

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

In re:

ECEC Wind-Down LLC (f.k.a. Ector County  
Energy Center LLC),<sup>1</sup>

Debtor.

Chapter 11

Case No. 22-10320 (JTD)

**Re: Docket Nos. 467, 471**

**NOTICE OF HEARING TO CONSIDER CONFIRMATION OF  
MODIFIED FIRST AMENDED CHAPTER 11 PLAN FILED BY THE DEBTOR AND  
RELATED VOTING AND OBJECTION DEADLINES**

**PLEASE TAKE NOTICE THAT** on November 17, 2022, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (A) Approving Form of Modified First Amended Disclosure Statement; (B) Approving Plan Solicitation and Voting Procedures; (C) Approving the Manner and Forms of Notices and Ballots; (D) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Plan; (E) Scheduling a Confirmation Hearing; and (F) Granting Related Relief* [Docket No. 471] (the “Disclosure Statement Order”); (a) approving the *Modified First Amended Disclosure Statement of Debtor in Support of Modified First Amended Liquidating Chapter 11 Plan* [Docket No. 468], including all exhibits and schedules thereto (as may be modified, amended or supplemented from time to time, the “Disclosure Statement”); (b) establishing the voting record date, voting deadline, and other related dates in connection with confirmation of the *Modified First Amended Chapter 11 Liquidating Plan of Debtor* [Docket No. 467] (as may be modified, amended or supplemented from time to time, the “Plan”);<sup>2</sup> (c) approving procedures for soliciting, receiving, and tabulating votes on the Plan; and (d) approving the manner and forms of notice and other related documents as they relate to the Debtor.

**PLEASE TAKE FURTHER NOTICE THAT** the hearing at which the Court will consider Confirmation of the Plan (the “Confirmation Hearing”) will commence **December 21, 2022 at 11:00 A.M. EST**, before the Honorable John T. Dorsey, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom #5, Wilmington, Delaware 19801, which may be held telephonically and/or by video conference, in the Court’s discretion. The agenda for the Confirmation Hearing, which will be filed at least two days prior to the Confirmation Hearing, will indicate whether the Confirmation Hearing will be in

<sup>1</sup> The last four digits of the Debtor’s federal tax identification are 6852. The Debtor’s mailing address is One South Wacker Drive, Suite 1900, Chicago, IL, 60606, and the Debtor has a principal place of business at 8200 OB Holt Road, Goldsmith, Ector County, Texas, 79761. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor’s solicitation agent, at [www.donlinrecano.com/ecec](http://www.donlinrecano.com/ecec), or can be requested by e-mail at [ececinfor@donlinrecano.com](mailto:ececinfor@donlinrecano.com).

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning given to such terms in the Plan or Disclosure Statement, as applicable.

person, telephonically and/or by video conference. You may contact counsel to the Debtor listed on the last page of this notice for a copy of the Hearing Agenda once it is filed.

**PLEASE BE ADVISED:** THE CONFIRMATION HEARING MAY BE CONTINUED FROM TIME TO TIME BY THE COURT OR THE DEBTOR **WITHOUT FURTHER NOTICE** OTHER THAN BY SUCH ADJOURNMENT BEING ANNOUNCED IN OPEN COURT AND/OR BY A NOTICE OF ADJOURNMENT FILED WITH THE COURT AND SERVED ON ALL PARTIES ENTITLED TO NOTICE.

### **CRITICAL INFORMATION REGARDING VOTING ON THE PLAN**

**Voting Record Date.** The voting record date is **November 17, 2022** (the “Voting Record Date”), which is the date for determining which Holders of Claims and Interests are entitled to vote on the Plan.

**Voting Deadline.** The deadline for voting on the Plan is **December 15, 2022, at 4:00 p.m. EST** (the “Voting Deadline”). If in a Voting Class, you should have received a Solicitation Package including a Ballot. If you intend to vote on the Plan, you must: (a) follow the instructions carefully; (b) complete all of the required information on the Ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is **actually received** by the Debtor’s noticing and balloting agent, Donlin, Recano & Company, Inc. (the “Solicitation Agent”) on or before the Voting Deadline. A failure to follow such instructions may disqualify your vote.

