trustee would be a de facto remedy in almost every chapter 22 case. That's not the law, and it is certainly not clear and convincing evidence of fraud, dishonesty, incompetence, or gross misconduct by management.

is merely one more attempt in CMB's scorched-earth playbook to use the bankruptcy process (or any other available court or tribunal) to rewrite its unsuccessful litigation history against the Debtor and the Debtor's affiliates.

9. It is abundantly clear that CMB is simply abusing the bankruptcy process to try to gain discovery in furtherance of its last remaining disputed litigation claims. CMB asserts outlandish falsehoods that would be laughable, if not for the very real and costly effect such allegations have on the Debtor's estate. CMB presents no evidence of fraud or improper insider transactions because no such fraud or improprieties took place. The Motion is not just an academic exercise for a dissatisfied litigation party seeking yet another avenue to pursue its failed litigation agenda. CMB's baseless allegations have reputational and emotional repercussions on real people who have devoted their time and effort serving as fiduciaries on the Debtor's board.

10. CMB repeatedly calls for an "independent investigation." One has already taken place and CMB has been provided with the reports that resulted from that investigation. There is no justification for a *second* investigation.

11. With no evidence of any improper insider transactions, no evidence of any improper transfers to or for the benefit of insiders, and with the robust Independent Investigation revealing no wrongdoing, the record establishes no basis to appoint a trustee. The Motion should be denied.

Factual Background

A. The Prepetition Loans and the O&M Agreement

12. Since the effective date of the 2020 Plan, the Debtor's affiliates have extended more than $215 million to fund the Debtor's operations and have committed an additional $10 million of postpetition DIP financing to fund this bankruptcy case. As described more fully in the First Day Declaration, the prepetition secured loans that this Court approved under the 2020 Plan provided for a term loan of $100 million and a revolving line of credit not to exceed $64 million. After the line of credit was fully drawn, CDF funded another $52.9 million, which, in connection with the Special Committee's Independent Investigation, CDF and the Debtor's direct parent, CDI,

voluntarily agreed to treat as an equity contribution. In August 2025, CDF formally increased the line of credit from $64 million to $73.5 million to fund additional operational expenses. The Debtor made interest payments totaling approximately $11.9 million from December 2020 only through October 2023, and has never repaid any principal loan amounts.

13. Additionally, on September 1, 2020, the Court authorized the Debtor to enter into that certain O*peration and Maintenance Agreement* with Cobra Industrial Services, Inc.[7] (the "O&M Agreement") to facilitate operations of the power plant, since the Debtor does not directly employ any personnel.

B. The Special Committee's Independent Investigation

14. In March of 2025, the Debtor appointed two independent managers, Ken Coleman and Thomas Donnelly, to the board. The board then established the Special Committee to conduct the Independent Investigation into (i) whether loans extended by CDF are valid, perfected, and unavoidable, and (ii) whether payments made under the O&M Agreement or other financial transactions involving the Debtor, CDF, Cobra, or their respective successors or affiliates are avoidable or otherwise give rise to a cause of action by the Debtor. *See* Plan at Section 4.1(e). Morris Nichols and Teneo issued two investigation reports, which concluded that the loans extended under the Prepetition Loan Agreement are valid, first-priority, and perfected, subject to limited caveats, and that identified no material claims or causes of action against CDF, Cobra, or their respective successors or affiliates.

15. During the course of the Independent Investigation into the prepetition loans, the Special Committee reviewed all definitive documents, including the 2020 Confirmation Order, the prepetition loan agreement, the equity pledge agreement, and Uniform Commercial Code searches.

[7] Cobra Industrial Services, Inc. is now known as ACS Industrial Activities, Inc. ("ACS IA").

The Special Committee verified the accuracy of the interest calculations and confirmed that they complied with the loan documents. The Special Committee also considered the additional amounts extended in excess of the line of credit, and concluded that any potential recharacterization claims were rendered moot by the voluntary agreement to treat such amounts as equity contributions.

16. The Special Committee similarly reviewed all transactions between the Debtor and ACS IA under the O&M Agreement and independently reconciled all invoices paid to ACS IA in the general ledger. The Special Committee concluded that the parties acted in good faith in executing the agreement, and that the expenses submitted by ACS IA for reimbursement appeared appropriate and necessary for the effective maintenance and operation of the power plant.

17. The Special Committee also examined the handful of smaller transactions that occurred with affiliates, and similarly found no grounds for a claim or cause of action. For example, on December 29, 2021, TSE and Cobra TP (n/k/a ACS TP) entered into an agreement to purchase spare parts inventory to support the power plant. The sale agreement set the purchase price at $2.5 million but provided for an independent valuation firm to determine the fair market value, and for a refund of the difference between the purchase price and fair market value. The Special Committee confirmed the parties' reliance on an independent third-party valuation and a refund of the excess purchase price demonstrated that the transaction was conducted in good faith and at arms' length.

ARGUMENT

I. CMB has not established clear and convincing evidence that appointment of a Chapter 11 Trustee is warranted.

18. CMB cannot establish cause for the Court to appoint a chapter 11 trustee, which is an extreme remedy. Section 1104(a) of the Bankruptcy Code provides, in relevant part, that upon request of a party in interest and after notice and a hearing, the court shall appoint a trustee:

> "(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause . . .; or
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor."

11 U.S.C. § 1104(a).

19. There is a "strong presumption against appointing an outside trustee," and the party moving for a trustee's appointment must overcome that presumption and prove the need for a trustee by "clear and convincing evidence." *In re G-I Holdings, Inc.*, 385 F.3d 313, 317–18 (3d Cir. 2004) (quoting *In re Marvel Entm't. Grp. Inc.*, 140 F.3d 463, 473 (3d Cir. 1998). This presumption against appointment reflects an understanding that there is usually no need for a trustee: "[t]he debtor-in-possession is a fiduciary of the creditors and, as a result, has an obligation to refrain from acting in a manner which could damage the estate, or hinder a successful reorganization." *In re Marvel Entm't. Grp. Inc.*, 140 F.3d at 471 (citations omitted). Consequently, appointing a trustee "should be the exception, rather than the rule." *In re Sharon Steel Corp.*, 871 F.2d 1217, 1225 (3d Cir. 1989) (citations omitted).

20. Under section 1104(a), the court is only required to appoint a trustee when it finds that cause exists; however, the determination of whether cause exists is within the discretion of the court. *See, e.g., In re Sharon Steel Corp.*, 871 F.2d at 1226 (citation omitted). Section 1104(a)(1) offers a non-exclusive list for what may be considered cause, including fraud, dishonesty, incompetence, or gross mismanagement. *In re Marvel Entm't. Grp., Inc.*, 140 F.3d at 472. Alternatively, section 1104(a)(2) allows appointment of a trustee when it would be in the interests of creditors, equity security holders, and the estate. *See, e.g., In re Sharon Steel Corp.*, 871 F.2d at 1226 (describing the 1104(a)(2) standards as "flexible," "made on a case-by-case basis," and

"emphasizing the court's discretion"). Under either analysis, determinations are made on a fact-specific, case-by-case basis, and the movant must prove the need for a trustee by clear and convincing evidence. *Id*. (citation omitted).

A. CMB fails to demonstrate any of the statutory grounds for "cause" enumerated in section 1104(a)(1).

21. Despite the absence of any improper transfers or any conduct that wrongly benefitted insiders, CMB alleges, without any support, that the sale price achieved in this case is somehow indicative of a fraudulent transfer or other insider misconduct. [8]

22. The only "evidence" that CMB relies on is that the market-tested sale value of the Power Plant in this case is lower than the economics projected under the 2020 Plan. Of course, if failing to meet business projections were the standard for appointment of a trustee, trustees would be appointed in practically every bankruptcy case, and certainly every repeat bankruptcy case. Because CMB does not identify any actual, colorable bad acts, it resorts to the argument that, because what was hoped for in 2020 ultimately did not come to fruition, there must have been some fiduciary wrongdoing. But this is not only unsupported, it is directly contradicted by the Special Committee's *actual* Independent Investigation—an unfettered investigation, performed with the support of independent counsel and financial advisors.

23. CMB, which has been engaged in litigation with the Debtor and the Cobra entities since before the 2020 bankruptcy case, suggests a trustee should be appointed because the Debtor's estate *might* have claims against insiders, including the Cobra entities, Crescent Dunes Finance (the prepetition lender) and Crescent Dunes Investment (the Debtor's direct owner). But CMB

[8] For the avoidance of doubt, CMB does not appear to call into question the integrity of the Debtor's sale process, nor could it, as the Court has already found, based on the record at the sale hearing, that the process was run properly and achieved the highest and best price available. *See Order (I) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Liens, (II) Approving the Assumption and Assignment of the Assigned Contracts, and (III) Granting Related Relief* [D.I. 184].

cannot and does not point to ***any*** facts establishing any conduct giving rise to any claim or cause of action the Debtor might have against any of those parties, because no such facts exist. While the Debtor's power plant and its underlying technology have faced operational challenges, the Debtor has—at all times—acted in good faith and has not exhibited any of the four enumerated factors in Bankruptcy Code section 1104(a)(1).

24. The caselaw CMB cites to support its position is entirely distinguishable from the circumstances in this chapter 11 case. Most tellingly, neither case CMB relies on involved a special committee or independent investigation. In *Sharon Steel*, the Third Circuit affirmed the appointment of a trustee where current management shared common control with the recipients of challenged transfers, which created "grave potential conflicts of interest" and a presumption that management would be "unable to make the impartial investigations and decisions demanded." *See In re Sharon Steel*, 871 F.2d at 1228. The conflicts in *Sharon Steel* were pervasive and structural, and at no point did the debtor consider hiring an independent investigator. *Id*. at 1222. Moreover, in *Marvel*, the Third Circuit affirmed the appointment of a trustee where questions existed as to whether a debtor could be trusted to manage its estate and negotiate with creditors. 140 F.3d 463. The party controlling the debtor had purchased at a discount a substantial number of prepetition debt claims and bonds which had been issued by several holding companies owning all or substantially all of *Marvel*'s stock. Critically, this party simultaneously wore "two hats"—as creditors of the holding companies that controlled Marvel and as the debtor. *Id*. at 468. This structural duality is fundamentally distinct from the facts here, where the Special Committee has no competing creditor claims or economic interests adverse to other stakeholders.

25. The Special Committee comprises two fully independent, experienced restructuring professionals who retained qualified independent counsel and conducted a robust Independent

Investigation. CMB cannot challenge either the independence of the Special Committee or the quality of the Special Committee's work. There is certainly no basis to appoint a trustee just to incur the cost of doing such an investigation all over again. The presence and role of the Special Committee and the independent managers fully refutes CMB's assertion that the Debtor is "controlled" by its affiliates and insiders with respect to estate causes of action or otherwise. *See* Mot. at ¶ 34. The Debtor appropriately implemented a specific governance structure prior to filing this chapter 11 case to enable it to conduct a fully *independent* investigation, including as to any potential causes of action against insiders. *See* Plan at Section 4.1 (e).

26. CMB's assertion that "[c]urrent management has conducted no meaningful investigation into potential fraudulent transfers, breaches of fiduciary duty, aiding-and-abetting claims, alter ego liability, or undercapitalization claims against those same insiders" is false. *See* Mot. at ¶ 34. There is a Special Committee of truly independent managers that was delegated the exclusive authority to investigate the Debtor's transactions with CDF and Cobra since emergence from the 2020 Chapter 11 Case and identify any potential claims. Claims before 2020 were released in the 2020 Plan. Claims against CDF related to the prepetition loan have now also been released under the DIP order in this case, following the expiration of the challenge period, though those were also separately investigated by the Special Committee.

27. The Independent Investigation was robust. The evidentiary record since the Debtor's emergence from bankruptcy in 2020 is straightforward and undisputed, and proves that there has been no improper conduct. The Debtor operated its business appropriately, with considerable financial support from, and at a substantial loss to, the Debtor's affiliates. There were no improper transfers from the Debtor to any affiliates, nor any other transactions that could give rise to any claims or causes of action against insiders.

28. The evidence, as carefully reviewed by the Special Committee in investigating over four years of conduct, reflects the opposite of what one might expect when a party demands appointment of a chapter 11 trustee. Rather than any indication that insiders used their control over the Debtor to achieve some personal gain, the record reflects that the Debtor's affiliates acted with the utmost good faith, ensuring that transactions were conducted at arms'-length, and continued to fund the Debtor to ensure that the power plant could operate and that third-party creditors and personnel that operate the power plant would not be harmed. There is certainly no evidence of fraud, dishonesty, incompetence or gross mismanagement of the affairs of the Debtor, or anything else that would support consideration of a trustee.

29. The Debtor's prepetition good faith conduct has also continued postpetition. The Debtor has retained and relied on the advice of a suite of experienced and disinterested restructuring professionals, operated with transparency, and complied with all applicable orders of this Court. Most recently, the Debtor worked to achieve a robust, transparent, and successful sale process and is collaborating with the buyer to achieve all necessary regulatory approvals so the sale can close. The Debtor has also filed a confirmable chapter 11 plan of liquidation. Such conduct does not illustrate any failure to satisfy the Debtor's fiduciary duties. The record of this chapter 11 case proves the opposite—the Debtor has taken and continues to take its fiduciary duties seriously and has at all times acted in the best interests of the Debtor's estate.

B. Appointing a trustee under section 1104(a)(2) would not be in the interests of creditors, equity holders and other interests of the Debtor's estate.

30. CMB's reliance on section 1104(a)(2) is equally misplaced, as it is obvious that CMB seeks an appointment of a trustee not for any purpose that would benefit the estate, but only to try to obtain some tactical advantage in its non-bankruptcy litigation with the Debtor and its affiliates.

31. Section 1104(a)(2) requires a showing that the appointment of a trustee is in the best interests of ***all*** interested constituencies—*i.e.*, the appointment must benefit the estate generally and not merely one constituency such as a creditor group. *In re Sletteland,* 260 B.R. 657, 672 (S.D.N.Y. 2001) ("[A] creditor group, no matter how dominant, cannot justify the appointment of a trustee or examiner simply by alleging that it would be in its interests. It must show that the appointment is in the interests of all those with a stake in the estate, which in this case would include the Debtor.").

32. Courts customarily engage in a balancing test that considers whether the benefits of a trustee's appointment outweigh the cost and disruption it would impose on the estate. *See In re Ford Steel, LLC,* 629 B.R. 871, 890 (Bankr. S.D. Tex. 2021) ("Ultimately, the court should consider the practical realities, necessities of the case, and the totality of the circumstances in determining whether to appoint a trustee."). In addition, the court "must bear in mind that the appointment of a trustee 'may impose a substantial financial burden on a hard-pressed debtor seeking relief under the Bankruptcy Code,' by incurring the expenditure of 'substantial administrative expenses' caused by further delay in the bankruptcy proceedings." *Adams v. Marwil (In re Bayou Grp.), LLC,* 564 F.3d 541, 546–47 (2d Cir. 2009) (internal citations omitted).

33. Again, CMB's Motion and purported evidence falls short of the clear and convincing standard required to overcome the governing presumption and justify appointing a trustee.[9] What is more, the appointment of a trustee at this stage of the chapter 11 case would not only introduce significant uncertainty, confusion, and disruption to the Debtor's business, which

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[9] CMB incorrectly asserts that the Debtor cannot confirm its chapter 11 liquidating Plan absent CMB's support, as the Debtor would otherwise not have an impaired, accepting class of non-insiders. Mot. at ¶ 39. This assertion has no relevance to the question of whether appointment of a chapter 11 trustee is appropriate. At best, CMB prematurely presents a confirmation objection. Nevertheless, the Debtor has two *other* classes of non-insiders that are impaired and thus eligible to vote on the Plan—Class 5 Former Manager Claims and Class 7 General Unsecured Convenience Class Claims. *See* Plan at Art. III. Even if CMB's remaining asserted claims were allowed, which they should not be, the Debtor does not need (or expect) CMB's support to confirm the Plan.

could jeopardize or unduly delay the closing of the sale, but could also result in the immediate termination of the asset purchase agreement to the detriment of all parties in interest. The Debtor and its advisors have worked diligently to preserve the value of the estate through a robust, transparent sale process and to maintain continuity of operations at the power plant pending closing—including the continuity of the workforce that operates the power plant through the Court-approved O&M Agreement. A trustee appointment would threaten stability with no offsetting benefit, instead risking inflicting collateral harm on the personnel that operate the power plant and other stakeholders, solely to advance CMB's private litigation agenda. Moreover, the appointment of a chapter 11 trustee would only lead to unnecessary, additional administrative expenses that the estate cannot afford. Especially when considering that the only thing CMB suggests that a trustee should do is to "redo" an independent investigation already completed by the Special Committee, CMB cannot accurately pinpoint a single way in which appointment would serve the interests of creditors and other stakeholders, as required by section 1104(a)(2) of the Bankruptcy Code, and its Motion should be denied.

C. CMB's Trustee Motion is an attempt to obtain a litigation advantage.

34. The entire premise of CMB's Motion is nothing more than camouflage for an improper discovery fishing expedition, with nothing to do with this bankruptcy case or the Debtor's ability to manage its estate. Instead, it is a transparent effort to obtain backdoor discovery that CMB is otherwise precluded from getting because its litigation claims are subject to arbitration in a non-bankruptcy forum.

35. In three successive pleadings—CMB's "limited" objection to the sale, CMB's objection to the Debtor's settlement with its consultant Mark Manski, and now in this Motion, CMB raises vague "concerns" based on nothing more than the fair market sale value achieved in

this case plus the presence of insiders, and uses those "concerns" as a platform to call for an "independent investigation" and to try to take unlimited discovery into matters that clearly have nothing to do with anything that could be at issue in this case. These tactics are obvious. There is no evidence of wrongdoing, no evidence of improper insider transactions, and no evidence of any estate claims or causes of action that the Debtor is wrongly ignoring. Instead, CMB, which has suffered defeat after defeat against the Debtor and its affiliates, is desperate to find ***something*** to turn the tide in its non-bankruptcy litigation. And so, without any actual evidence or legal basis, it seeks to hijack this bankruptcy case, either through costly and frivolous motions, a trustee appointment, improper discovery, or post-confirmation control of the plan administrator. None of this serves any bankruptcy purpose, but rather is an attempt by CMB to turn ill-gotten control into something it can use to gain leverage in its non-bankruptcy litigation.

36. Unlike CMB's unfounded assertions, the reality of CMB's motivations can be demonstrated by evidence: in particular, the discovery requests that CMB has already tried to propound on both the Debtor and Mr. Manski in this chapter 11 case. Those fully reveal CMB's purpose, which is to go well beyond anything relevant to their objection to the Manski settlement, or even this Motion (if they contend that those discovery requests were intended to relate to this, too).[10]

37. Attached as **Exhibits A-1** through **A-3** are the document requests and deposition notice that CMB served on the Debtor and the subpoena that CMB wants to serve on Mr. Manski.

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[10] CMB's effort to abuse this process to gain advantage in its non-bankruptcy litigation is also revealed through baseless allegations in the Motion regarding plant operations that have nothing to do with insider transfers or alleged insider misconduct. Such allegations serve only to impugn the reputation of the Debtor's managers, who have done nothing but support the plant, including throughout this chapter 11 case when the board has included two fully independent managers.

They are replete with examples of expansive, irrelevant discovery requests that lay bare CMB's effort to use discovery in this case to obtain a litigation advantage.

38. By way of example, document request (RFP) number 12 to the Debtor, attached as **Exhibit A-2** asks for all documents concerning the condition of the plant, including the hot salt tank, since the commencement of the 2020 Chapter 11 Case. Issues relating to plant operations and construction are directly related to CMB's litigation claims, and have nothing to do with insider transactions or the Debtor's fiduciary responsibilities. Similarly, by demanding information prior to the effective date of the 2020 Plan, CMB further reveals its hand. The Cobra parties and the Debtor's managers were all ***released*** by the estate under the 2020 Plan; CMB's only possible reason for asking about things occurring prior to the 2020 effective date is to take discovery related to its own litigation claims. CMB similarly propounded many other document requests that clearly relate not to this chapter 11 case but to their litigation claims, such as RFP 14 (all documents related to purchasers of energy); RFP 17 (hourly data and plant operations, including delivered electric energy, other energy services supplied, and stored energy); RFP 18 (projections of hourly production available for delivery to electric grid); RFP 19 (invoices sent to purchasers of electricity); RFP 20 (investigations, reports and photographs related to the hot salt tank failures); RFP 21 (status reports from the plant operator); RFP 22 (plant operator logs); 2 RFP 5 (sale of electricity); RFP 26 (sale of electricity); RFP 27 (sale of electricity); RFP 49 (root cause analyses, internal analyses, reports, and repair estimates related to the hot salt tanks); RFP 50 (documents and communications concerning CADE Engineered Technologies). These topics are repeated in the deposition topics referenced on the 30(b)(6) notice sent to the Debtor.

39. The same improper intent is reflected in the subpoena sent to Mr. Manski, attached as **Exhibit A-3**, which goes even further and more obviously into CMB's litigation claims.

See RFP 1 & 14 (hot salt tank condition and leaks); RFP 4 (efforts to sell electricity since 2020); RFP 5 (plant's performance since 2020); RFP 8 (plant operations); RFP 14 (root cause analyses, internal analyses, reports, and repair estimates related to the hot salt tanks); RFP 15 (documents and communications concerning CADE Engineered Technologies); RFP 21 (documents and communications with FTI Consulting regarding the 2020 Chapter 11 Petition and/or the 2020 restructuring support agreement); and RFP 22 (2017 arbitration filed with the ICC by CPI against the Debtor).

40. It is a bedrock bankruptcy principle that even a court-sanctioned "fishing expedition" under Bankruptcy Rule 2004 may not be used as a means to take discovery in connection with already-pending litigation. *See In re Enron Corp.*, 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) ("Courts have imposed limits on the use of Rule 2004 examinations where the purpose of the examination is to abuse or harass, *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984), or under the well-recognized rule that once an adversary proceeding or contested matter is commenced, discovery should be pursued under the Federal Rules of Civil Procedure and not by Rule 2004."). CMB's attempted discovery here is impermissible. Recognizing that it would never be permitted to take a Rule 2004 examination into topics already at issue in its litigation, it instead tries to disguise such discovery topics on the back of other unrelated contested-matter discovery in this case. This is just another version of the same impermissible conduct.

41. CMB has no evidence to support a trustee and no evidence to support any wrongdoing by the Debtor or its management, and is seeking to use this chapter 11 case to gain a litigation advantage. The Motion should be denied.

RESERVATION OF RIGHTS

42. The Debtor expressly reserves the right to amend, modify, or supplement this Objection, including based on discovery, and to file additional objections to any other claims (filed or not) that may be asserted against the Debtor and its estate.

43. Nothing contained in this Objection (i) is intended or may be deemed to constitute an assumption of any agreement under section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtor and its estate; (ii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to the validity, priority, or amount of any claim against the Debtor and its estate; (iii) impairs, prejudices, waives, or otherwise affects the rights of the Debtor and its estate with respect to any and all claims or causes of action against any third party; or (iv) may be construed as a promise to pay a claim. Likewise, if the Court grants the relief sought in this Objection, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity, priority, or amount of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

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WHEREFORE, the Debtor respectfully requests entry of an order (i) sustaining this Objection, (ii) denying the Motion and (iii) providing such other and further relief to the Debtor as the Court may deem just and proper.

Dated: April 23, 2026
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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Counsel to the Debtor

- and -

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Co-Counsel to the Debtor

EXHIBIT A-1

Notice of Deposition of Debtor Tonopah Solar Energy, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Tonopah Solar Energy, LLC Debtor.	Chapter 11 Case No. 26-10060

CMB INFRASTRUCTURE INVESTMENT GROUP IX, LP, CMB INFRASTRUCTURE INVESTMENT GROUP XI, LP, AND CMB EXPORT, LLC'S NOTICE OF DEPOSITION OF DEBTOR TONOPAH SOLAR ENERGY, LLC

Pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 7030 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 7030-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and Rules 26 and 30 of the Federal Rules of Civil Procedure, CMB Infrastructure Investment Group IX, LP and CMB Export, LLC (collectively, "CMB"), by their undersigned attorneys, request that Tonopah Solar Energy, LLC (the "Debtor") designate and make available for deposition one or more officers, directors, or managing agents on the topics identified below.

The deposition shall take place on May 11, 2026, commencing at 10:00 a.m. ET, or at a date and time to be agreed to by the parties. The deposition will be conducted via virtual deposition services, or via other remote means agreed upon by the parties. The deposition will be recorded stenographically and may be video recorded. The stenographic recording will be taken by a certified court reporter or before some other officer authorized by law to administer oaths. The oral examination shall continue from day to day until completed.

I. DEFINITIONS

1. "2020 Chapter 11 Petition" means the petition filed by Debtor in the proceeding captioned *In re: Tonopah Solar Energy, LLC*, United State Bankruptcy Court for the District of Delaware Case No. 20-11884.

2. "ACS" means ACS Servicios Comunicaciones y Energía S.L. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

3. "Affiliate" means any legal entity that directly or indirectly controls, is controlled by, or is under common control with the Debtor.

4. "Board" means any of Your boards of directors or boards of managers, or any member thereof.

5. "Bogen First Day Declaration" means the Declaration of Yale Scott Bogen in Support of Debtor's Chapter 11 Petition and First Day Motions, filed on January 21, 2026, Docket No. 12.

6. "CEI" means Cobra Energy Investment, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

7. "Cobra" means CPI, CEI, and ACS and their affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on their behalf or under their control.

8. "Communications" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone

conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, text messages, and any other medium through which any information is conveyed or transmitted.

9. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

10. “CPI” means Cobra Thermosolar Plants, Inc. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

11. “Documents” means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

12. “DOE” means the United States Department of Energy.

13. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

14. “Including” means including, but not limited to.

15. “NVE” means Nevada Power Company, d/b/a NV Energy and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

16. "Person" means and includes individuals as well as corporations, partnerships, unincorporated associations, limited liability companies, trusts, firms, cooperatives, fictitious business names and government agencies, and their respective agents, representatives, and employees.

17. "Power Plant" or "Project" means that certain net 110-megawatt concentrated solar energy power plant , also known as the Crescent Dunes Solar Energy Project, located near Tonopah in Nye County, Nevada, and owned and operated by you.

18. "Prepetition Secured Parties" means the DOE, FFB, and Collateral Agent.

19. "You", "Your", and "Debtor" means Tonopah Solar Energy, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

TOPICS FOR DEPOSITION

1. The Special Committee Investigation Phase I Report, referenced in paragraph 79 of the Bogen First Day Declaration.

2. The Special Committee Investigation Phase II Report, referenced in paragraph 79 of the Bogen First Day Declaration.

3. All internal and third party reports and analyses concerning any claims against Affiliates, other than the Special Committee Investigation Phase I Report and Special Committee Investigation Phase II Report.

4. The condition of the Plant, including the status of the Hot Salt Tank and any repairs thereto, since the 2020 Chapter 11 Petition.

5. Any offers to purchase of the Debtor's assets, including the Plant or any component thereof.

6. Any efforts by the Debtor to market or sell the Debtor's assets, including the Plant or any component thereof.

7. The Debtor's efforts to sell electricity generated by the Plant.

8. The Debtor's discussions with Nevada Energy regarding the Plant since the 2020 Chapter 11 Petition.

9. All Documents and Communications sent to or received from Crescent Dunes Investment, Inc.

10. The articles of incorporation and bylaws for Crescent Dune Finance, Inc., in effect at any time since its formation.

11. The articles of incorporation and bylaws for Crescent Dune Investment, Inc., in effect at any time since its formation.

12. The operation and maintenance agreement between the Debtor and Cobra Industrial Services referenced in paragraph 35 of the Bogen First Day Declaration, including, without limitation, any amendments thereto or restatements thereof.

13. Any agreements entered into between the Debtor and any Affiliate, including, without limitation, any amendments thereto or restatements thereof.

14. Any economic support Crescent Dunes Finance, Inc., has provided to the Debtor.

15. Any loan or credit facility extended to the Debtor by Crescent Dunes Finance, Inc.

16. The disbursement of funds from Crescent Dunes Finance, Inc. to the Debtor.

17. The use of funds disbursed from Crescent Dunes Finance, Inc. to the Debtor.

18. The restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration, including, without limitation negotiations and communications regarding the restructuring support agreement.

19. The DIP Facility referenced in paragraph 16 of the Bogen First Day Declaration.

20. The short-term PPA referenced in paragraph 39 of the Bogen First Day Declaration.

21. Negotiations with NVE since the 2020 Chapter 11 Petition regarding a power purchase agreement.

22. The 2021 PPA referenced in paragraph 41 of the Bogen First Day Declaration.

23. Negotiations with NVE Concerning the 2021 PPA referenced in paragraph 41 the Bogen First Day Declaration.

24. The hot salt tank leaks referenced in paragraph 42 of the Bogen First Day Declaration, including, without limitation, all root causes analyses, internal analyses, reports, and repair estimates Concerning the hot salt tank.

25. The Debtor's retention and communications with CADE Engineered Technologies.

26. The Switch Short-Term PPA referenced in paragraph 46 of the Bogen First Day Declaration.

27. The Prepetition Term Loan referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon, and the use made of such disbursements.

28. The Prepetition Line of Credit referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon, and the use made of such disbursements.

29. The Prepetition Equity Pledge Agreement referenced in paragraph 68 of the Bogen First Day Declaration.

30. The $52.9 million the Prepetition Lender contributed to TSE, as referenced in paragraph 69 of the Bogen First Day Declaration, including, without limitation, any Documents memorializing of referencing any terms or conditions for the contribution thereof, the grant of equity in relation thereto, all disbursements thereof, and the use made of such disbursements.

31. The financing Prepetition Line of Credit referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon.

32. The Amendment and Forbearance Agreement dated as of August 29, 2025, referenced in paragraph 69 of the Bogen First Day Declaration.

33. Any agreement between the Debtor and Mark Manski, including, without limitation, the Existing Consulting Agreement referenced in paragraph 12 of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

34. Mark Manski's involvement with the Debtor.

35. Any analyses or investigations made to assess whether any claims exist between the Debtor and Mark Manski.

36. The negotiations between the Debtor and Mark Manski that culminated in the Settlement Agreement that is the subject of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

37. The New Consulting Agreement between Mark Manski and ACS Industrial Activities, Inc., as referenced in paragraph 15 and Exhibit 1 of the Motion of the Debtor for Entry

of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

38. Communications with the DOE since the 2020 Chapter 11 Petition.

Dated: April 1, 2026
Wilmington, Delaware

<u>/s/ Ann M. Kashishian</u>
Scott D. Cousins (No. 3079)
Ann M. Kashishian (No. 5622)
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—and—

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Counsel to CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC

EXHIBIT A-2

Requests for Production of Documents to Debtor Tonopah Solar Energy, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Tonopah Solar Energy, LLC Debtor.	Chapter 11 Case No. 26-10060

CMB INFRASTRUCTURE INVESTMENT GROUP IX, LP, CMB INFRASTRUCTURE INVESTMENT GROUP XI, LP, AND CMB EXPORT, LLC'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEBTOR TONOPAH SOLAR ENERGY, LLC

DOCUMENT REQUESTS PURSUANT TO FED. R. BANKR. P. 2004

Pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and Rules 26, 33, and 34 of the Federal Rules of Civil Procedure, CMB Infrastructure Investment Group IX, LP and CMB Export, LLC (collectively, "CMB"), by their undersigned attorneys, request that Tonopah Solar Energy, LLC (the "Debtor") produce the documents specified in these Requests ("Requests") on May 1, 2026, or a date and time to be agreed to by the parties, after entry of an order from the United States Bankruptcy Court for the District of Delaware (the "Court"), or at such time as the Court shall direct, at the offices of Lewis Brisbois Bisgaard & Smith LLP, 2020 West El Camino Avenue, Suite 700, Sacramento, CA 95833.

I. INSTRUCTIONS

1. Unless otherwise indicated, the Documents and Communications requested include all Documents and Communications that have come into existence or been utilized, read,

transcribed, copied, placed in, or retrieved from any file between January 1, 2016 and the date hereof.

2. For each Document or Communication withheld by reason of a claim of privilege, provide a privilege log identifying such Document or Communication together with: (a) the date of the Document or Communication; (b) the identity of the author or preparer; (c) the identity of each Person who was sent or furnished with the Document or Communication or who received or had possession or custody of the Document or Communication; (d) a description of the Document or Communication, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the document is responsive. In the case of Documents or Communications Concerning a meeting or conversation, identify all participants in the meeting or conversation.

3. Each Document or Communication shall be produced as kept in the usual course of business in a fashion that indicates clearly the file in which it was located, or organized and labeled to correspond to the specific requests set forth below. Each complete Document must be produced, including all addenda, appendices, indexes, attachments, and any other ancillary Documents related to each Document or Communication.

4. If a Document or Communication cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your inability to produce the remainder.

5. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs or other media to be mutually agreed by the parties.

6. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tiff format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs or other media to be mutually agreed by the parties with .tiff and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs or other media to be mutually agreed by the parties or use an ftp site upload.

7. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. Rule 7026(e).

8. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

9. The words "and" and "or" are interchangeable and shall be construed either disjunctively or conjunctively or both, as broadly as necessary to bring within the scope of each Request those responses that might otherwise be construed to be outside the scope.

II. DEFINITIONS

1. "2020 Chapter 11 Petition" means the petition filed by Debtor in the proceeding captioned *In re: Tonopah Solar Energy, LLC*, United State Bankruptcy Court for the District of Delaware Case No. 20-11884.

2. "ACS" means ACS Servicios Comunicaciones y Energía S.L. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

3. “Affiliate” means any legal entity that directly or indirectly controls, is controlled by, or is under common control with the Debtor.

4. “Board” means any of Your boards of directors or boards of managers, or any member thereof.

5. “Bogen First Day Declaration" means the Declaration of Yale Scott Bogen in Support of Debtor’s Chapter 11 Petition and First Day Motions, filed on January 21, 2026, Docket No. 12.

6. “CEI” means Cobra Energy Investment, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

7. “Cobra” means CPI, CEI, and ACS and their affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on their behalf or under their control.

8. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, text messages, and any other medium through which any information is conveyed or transmitted.

9. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

10. "CPI" means Cobra Thermosolar Plants, Inc. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

11. "Documents" means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, "writings" as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

12. "DOE" means the United States Department of Energy.

13. "ESI" has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

14. "Including" means including, but not limited to.

15. "NVE" means Nevada Power Company, d/b/a NV Energy and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

16. "Person" means and includes individuals as well as corporations, partnerships, unincorporated associations, limited liability companies, trusts, firms, cooperatives, fictitious business names and government agencies, and their respective agents, representatives, and employees.

17. "Power Plant" or "Project" means that certain net 110-megawatt concentrated solar energy power plant , also known as the Crescent Dunes Solar Energy Project, located near Tonopah in Nye County, Nevada, and owned and operated by you.

18. "Prepetition Secured Parties" means the DOE, FFB, and Collateral Agent.

19. "You", "Your", and "Debtor" means Tonopah Solar Energy, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

DOCUMENT REQUESTS

1. The Special Committee Investigation Phase I Report, referenced in paragraph 79 of the Bogen First Day Declaration.

2. All Documents and Communications used, requested, or relied upon for the preparation of the Special Committee Investigation Phase I Report.

3. All Documents reflecting notes or transcripts of any interviews conducted in connection with the Special Committee Investigation Phase I Report.

4. The Special Committee Investigation Phase II Report, referenced in paragraph 79 of the Bogen First Day Declaration.

5. All Documents and Communications used, requested, or relied upon for the preparation of the Special Committee Investigation Phase II Report.

6. All Documents reflecting notes or transcripts of any interviews conducted in connection with the Special Committee Investigation Phase II Report.

7. All internal and third party reports, analyses, and documents prepared by, provided to, or otherwise used by the Debtor concerning any claims against Affiliates other than those identified or produced in response to Document Request Nos 1-4 herein.

8. All Documents and Communications Concerning evaluation of any potential claims against the Crescent Dunes Finance, Inc.

9. All Documents and Communications Concerning the evaluation of any potential claims against the Debtor's officers and managers.

10. All Documents and Communications Concerning the evaluation of any potential claims against any Affiliates of the Debtor.

11. All minutes of any meeting, including any meeting of the Board, discussing claims against Cobra.

12. Documents Concerning the condition of the Plant, including the status of the Hot Salt Tank, since the 2020 Chapter 11 Petition.

13. All Documents and Communications Concerning any potential purchase of the Debtor's assets, including the Plant or any component thereof.

14. All Documents and Communications Concerning any potential purchasers of energy produced at the Plant if the Plant produces energy in the future.

15. All Documents and Communications concerning any efforts by the Debtor to market or sell the Debtor's assets, including the Plant or any component thereof.

16. The Debtor's financial statements since the 2020 Chapter 11 Petition.

17. Hourly data on Plant operations, including delivered electric energy, other energy services supplied, and stored energy (MWh) since the 2020 Chapter 11 Petition.

18. Any projections of the Plant's expected annual hourly production (available for delivery to electric grid) since the 2020 Chapter 11 Petition.

19. All invoices, including attachments, sent to any purchaser of the Plant's electricity since the 2020 Chapter 11 Petition.

20. All investigations, reports, photographs, and related Documents and Communications Concerning the Hot Salt Tank failures at the Plant since the 2020 Chapter 11 Petition.

21. All status reports from the plant operator to Debtor since the 2020 Chapter 11 Petition.

22. Operator logs concerning Plant operations since the 2020 Chapter 11 Petition.

23. All agreements between the Debtor and Yale Scott Bogen.

24. All agreements between the Debtor and Development Specialists Inc.

25. All Documents and Communications Concerning the sale of electricity generated by the Project, including, without limitation, any agreements for the purchase of such electricity.

26. All Documents and Communications Concerning any proposals to enter into any agreement Concerning the sale of electricity generated by the Project.

27. All meetings of minutes of the Debtor's board of managers concerning the sale of electricity generated by the Project.

28. All Documents and Communications sent to or received from Crescent Dunes Finance, Inc.

29. All Documents and Communications sent to or received from Crescent Dunes Investment, Inc.

30. The articles of incorporation and bylaws for Crescent Dune Finance, Inc., in effect at any time since its formation.

31. The articles of incorporation and bylaws for Crescent Dune Investment, Inc., in effect at any time since its formation.

32. The operation and maintenance agreement between the Debtor and Cobra Industrial Services referenced in paragraph 35 of the Bogen First Day Declaration, including, without limitation, any amendments thereto or restatements thereof.

33. All Documents and Communications Concerning any agreements entered into between the Debtor and any Affiliate, including, without limitation, any amendments thereto or restatements thereof.

34. All Documents and Communications Concerning any economic support Crescent Dunes Finance, Inc., has provided to the Debtor.

35. All Documents and Communications Concerning any loan or credit facility extended to the Debtor by Crescent Dunes Finance, Inc.

36. All Documents reflecting the disbursement of funds from Crescent Dunes Finance, Inc. to the Debtor.

37. All Documents and Communications Concerning the use of funds disbursed from Crescent Dunes Finance, Inc. to the Debtor.

38. All Documents and Communications Concerning the robust prepetition marketing efforts referenced in paragraph 15 of the Bogen First Day Declaration.

39. The restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration.

40. All Communications with Cobra Concerning the restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration.

41. All Communications with the Prepetition Lender Concerning the restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration.

42. All internal Communications Concerning the restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration.

43. All minutes of any meeting, including any meeting of the Board, discussing the restructuring support agreement referenced in paragraph 16 of the Bogen First Day Declaration.

44. All Documents and Communications Concerning the DIP Facility referenced in paragraph 16 of the Bogen First Day Declaration.

45. All Documents and Communications Concerning the short-term PPA referenced in paragraph 39 of the Bogen First Day Declaration.

46. All Documents and Communications Concerning negotiations with NVE since the 2020 Chapter 11 Petition regarding a power purchase agreement.

47. All Documents and Communications Concerning the 2021 PPA referenced in paragraph 41 of the Bogen First Day Declaration.

48. All Documents and Communications Concerning negotiations with NVE Concerning the 2021 PPA referenced in paragraph 41 the Bogen First Day Declaration.

49. All Documents and Communications Concerning the hot salt tank leaks referenced in paragraph 42 of the Bogen First Day Declaration, including, without limitation, all root causes analyses, internal analyses, reports, and repair estimates Concerning the hot salt tank.

50. All Documents and Communications Concerning CADE Engineered Technologies.

51. All Documents and Communications Concerning the Switch Short-Term PPA referenced in paragraph 46 of the Bogen First Day Declaration.

52. All Documents and Communications Concerning the Prepetition Term Loan referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon, and the use made of such disbursements.

53. All Documents and Communications Concerning the Prepetition Line of Credit referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon, and the use made of such disbursements.

54. All Documents and Communications Concerning the Prepetition Equity Pledge Agreement referenced in paragraph 68 of the Bogen First Day Declaration.

55. All Documents and Communications Concerning the $52.9 million the Prepetition Lender contributed to TSE, as referenced in paragraph 69 of the Bogen First Day Declaration,

including, without limitation, any Documents memorializing of referencing any terms or conditions for the contribution thereof, the grant of equity in relation thereto, all disbursements thereof, and the use made of such disbursements.

56. All Documents and Communications Concerning the financing Prepetition Line of Credit referenced in paragraph 67 of the Bogen First Day Declaration, including, without limitation, all amendments thereto and extensions thereof, all disbursements thereof, and all payments made thereon.

57. All Documents and Communications Concerning the Amendment and Forbearance Agreement dated as of August 29, 2025, referenced in paragraph 69 of the Bogen First Day Declaration.

58. All Documents and Communications Concerning any agreement between the Debtor and Mark Manski, including, without limitation, the Existing Consulting Agreement referenced in paragraph 12 of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

59. All Documents and Communications Concerning the minutes of meetings attended by Mark Manski.

60. All Documents and Communications Concerning any analyses or investigations made to assess whether any claims exist between the Debtor and Mark Manski.

61. All Documents and Communications Concerning the negotiations between the Debtor and Mark Manski that culminated in the Settlement Agreement that is the subject of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

62. All Documents and Communications Concerning the New Consulting Agreement between Mark Manski and ACS Industrial Activities, Inc., as referenced in paragraph 15 and Exhibit 1 of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

63. All Documents and Communications received from or provided to the DOE since the 2020 Chapter 11 Petition.

64. All Communications involving or Concerning Mark Manski.

[Remainder of page intentionally left blank]

Dated: April 1, 2026
Wilmington, Delaware

/s/ Ann M. Kashishian

Scott D. Cousins (No. 3079)
Ann M. Kashishian (No. 5622)
LEWIS BRISBOIS BISGAARD & SMITH LLP
500 Delaware Ave., Suite 700
Wilmington, DE 19801
Phone: (302) 985-6000
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—and—

John S. Poulos
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Counsel to CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC

<u>EXHIBIT A-3</u>

Notice of Intent to Serve Subpoena Directed to Mark Manski

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Tonopah Solar Energy, LLC	Case No. 26-10060
Debtor.	**D.I. 165**

NOTICE OF INTENT TO SERVE SUBPOENA DIRECTED TO MARK MANSKI

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 9016 of the Federal Rules of Bankruptcy Procedure, CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC (together, the "**CMB Creditors**"), by and through its counsel, is serving the enclosed subpoena upon non-party Mark Manski ("**Manski**"), in the form appended hereto, for the deposition of Manski and the production of documents described in Schedule A to the subpoena. The documents are to be produced by May 1, 2026 at 12:00 AM EST at the offices of Lewis Brisbois Bisgaard & Smith LLP, 500 Delaware Ave., Suite 700, Wilmington, DE 19801.

[Remainder of page intentionally left blank]

Dated: April 10, 2026
Wilmington, Delaware

/s/ Scott D. Cousins
Scott D. Cousins (No. 3079)
Ann M. Kashishian (No. 5622)
LEWIS BRISBOIS BISGAARD & SMITH LLP
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—and—

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Counsel to CMB Infrastructure Investment Group IX, LP, CMB Infrastructure Investment Group XI, LP, and CMB Export, LLC

Subpoena

UNITED STATES BANKRUPTCY COURT

District of DELAWARE

In re Tonopah Solar Energy, LLC
Debtor

(Complete if issued in an adversary proceeding)

Case No. 26-10060

Chapter 11

____
Plaintiff
v.
____
Defendant

Adv. Proc. No. _______________

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Mark Manski, c/o Douglas I. Koff, McDermott Will & Schulte LLP, 919 Third Avenue, New York, NY 10022
(Name of person to whom the subpoena is directed)

■ *Testimony*: **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE	DATE AND TIME
Lewis Brisbois Bisgaard & Smith, LLP 500 Delaware Ave., Suite 700, Wilmington, DE 19801	05/01/26 1:00 pm

The deposition will be recorded by this method:

■ *Production*: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:
See Schedule A

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: April 10

CLERK OF COURT

OR

____
Signature of Clerk or Deputy Clerk

/s/ Scott D. Cousins
Attorney's signature

The name, address, email address, and telephone number of the attorney representing *(name of party)* CMB Infrastructure et al. , who issues or requests this subpoena, are:
Scott D. Cousins, 500 Delaware Ave., Suite 700, Wilmington, DE 19801, scott.cousins@lewisbrisbois.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*:
on *(date)* .

☒ I served the subpoena by delivering a copy to the named person as follows:

on (*date*) ____________________ ; or

☐ I returned the subpoena unexecuted because: ______________

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ ______________ .

My fees are $ for travel and $ for services, for a total of $.

I declare under penalty of perjury that this information is true and correct.

Date:

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

…

(g) Contempt. The court for the district where compliance is required – and also, after a motion is transferred, the issuing court – may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

Schedule A

I. DEFINITIONS

1. “2020 Chapter 11 Petition” means the petition filed by Debtor in the proceeding captioned *In re: Tonopah Solar Energy, LLC*, United State Bankruptcy Court for the District of Delaware Case No. 20-11884.

2. “ACS” means ACS Servicios Comunicaciones y Energía S.L. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

3. “Affiliate” means any legal entity that directly or indirectly controls, is controlled by, or is under common control with the Debtor.

4. “Board” means any of Your boards of directors or boards of managers, or any member thereof.

5. “Bogen First Day Declaration" means the Declaration of Yale Scott Bogen in Support of Debtor’s Chapter 11 Petition and First Day Motions, filed on January 21, 2026, Docket No. 12.

6. “CEI” means Cobra Energy Investment, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

7. “Cobra” means CPI, CEI, and ACS and their affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on their behalf or under their control.

8. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone

conversations, discussions, meetings, facsimiles, e-mails, pagers, memoranda, text messages, and any other medium through which any information is conveyed or transmitted.

9. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

10. “CPI” means Cobra Thermosolar Plants, Inc. and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

11. “Debtor” means Tonopah Solar Energy, LLC and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

12. “Documents” means and includes all written, recorded, transcribed or graphic matter of every nature, type and kind, however and by whoever produced, reproduced, disseminated or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

13. “DOE” means the United States Department of Energy.

14. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

15. “Including” means including, but not limited to.

16. “NVE” means Nevada Power Company, d/b/a NV Energy and its affiliates, agents, advisors, employees, representatives, staff, attorneys, and all other persons or entities acting on its behalf or under its control.

17. “Person” means and includes individuals as well as corporations, partnerships, unincorporated associations, limited liability companies, trusts, firms, cooperatives, fictitious business names and government agencies, and their respective agents, representatives, and employees.

18. “Power Plant” or “Project” means that certain net 110-megawatt concentrated solar energy power plant , also known as the Crescent Dunes Solar Energy Project, located near Tonopah in Nye County, Nevada, and owned and operated by you.

19. “Prepetition Secured Parties” means the DOE, FFB, and Collateral Agent.

20. “You” or “Your” means Mark Manski, and any Person acting on Your behalf.

DOCUMENTS PRODUCTION REQUESTS

1. All Documents and Communications Concerning the condition of the Power Plant, including the status of the Hot Salt Tank and any repairs thereto, since the 2020 Chapter 11 Petition.

2. All Documents and Communications Concerning any offers to purchase of the Debtor’s assets, including the Power Plant or any component thereof.

3. All Documents and Communications Concerning any efforts by the Debtor to market or sell the Debtor’s assets, including the Power Plant or any component thereof.

4. All Documents and Communications Concerning the Debtor’s efforts to sell electricity generated by the Power Plant.

5. All Documents and Communications Concerning the Power Plant’s performance since the 2020 Chapter 11 Petition.

6. All Documents and Communications Concerning the Debtor’s discussions with Nevada Energy regarding the Power Plant since the 2020 Chapter 11 Petition.

7. All Documents and Communications Concerning the Debtor's Communications with the DOE regarding the Power Plant since the 2020 Chapter 11 Petition.

8. All Documents and Communications Concerning Cobra Industrial Services' performance under the operation and maintenance agreement with the Debtor.

9. All Documents and Communications Concerning any economic support Crescent Dunes Finance, Inc., has provided to the Debtor.

10. All Documents and Communications Concerning any loan or credit facility extended to the Debtor by Crescent Dunes Finance, Inc., including the disbursement of funds from Crescent Dunes Finance, Inc. to the Debtor, and the use of funds disbursed from Crescent Dunes Finance, Inc. to the Debtor.

11. All Documents and Communications Concerning any loan or credit facility extended to the Debtor by any affiliate of the Debtor, other than Crescent Dunes Finance, Inc., including the disbursement of funds to the Debtor, and the use of funds disbursed to the Debtor.

12. All Documents and Communications Concerning any restructuring support agreement entered into concerning the Debtor, including the restructuring support agreement relating to the 2020 Chapter 11 Petition and the restructuring support agreement related to the current chapter 11 petition.

13. All Documents and Communications Concerning any PPA the Debtor entered into since the Chapter 11 Petition, including negotiations of the same.

14. All Documents and Communications Concerning the hot salt tank leaks at the Power Plant including, without limitation, all root causes analyses, internal analyses, reports, and repair estimates Concerning the hot salt tank.

15. All Documents and Communications Concerning the Debtor's retention and communications with CADE Engineered Technologies.

16. All Documents and Communications Concerning any agreement between YOU and the Debtor and/or any of the Debtor's Affiliates, including, without limitation, the Existing Consulting Agreement referenced in paragraph 12 of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

17. All Documents and Communications Concerning any compensation or consideration paid to You or any entity in which You hold an ownership interest in exchange for Your involvement with the Debtor or any of its Affiliates.

18. All Documents and Communications Concerning any discussions between You and the Debtor, or anyone acting on behalf of the Debtor, Concerning any claims between the Debtor and You, and the release of any claims between the Debtor and You.

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19. All Documents and Communications Concerning the negotiations between the Debtor and You that culminated in the Settlement Agreement that is the subject of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

20. All Documents and Communications Concerning the New Consulting Agreement between You and ACS Industrial Activities, Inc., as referenced in paragraph 15 and Exhibit 1 of the Motion of the Debtor for Entry of an Order Approving and Authorizing Settlement Agreement By and Between the Debtor and Former Manager (Dkt. 165).

21. All Documents and Communications Concerning Your discussions and communications with FTI Consulting, or any Person acting on its behalf, regarding the 2020 Chapter 11 Petition and/or the restructuring support agreement executed in relation to the 2020 Chapter 11 Petition.

22. All Documents and Communications Concerning the 2017 arbitration filed with International Chamber of Commerce by CPI against the Debtor, including the decision to assert a counterclaim in the arbitration and the decision to settle the arbitration.