

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

In re:)	
)	Chapter 11
BEACON POWER CORPORATION, ¹)	
Debtor)	Case No. 11-13450 ()
)	
In re:)	Chapter 11
)	
STEPHENTOWN HOLDING LLC,)	Case No. 11-13451 ()
Debtor)	
)	
In re:)	Chapter 11
)	
STEPHENTOWN REGULATION SERVICES LLC,)	Case No. 11-13452 ()
Debtor)	Joint Administration Requested
)	

**APPLICATION OF THE DEBTORS FOR AN ORDER
AUTHORIZING THE EMPLOYMENT AND RETENTION OF
BROWN RUDNICK LLP AS COUNSEL FOR THE DEBTORS
NUNC PRO TUNC TO THE PETITION DATE**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors” or the “Company”), hereby submit this application (this “Application”) for an order authorizing the employment and retention of Brown Rudnick LLP (“Brown Rudnick”) as counsel for the Debtors, effective as of the Petition Date (as defined below). In support of this Application, the Debtors submit the Verified Statement of William R. Baldiga, sworn to on October 30, 2011 and attached hereto as Exhibit A (the “Baldiga Statement”), and respectfully represent and set forth as follows:

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Beacon Power Corporation (2365); Stephentown Holding LLC (4923); and Stephentown Regulation Services LLC (5016). The Debtors’ headquarters is located at 65 Middlesex Road, Tyngsboro, MA 01879.

Background

1. On October 30, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases").

2. The Debtors consist of Beacon Power Corporation ("Beacon"), its wholly owned subsidiary Stephentown Holding, LLC ("Holding"), and Holding's wholly owned subsidiary Stephentown Regulation Services, LLC ("SRS").

3. Beacon, a Delaware corporation, was founded in 1997 as a spin-off of SatCon's Energy Systems Division (a Massachusetts power and energy management company), to develop advanced flywheel-based energy storage technology. Beacon became a separate operating entity in 1998, and went public in 2000 (Nasdaq: BCON). Beacon's headquarters is located in Tyngsboro, Massachusetts.

4. Beacon is a leader in the development and commercialization of high energy mechanical flywheel-based energy storage systems for grid-scale frequency regulation services and other utility-scale and unitary energy storage applications. Beacon's first flywheel systems, the first and second generations of Beacon's technology, were deployed in North America for telecommunications backup power applications.

5. As the telecommunications market slowed, Beacon applied its technology to higher-power applications, leading to the Smart Power and Smart Energy systems. Realizing the synergy between flywheel energy storage and renewable energy, in 2003 Beacon acquired the intellectual property assets of a manufacturer of photovoltaic (solar) power conversion systems. This technology was significantly improved and expanded, then applied first to a line of solar

inverters, and today is being incorporated into a “smart grid” technology that Beacon is now developing.

6. In 2002, Beacon conceived the idea of using flywheel energy storage systems to provide an essential reliability service (now called frequency regulation) to the grid. Beacon was encouraged in this regard by representatives of the U.S. Department of Energy (“DOE”) and the PJM Interconnection, one of the largest grid operators in the world. During this period Beacon helped to conceive the idea of using flywheel energy storage systems to provide an essential reliability service (now called frequency regulation) to the grid. In 2004, Beacon redirected its flywheel research and development program to develop a next-generation system that could “recycle” electricity from the grid, absorbing energy when supply exceeds demand and injecting energy when demand exceeds supply. During the period of approximately 2005 through 2007, Beacon successfully demonstrated third-generation scale-power flywheel systems in New York and California, co-funded respectively by the New York State Energy Research and Development Authority and the California Energy Commission, with DOE support in both cases. Based on these experiences and results, Beacon then completed development of the Smart Energy 25, Beacon’s fourth-generation flywheel system. This flywheel is the basis of Beacon’s grid-scale Smart Energy Matrix, which has been commercially deployed for the regulation of grid frequency since 2008.

7. Beacon has invested over \$200 million to date on research and development for the flywheel system and other products. The resulting Intellectual Property includes twenty-two (22) existing U.S. and eleven (11) foreign patents along with six (6) U.S. and seventeen (17) foreign patents pending.

8. Beacon’s business model has two parts. The first is to be an integrated provider of frequency regulation services to Grid Operators (“ISOs” or “RTOs”) that operate so-called

organized markets created by the deregulation mandated by the Federal Regulatory Energy Commission (“FERC”). In these markets, representing about half of the addressable market in the United States, Beacon builds, owns and operates flywheel-based frequency regulation facilities (so-called “merchant plants”). The second is to sell such facilities in the regulated (non-organized) markets in the United States and foreign markets (so-called “turnkey systems”).

9. SRS was created by Beacon and Holding to build and operate a frequency regulation facility in Stephentown, New York (the “Stephentown Facility”). The Stephentown Facility will consist of 200 fourth-generation mechanical flywheels comprising 20 MW of balancing capacity (the ability to either subtract or add 20MW of power based on the dispatch signal received every six seconds from the grid operator’s automatic control system) that will earn revenues by providing frequency regulation services to the New York Independent System Operator (“NYISO”). The flywheels are modular in design; when combined with the accompanying electronic controls, the system forms a Smart Energy Matrix capable of absorbing from or returning excess energy to the power grid to maintain frequency at the required 60 Hz. Based on the capacity of the technology (fourth-generation flywheel), the project is expected to respond to ISO signals in approximately six seconds versus the requirement of 300 seconds, and so about 50 times faster than the minimum (and significantly faster than the average resource), thereby providing demonstrably more value. FERC issued its Order 755 on October 20, 2011, requiring significantly higher payments to such fast-responding resources. Combined with the minimal variable costs of providing regulation relative to fossil-fuel power generation resources, the Company’s projects are well positioned in the ISO’s auction-based regulation market. The Stephentown Facility started receiving frequency regulation revenue in January 2011, and was operating at its full capacity as of June 2011.

10. The estimated total project costs for completion of the Stephentown Facility are \$69 million of which approximately \$43 million was to be funded by the DOE guaranteed loan described more fully below and approximately \$26 million was to be funded by cash (including an initial amount of \$7 million that has been contributed by Beacon to the Base Equity Account) and in-kind assets contributed by Beacon through its wholly owned subsidiary, Holding. The construction cost for the Stephentown Facility are currently running below budgeted cost. Beacon operates and manages all aspects of the Stephentown Facility pursuant to the Operations and Management Agreement (the "O&M Agreement"), and the Administrative Services Agreement (the "Administrative Services Agreement" and together with the O&M Agreement, the "Intercompany Services Agreements") pursuant to which Beacon provides all engineering, technical, administrative and management services to and under contract with SRS. Both the O&M Agreement and the Administrative Services Agreement were executed in connection with the Common Agreement, with DOE's review and consent.

11. In addition to the Stephentown Facility, Beacon has constructed, or has been awarded grants to construct, other frequency regulation facilities in the United States. For example, since November 2008, Beacon has owned and operated a smaller frequency regulation facility in Tyngsboro, Massachusetts, under the Independent System Operator of New England (the "ISO-NE") Alternative Technologies Regulation pilot program. In November 2009, the DOE awarded Beacon a Smart Grid Stimulus Grant valued at \$24 million to construct a flywheel energy storage facility, which Beacon expects to build in Hazle Township, Pennsylvania (the "Hazle Facility"). Also, on February 28, 2011, Beacon executed a 15-month lease agreement with NorthWestern Corporation, d/b/a NorthWestern Energy, to install and operate a small flywheel energy storage facility in conjunction with a gas-fired regulating reserve plant recently commissioned in Montana and owned by NorthWestern Energy.

Jurisdiction

12. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The predicates for the relief requested herein are sections 327(a) and 328(a) of the Bankruptcy Code, Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court District of Delaware (the “Local Rules”).

Relief Requested

13. By this Application, the Debtors seek to employ and retain the law firm of Brown Rudnick, effective as of the Petition Date, to represent the Debtors as their co-counsel in connection with the filing of their chapter 11 petitions and the prosecution of these Chapter 11 Cases. Accordingly, the Debtors respectfully request that this Court enter an order authorizing the Debtors to employ and retain Brown Rudnick under a general retainer as their attorneys to perform the legal services that will be necessary during these Chapter 11 Cases.

Basis For Relief

14. The Debtors have selected, and seek to retain herein, the firm of Brown Rudnick as their bankruptcy co-counsel owing to, among other things: (i) Brown Rudnick’s extensive experience and knowledge in the fields of debtors’ and creditors’ rights and business reorganizations and liquidations under chapter 11 of the Bankruptcy Code; and (ii) Brown Rudnick’s familiarity with the Debtors’ business and affairs and potential legal issues in the context of these Chapter 11 Cases. Brown Rudnick has represented debtors, official and unofficial committees and other prominent parties in many chapter 11 cases in this District and others, as more fully described in the Baldiga Statement.

15. Prior to the Petition Date, commencing on April 1, 2010, the Debtors engaged Brown Rudnick to provide regulatory advice in connection with certain federal and state regulatory requirements before the Federal Energy Regulatory Commission, the New York Independent System Operator, ISO-New England, PJM Interconnection, LLC, the California Independent System Operator Corporation, the Midwest Independent Transmission System Operator, Inc., the Electric Reliability Council of Texas, the California Public Service Commission, the New York Public Service Commission, the Pennsylvania Public Service Commission, the Massachusetts Department of Public Utilities, the Texas Public Service Commission, the Washington DC Public Service Commission, and other federal and state agencies on issues related to opening the markets for ancillary services providers to bid, provide and be paid on a comparable basis with traditional generators and other non-generators.

16. Within the past two weeks, the Debtors have also consulted Brown Rudnick concerning a potential restructuring and related matters and, more recently, as to the preparation for filing these Chapter 11 Cases. Accordingly, Brown Rudnick has developed significant experience and expertise regarding the Debtors which will allow the effective and efficient provision of legal services in these Chapter 11 Cases.

Services to Be Rendered

17. Brown Rudnick will render, among others, the following services to the Debtors, as requested by the Debtors:

- (i) provision of legal advice with respect to the Debtors' rights and duties as debtors in possession;
- (ii) preparation on behalf of the Debtors of all necessary petitions, applications, motions, objections, responses, answers, orders, reports and other legal papers;
- (iii) pursuit of confirmation of a plan of reorganization and approval of the corresponding solicitation procedures and disclosure statement;

- (iv) attendance at any meetings and negotiations with representatives of creditors, equity holders or other parties-in-interest in connection with the above matters;
- (v) provision of general corporate, capital markets, employment, tax and litigation advice and other general non-bankruptcy legal services to the Debtors (as may be requested by the Debtors);
- (vi) appearance before this Court, any appellate courts and the U.S. Trustee to protect the interests of the Debtors; and
- (vii) performance of all other legal services for the Debtors that are necessary and proper in these proceedings.

18. The Debtors understand that Brown Rudnick intends to work closely with the other professionals retained by the Debtors to ensure that there is no unnecessary duplication of services performed for or charged to the Debtors' estates.

Disinterestedness

19. To the best of the Debtors' knowledge, except as otherwise set forth in the Baldiga Statement, neither Brown Rudnick nor any partner, counsel or associate of Brown Rudnick: (i) represents entities other than the Debtors in connection with these Chapter 11 Cases; (ii) has any connections with the Debtors, their creditors or stockholders or any other party-in-interest; or (iii) holds any interest adverse to the Debtors or their estates with respect to the matters on which Brown Rudnick is to be retained and employed in these Chapter 11 Cases.

20. In addition, as set forth in the Baldiga Statement, Brown Rudnick, its partners, counsel and associates:

- (i) are not creditors, equity security holders or insiders of the Debtors;
- (ii) are not and were not, within two years before the date of the filing of the Debtors' chapter 11 petitions, directors, officers or employees of the Debtors; and
- (iii) do not have an interest materially adverse to the interest of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, or for any other reason.

Accordingly, the Debtors believe that Brown Rudnick is a “disinterested person,” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) thereof.

21. Brown Rudnick is conducting a continuing inquiry into any matters that would affect its disinterested status. In the event additional disclosure is necessary, Brown Rudnick promptly will file a supplemental affidavit with this Court setting forth any facts and circumstances relevant thereto.

22. To the extent that issues arise that would cause the Debtors to be adverse to any of Brown Rudnick’s clients such that it would not be appropriate for Brown Rudnick to represent the Debtors with respect to such matters, the Debtors will request that their proposed local bankruptcy co-counsel, Potter Anderson & Corroon LLP, represent the Debtors with respect to those matters.

Professional Compensation

23. Pursuant to section 328(a) of the Bankruptcy Code, the Debtors may retain Brown Rudnick on any reasonable terms and conditions. The Debtors submit that the most reasonable terms and conditions are those charged by Brown Rudnick to the Debtors and other clients on an hourly basis in a competitive market for legal services. Therefore, the Debtors and Brown Rudnick have agreed that, subject to this Court’s approval, for all services performed and expenses incurred after the Petition Date, Brown Rudnick shall be paid its customary hourly rates for services that are in effect from time to time, as charged to bankruptcy and non-bankruptcy clients, and shall be reimbursed according to Brown Rudnick’s customary reimbursement policies and in accordance with sections 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016, the Local Rules and applicable guidelines established by the U.S. Trustee (the “U.S. Trustee Guidelines”). In addition, the Debtors wish to retain Brown Rudnick under a

general retainer because of the extensive legal services that may be required and the fact that the nature and extent of such services are not known at this time.

24. In compliance with the U.S. Trustee Guidelines, Brown Rudnick categorizes its billings by subject matter. As of the Petition Date, Brown Rudnick's rates, which are adjusted from time to time, range from \$625 to \$1,055 per hour for partners, \$375 to \$650 per hour for associates and \$265 to \$370 per hour for paraprofessionals. Brown Rudnick customarily is reimbursed for all expenses it incurs in connection with its representation of a client in a given matter. Such expenses include, without limitation, travel costs, telecommunications, express mail, messenger service, photocopying costs, document processing, temporary employment of additional staff, overtime meals, Lexis and Westlaw expenses, court fees, transcript costs and, in general, all identifiable expenses that would not have been incurred but for the representation of a particular client.

25. Brown Rudnick is not a creditor of the Debtors. In the one year prior to the Petition Date, the Debtors paid \$912,680.95 to Brown Rudnick on account of services performed and expenses incurred in connection with its regulatory advice to the Debtors and the preparation for the commencement of these Chapter 11 Cases. In addition, Brown Rudnick received an advance retainer of \$60,000, which includes an advance of estimated fees and expenses from October 14 through October 30, 2011. The exact amount of actual charges for fees and expenses for such period will be determined upon the final recording of all time and expense charges and debited against such advance. After application of amounts for payment of any additional prepetition professional services and related expenses, any excess advance amounts will be held by Brown Rudnick for application toward and payment of postpetition fees and expenses allowed by this Court, and any shortfall as of the commencement of these cases will be waived (so that Brown Rudnick will have no claim against these estates in any event).

26. Brown Rudnick has acknowledged that all amounts paid to Brown Rudnick during these Chapter 11 Cases are subject to final allowance by this Court. In the event that any fees or expenses paid to Brown Rudnick during these Chapter 11 Cases are disallowed by this Court, the fees and expenses will be disgorged by Brown Rudnick and returned to the Debtors or be treated as otherwise ordered by this Court.

27. The Debtors understand that no agreement exists, and that no agreement will be made, for Brown Rudnick to share with any other person or firm any compensation that Brown Rudnick receives for its services to the Debtors.

Bests Interests of the Estate

28. Brown Rudnick's attorneys are highly experienced and skilled in the fields of bankruptcy and have developed a familiarity with the Debtors' business, operations and finances. The Debtors believe that Brown Rudnick's expertise in the areas described above and in the Baldiga Statement is essential to the Debtors' efficient reorganization. Accordingly, based on the foregoing facts and authorities, the Debtors submit that the relief requested herein should be granted.

Notice

29. Notice of this Motion has been given to: (i) the Office of the United States Trustee; (ii) those creditors listed on the Debtors' Consolidated List of Creditors Holding the 20 Largest Unsecured Claims; (iii) the Office of the United States Attorney for the District of Delaware; (iv) the Internal Revenue Service; (v) the U.S. Securities and Exchange Commission; (vi) the U.S. Department of Energy; (vii) counsel to the U.S. Department of Energy; (viii) Midland Loan Services, a PNC Real Estate Business; and (ix) the Massachusetts Development Finance Agency.

No Prior Request

30. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE the Debtors respectfully request that this Court enter an order in the form attached hereto as Exhibit B authorizing the Debtors to employ and retain Brown Rudnick as counsel for the Debtors and granting such other and further relief as is just and proper.

Dated: October 30, 2011



Name: F. William Capp
Title: President and Chief Executive Officer.