### **Classified Claims, Generally**

Claims, other than Administrative Expense Claims and Priority Tax Claims (as defined in the Plan) are classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan, as follows:

| <b>Class</b>                                  | <b>Voting Status</b>        | <b>Estimated Recovery to Holders of Allowed Claims/Interests</b> |
|-----------------------------------------------|-----------------------------|------------------------------------------------------------------|
| Class 1 – Other Priority Claims               | Unimpaired—Deemed to accept | 100%                                                             |
| Class 2 – Prepetition Term Lender Claims      | Impaired                    | 22%                                                              |
| Class 3 – Prepetition Revolving Lender Claims | Impaired                    | 1.1% (towards legal fees and expenses)                           |
| Class 4 – Other Secured Claims                | Unimpaired—Deemed to accept | 100%                                                             |
| Class 5 - General Unsecured Claims            | Impaired                    | 100%                                                             |

| Class                                                                    | Voting Status    | Estimated Recovery to Holders of Allowed Claims/Interests                                       |
|--------------------------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------|
| That Are Not Class 6 or Class 7 General Unsecured Claims                 |                  |                                                                                                 |
| Class 6 - General Unsecured Claims Resulting from Winter Storm Uri       | Impaired         | Est. 100%                                                                                       |
| Class 7 - Affiliate, Insider, and Inter-Company General Unsecured Claims | Impaired         | Unknown                                                                                         |
| Class 8 – Equity Interests                                               | Deemed to reject | Cancelled but with distribution rights to the extent all Claims are paid in full with Interest. |

Holders of Claims in Class 2, Class 3, Class 5, Class 6, and Class 7 (collectively, “Voting Classes”) are entitled to vote towards the Plan, subject to the limitations set forth herein.

If you believe you are in a Voting Class and did not receive a Ballot, please contact the Solicitation Agent immediately by calling the Solicitation Agent at 1 (800) 361-2782 (Toll Free U.S.) or (212) 771-1128 (Non-U.S. Parties); or emailing the Solicitation Agent at [ececinfo@donlinrecano.com](mailto:ececinfo@donlinrecano.com). If your Claim is the subject of a proceeding objecting to or seeking estimation of the amount of the Claim that is pending as of the Voting Record Date, which is November 17, 2022 (a “Disputed Claim”), your Ballot will be treated as a provisional ballot, and will not be counted unless you file a motion seeking temporary allowance of your Claim for purposes of voting on the Plan (a “Rule 3018(a) Motion”), and file such motion with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware, 19801, by later **than December 2, 2022, at 4:00 P.M. EST** (the “Rule 3018(a) Motion Deadline”) and served on that same date upon the Notice Parties specified below. The Debtor and other parties-in-interest shall have until **December 14, 2022, at 12:00 PM EST**, to file and serve on the Notice Parties (and any Holder of the Disputed Claim) any response or objection to a timely filed Rule 3018(a) Motion. If, and to the extent that, the Debtor and the holder of the Disputed Claim are unable to resolve the issues raised by a Rule 3018(a) Motion prior to the Voting Deadline by stipulation or stipulated order, then, at the Confirmation Hearing, the Bankruptcy Court shall rule on the Rule 3018 Motion and determine whether the provisional Ballot should be counted as a vote on the Plan. Any other party seeking temporary allowance of their Claim for purposes of voting on the Plan must also file a Rule 3018(a) Motion by the Rule 3018(a) Motion Deadline. Additional

information regarding the filing of a Rule 3018 Motion is set forth in the Disclosure Statement Order.

### **CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN**

**Plan Objection Deadline.** The deadline for filing objections to confirmation of the Plan or to classification of a Claim within the Plan (a “Confirmation Objection”) is **December 15, 2022 at 4:00 p.m. EST** (the “Objection Deadline”). All Confirmation Objections must: (a) be in writing; (b) comply with the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court; (c) set forth the name of the objector and the nature and amount of any Claim or Interest asserted by the objector against or in the Debtor; (d) state, with particularity, the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection; and (e) be filed with the Court (with proof of service as and when required by the Local Rules of the Bankruptcy Court) and served upon the following parties through the CM/ECF system, with courtesy copies provided by email to the following notice parties, on or before the Objection Deadline: (a) counsel to the Debtor (i) Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Attn: John J. Monaghan, Esq. and Lynne B. Xerras, Esq. (john.monaghan@hklaw.com; lynne.xerras@hklaw.com) and (ii) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801, Attn: Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., (cward@polsinelli.com; mdipietro@polsinelli.com); (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Juliet M. Sarkessian (Juliet.M.Sarkessian@usdoj.gov); and (c) counsel to the Agent and the Ad Hoc Group, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian Resnick, Esq. and Joshua Sturm, Esq. (brian.resnick@davispolk.com; joshua.sturm@davispolk.com) (collectively, the “Notice Parties”).

**Deadline for Brief in Support of Confirmation of the Plan or Reply to Confirmation Objections.** Any brief in support of confirmation of the Plan or Reply to a Confirmation Objection, and the proposed form of Confirmation Order, shall be filed so as to be received no later than **December 19, 2022 at 12:00 P.M. EST** (or, in the event that the Confirmation Hearing is adjourned, the date that is three (3) business days prior to the adjourned hearing) and served upon the Notice Parties and any party that files a Confirmation Objection.

**Obtaining Solicitation Materials.** The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials (or paper copies of solicitation materials if you received an electronic version), please feel free to contact the Solicitation Agent by: (a) visiting, free of charge, the Debtor’s bankruptcy website at: <https://www.donlinrecano.com/Clients/ecec/Index>, and clicking on the link for Plan and Disclosure Statement Documents or (b) calling the Solicitation Agent at 1 (800) 361-2782 (Toll Free U.S.) or (212) 771-1128 (Non-U.S. Parties); or emailing the Solicitation Agent at [ececinfo@donlinrecano.com](mailto:ececinfo@donlinrecano.com). You may also obtain copies of any pleadings filed in the Chapter 11 Case for a fee via PACER at: [www.deb.uscourts.gov](http://www.deb.uscourts.gov). Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

### **ADDITIONAL INFORMATION**

**ARTICLE IX** OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE SOLICITATION AGENT. THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE REGARDING THE PLAN.**

### **RELEASES, INJUNCTIONS, AND EXCULPATIONS**

Pursuant to the Plan, the Debtor seeks approval of the following release, injunction, and exculpation provisions:

### **ARTICLE II DEFINITIONS AND CONSTRUCTION OF TERMS**

#### **Defined Terms**

**“Exculpated Parties”** means, collectively and individually, the CRO (including in his capacity as Distribution Agent), the members of the Special Committee, the Shared Services Counterparties, and each of their and the Debtor’s agents, employees, affiliates, officers, directors, attorneys, financial advisors, investment bankers, accountants, agents, and other Professionals.

**“Released Parties”** means, collectively and individually, and in each case solely in its capacity as such: (a) the Debtor’s Related Persons; (b) the Prepetition Secured Parties and each of their respective Related Persons; and (c) Direct Energy and its respective Related Persons.

**“Related Persons”** means collectively, with respect to any Person, such Person’s predecessors, successors and assigns (whether by operation of law or otherwise) and their respective present and former affiliates and subsidiaries and each of their respective current and former members, partners, limited partners, general partners, principals, equity holders (regardless of whether such interests are held directly or indirectly), participants, officers, directors, advisory board members, special committee members (including members of the Special Committee), employees, managers, shareholders, representatives, financial advisors, attorneys, accountants, investment bankers, consultants, agents and professionals, each acting in such capacity, and any Person claiming by or through any of them (including their respective officers, directors, managers, shareholders, partners, employees, members, and professionals).

**ARTICLE IX INJUNCTION, EXCULPATION, AND RELEASE****A. Injunction.**

All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Except as otherwise provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order or a separate Order of the Bankruptcy Court, all Entities who have held, hold or may hold Equity Interests in the Debtor or a Claim, cause of action, or other debt or liability against the Debtor or any Released Party that have been released and/or exculpated under the Plan (the “Released Claims and Interests”) and all other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, representatives and affiliates shall be and are, with respect to any Released Claims and Interests, permanently enjoined from taking any of the following actions against the Debtor or the Released Parties or their Related Persons or any property of the same, on account of such Released Claims and Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or Order; (c) creating, perfecting, or enforcing any Lien or encumbrance; (d) asserting a setoff right (other than setoffs exercised prior to the Petition Date), or subrogation of any kind against any debt, liability or obligation on account of or in connection with or with respect to any Released Claims and Interests, unless such setoff was formally asserted in a timely Filed Proof of Claim or in a pleading Filed with the Bankruptcy Court prior to entry of the Confirmation Order; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided, however*, that such Entities shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Plan or the Confirmation Order; *provided, further*, that the foregoing provisions of this Article IX(A) shall not apply to any acts, omissions, claims, causes of action or other obligations based on or arising out of gross negligence, fraud, or willful misconduct, or expressly set forth in and preserved by this Plan or any defenses thereto.

**B. Exculpation.**

On the Effective Date, except as otherwise specifically provided in the Plan or the Confirmation Order, for good and valuable consideration, to the maximum extent permissible under applicable law, the Exculpated Parties and any of such parties’ successors and assigns, solely in their capacities as such, shall not have or incur any liability to any Holder of a Claim or Equity Interest or any other Person for any act or omission in connection with, related to, or arising out of, the Asset Sale and the Debtor’s liquidation, including the negotiation, implementation and execution of this Plan, the Chapter 11 Case, the Prepetition Credit Agreement, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be liquidated and/or distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of this Plan, except for their willful misconduct or gross negligence as determined by a Final

Order of the Bankruptcy Court. For purposes of the foregoing, it is expressly understood that any act or omission effected with the approval of the Bankruptcy Court will be deemed conclusively not to constitute gross negligence or willful misconduct unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation, and in all respects, the applicable Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under or in connection with the Chapter 11 Case, the Plan and the administration thereof.

In the event that the Bankruptcy Court determines that applicable law does not permit a Person or Entity to be an Exculpated Party, the Plan shall be deemed modified to exclude such Person or Entity from the definition of Exculpated Party. For the avoidance of doubt, such exclusion shall not affect the exculpations contained in the Plan with respect to the other Exculpated Parties.

**C. Release by Debtor and Estate.**

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise expressly provided in the Plan and/or the Confirmation Order, for good and valuable consideration, including the service of the Released Parties to facilitate the expeditious formulation and implementation of the Plan and the consummation of the transactions and compromises contemplated by the Plan, on and after the Effective Date, the Debtor, on its own behalf and as representative of its Estate, and its respective Related Persons, shall, and shall be deemed to, completely and forever release, waive, void, and extinguish unconditionally, each and all of the Released Parties of and from any and all Claims, any and all other obligations, rights, suits, judgments, damages, debts, rights, remedies, causes of action and liabilities of any nature whatsoever (including, without limitation, those arising under the Bankruptcy Code), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, then existing or thereafter arising, in law, equity or otherwise, whether for tort, contract, violations of state or federal securities laws, or otherwise, that may or could have been asserted by or on behalf of the Debtor or the Debtor's Estate, directly or indirectly, derivatively or otherwise, including, but not limited to, claims for fraudulent transfer, contribution, marshaling, breach of fiduciary duty, subrogation, preferences, alter ego, substantive consolidation, piercing the corporate veil, and Avoidance Actions, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or before the Effective Date (including before the Petition Date) in connection with or related to the Debtor (including any of the Debtor's capital structure, management, ownership, or operation thereof), or the Debtor's assets, operations, finances, contracts, potential contracts, business relationships, intercompany transactions between or among the Debtor and its affiliates, securities, property and Estate, the Prepetition Credit Agreement and the exercise of any remedies thereunder, the Chapter 11 Case, the Asset Sale, the Plan Support Agreement, the HRCO, the Plan, or related agreements, instruments or other documents, or any pleadings filed during the Chapter 11 Case, and any related act or omission other than those based on or arising out of willful misconduct or gross negligence taking place on or before the Effective Date as determined by a Final Order of the Bankruptcy Court in accordance with the foregoing Exculpation provisions; provided, however, that this release shall not limit the Debtor's right to enforce the Plan or release the

Released Parties' obligations under the Plan (including in connection with payments required in connection with the Invenergy Thermal Settlement and Invenergy Services Settlement).

**D. Release of Liens.**

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtor's Estate shall be fully released, settled, compromised, and discharged, *provided*, however, that, for the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interest against obligors other than the Debtor under the Prepetition Credit Agreement shall remain unaffected. The Holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtor to reflect and effectuate such release. All of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtor and its successors and assigns without any further approval or Order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtor.

**BINDING NATURE OF THE PLAN:**

IF CONFIRMED, THE PLAN SHALL BIND ALL HOLDERS OF CLAIMS AND INTERESTS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHETHER OR NOT SUCH HOLDER WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN, HAS FILED A PROOF OF CLAIM IN THE CHAPTER 11 CASE, FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN, OR VOTED TO REJECT THE PLAN, OR IS NOT ENTITLED TO VOTE.

Dated: November 17, 2022  
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher A. Ward

**POLSINELLI PC**

Christopher A. Ward (Del. Bar No. 3877)  
Michael V. DiPietro (Del. Bar No. 6781)  
222 Delaware Avenue, Suite 1101  
Wilmington, Delaware 19801  
Telephone: 302-252-0920  
Facsimile: 302-252-0921  
[cward@polsinelli.com](mailto:cward@polsinelli.com)  
[mdipietro@polsinelli.com](mailto:mdipietro@polsinelli.com)

-and-

**HOLLAND & KNIGHT LLP**

John J. Monaghan (admitted *pro hac vice*)  
Lynne B. Xerras (admitted *pro hac vice*)  
Kathleen M. St. John (admitted *pro hac vice*)  
10 St. James Avenue  
Boston, MA 02116  
Phone: 617-523-2700  
Fax: 617-523-685  
[john.monaghan@hklaw.com](mailto:john.monaghan@hklaw.com)  
[lynne.xerras@hkaw.com](mailto:lynne.xerras@hkaw.com)  
[kathleen.stjohn@hklaw.com](mailto:kathleen.stjohn@hklaw.com)

-and-

David W. Wirt (admitted *pro hac vice*)  
Phillip W. Nelson (admitted *pro hac vice*)  
150 N. Riverside Plaza, Suite 2700  
Chicago, IL 60606  
Phone: 312-263-3600  
Fax: 312-578-6666  
[david.wirt@hklaw.com](mailto:david.wirt@hklaw.com)  
[phillip.nelson@hklaw.com](mailto:phillip.nelson@hklaw.com)

*Counsel to the Debtor and  
Debtor in Possession*