

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF DIMITRIOS “JIM” VOUNASSIS IN SUPPORT OF
FOREIGN REPRESENTATIVE’S MOTIONS: (I) SEEKING RECOGNITION AND
ENFORCEMENT OF CCAA VESTING ORDERS; (II) APPROVING THE SALES OF
CERTAIN OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
AND ENCUMBRANCES; (III) APPROVING THE ASSUMPTION AND ASSIGNMENT
OF CERTAIN CONTRACTS; AND (IV) GRANTING RELATED RELIEF**

I, Dimitrios “Jim” Vounassis, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States, as follows:

1. I am the President and Chief Executive Officer of FormerXBC Inc. (f/k/a Xebec Adsorption Inc.), which is the duly-appointed foreign representative (“**Foreign Representative**”) of the above-captioned debtors (the “**Debtors**”), in Canadian proceedings (the “**Canadian Proceeding**”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, pending before the Superior Court of Québec in the Commercial Division in the District of Montreal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Foreign Representative.

2. I joined the Foreign Representative in May 2021, in the role of Chief Operating Officer, and I became President and Chief Executive Officer in March 2022.

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and Xebec Systems USA LLC (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

3. Before joining the Foreign Representative, I worked at Bombardier Transportation, now part of Alstom, one of the world's largest rail equipment manufacturing companies, as Chief Operating Officer. Prior to being appointed Chief Operating Officer at Bombardier Transportation, I held the position of Chief Transformation and Procurement Officer at Bombardier Corporation. Prior to that, I held positions as Vice President Global Operations at Pharmascience, Vice President Global Manufacturing and Strategic Sourcing at Baker Hughes, and Vice President Global Strategic Sourcing at Pratt and Whitney. I graduated from University of Waterloo with an Honours Bachelor of Science in Mechanical Engineering, and I completed an Executive MBA at the Smith School of Business at Queen's University.

4. I respectfully submit this declaration in support of the following motions filed concurrently herewith:

- (a) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor Xebec Systems USA LLC's Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief (the "EnergyLink Sale Motion"), which seeks approval of the sale transaction between Debtor Xebec Systems USA LLC and EnergyLink US Inc. (the "EnergyLink Transaction");*²
- (b) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor The Titus Company's Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief (the "Fluid-Aire Sale Motion"), which seeks approval of the sale transaction between Debtor The Titus Company and FAD Pennsylvania Inc. (the "Fluid-Aire Transaction"); and*
- (c) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor XBC Flow Services – Wisconsin Inc.'s Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief (the "Total Energy Sale Motion" and, collectively with the EnergyLink Sale Motion and the Fluid-Aire Sale Motion, the "Sale Motions"), which seeks approval of the sale*

² Capitalized but undefined terms herein shall have the meanings set forth in the Private Sale Motions.

transaction between Debtor XBC Flow Services – Wisconsin Inc. and Total Energy Systems, LLC (the “**Total Energy Transaction**” and, collectively with the EnergyLink Transaction and the Fluid-Aire Transaction, the “**Sale Transactions**”).

5. I previously submitted that certain *Declaration of Dimitrios “Jim” Vounassis in Support of Motion for Recognition of Foreign Main Proceeding* [Docket No. 3], filed on September 30, 2022, which is I fully incorporate herein by reference.

A. The Xebec Group

6. The Debtors and certain non-U.S. based subsidiaries and affiliates of the Debtors (the “**Xebec Group**”) primarily supply a wide range of renewable and low-emission gas products and services globally through several channels, including direct sales, channel partners, project developers, and e-commerce. The Xebec Group portfolio includes proprietary technologies for the on-site and distributed production of renewable and low-emission natural gas, oxygen and nitrogen, and proprietary technologies that transform raw gases into clean sources of renewable energy. The Xebec Group’s operations include manufacturing, research and development, service, and sales. The Xebec Group operates in North America, Europe, the Middle East, and Asia.

B. The EnergyLink Transaction

7. Debtor Xebec Systems USA LLC (“**Xebec Systems**”) operates a 100,000 square foot facility located in Henderson, Colorado, and designs and manufactures air and gas processing systems with references in landfill gas, natural gas, biogas, hydrogen and carbon dioxide compression. Xebec Systems also manufactures containerized biogas upgrading equipment under the supervision of other divisions of the Debtors. Xebec Systems also provides services as part of the Debtors’ cleantech service network. Xebec Systems is a wholly owned

subsidiary of Xebec Holding USA Inc., which is in turn a direct and wholly owned subsidiary of the Foreign Representative. Xebec Systems currently employs approximately 56 employees.

8. The EnergyLink Transaction contemplates the sale of substantially all Xebec Systems' assets on an "as is, where is" basis and the assignment to EnergyLink US Inc. ("**EnergyLink**") of certain executory contracts and unexpired leases, free and clear of all liens, claims, encumbrances, and other interests, pursuant to that certain Asset Purchase Agreement by and between Xebec Systems and EnergyLink, dated March 14, 2023 (the "**EnergyLink Purchase Agreement**").

9. The Foreign Representative understands that EnergyLink intends on hiring no less than 80% of Xebec Systems' current employees.

10. The Foreign Representative believes that the terms of the EnergyLink Purchase Agreement and EnergyLink Vesting Order are reasonable and fair under the circumstances, and that the EnergyLink Transaction provides the highest and best return for Xebec Systems' assets. Further, because Xebec Systems lacks sufficient liquidity to continue operations in the ordinary course, the expedited closing proposed by the EnergyLink Purchase Agreement will benefit all stakeholders, as it will prevent a forced liquidation of Xebec Systems' business.

11. The Foreign Representative understands that the Monitor and the DIP Lenders are supportive of Xebec Systems' entry into the EnergyLink Transaction.

12. Consummating the EnergyLink Transaction in accordance with the deadlines set forth in the EnergyLink Purchase Agreement is critical to preserving the going-concern value of Xebec Systems' assets ("**EnergyLink Purchased Assets**") as EnergyLink's offer is highest, best, and only viable offer made for the EnergyLink Purchased Assets. The Foreign Representative believes that entering into the EnergyLink Purchase Agreement, which will

enable Xebec Systems' business to continue as a going-concern, will benefit a broad array of stakeholders, including Xebec Systems' customers, employees, and suppliers.

13. The EnergyLink Transaction is the result of the Debtors' thorough, transparent, and fair marketing and sale process – the Sale and Investment Solicitation Process (“SISP”), which included extensive stakeholder negotiations and engagement, and ultimately resulted in entry into the EnergyLink Purchase Agreement. The EnergyLink Purchase Agreement is the product of arm's-length, good faith negotiations between the Debtors and EnergyLink. Further, the EnergyLink Transaction provides a viable going-concern transaction available to the Debtors to maximize the value of Xebec Systems' assets for the benefit of all stakeholders.

14. The Foreign Representative submits that EnergyLink is a “good faith” purchaser, and, considering that the SISP was crafted to ensure that the EnergyLink Purchased Assets were sold for the maximum potential price, the Foreign Representative believes that the EnergyLink Transaction has been proposed in good faith. The Foreign Representative believes that the Debtors have a sound business reason justifying the sale of the EnergyLink Purchased Assets to EnergyLink pursuant to the EnergyLink Purchase Agreement.

15. Prior to entering into the EnergyLink Purchase Agreement and filing the Canadian Application, the Foreign Representative believes that the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than EnergyLink's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISP for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only Xebec Systems' assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further

deterioration to the Debtors' business. If the Debtors cannot consummate the EnergyLink Transaction, they will be forced to liquidate Xebec Systems' assets. Therefore, given Xebec Systems' financial circumstances, the Foreign Representative believes that the proposed private sale is the only viable option.

16. The Foreign Representative believes that pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors.

17. The Foreign Representative believes that Debtors and EnergyLink have entered into the EnergyLink Purchase Agreement, and seek entry of the EnergyLink Vesting Order and the Energy Link Sale and Recognition Order, without collusion, in good faith, and after extensive arm's-length negotiations.

18. The assignment and assumption of the contracts and leases identified in the EnergyLink Purchase Agreement (the "**EnergyLink Assigned Contracts**") is necessary to maximize the value of the EnergyLink Purchased Assets. Specifically, EnergyLink required the inclusion of the EnergyLink Assigned Contracts in the transaction. Therefore, if Xebec Systems is unable to assign the EnergyLink Assigned Contracts, the EnergyLink Transaction will be jeopardized, causing a disruption in the administration of the Canadian Proceeding and a significant loss of value to the Debtors and their stakeholders. Moreover, Xebec Systems is selling substantially all of its assets and has no further use for such contracts. Accordingly, after carefully considering the economic terms of EnergyLink Assigned Contracts with their advisors, the Debtors determined that the assignment and assumption of EnergyLink Assigned Contracts would allow them to consummate the EnergyLink Transaction thereby maximizing the value of the EnergyLink Purchased Assets for the benefit of all stakeholders.

C. The Fluid-Aire Transaction

19. Debtor The Titus Company (“**Titus**”) is a supplier of compressed air services and a part of the Debtors’ cleantech service network. It notably supplies nitrogen generators and membrane products to the United States Navy. Titus leases a facility in Morgantown, Pennsylvania and is a wholly owned subsidiary of Xebec Holding USA Inc. Titus currently employs approximately 20 employees.

20. The Fluid-Aire Transaction contemplates the sale of substantially all Titus’s assets on an “as is, where is” basis and the assignment to FAD Pennsylvania Inc. (“**FAD Pennsylvania**”) of certain executory contracts and unexpired leases, free and clear of all liens, claims, encumbrances, and other interests, pursuant to that certain Asset Purchase Agreement by and between Titus and FAD Pennsylvania, dated March 11, 2023 (the “**Fluid-Aire Purchase Agreement**”).

21. The Foreign Representative understands that FAD Pennsylvania intends on hiring all or substantially all of Titus’s current employees.

22. The Foreign Representative believes that the terms of the Fluid-Aire Purchase Agreement and Fluid-Aire Vesting Order are reasonable and fair under the circumstances, and that the Fluid-Aire Transaction provides the highest and best return for Titus’s assets. Further, because Titus lacks sufficient liquidity to continue operations in the ordinary course, the expedited closing proposed by the Fluid-Aire Purchase Agreement will benefit all stakeholders, as it will prevent a forced liquidation of Titus’s business.

23. The Foreign Representative understands that the Monitor and the DIP Lenders are supportive of Titus’s entry into the Fluid-Aire Transaction.

24. Consummating the Fluid-Aire Transaction in accordance with the deadlines set forth in the Fluid-Aire Purchase Agreement is critical to preserving the going-concern value of Titus's assets ("**Fluid-Aire Purchased Assets**") as FAD Pennsylvania's offer is highest, best, and only viable offer made for the Fluid-Aire Purchased Assets. The Foreign Representative believes that entering into the Fluid-Aire Purchase Agreement, which will enable Titus's business to continue as a going-concern, will benefit a broad array of stakeholders, including Titus's customers, employees, and suppliers

25. The Fluid-Aire Transaction is the result of the SISP, which included extensive stakeholder negotiations and engagement, and ultimately resulted in entry into the Fluid-Aire Purchase Agreement. The Fluid-Aire Purchase Agreement is the product of arm's-length, good faith negotiations between the Debtors and FAD Pennsylvania. Further, the Fluid-Aire Transaction provides a viable going-concern transaction available to the Debtors to maximize the value of Titus's assets for the benefit of all stakeholders.

26. The Foreign Representative submits that FAD Pennsylvania is a "good faith" purchaser, and, considering that the SISP was crafted to ensure that the Fluid-Aire Purchased Assets were sold for the maximum potential price, the Foreign Representative believes that the Fluid-Aire Transaction has been proposed in good faith. The Foreign Representative believes that the Debtors have a sound business reason justifying the sale of the Fluid-Aire Purchased Assets to FAD Pennsylvania pursuant to the Fluid-Aire Purchase Agreement.

27. Prior to entering into the Fluid-Aire Purchase Agreement and filing the Canadian Application, the Foreign Representative believes that the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Fluid-Aire's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the

SISP for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only Titus's assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the Fluid-Aire Transaction, they will be forced to liquidate Titus's assets. Therefore, given Titus's financial circumstances, the Foreign Representative believes that the proposed private sale is the only viable option.

28. The Foreign Representative believes that pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors.

29. The Foreign Representative believes that Debtors and FAD Pennsylvania, and their respective advisors, have entered into the Fluid-Aire Purchase Agreement, and seek entry of the Fluid-Aire Vesting Order and the Fluid-Aire Sale and Recognition Order, without collusion, in good faith, and after extensive arm's-length negotiations.

30. The assignment and assumption of the contracts and leases identified in the Fluid-Aire Purchase Agreement (the "**Fluid-Aire Assigned Contracts**") is necessary to maximize the value of the Fluid-Aire Purchased Assets. Specifically, FAD Pennsylvania required the inclusion of the Fluid-Aire Assigned Contracts in the transaction. Therefore, if Titus is unable to assign the Fluid-Aire Assigned Contracts, the Fluid-Aire Transaction will be jeopardized, causing a disruption in the administration of the Canadian Proceeding and a significant loss of value to the Debtors and their stakeholders. Moreover, Titus is selling substantially all of its assets and has no further use for such contracts. Accordingly, after the carefully considering the economic terms of Fluid-Aire Assigned Contracts with their advisors, the Debtors determined that the

assignment and assumption of Fluid-Aire Assigned Contracts would allow them to consummate the Fluid-Aire Transaction thereby maximizing the value of the Fluid-Aire Purchased Assets for the benefit of all stakeholders.

D. The Total Energy Transaction

31. Debtor XBC Flow Services – Wisconsin Inc. (“**XBC**”) is a leading distributor of air compressors, air dryers, filters, industrial blowers and vacuums, and provides the Debtors with distribution and service capabilities for customers located in Wisconsin. XBC sells, rents, and services compressed air products and supports the Debtors’ products in Wisconsin. XBC is a wholly owned subsidiary of debtor Xebec Holding USA Inc., and currently employs approximately nine employees.

32. The Total Energy Transaction contemplates the sale of substantially all XBC’s assets on an “as is, where is” basis and the assignment to Total Energy Systems, LLC (“**Total Energy**”) of certain executory contracts and unexpired leases, free and clear of all liens, claims, encumbrances, and other interests, pursuant to that certain Asset Purchase Agreement by and between XBC and Total Energy, dated March 11, 2023 (the “**Total Energy Purchase Agreement**”).

33. The Foreign Representative understands that Total Energy intends on hiring all or substantially all of XBC’s current employees.

34. The Foreign Representative believes that the terms of the Total Energy Purchase Agreement and Total Energy Vesting Order are reasonable and fair under the circumstances, and that the Total Energy Transaction provides the highest and best return for XBC’s assets. Further, because XBC lacks sufficient liquidity to continue operations in the ordinary course, the

expedited closing proposed by the Total Energy Purchase Agreement will benefit all stakeholders, as it will prevent a forced liquidation of XBC's business.

35. The Foreign Representative understands that the Monitor and the DIP Lenders are supportive of XBC's entry into the Total Energy Transaction.

36. Consummating the Total Energy Transaction in accordance with the deadlines set forth in the Total Energy Purchase Agreement is critical to preserving the going-concern value of XBC's assets ("**Total Energy Purchased Assets**") as Total Energy's offer is highest, best, and only viable offer made for the Total Energy Purchased Assets. The Foreign Representative believes that entering into the Total Energy Purchase Agreement, which will enable XBC's business to continue as a going-concern, will benefit a broad array of stakeholders, including XBC's customers, employees, and suppliers.

37. The Total Energy Transaction is the result of the SISP, which included extensive stakeholder negotiations and engagement, and ultimately resulted in entry into the Total Energy Purchase Agreement. The Total Energy Purchase Agreement is the product of arm's-length, good faith negotiations between the Debtors and Total Energy. Further, the Total Energy Transaction provides a viable going-concern transaction available to the Debtors to maximize the value of XBC's assets for the benefit of all stakeholders.

38. The Foreign Representative submits that Total Energy is a "good faith" purchaser, and, considering that the SISP was crafted to ensure that the Total Energy Purchased Assets were sold for the maximum potential price, the Foreign Representative believes that the Total Energy Transaction has been proposed in good faith. The Foreign Representative believes that the Debtors have a sound business reason justifying the sale of the Total Energy Purchased Assets to Total Energy pursuant to the Total Energy Purchase Agreement.

39. Prior to entering into the Total Energy Purchase Agreement and filing the Canadian Application, the Foreign Representative believes that the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Total Energy's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISP for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only XBC's assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the Total Energy Transaction, they will be forced to liquidate XBC's assets. Therefore, given XBC's financial circumstances, the Foreign Representative believes that the proposed private sale is the only viable option.

40. The Foreign Representative believes that pursuing a sale other than one free and clear of all liens, claims, encumbrances, and other interests would yield substantially less value for the Debtors and their creditors.

41. The Foreign Representative believes that Debtors and Total Energy, and their respective advisors, have entered into the Total Energy Purchase Agreement, and seek entry of the Total Energy Vesting Order and the Total Energy Sale and Recognition Order, without collusion, in good faith, and after extensive arm's-length negotiations.

42. The assignment and assumption of the contracts and leases identified in the Total Energy Purchase Agreement (the "**Total Energy Assigned Contracts**") is necessary to maximize the value of the Total Energy Purchased Assets. Specifically, Total Energy required the inclusion of the Total Energy Assigned Contracts in the transaction. Therefore, if XBC is

unable to assign the Total Energy Assigned Contracts, the Total Energy Transaction will be jeopardized, causing a disruption in the administration of the Canadian Proceeding and a significant loss of value to the Debtors and their stakeholders. Moreover, XBC is selling substantially all of its assets and has no further use for such contracts. Accordingly, after the carefully considering the economic terms of Total Energy Assigned Contracts with their advisors, the Debtors determined that the assignment and assumption of Total Energy Assigned Contracts would allow them to consummate the Total Energy Transaction thereby maximizing the value of the Total Energy Purchased Assets for the benefit of all stakeholders.

[Signature Page Follows]

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that, based upon my knowledge, information, and belief as set forth herein, the foregoing is true and correct.

Dated: March 15, 2023

/s/ Dimitrios “Jim” Vounassis
Dimitrios “Jim” Vounassis
President and CEO of FormerXBC Inc. (f/k/a Xebec
Adsorption Inc.)