

**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),¹

Debtor.

Chapter 11

Case No. 22-10320 (JTD)

Re: Docket Nos. 467 and 507

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING
DEBTOR'S FURTHER MODIFIED FIRST AMENDED
LIQUIDATING CHAPTER 11 PLAN**

ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC) (the “Debtor”), the debtor and debtor-in-possession in the above-captioned chapter 11 case, having Filed the *Further Modified First Amended Liquidating Chapter 11 Plan of Debtor* (the “Plan”) with the United States Bankruptcy Court, District of Delaware (“Bankruptcy Court”) on December 19, 2022 [Docket No. 507] as containing non-material modifications to the form of *Modified First Amended Liquidating Chapter 11 Plan of Debtor* Filed on November 16, 2022 [Docket No. 467] (“First Modified Plan”) circulated as part of the Solicitation Package, along with the *Modified First Amended Disclosure Statement of the Debtor In Support of First Amended Liquidating Chapter 11 Plan* Filed on November 16, 2022 [Docket No. 468] (the “Disclosure Statement”); the Bankruptcy Court having entered an order on November 17, 2022, among other things, approving the Disclosure Statement as containing adequate information pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”), establishing certain procedures for solicitation of votes regarding the Plan and approving the forms of Ballots and Notices of Non-Voting Status,

¹ 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. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor’s claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com.

scheduling a confirmation hearing on December 21, 2022 at 11:00 A.M. (“Confirmation Hearing”), and setting December 15, 2022 at 4:00 p.m. as the deadline for filing of objections to confirmation of the Plan and to classification within the Plan, and as the last day for submitting Ballots indicating acceptance or rejection of the Plan [Docket No. 394] (“Disclosure Statement Order”); the Debtor’s claims and balloting agent, Donlin, Recano & Company, Inc. (“Donlin”), having certified that it served copies of the Disclosure Statement Order, along with the Plan, the Disclosure Statement, a Ballot or Notice of Non-Voting Status, and Notice of the Confirmation Hearing (“Solicitation Package”), on all creditors, interest holders and other parties-in-interest [Docket No. 485], and publication notice of the Confirmation Hearing having been provided, as certified to by Donlin [Docket No. 482], as required by and in compliance with the Disclosure Statement Order; the Debtor having Filed the (a) *Declaration of Johnny Burlacu of Donlin, Recano & Company, Inc. Regarding the Solicitation and Tabulation of Ballots Cast on Debtor’s Further Modified First Amended Liquidating Plan* [Docket No. 506] (the “Balloting Declaration”), (b) *Declaration of John Baumgartner, Chief Restructuring Officer, in Support of Debtor’s Further Modified First Amended Liquidating Plan* [Docket No. 509] (the “Baumgartner Declaration”); and (c) *Debtor’s Memorandum of Law in Support of Entry of an Order Confirming the Debtor’s Further Modified First Amended Liquidating Plan* [Docket No. 511] (the “Memorandum,” and together (a) - (c) collectively referred to as the “Supporting Documents”) on December 19, 2022; this Court finding that notice of the Voting Deadline, Objection Deadline, and Confirmation Hearing² were adequate and appropriate, in accordance with Rule 2002(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and the Disclosure Statement Order, such that no further notice of the Confirmation Hearing is required; no objections to confirmation of the Plan

² “Voting Deadline” and “Objection Deadline” shall have the meanings ascribed to them in the Disclosure Statement Order.

or to the classification of Classes within the Plan having been filed; the Confirmation Hearing having been held on December 21, 2022; the Court having considered the arguments of counsel during the Confirmation Hearing, the Supporting Documents, the Plan, and the entire record in the above-captioned chapter 11 case (“Chapter 11 Case”); upon determining that the legal and factual bases presented at the Confirmation Hearing establish just cause for confirmation of the Plan; and after due deliberation thereon,

NOW THEREFORE, IT IS HEREBY FOUND AND DETERMINED THAT:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings and Conclusions. The findings and conclusions set forth herein and on the record during the Confirmation Hearing constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

B. Definitions: Unless otherwise specified herein, the definitions and rules of construction set forth in Article II of the Plan shall apply to this Confirmation Order.

C. Jurisdiction and Venue: This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1334(a) and 157(b)(1). Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2)(L), and this Court has the exclusive jurisdiction to consider confirmation of the Plan and enter a final order with respect thereto.

D. Transmittal and Mailing of Materials; Notice: As set forth in the Balloting Declaration and as evidenced by the affidavits of service filed by Donlin [Dkt. No. 485], the

Debtor, through Donlin, has properly transmitted copies of the Notice of Confirmation Hearing, along with the Plan and the Disclosure Statement, to all creditors and parties-in-interest in accordance with the Disclosure Statement Order, the Bankruptcy Code, and the Bankruptcy Rules. Based on the record, notice of the time for filing acceptances or rejections to the Plan, objections to confirmation and objections to classification, and of the date of the Confirmation Hearing, together with a Ballot in substantial compliance with the Disclosure Statement Order, was properly transmitted to all creditors entitled to vote regarding the Plan; similarly, those parties asserting claims that were not entitled to vote regarding the Plan received a Notice of Non-Voting Status along with the remaining documents comprising the Solicitation Package, other than a Ballot. Notice by publication was also provided by the Debtor on November 23, 2022 in the national edition of *USA Today*, as verified by Donlin on November 29, 2022. [Dkt. No. 482]. By virtue of this procedure, all creditors and parties-in-interest have had ample opportunity to appear and be heard with respect to the Plan and the Confirmation Hearing, and no other or further notice is required.

E. Solicitation and Tabulation: Based on the Balloting Declaration, the Debtor, with the assistance of Donlin, solicited and tabulated votes for acceptance or rejection of the Plan fairly, in good-faith and in a manner consistent with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Solicitation Procedures Order, and all other applicable laws and regulations. The Debtor and its professionals have acted in good-faith within the meaning of Bankruptcy Code sections 1125(e) and 1129(a)(3) and are, thus, entitled to the protections afforded by Bankruptcy Code section 1125(e).

F. Voting. The Court finds that Class 2, Class 3, Class 5, Class 6, and Class 7 are impaired under the Plan and entitled to vote to accept or reject the Plan.

G. As evidenced by the Balloting Declaration, Classes 2, 3, 5, 6 and 7 voted to accept the Plan. The Court finds that Class 8 is impaired under the plan and the Holder of Interests classified in Class 8 is conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Court further finds that Class 1 and Class 4 are unimpaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

H. No Material Plan Modifications. The Court finds and concludes that any modifications to the Plan made following the filing of the First Modified Plan or as set forth in this Confirmation Order or otherwise, do not have any material adverse impact on any interested party and are appropriate under the circumstances.

I. Releases, Exculpations, and Injunctions. Pursuant to Bankruptcy Rule 3016(c), the Plan describes in specific and conspicuous language all acts to be enjoined by, and identifies the entities that are subject to releases and injunctions provided under the Plan, including without limitation, Article IX of the Plan. The Court finds that each release, exculpation, and injunction provision set forth in the Plan is: (i) within the jurisdiction of the Court under 28 U.S.C. § 1334; (ii) essential to the implementation of the Plan pursuant to Bankruptcy Code section 1123(a)(5) and warranted by the circumstances of the Chapter 11 Case; (iii) an integral element of the Plan; and (iv) consistent with Bankruptcy Code sections 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. In addition, the Court finds that the releases given by the Debtor under the Plan are: (a) the product of an arm's length transaction and a critical element of obtaining the support of the various constituencies for the Plan; (b) fair, equitable, and in the best interest of Debtor's estates and creditors; (c) important to the overall objectives of the Plan; and

(d) supported by fair, sufficient, and adequate consideration provided to each and all of the parties providing such releases.

J. As evidenced by the Plan and Supporting Documents, the Plan complies with all, and is not inconsistent with any, of the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code Section 1129(a)(1), in that:

(i) Proper Classification: In addition to Administrative Expense Claims and Priority Tax Claims, which are not classified under the Plan, the Plan designates seven Classes of Claims and one Class of Equity Interests. The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests in such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between Holders of Claims and Equity Interests. Thus, the Plan satisfies the provisions of Bankruptcy Code sections 1122 and 1123(a)(1);

(ii) The Plan specifies that Classes 1 and 4 are unimpaired and thus Bankruptcy Code section 1123(a)(2) is satisfied;

(iii) Classes 2, 3, 5, 6, 7 and 8 are designated as impaired under the Plan. Article III of the Plan specifies the treatment of impaired Claims and Equity Interests, thereby satisfying Bankruptcy Code section 1123(a)(3);

(iv) The Plan provides for the same treatment by the Debtor for each Claim and each Equity Interest in a respective Class, thereby satisfying Bankruptcy Code section 1123(a)(4);

(v) The Plan provides adequate and proper means for implementation of the Plan, requiring the distribution of proceeds of a largely completed liquidation of essentially all of the Debtor's assets that yielded sufficient proceeds to satisfy all of the Debtor's obligations under the Plan, thereby satisfying Bankruptcy Code section 1123(a)(5);

(vi) The Plan and Disclosure Statement properly and adequately disclosed the identity and affiliations of the proposed Distribution Agent and the appointment of the Distribution Agent is consistent with the interests of Holders of Claims and Equity Interests and with public policy, and accordingly, satisfies the requirements of Bankruptcy Code Section 1123(a)(7); and

(vii) The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

K. The Plan complies with Bankruptcy Rule 3016(a).

L. The Debtor, as Plan proponent, has complied with the applicable provisions of the Bankruptcy Code, as required by Bankruptcy Code section 1129(a)(2). In particular, as set forth

in the Supporting Documents, the Debtor has not solicited post-petition acceptances or rejections of the Plan except after transmittal to all parties-in-interest of the Disclosure Statement as and in the form approved by the Court on or about November 17, 2022.

M. The Plan has been proposed in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3). In making this determination, the Court has considered the totality of the circumstances and the Supporting Documents, such as the Debtor's representations that it filed its Chapter 11 Case and proposed the Plan with the legitimate purposes of maximizing return to creditors through realization of the Debtor's going-concern value through a sale process conducted before this Court, and by affording Holders of impaired Claims the opportunity to participate in the Plan confirmation process. In addition, the Debtor has acted in good-faith in agreeing to appoint the Distribution Agent to oversee the liquidation of the Debtor's remaining assets, if any, and to take such action as is necessary to complete the process of liquidating the Debtor, including the filing of any final tax returns and making distribution to creditors in accordance with the Plan.

N. As set forth in the Baumgartner Declaration, any payments made or to be made by the Debtor for services or for costs and expenses in, or in connection with, the Chapter 11 Case or in connection with the Plan and incident to the Chapter 11 Case, have been disclosed to and have been approved by, or are subject to approval, of this Court as reasonable, thereby satisfying Bankruptcy Code section 1129(a)(4).

O. The Debtor has complied with Bankruptcy Code section 1129(a)(5) of the Bankruptcy Code by disclosing that, on and after the Effective Date of the Plan, John Baumgartner of Grant Thornton LLP will serve as the Distribution Agent and in that capacity shall be the responsible officer and director on behalf of the Debtor until he is discharged from his duties. His

appointment is consistent with the interests of Holders of Claims and Equity Interests and with public policy. As no insider will serve in any capacity after the Effective Date, no disclosure is required under Bankruptcy Code section 1129(a)(5)(B).

P. As set forth in the Baumgartner Declaration, given the closing of the Sale of the Debtor's operating assets in July, 2022, the Debtor no longer has a business that involves the establishment of rates over which any governmental regulatory commission has or will have jurisdiction after the Confirmation Date. Therefore, the requirements of section 1129 (a)(6) of the Bankruptcy Code do not apply to the Chapter 11 Case.

Q. As detailed in the Supporting Documents and the Disclosure Statement, confirmation of the Plan is in the best interests of all holders of Claims and holders of Equity Interests, as required of section 1129(a)(7) of the Bankruptcy Code. The Debtor has demonstrated that each holder of an impaired Claim in Classes 2, 3, 5, 6 or 7 has accepted the Plan, or will receive, upon the Effective Date of the Plan, no less than such holders would receive in a hypothetical chapter 7 liquidation of the Debtor's Estate. Holders of Equity Interests classified in Class 8 are receiving the same treatment that would be afforded in a chapter 7 liquidation, thereby satisfying section 1129(a)(7).

R. Acceptance by Certain Classes: As evidenced by the Supporting Documents, with respect to each Class of Claims remaining after the Voting Deadline, each such Class has accepted the Plan, or is not impaired, as follows:

(a) Class 1 under the Plan, consisting of Other Priority Claims, is unimpaired and therefore, is deemed to accept the Plan;

(b) Class 2, consisting of the Prepetition Term Lender Claims, is impaired. Class 2 voted to accept the Plan.

(c) Class 3, consisting of the Prepetition Revolving Lender Claims, is impaired. Class 3 voted to accept the Plan;

(d) Class 4 is unimpaired and therefore, is deemed to accept the Plan;

(e) Class 5, consisting of General Unsecured Claims that are not Class 6 or Class 7 Claims, is impaired. Class 5 voted to accept the Plan;

(f) Class 6, consisting of General Unsecured Claims for Personal Injury or Property Damage or Other Causes of Action Arising from Winter Storm Uri, voted to accept the Plan;

(g) Class 7, consisting of Claims of Insiders and Affiliates, is impaired. Class 7 voted to accept the Plan; and

(h) Class 8 consists of the Holders of Equity Interests, an impaired Class that is not receiving or retaining any property under the Plan. Class 8 is deemed to have rejected the Plan.

S. The Plan complies with section 1129(a)(9) of the Bankruptcy Code in that it provides for full payment in cash on the Effective Date of the Plan, or as soon thereafter as such Claims are allowed, of all Priority Claims, including those Administrative Expense Claims arising under Bankruptcy Code sections 503(b) and 507(a)(2), all Priority Tax Claims entitled to priority under section 507(a)(8), and all other Priority Claims entitled to priority under Bankruptcy Code section 507(a) that are classified in Class I of the Plan.

T. As set forth in the Supporting Documents, the Plan complies with section 1129(a)(10) of the Bankruptcy Code insofar as at least one class of Claims that is impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider. Those Classes are Classes 2, 3, 5 and 6.

U. The Debtor's business assets have already been liquidated, and the net proceeds of the sale, after payment of operating expenses and Allowed Professional Fee Claims accrued and paid to date, are to be distributed to creditors in accordance with the priorities of the Bankruptcy Code under the Plan. The Debtor has, therefore, demonstrated that confirmation of the Plan is not likely to be followed by liquidation, or the need for further financial reorganization, of the Debtor in accordance with Bankruptcy Code section 1129(a)(11). The Debtor has represented that the Cash on Hand is in an amount that is sufficient to satisfy all payments that will become due under the Plan on the Effective Date after funding of the Wind-Down Reserve Accounts.

V. The Debtor has represented that all fees payable under 28 U.S.C. § 1930 (defined below as the “Statutory Fees”) have either been paid or will be paid under the Plan following confirmation of the Plan through the date of the entry of the Final Decree closing the Chapter 11 Case.

W. As set forth in the Supporting Documents, the Debtor is not paying benefits to retired employees, within the meaning of section 1114 of the Bankruptcy Code, and therefore section 1129(a)(13) of the Bankruptcy Code is not applicable to the Plan.

X. Cram-Down: Section 1129(b): Even though the requirements of subparagraph (8) of Bankruptcy Code section 1129(a) are not met since Class 8, Equity Interests, is deemed to reject the Plan, the Plan is still confirmable under section 1129(b).

I. The Plan is Fair and Equitable: As the Supporting Documents indicate, the Plan does not discriminate unfairly, and is fair and equitable in the treatment of Holders of Equity Interests. No Holder of any interest that is junior to the Interests of that classified in Class 8 will receive or retain any property under the plan on account of such junior Interest; there is no Class that is junior to Class 8.

II. No Unfair Discrimination: Under the Plan and as described in the Supporting Documents and Disclosure Statement, no Voting Class has voted to reject the Plan. Rather, there is only one Class that is deemed to reject the Plan, Class 8, comprised solely of the holder of the Equity Interest that is not receiving a distribution under the Plan. Nonetheless, the Plan does not discriminate unfairly as there is only one holder of Equity Interest in Class 8, and any other holders of Equity Interests in Class 8, if any, are receiving identical treatment in Class 8.

Y. The Debtor has represented that the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, as amended, and no governmental entity has Filed an objection disputing this representation. Therefore, the Plan satisfies the requirements of Bankruptcy Code section 1129(d).

NOW THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

A. Confirmation of the Plan and Notice of Confirmation Hearing

1. The record of the Confirmation Hearing is hereby closed.

2. No further notice of the Confirmation Hearing or regarding the Plan is required.

3. All objections to the Plan, to the extent they have not been withdrawn or otherwise resolved prior to entry of this Confirmation Order, are hereby expressly overruled.

4. The Plan, which is incorporated herein by reference, is hereby confirmed as of the date of this Order pursuant to 11 U.S.C. § 1129.

5. Finality and Immediate Effect of Confirmation Order. This Confirmation Order (a) is a final order and the period in which an appeal must be filed shall commence upon the entry hereof; and (b) notwithstanding the applicability of Bankruptcy Rule 3020(e), or, to the extent applicable, Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon the entry hereof.

6. Effectiveness of Plan. The Plan shall become effective upon the satisfaction or waiver of the conditions precedent outlined in Article X.A of the Plan, provided, however, that the Plan shall not become effective unless and until the Mediation Settlement Agreement has been executed by all parties thereto.

7. Binding Effect. Notwithstanding any otherwise applicable law, the terms of the Plan and this Confirmation Order shall be deemed binding upon all persons, including the Debtor,

the Post-Effective Date Debtor, and any and all Holders of Claims or Equity Interests, irrespective of whether such Claims or Equity Interests were filed, are Allowed, or are impaired under the Plan or whether the Holders of such Claims or Equity Interests accepted, rejected or are deemed to have accepted or rejected the Plan.

8. Vesting of Assets. Except as otherwise provided in the Plan, the Post-Effective Date Debtor, as of the Effective Date, shall be vested with all property of the Estate, free and clear of all Liens, claims, encumbrances, interests, and Released Claims and Interests.

9. Preference Settlements. On the Effective Date, Invenergy Thermal and Invenergy Services, respectively, shall pay to the Distribution Agent the Invenergy Services Settlement or the Invenergy Thermal Settlement, as applicable. The Distribution Agent shall add the funds received in connection with such settlements to the Wind-Down Account, for distribution in accordance with the Plan.

10. Distributions to Direct Energy. On the Effective Date, the Distribution Agent shall cause the balance of the Class 5 Allocation not distributed or reserved in one of the Wind-Down Reserve Accounts to be distributed to Direct Energy up to the amount of the Direct Energy Allowed Claim Cap. In the event that, after that Effective Date Distribution, the amount distributed to Direct Energy is less than the Direct Energy Allowed Claim Cap, the Distribution Agent shall thereafter cause the Wind-Down Reserves Waterfall to be distributed to Direct Energy until such time as Direct Energy has received Distributions totaling the Direct Energy Allowed Claim Cap.

11. Approval of Injunction, Exculpation and Release Provisions of the Plan. The Injunction provisions of Article IX.A, the Exculpation provisions of Article IX.B, and the Release provisions of Article IX.C of the Plan (collectively, the “Release Provisions”), are hereby

approved and upon occurrence of the Effective Date, shall be in full force and effect to the fullest extent available under applicable law, without limitation, except as otherwise may be expressly indicated in the Plan.

12. Rejection of Executory Contracts (Other than Insurance Policies); Rejection Damages Claims. As of the Effective Date, all of the Rejected Contracts shall be deemed rejected pursuant to 11 U.S.C. § 365(a). Any Proofs of Claim asserting Rejection Damages Claims must be Filed no later than the date that is thirty (30) days after the Debtor files and serves the Notice of Effective Date (defined below) on parties to Rejected Contracts (“Rejection Damages Claim Deadline”). Any Proofs of Claim for Rejection Damages Claims that are not timely filed by the Rejection Damages Claim Deadline shall be subject to objection filed by the applicable Claims Objection Deadline, and if an objection to the same is sustained by the Court, such claim or claims shall be disallowed, and forever barred from assertion, and shall not be enforceable against the Debtor or the Estate. Any Claim for Rejection Damages Claims that is not filed, and is not included on the Debtor’s Schedules, shall be deemed released. All Allowed Rejection Damages Claims shall be classified as Non-Direct Energy Class 5 Claims, unless such Rejection Damages Claims are asserted by an affiliate of the Debtor (including, but not limited to, Invenergy Services, Invenergy Thermal, and ITOI) in which case the Allowed Rejection Damages Claims shall be classified as Class 7 General Unsecured Claims, and shall be treated in accordance with the particular provisions of this Plan applicable to such Claims; provided however, if the Holder of an Allowed Rejection Damages Claim has an unavoidable security interest in any collateral to secure obligations under such rejected Executory Contract, the Allowed Rejection Damages Claim shall be treated as a Class 4 Other Secured Claim to the extent of the value of such Holder’s interest in the collateral, with the deficiency, if any, treated as a General Unsecured Claim.

13. Authority to Implement the Releases. The Debtor shall have the full authority to execute any and all documents, stipulations, agreements, or to present orders deemed necessary and appropriate to effect the Release Provisions or other provisions of the Plan in any pending litigation in which the Debtor is a party, including to cause the dismissal of the Direct Energy Litigation and the lawsuit commenced by Direct Energy against Invenenergy LLC in the Supreme Court of the State of New York, County of New York, Commercial Division (Index No. 653977-2021), with prejudice, and dismissal of the appeal of this Court's *Order Denying Motion for Order Authorizing Direct Energy Business Marketing, LLC to Commence and Prosecute Claims on Behalf of the Debtor's Estate* [Dkt No. 355] pending before the United States District Court for the District of Delaware as Civ. Action No. 1:22-cv-01176-MN (the "Appeal") by motion or other appropriate pleading. Following the Effective Date, Direct Energy shall be authorized and permitted to take any and all action deemed necessary and appropriate to cancel those letters of credit or recover other collateral posted in favor of the Debtor in connection with the HRCO, without further order or relief. As of the Effective Date, the Debtor shall be deemed to have surrendered for cancellation those letters of credit or collateral posted in favor of the Debtor in connection with the HRCO, and the Debtor shall take all actions necessary to surrender and cause to be cancelled the letters of credit with the respective issuers thereof.

14. Dismissal of Adversary Proceeding and Appeal. The Direct Energy Bankruptcy Litigation shall be deemed to be dismissed with prejudice upon the occurrence of the Effective Date and the receipt of the Settlement Payment (as defined in the Mediation Settlement Agreement) by Direct Energy and the parties to the Direct Energy Bankruptcy Litigation shall promptly file with the Court a stipulation of dismissal with prejudice of the Direct Energy Bankruptcy Litigation. Upon the occurrence of the Effective Date and the receipt of the Settlement

Payment by Direct Energy, Direct Energy shall take all necessary steps to dismiss the Appeal with prejudice.

15. No Discharge. Pursuant to section 1141(d)(3) of the Bankruptcy Code, confirmation will not discharge the Debtor of Claims that arose prior to the Petition Date.

16. Claims Filed After the Confirmation Date. Other than Claims for Professional Fees, Administrative Claims subject to the Supplemental Administrative Claim Bar Date, Rejection Damages Claims, or Statutory Fees, no Claim, or amendment to any Claim shall be Filed after the Confirmation Date absent leave granted by the Bankruptcy Court. Any such Claim or amendment to Claim Filed after the Confirmation Date without leave of the Bankruptcy Court shall be void, of no effect, and deemed disallowed. None of the Debtor, the Post-Effective Date Debtor, the Distribution Agent, or any other party-in-interest shall have any obligation to respond in any way to any such Claim.

17. Substantial Consummation. The Plan shall be deemed to be substantially consummated, within the meaning of section 1127 of the Bankruptcy Code, upon the occurrence of the Effective Date and the payment of the Effective Date Allowed Claim Payments.

18. Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under or related to this Chapter 11 Case and the Plan to the fullest extent legally permissible.

19. Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of a security, or the making or delivery of an instrument of transfer under the Plan, may not be taxed under any law imposing a stamp tax or similar tax.

20. Notice of Effective Date and Related Claim Deadlines: In accordance with Bankruptcy Rule 2002 and 3020(c), within three (3) business days after the Effective Date, the

Debtor shall file a notice of occurrence of the Effective Date (“Notice of Effective Date”) with the Court and serve it upon all known creditors and parties entitled to receive notice pursuant to Rule 2002. The Notice of Effective Date shall further provide notice of the deadlines established herein or in the Plan for the filing of Rejection Damages Claims and Professional Fee Claims, of the Supplemental Administrative Claims Bar Date.

21. Texas Comptroller of Public Accounts. Notwithstanding anything to the contrary in the Plan or this Order, as to the Texas Comptroller of Public Accounts (the “Comptroller”), nothing in the Plan or this Order shall: (1) affect or impair any setoff or recoupment rights of the Comptroller under applicable bankruptcy and nonbankruptcy law and all such rights are preserved; (2) affect or impair any rights of the Comptroller to pursue any non-debtor third parties for tax debts or claims; (3) be construed to preclude the payment of interest and/or penalties provided under nonbankruptcy law, if any, on the Comptroller’s Administrative Expense Claim(s); (4) modify, to the extent that interest is payable as to any Claim of the Comptroller, the statutory interest rate under applicable nonbankruptcy law; (5) be construed to preclude the payment of interest on the Comptroller’s Priority Tax Claim(s) post-Effective Date, or (6) be construed as a compromise or settlement of any liability, claim, cause of action, suit, right, or interest of the Comptroller.

22. Non-Material Modifications. At any time after the Confirmation Date, the Post-Effective Date Debtor may, without the approval of the Court, make non-material modifications to the Plan to remedy any defect or omission, or reconcile any such inconsistencies between the Plan and the Confirmation Order, as such matters may be necessary to carry out the purposes, intent and effect of the Plan, provided that any such modifications, alterations, or amendments do not conflict with the terms of the Sale Order or materially or adversely affect the interest of any

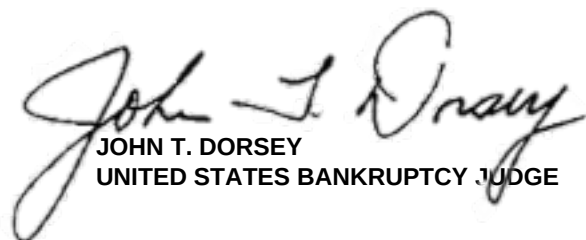
creditor or interest holder; provided, further, that any other modification deemed by the Post-Effective Date Debtor as necessary to carry out the purposes, intent and effect of the Plan shall only occur upon notice and further order of the Bankruptcy Court in accordance with Bankruptcy Code section 1127(b).

23. Conflicts Between Confirmation Order and the Plan. The provisions of the Plan and any instrument or document created or executed pursuant to the Plan, and this Confirmation Order, shall be construed in a manner consistent with each other so as to effect the purpose of each; *provided, however*, that if there is determined to be any inconsistency between any provision in the Plan or in any instrument or document created or executed pursuant to the Plan, and any provision of this Confirmation Order that cannot be so reconciled, then solely to the extent of such inconsistency the provisions of this Confirmation Order shall govern. In the event of any inconsistency between the Plan and the Sale Order, the Court shall determine which provisions shall govern. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent unless expressly stated by further order of this Court.

24. Binding Effect of Sale Order: Nothing herein or in the Plan shall have any impact on the findings or rulings of the Sale Order, with such Sale Order to remain in full force and effect.

25. Service of Confirmation Order. Within five (5) business days of the entry of this Order, the Debtor shall cause Donlin to serve a copy of this Confirmation Order via first class mail with postage prepaid to all of its known creditors and parties-in-interest. Such notice shall be adequate under the circumstances and shall be sufficient to meet the requirements necessary for due process and Bankruptcy Rule 2002(f)(7).

Dated: December 21st, 2022
Wilmington, Delaware



JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE