

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
EP ENERGY CORPORATION, <i>et al.</i> ,	§	
	§	Case No. 19-35654 (MI)
	§	
Debtors. ¹	§	(Jointly Administered)
	§	
	§	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING REJECTION
OF OFFICE LEASE AND TRANSPORTATION AGREEMENT**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 8, 2020 AT 11:00 A.M. (PREVAILING CENTRAL TIME) IN COURTROOM 404, 4th FLOOR, 515 RUSK AVENUE, HOUSTON, TX 77002. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

EP Energy Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**” or the “**Company**”), respectfully represent as follows in support of this motion (this “**Motion**”):

Relief Requested

1. Pursuant to sections 105(a) and 363(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: EP Energy Corporation (2728), EPE Acquisition, LLC (5855), EP Energy LLC (1021), Everest Acquisition Finance Inc. (0996), EP Energy Global LLC (7534), EP Energy Management, L.L.C. (5013), EP Energy Resale Company, L.L.C. (9561), EP Energy E&P Company, L.P. (7092). The Debtors’ mailing address is 1001 Louisiana Street, Houston, TX 77002.

(the “**Bankruptcy Rules**”), the Debtors request entry of an order, substantially in the form annexed hereto as **Exhibit B** (the “**Proposed Order**”), granting authority for the Debtors to reject the following unexpired lease and executory contract (collectively, the “**Proposed Rejected Contracts**”):²

(a) that certain unexpired office lease agreement dated May 24, 2012 (as amended, modified, or supplemented from time to time, the “**Office Lease**”) between EP Energy Global LLC (“**EP Energy Global**”) and EPC Building, LLC (“**EPC Building**”) for premises located at 1001 Louisiana Street, Houston, Texas (the “**Leased Office Space**”), effective March 31, 2020; and

(b) that certain crude oil transportation agreement dated February 1, 2012 (as amended, modified, or supplemented from time to time, the “**Transportation Agreement**”) between EP Energy E&P Company, L.P. (“**EP Energy**”) and Camino Real Gathering Company, L.L.C. (“**Camino**”), effective January 31, 2020.

2. In support of this Motion, the Debtors submit the *Declaration of David Rush in Support of Debtors’ Motion to Reject Office Lease and Transportation Agreement* (the “**Rush Declaration**”), attached hereto as **Exhibit A**.

Jurisdiction

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. On October 3, 2019 (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue

² Each of the counterparties to the Proposed Rejected Contracts (*i.e.*, EPC Building and Camino) are affiliates of Kinder Morgan Altamont LLC, which is the plaintiff in *Kinder Morgan Altamont LLC v. EP Energy E&P Company, L.P.*, Adv. Proceeding Case No. 19-03681(MI) (the “**Altamont Adversary Proceeding**”). However, the Proposed Rejected Contracts are not related to the agreements at issue in the Altamont Adversary Proceeding.

to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**").

6. The Debtors are an oil and natural gas exploration and production company headquartered in Houston, Texas. The Company operates through a diverse base of producing assets and is focused on the development of drilling inventory located in three areas: the Eagle Ford shale in South Texas, the Permian basin in West Texas, and Northeastern Utah.

Contracts to be Rejected

7. In connection with their restructuring efforts, the Debtors and their advisors are undertaking an analysis of all of the Debtors' unexpired leases and executory contracts. For the reasons set forth below and in the Rush Declaration, the Debtors have determined, in their business judgment, to reject the Office Lease and the Transportation Agreement.

A. Office Lease

8. Pursuant to the Office Lease, EP Energy Global leases four floors of office space for its headquarters at 1001 Louisiana Street, Houston, Texas from EPC Building. The Office Lease is currently set to expire on August 31, 2025 (the "**Lease Expiration Date**").

9. The Debtors have determined that (i) they no longer require all four floors of the Leased Office Space and (ii) the rates provided for in the Office Lease are significantly above market. Indeed, as provided in the Rush Declaration, the Debtors are currently obligated to pay approximately \$310,000 per month pursuant to the Office Lease (subject to pre-defined annual escalating rates) and estimate that they will incur approximately \$22 million under the Office Lease

between March 31, 2020 and the Lease Expiration Date. Based on the Debtors' and their advisors' analysis of the office lease market in downtown Houston, the Debtors believe they can move their headquarters to a smaller space and at lower rates that would result in significant savings between March 31, 2020 and the Lease Expiration Date.

10. The Debtors have engaged in negotiations with EPC Building in an attempt to reach new terms under the Office Lease that would permit the Debtors to continue using the Leased Office Space in a cost-effective manner. However, because the Debtors have been unable to reach an acceptable agreement, the Debtors have determined, in the exercise of their business judgment, that it is in their best interest to reject the Office Lease and move their headquarters from the Leased Office Space to another location on or before April 1, 2020. Accordingly, the Debtors seek to reject the Office Lease effective March 31, 2020.

B. Transportation Agreement

11. The Debtors have also determined, in their business judgment, that the Transportation Agreement is burdensome to the Debtors' estates and should be rejected as of January 31, 2020.

12. Pursuant to the Transportation Agreement, EP Energy transports its crude oil on the Camino Real Oil Gathering System (the "**Gathering System**") and is obligated to pay for 80,000 barrels per day of capacity, whether that capacity is utilized or not, through February 1, 2023 (the "**Termination Date**"). However, EP Energy currently only transports approximately 18,500 barrels of crude oil per day on the Gathering System, resulting in significant reservation charges (the "**Reservation Charges**") for unused transportation capacity. Moreover, based on the Debtors' projected production, the Debtors anticipate transporting far less than 80,000 barrels per day on the Gathering System through the Termination Date and therefore expect to

incur significant Reservation Charges without receiving sufficient consideration in return, absent rejection of the Transportation Agreement.

13. The Debtors have identified a more cost-effective alternative for transporting their crude oil that will be available to the Debtors no later than January 31, 2020. Accordingly, the Debtors seek to reject the Transportation Agreement effective January 31, 2020.

Relief Requested Should be Granted

14. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984); *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)). “[T]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’” *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993); *see also Bildisco & Bildisco*, 465 U.S. at 528 (“[T]he authority to reject an executory contract is vital to the basic purpose to a Chapter 11 reorganization, because rejection can release the debtor’s estate from burdensome obligations that can impede a successful reorganization.”); *Murexco Petroleum*, 15 F.3d at 62 (noting that section 365 “allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed”).

15. The standard applied to determine whether the rejection of an executory contract or unexpired lease should be authorized is the “business judgment” standard. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (“It is well

established that ‘the question whether a lease should be rejected . . . is one of business judgment.’”) (quoting *Grp. of Institutional Inv’rs v. Chi., Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943)); see also *In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 422 (Bankr. N.D. Tex. 2009) (“The general rule is that the decision to reject a given contract should be left to the trustee’s (or debtor in possession’s) sound business judgment.”).

16. The “business judgment” standard requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor’s estate. See *In re Idearc Inc.*, 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009) (stating that the business judgment standard only “requires a showing that the proposed course of action will be advantageous to the estate.” (citation omitted)). Further, under the business judgment standard, “[a] debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of ‘bad faith, or whim or caprice.’” *Pilgrim’s Pride Corp.*, 403 B.R. at 422 (citing *Wheeling–Pittsburgh Steel Corp. v. W. Penn Power Co. (In re Wheeling–Pittsburgh Steel Corp.)*, 72 B.R. 845, 849–50 (Bankr. W.D. Pa. 1987)).

I. Rejection of Office Lease Constitutes a Sound Exercise of Debtors’ Reasonable Business Judgment.

17. The Debtors believe that rejection of the Office Lease is well within their business judgment and is in the best interests of their estates. The Debtors do not believe that maintaining their headquarters at the Leased Office Space under the terms of the Office Lease is beneficial to the Debtors and their estates given that the (i) Debtors no longer need all four floors of the Leased Office Space and (ii) rates provided for in the Office Lease are higher than available alternatives. Consequently, unless the Debtors reach an acceptable agreement with EPC Building, the Debtors have determined that rejection of the Office Lease will result in a net gain for their estates.

18. The Debtors request that the Office Lease be rejected effective March 31, 2020 to provide themselves with sufficient time to vacate the Leased Office Space. The Debtors have continued to pay EPC Building in accordance with the terms of the Office Lease during the course of these chapter 11 cases and will continue to do so until the effective date of the rejection of the Office Lease. Therefore, EPC Building is not prejudiced by the rejection being effective March 31, 2020.

II. Rejection of Transportation Agreement Constitutes a Sound Exercise of Debtors' Reasonable Business Judgment.

19. The Debtors have determined that the projected costs incurred under the Transportation Agreement outweigh the projected benefits associated therewith. Specifically, absent rejection, the Debtors estimate that they will be obligated to pay significant Reservation Charges over the remaining life of the Transportation Agreement on account of unused transportation capacity. Moreover, the Debtors have identified a more cost-effective alternative for transporting their crude oil that will be available to the Debtors no later than January 31, 2020. Therefore, if approved, rejection of the Transportation Agreement will result in significant savings for the Debtors' estates.

20. The Debtors request that the Transportation Agreement be rejected effective January 31, 2020 to provide the Debtors with sufficient time to arrange an alternative option for transporting their crude oil. Therefore, Camino is not prejudiced by the rejection being effective January 31, 2020.

21. The Debtors respectfully submit that rejecting the Transportation Agreement is appropriate under the circumstances and reflects the Debtors' sound business judgment.

Reservation of Rights

22. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, (iii) a waiver or limitation of the Debtors' right to assert at a later date that the Office Lease and/or Transportation Agreement is not an executory contract, or (iv) a concession or evidence that the Office Lease and/or Transportation Agreement has not expired, been terminated, or is otherwise currently not in full force and effect.

Request for Bankruptcy Rule 6004 Waivers

23. The Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As explained above, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

No Previous Request

24. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: December 12, 2019
Houston, Texas

/s/ Alfredo R. Pérez
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Clifford W. Carlson (24090024)
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– and –

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*Attorneys for Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on December 12, 2019, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed claims, noticing, and solicitation agent.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

Exhibit A

Rush Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
EP ENERGY CORPORATION, et al.,	§	Case No. 19-35654 (MI)
	§	
Debtors.¹	§	(Jointly Administered)
	§	
	§	

**DECLARATION OF DAVID RUSH IN SUPPORT OF DEBTORS' MOTION TO
REJECT OFFICE LEASE AND TRANSPORTATION AGREEMENT**

I, David Rush, pursuant to section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

Background

1. I am the Chief Restructuring Officer (the “CRO”) of EP Energy Corporation and its direct and indirect subsidiaries. EP Energy Corporation is an independent oil and gas exploration and production company that operates in the Eagle Ford Shale in South Texas, the Permian basin in West Texas, and Northeastern Utah. On October 3, 2019 (the “**Petition Date**”), EP Energy Corporation and certain of its direct and indirect subsidiaries (collectively, the “**Debtors**”) commenced in this Court voluntary cases under chapter 11 of title 11 of the United States Code. I am knowledgeable about and familiar with the Debtors’ businesses and financial affairs. In addition to serving as the Debtors’ CRO, I am a Senior Managing Director at FTI Consulting, Inc., a leading global business advisory firm with 75 offices worldwide and over 4,700 professionals.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: EP Energy Corporation (2728), EPE Acquisition, LLC (5855), EP Energy LLC (1021), Everest Acquisition Finance Inc. (0996), EP Energy Global LLC (7534), EP Energy Management, L.L.C. (5013), EP Energy Resale Company, L.L.C. (9561), and EP Energy E&P Company, L.P. (7092). The Debtors’ primary mailing address is 1001 Louisiana Street, Houston, TX 77002.

2. I submit this declaration (the “**Declaration**”) in support of *Debtors’ Motion for Entry of an Order Authorizing Rejection of Office Lease and Transportation Agreement* (the “**Motion**”).² I am authorized to submit this Declaration on behalf of the Debtors.

3. Except as otherwise indicated, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, my opinion based upon experience, knowledge, and information concerning the Debtors’ operations and financial condition, and/or my discussions with the Debtors’ officers, directors, and restructuring advisors. If called upon to testify, I would testify to the facts set forth in this Declaration.

Facts Relevant to Motion

4. In connection with their restructuring efforts, the Debtors and their advisors are undertaking an analysis of all of the Debtors’ unexpired leases and executory contracts. Based on my review of the terms of the relevant agreements and discussions with certain of the Debtors’ officers and advisors, I believe that rejection of the Office Lease and the Transportation Agreement is in the best interests of the Debtors and their estates.

A. Office Lease

5. Pursuant to the Office Lease, EP Energy Global leases four floors of office space for its headquarters at 1001 Louisiana Street, Houston, Texas from EPC Building. The Office Lease is currently set to expire on August 31, 2025 (the “**Lease Expiration Date**”).

6. The Debtors have determined that (i) they no longer require all four floors of the Leased Office Space and (ii) the rates provided for in the Office Lease are higher than available alternatives. The Debtors are currently obligated to pay approximately \$310,000 per

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

month pursuant to the Office Lease (subject to pre-defined annual escalating rates) and estimate that they will incur approximately \$22 million between March 31, 2020 and the Lease Expiration Date. Based on the Debtors and their advisors' analysis of the office lease market in downtown Houston, the Debtors believe they can move their headquarters to a smaller space and at lower rates that would result in significant savings between March 31, 2020 and the Lease Expiration Date.

7. The Debtors have engaged in negotiations with EPC Building in an attempt to reach new terms under the Office Lease that would permit the Debtors to continue using the Leased Office Space in a cost-effective manner. However, because the Debtors have been unable to reach an acceptable agreement, the Debtors have determined, in the exercise of their business judgment, that it is in their best interest to reject the Office Lease and move their headquarters from the Leased Office Space to another location on or before April 1, 2020. Accordingly, the Debtors seek to reject the Office Lease effective March 31, 2020.

B. Transportation Agreement

8. The Debtors have also determined, in their business judgment, that the Transportation Agreement is burdensome to the Debtors' estates and should be rejected as of January 31, 2020.

9. Pursuant to the Transportation Agreement, EP Energy transports its crude oil on the Camino Real Oil Gathering System (the "**Gathering System**") and is obligated to pay for 80,000 barrels per day of capacity, whether that capacity is utilized or not, through February 1, 2023 (the "**Termination Date**"). However, EP Energy currently only transports approximately 18,500 barrels of crude oil per day on the Gathering System, resulting in significant reservation charges (the "**Reservation Charges**") for unused transportation capacity. Moreover,

based on the Debtors' projected production, the Debtors anticipate transporting far less than 80,000 barrels per day on the Gathering System through the Termination Date and therefore expect to incur significant Reservation Charges without receiving sufficient consideration in return, absent rejection of the Transportation Agreement.

10. The Debtors have identified a more cost-effective alternative for transporting their crude oil that will be available to the Debtors no later than January 31, 2020. Accordingly, the Debtors seek to reject the Transportation Agreement effective January 31, 2020.

11. Based on the foregoing, I believe that rejecting the Transportation Agreement is in the best interests of the Debtors' assets.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 12, 2019
Houston, Texas

/s/ David Rush
David Rush
Chief Restructuring Officer
EP Energy Corporation

Exhibit B

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
EP ENERGY CORPORATION, et al.,	§	Case No. 19-35654 (MI)
	§	
	§	(Jointly Administered)
	§	
Debtors.¹	§	
	§	Re: Docket No. ____

**ORDER AUTHORIZING REJECTION
OF OFFICE LEASE AND TRANSPORTATION AGREEMENT**

Upon the motion, dated December 12, 2019 (the “**Motion**”),² of EP Energy Corporation and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), for authority to reject (i) the Office Lease, effective March 31, 2020 and (ii) the Transportation Agreement, effective January 31, 2020, as more fully set forth in the Motion; and upon consideration of the Rush Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing on the Motion; and all objections, if any, to the Motion having been withdrawn, resolved,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: EP Energy Corporation (2728), EPE Acquisition, LLC (5855), EP Energy LLC (1021), Everest Acquisition Finance Inc. (0996), EP Energy Global LLC (7534), EP Energy Management, L.L.C. (5013), EP Energy Resale Company, L.L.C. (9561), and EP Energy E&P Company, L.P. (7092). The Debtors’ mailing address is 1001 Louisiana Street, Houston, TX 77002.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing,

IT IS HEREBY ORDERED THAT:

1. Pursuant to sections 365(a) and 105(a) of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006, (i) the Office Lease is deemed rejected as of March 31, 2020 and (ii) the Transportation Agreement is deemed rejected as of January 31, 2020.

2. Nothing contained in the Motion, this Order, or any actions taken by the Debtors pursuant to relief granted in the Order shall be construed as: (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, (iii) a waiver or limitation of the Debtors' right to assert at a later date that the Office Lease and/or Transportation Agreement is not an executory contract, or (iv) a concession or evidence that the Office Lease and/or Transportation Agreement has not expired, been terminated, or is otherwise currently not in full force and effect.

3. The requirements of Bankruptcy Rule 6004(a) are waived.

4. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all steps necessary or appropriate to carry out the relief granted in this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2020
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE