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)

MODIFIED FIRST AMENDED DISCLOSURE STATEMENT OF THE DEBTOR IN SUPPORT OF MODIFIED FIRST AMENDED LIQUIDATING CHAPTER 11 PLAN

Dated: November 16, 2022
Wilmington, Delaware

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[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 solicitation agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com.

DISCLAIMER

THIS DISCLOSURE STATEMENT IS PROVIDED TO THE CREDITORS OF THE DEBTOR AND OTHER PARTIES-IN-INTEREST FOR THE PURPOSE OF SOLICITING ACCEPTANCES TO THE PLAN THAT ACCOMPANIES THIS DISCLOSURE STATEMENT AND WHICH IS INCORPORATED HEREIN. THE DEBTOR STRONGLY URGES YOU TO READ THIS DISCLOSURE STATEMENT BECAUSE IT CONTAINS IMPORTANT INFORMATION CONCERNING THE DEBTOR'S FINANCIAL AND BUSINESS HISTORY. THIS DISCLOSURE STATEMENT SUMMARIZES AND ANALYZES THE PLAN AND PRESENTS THE RESULTS THAT THE DEBTOR BELIEVES WOULD BE OBTAINED IN A CHAPTER 11 LIQUIDATION. YOU ARE ENCOURAGED TO READ THE PLAN IN FULL AND OBTAIN INDEPENDENT PROFESSIONAL ADVICE IF YOU DEEM IT NECESSARY OR APPROPRIATE. NO PERSON, INCLUDING, WITHOUT LIMITATION, ANY CREDITOR, SHOULD CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS LEGAL, TAX, OR INVESTMENT ADVICE, AND THE DEBTOR DISCLAIMS RESPONSIBILITY FOR ANY SUCH ADVICE. CONSEQUENTLY, EACH PERSON IS STRONGLY URGED TO CONSULT HIS, HER, OR ITS OWN LEGAL COUNSEL, ACCOUNTANTS OR OTHER PROFESSIONAL ADVISORS AS TO ANY LEGAL, TAX, INVESTMENT, AND/OR RELATED MATTERS OR CONSEQUENCES ARISING FROM OR ANCILLARY TO THE PLAN OR ANY OF ITS PROVISIONS OR ANY ACTIONS TO BE TAKEN IN FURTHERANCE THEREOF INCLUDING, WITHOUT LIMITATION, WHETHER TO VOTE IN FAVOR OF THE PLAN.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BASED UPON FINANCIAL AND OTHER INFORMATION SUPPLIED BY THE DEBTOR, ITS ADVISORS, AND, EXCEPT WHERE SPECIFICALLY NOTED, HAS NOT BEEN SUBJECT TO AN AUDIT OR INDEPENDENT REVIEW AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THIS DISCLOSURE STATEMENT IS AN ATTEMPT BY THE DEBTOR TO SET FORTH IN REASONABLE DETAIL INFORMATION SUFFICIENT TO ENABLE HOLDERS OF ALLOWED CLAIMS TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN. ALL HOLDERS OF CLAIMS WITH QUESTIONS ABOUT THIS DISCLOSURE STATEMENT AND ANY OTHER MATERIALS INCLUDED WITH THIS DISCLOSURE STATEMENT ARE INVITED TO ADDRESS WRITTEN INQUIRIES TO THE DEBTOR, IN CARE OF COUNSEL FOR THE DEBTOR. HOWEVER, NO INFORMATION OR REPRESENTATION CONCERNING THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT IS AUTHORIZED BY THE DEBTOR, NOR SHOULD IT BE RELIED UPON IN REACHING A DECISION WHETHER TO VOTE IN FAVOR OF THE PLAN.

NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY THE DEBTOR, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY.

TABLE OF CONTENTS

Page

EXHIBITS

ARTICLE I.

OVERVIEW OF PURPOSE OF DISCLOSURE STATEMENT

ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC) (the "Debtor") presents this *Modified First Amended Disclosure Statement In Support of Modified First Amended Liquidating Chapter 11 Plan* ("Disclosure Statement") to provide each holder of an Allowed Claim entitled to vote sufficient information to make an informed decision as to whether to accept or reject the *Modified First Amended Liquidating Chapter 11 Plan* attached hereto as Exhibit A (the "Plan"). This information includes, among other matters, general background and historical information, an overview of the events of the Chapter 11 Case and Sale process, and an explanation of how payments to creditors under the Plan will be implemented. The Debtor also makes this Disclosure Statement available to, among others, the known holders of Administrative Expense Claims, including Professional Claims, to provide such holders with additional information to evaluate the Plan, as well as holders of Claims and Equity Interests in those Classes not entitled to vote because deemed to either reject or accept the Plan due to the treatment afforded under the Plan.

Accompanying this Disclosure Statement are copies of:

- the Plan;
- the Notice fixing the time for the transmission of Ballots accepting or rejecting the Plan, the date and time of the hearing to consider confirmation of the Plan and related matters, and the time for filing objections to the Plan;
- a Ballot for accepting or rejecting the Plan submitted for the holders of Claims that are entitled to vote to accept or reject the Plan;
- a pre-addressed envelope; and
- additional documents relating to the voting and Plan confirmation process.

ARTICLE II.

DEFINITIONS

Unless otherwise indicated herein, defined terms contained in this Disclosure Statement shall have the meaning ascribed either in the Plan or in the Bankruptcy Code, codified at 11 U.S.C. §§ 101 *et seq*. All terms used in this Disclosure Statement that are not defined in the Plan or in the Bankruptcy Code, but that are defined in the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") or the Local Bankruptcy Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), shall have the respective meanings assigned to such terms by those rules. Creditors, therefore, should carefully review the Plan in conjunction with their review of this Disclosure Statement.

ARTICLE III.

INTRODUCTION AND GENERAL OVERVIEW OF PLAN

The Debtor in this Chapter 11 Case hereby proposes its Plan pursuant to section 1129 of the Bankruptcy Code. The Debtor is the proponent of the Plan within the meaning of Bankruptcy Code section 1129.

The Plan is a liquidating chapter 11 plan that provides for the proceeds generated through the previously-consummated going concern sale of substantially all of the Debtor's operating assets free and clear of all liens, claims, encumbrances, and interests, to be distributed to holders of Allowed Claims in accordance with the terms of the Plan and the priority of claims provisions in the Bankruptcy Code.

Prior to the April 11, 2022 Petition Date, the Debtor received a bid from Ector County Generation LLC, an acquisition entity affiliated with Rockland Capital, LLC (together with its assignees or designees, "Rockland Capital") to acquire substantially all of the Debtor's assets for payment of $91,250,000, subject to potential adjustments. As part of its offer, once accepted by the Debtor, Rockland Capital agreed to serve as "stalking-horse" bidder ("Stalking-Horse Bidder") in that its bid would be subject to an overbid process during the Debtor's chapter 11 case. Following the Petition Date, the Debtor continued to market its assets with the assistance of its investment banker in order to solicit additional bids in higher amounts than submitted by the Stalking-Horse Bidder in accordance with the bid procedures approved by the Bankruptcy Court. Ultimately, the Debtor received an overbid of approximately $96 million from a third-party bidder, and an auction was scheduled for June 22, 2022 involving the Stalking-Horse Bidder and that additional bidder. By the conclusion of the auction conducted by the Debtor and its investment banking firm, the Stalking-Horse Bidder had increased its bid to the net amount of $141,556,250, subject to purchase price adjustments, plus an additional amount of up to $2,700,000 in incentive consideration. The Stalking-Horse Bidder was declared the highest and best bidder. The sale transaction closed, with the Acquired Assets having been sold to the Stalking-Horse Bidder as "Purchaser," on July 12, 2022. Following the closing of the Sale, the Debtor held Cash totaling approximately $154,002,000.

This sale effort was conducted in accordance with, and furtherance of, terms negotiated by the Debtor and the Prepetition Agent and certain Prepetition Secured Lenders that are Consenting Lenders for a consensual chapter 11 process pursuant to the Plan Support Agreement executed prior to the Petition Date.[2] In the Plan Support Agreement, the Consenting Lenders agreed, subject to certain conditions, to forego their entitlement to receive one-hundred percent of the proceeds of their collateral until the full $340 million balance of the Prepetition Term Lender Claims were paid and instead capped their recovery toward that claim at $75 million. As a result of that cap, should the Plan be confirmed and the Plan Support Agreement implemented, as discussed herein, in excess of $65 million that the Prepetition Secured Lenders could otherwise have claimed entitlement to will be distributed to priority and general unsecured creditors of the Debtor. Among the conditions to that cap is that both the Prepetition Secured Lenders and the co-obligors for the Prepetition Term Lender Claims receive protection against post-Effective Date litigation risk,

[2] The Plan Support Agreement is attached as Exhibit A to the *Declaration of John Baumgartner*, Docket No. 2.

requiring that the Prepetition Secured Lenders, Invenergy Thermal Operating I LLC ("ITOI"), and each of their respective subsidiaries, affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, affiliates and representatives receive releases of all claims that could be brought by the Debtor directly or by those pursuing litigation rights of the Debtor derivatively. The Plan includes those releases as part of a global settlement as described further in Article V.I(C) of this Disclosure Statement. For the avoidance of doubt, no third party releases are being sought, and all releases provided under the Plan are solely releases by the Debtor of claims 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. The Debtor does not believe that there is material value to any of the Released Claims and Interests and that, whatever value there may be, the benefit to the Estate and the Debtor's other Creditors of capping the Prepetition Secured Lenders' recovery at $75 million through the Plan Support Agreement far outweighs any potential benefit of foregoing access to those funds and instead pursuing the Debtor's potential litigation rights.

The proposed release provisions of the Plan, involving only claims "owned" by the Debtor as structured in compliance with the Plan Support Agreement, were initially challenged by Direct Energy Business Marketing, LLC ("Direct Energy"), the holder of an asserted claim in the amount of approximately $403 million, in the Derivative Standing Motion (defined below) and in other filings with the Court. When the Court entered an order denying Direct Energy's Derivative Standing Motion, Direct Energy appealed that order to the U.S. District Court, District of Delaware. Separately, the Debtor challenged the amount and allowance of Direct Energy's claim against the Debtor through an Objection to that claim filed on October 14, 2022. Ultimately, at the conclusion of a two-day mediation conducted before the Honorable Christopher S. Sontchi (Ret.) (the "Mediator"), the Debtor and the Prepetition Agent (acting at the direction of the Prepetition Secured Lenders) negotiated terms for a global resolution of disputes between themselves and Direct Energy regarding allowance and treatment of Direct Energy's claim under the Plan. Separate, but inter-related terms were negotiated between Direct Energy, and Invenergy LLC and ITOI, affiliates of the Debtor, for settlement of litigation claims asserted by Direct Energy against those parties. Through this heavily negotiated global settlement, Direct Energy has agreed to support, and not object to, confirmation of a Plan that is consistent with the settlement reached through the mediation. This compromise, which provides Direct Energy to receive a distribution of up to $63 million, enables other holders of allowed general unsecured claims to receive payment in full on a Plan Effective Date projected to occur well-before would be realized were there a contested confirmation process and claim objection proceeding regarding Direct Energy's $403 million asserted claim. As a result of the global settlement, Direct Energy will also be deemed a "Released Party" under the Plan.

Following the Effective Date, the Debtor will remain in existence in order to make the Distributions required under the Plan and to close the Chapter 11 Case, with a Plan-appointed Distribution Agent overseeing those processes. Distributions will commence on the Effective Date and at various intervals following the Effective Date as Disputed Claims are adjudicated and funds held on reserve released to pay those claims. Upon completion of the asset liquidation and distribution under the Plan, the Post-Effective Date Debtor will undertake any steps necessary to achieve dissolution.

A FURTHER, DETAILED DESCRIPTION OF THE PLAN AND ITS TREATMENT OF CLAIMS IS SET FORTH IN **ARTICLES VII THROUGH IX** BELOW, AND YOU ARE URGED TO READ THE ENTIRETY OF THE DISCLOSURE STATEMENT VERY CAREFULLY.

Subject to the restrictions on modifications set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and Article XII of the Plan, the Debtor expressly reserves the right to alter, amend, or modify the Plan one or more times before its substantial consummation, with the prior written consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders.

The Debtor urges all Holders of Claims to vote in favor of the Plan, and believes that the Plan will provide superior recoveries to all such Holders as compared with any alternatives.

ARTICLE IV.

INFORMATION CONCERNING THE DEBTOR'S BUSINESS, ASSETS, AND LIABILITIES

A. Historical Operational Information and Financial Information.

Formed in 2014 as a Delaware limited liability company and a wholly-owned subsidiary of non-debtor Ector County Energy Center Holding LLC, the Debtor is one entity within a portfolio of energy generation and storage companies held, indirectly, by Invenergy Clean Power LLC. Within that portfolio structure, the Debtor is among the group of gas-fired electric power plants owned through intermediate holding companies by Invenergy AMPCI Thermal Power LLC, a joint venture in which Invenergy Clean Power LLC and AMPCI North America Thermal Power Acquisition LLC each holds a fifty percent (50%) interest.

Prior to the sale of substantially all of its assets, the Debtor was in the business of owning and operating the Power Plant, which is a 330 MW natural gas-fired electricity-generating facility located on 32.5 acres of land in Ector County, Texas, just outside of Odessa, that is part of the Permian Basin. Acquisition of the land on which the Power Plant is located and construction of the Power Plant itself commenced in October 2014, financed through a $117,883,780.33 credit facility under which Morgan Stanley Senior Funding, Inc. was administrative agent and The Bank of New York Mellon was Collateral Agent. That facility was ultimately refinanced under the Prepetition Credit Agreement and constitutes a portion of the approximately $337 million outstanding balance of Prepetition Term Lender Claims.

From the Power Plant, the Debtor dispatched energy generated by its two natural gas fueled simple-cycle combustion turbines and related plant equipment, all designed to enable the Power Plant to generate energy and respond quickly at times when demand is "peaking." Connected to the 138kV Holt Switching Station of the Oncor Electric transmission and distribution system, the Debtor sold capacity and energy within the "ERCOT West" region. The Debtor's power generating turbines were fueled by natural gas purchased in the spot market from a select group of suppliers, including Sequent Energy Management, LP. Once purchased, natural gas was transported under a

Gas Service Agreement and related Customer Order with ONEOK WesTex Transmission, L.L.C. and delivered to the Power Plant via the ONEOK WesTex Transmission Pipeline, part of which was originally constructed for the Debtor pursuant to a Facility Construction, Ownership, and Operating Agreement with ONEOK WesTex Transmission, L.L.C. The turbines were maintained in part pursuant to the terms of a Contractual Service Agreement with General Electric International, Inc.

While operating the Power Plant, the Debtor was licensed as a "power generating company" by the Public Utilities Commission of Texas ("PUCT"), and participated in the competitive wholesale electricity market operated by the Electric Reliability Council of Texas ("ERCOT") as a "Qualified Scheduling Entity" ("QSE"), as described more fully below. The Power Plant was placed in service on or about September 28, 2015 and maintained ordinary course peaker operations through the closing of the Asset Sale, with one notable exception, during the extraordinary and prolonged cold weather event that occurred in February 2021 referred to as "Winter Storm Uri."

Broadly, ERCOT functions as an independent system operator or "ISO," overseen by the PUCT and Texas legislature, bearing responsibility for management of the Texas Interconnection power grid. As an ISO, ERCOT schedules power for more than 26 million electric customers over a network that contains approximately 52,000 miles of transmission lines and connects to more than 850 generation units, like the Debtor's. ERCOT operates pursuant to a comprehensive set of rules known as "protocols" that govern the ERCOT market and how market participants, including ERCOT, interact (the "Protocols"). Broadly, power generating companies sell electricity using ERCOT as an intermediary. Generated wholesale power is sold to retail electric providers ("REPs"). Those REPs work with Transmission and Distribution Service Providers or "TDSPs" to ensure that electricity reaches end-user customers. ERCOT is charged with ensuring that electrical supply equals demand in the market by regulating the power generated by various power plants, closely tracking and reporting projected capacity, demand, and reserves. Unlike other commodities, since electricity cannot be stored in significant quantities, it must be produced as and only when needed; electricity supply and demand within the state of Texas is constantly balanced by ERCOT. In addition to the contractual market in which generators, marketers, and retail providers can enter into longer term contracts, the Texas energy market operates as a spot market in which electric generators sell electricity for purchase by load serving entities such as REPs. In the simplest sense, in Texas, power generators place offers with ERCOT to provide electricity and ancillary services to REPs for a particular time period, typically a day or hour ahead, indicating the minimum price at which they would agree to deliver. Wholesale electricity is measured in megawatts ("MW"), and when delivered over a period of time, transactions are based on megawatt-hours ("MWh").

In order to participate in the ERCOT market as a "Resource Entity," the Debtor entered into a Standard Form Market Participant Agreement with ERCOT ("ERCOT SFA") dated April 1, 2015, which required the Debtor to abide by all ERCOT Protocols pertaining to its role in the market, such as the ERCOT Nodal Protocols. Through an amendment of the ERCOT SFA dated April 20, 2020, the Debtor qualified under the Protocols as a Qualified Scheduling Entity or "QSE," a Congestion Revenue Right Account Holder, and a Resource Entity.

The Debtor never had employees, but instead relied on certain non-Debtor affiliates for the day-to-day operation of the Power Plant. First, the Debtor contracted with Invenergy Services LLC ("Invenergy Services"), an affiliate, pursuant to an Energy Management Agreement dated November 2, 2017 ("EMA"), to act as the Debtor's "energy manager," to generally provide energy management, fuel management, and power management services to the Debtor as participant in the ERCOT market. As part of that arrangement, Invenergy Services scheduled and offered power and ancillary services to the Debtor. The arrangement covered participation in the Day-Ahead Market, Ancillary Services Market, and Real-Time Market, with Invenergy Services acting as "QSE Agent" on behalf of the Debtor. Staffing to provide these functions was made available by Invenergy Services.

The administration of all project agreements and general operation, maintenance and oversight of the Power Plant, including oversight and inspection of all maintenance work undertaken by GEI, was conducted by Invenergy Services Thermal US LLC ("Invenergy Thermal") on the Debtor's behalf pursuant to a Facilities Management Agreement dated November 25, 2014 (the "FMA"). Pursuant to the FMA, as of the Petition Date, the Debtor was obligated to pay a management fee to Invenergy Thermal in the approximate amount of $24,520 per month, as well as a monthly administrative expense fee, which reimbursed Invenergy Thermal for human resources, IT, and accounting services provided to the Debtor. Under the EMA, Invenergy Services acted as energy manager for ECEC, a role that entailed Invenergy Services acting as a trader for in-bound acquisitions of fuel to power the Debtor's turbines and outbound dispatch of the produced power. Invenergy Services also served as ECEC's "QSE Agent," and in that capacity, performed some of the most important regulatory, market and compliance tasks for ECEC. For these EMA-related services, ECEC was obligated to pay Invenergy Services a fixed monthly Energy Management Fee that, as of April 2022, was approximately $20,420.54. ECEC also reimbursed Invenergy Services for documented fees paid to third-party gas, power and emission credit brokers and for ERCOT telecommunications fees. All labor was provided directly to the Debtor either by employees of Invenergy Thermal under the FMA, or by employees of Invenergy Services under the EMA. On average, the Debtor paid approximately $250,000 per month for services rendered to it by Invenergy Thermal under the FMA, other than for extraordinary legal fees, and approximately $21,000 to $35,000 per month for services rendered to it by Invenergy Services under the EMA.

From the date that the Power Plant went into operation through May 2021, the Debtor's primary source of revenue was payments received under and in accordance with the heat rate call option ("HRCO"). Pursuant to the HRCO, the Debtor received fixed monthly cash payments from Direct Energy. Following Direct Energy's purported termination of the HRCO after Winter Storm Uri (as discussed more fully in Article IV(C) below), the Debtor no longer received those fixed payments and instead generated revenue primarily through the sale of its energy output as a merchant peaker plant into the ERCOT Day-Ahead Market and Real Time Market along with offering ancillary services based on competitive bid processes. In the latter market, generators like the Debtor essentially make themselves available for sudden deployment in an electric grid emergency to maintain grid stability and security. Prices for ancillary services typically mirror the rise and fall of prices in the Real-Time energy market.

The Day-Ahead Market is a voluntary, financially-binding forward energy market through which market participants commit to buy electricity, and electricity producers commit to sell the

ordered electricity to satisfy the buyer's commitment, one day before the operating day. The pricing is nodal, based on hourly pricing, and is invoiced two business days after the operating day with payments due two days thereafter. That operational shift from operating with HRCO in place to sale of peak power and ancillary services in the Day Ahead Market led to an uneven and difficult to project revenue stream. Because the Debtor's operating expenses were largely driven by the costs of dispatching power, operating expenses were also subject to substantial volatility.

The Debtor's unaudited financial statements for the twelve months ending December 31, 2021 indicate normalized operating revenues of $22,974,152 and normalized operating expenses of $24,308,322, inclusive of $3,308,912 of depreciation expense, for EBITDA of $1,974,742. The normalized results were calculated by excluding the extraordinary impact of the asserted HRCO loss claim asserted by Direct Energy required to be reported in accordance with GAAP, but including the professional fees and other costs incurred in connection with the Debtor's prospective sale and restructuring. The Debtor reported total Cash balances as of December 31, 2021 of $15.9 million, inclusive of the $7 million posted by the Debtor to collateralize the Direct Energy Letter of Credit. Excluding those funds, the Debtor's ending cash position as of December 31, 2021 was approximately $8.9 million.

The Debtor's audited financial statements for the twelve months ending December 31, 2020 reported operating revenues of $71.0 million, and EBITDA of $54.3 million. The Debtor's cash position as of year-end 2020 was $11.7 million. The Debtor's unaudited financial statements for the two months ending February 28, 2022 reported operating revenues of $0.7 million, and EBITDA loss of $(1.9 million). The Debtor's cash position as of February 28, 2022 was approximately $7.1 million, exclusive of the $7 million cash posted to collateralize the Direct Energy Letter of Credit.

On a cash basis, as of March 31, 2022, just ten days prior to the Petition Date, the Debtor collected gross receipts of approximately $2.1 million during the shoulder months of January through March. This period historically represented one of the low points of the Debtor's revenue seasonality. As of the commencement of the Chapter 11 Case, the Debtor's projections indicated a cash balance of $1.34 million as of May 31, 2022. Additionally, the pre-petition projections indicated a dwindling cash balance during the Chapter 11 Case, with a projected cash balance of $0.723 million as of July 31, 2022, even when including anticipated draws of $5.0 million under a then-contemplated debtor-in-possession financing facility. Due to unexpected extreme heat and corresponding power demands, however, the Debtor's financial position was stronger during the summer months prior to the closing of the Asset Sale than was previously projected, with a cash balance of approximately $4,267,000 as of the July 12, 2022 closing of the Asset Sale.

B. The Debtor's Prepetition Indebtedness.

As is described in the *Motion of Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lenders, (III) Modifying Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Dkt. No. 6] (the "Cash Collateral Motion"),[3] the Debtor is a party to the

[3] Capitalized terms used in this Subsection (B) shall have the meanings ascribed in the Cash Collateral Motion.

Prepetition Credit Agreement by and among ITOI, the Debtor and certain of its non-debtor affiliates, each of the Prepetition Secured Lenders, and the Prepetition Agent.

In accordance with the Prepetition Credit Agreement as originally executed, the Prepetition Secured Lenders agreed to provide term and revolving loans to the Debtor, and to issue Revolving Letters of Credit. As of the Petition Date, a principal balance of approximately $337,319,920.82 was outstanding under the term loans extended pursuant to the Prepetition Credit Agreement (the "Prepetition Term Loans"), consisting in part of the approximately $117 million Power Plant construction loan refinancing, and Revolving Letters of Credit totaling approximately $64,553,598.00 were issued and outstanding, exclusive of fees, interests, and other costs to which the Prepetition Secured Lenders are entitled pursuant to the Prepetition Loan Documents.

The Debtor is a primary obligor for all obligations owed to the Prepetition Secured Lenders. The Debtor's obligations, including its primary liability for the approximately $340 million balance of the Prepetition Term Loans as of the Petition Date, were secured by a first-priority security interest in, and lien granted to the Prepetition Agent for the ratable benefit of Prepetition Secured Lenders on, substantially all of the Debtor's real and personal property assets and the proceeds thereof. The Prepetition Agent, on behalf of the Prepetition Secured Lenders, perfected the Prepetition Secured Lenders' security interests in "Collateral" as defined in the Prepetition Credit Agreement (the "Prepetition Collateral") held by the Debtor through the filing of UCC-1 financing statements with the Office of the Delaware Secretary of State and a Transmission Utility Financing Statement with the Office of the Texas Secretary of State.

Separately, the Prepetition Secured Lenders' security interests in cash and cash equivalents generated by the Debtor were perfected under the Depositary Agreement. The Depositary Agreement provides the Prepetition Agent, on behalf of the Prepetition Secured Lenders, a first priority lien and control over the Debtor's right, title and interest in, funds on deposit in various "Collateral Accounts," maintained in the ordinary course. The Collateral Accounts included an Ector Revenue Account, receiving all income and receipts generated through operation of the Power Plant, and an Ector Operating Account, from which certain of the Debtor's operating and maintenance expenses were paid on a monthly basis, as well as a local account used to pay certain vendors providing services to the Power Plant. The Debtor's obligations to the Prepetition Secured Lenders were also secured by a mortgage granted on the Debtor's owned real estate assets and improvements and easement rights pertaining to the Power Plant property in Ector County, Texas, through a *Deed of Trust, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing*, as amended on August 22, 2019. Those interests were perfected through recording with the Public Records Office of Ector County, Texas.

As of the Petition Date, the Debtor was subject to a disputed, unliquidated, unsecured claim for damages demanded by Direct Energy, as described below, in the approximate amount of $403 million; that HRCO-related obligation was partially backed by a letter of credit in the amount of $7 million posted in Direct Energy's favor prior to the Petition Date. Direct Energy has since drawn on that letter of credit and recovered the $7 million available leaving Direct Energy with an unsecured, unliquidated and disputed claim of approximately $396 million. Other asserted, unresolved unsecured claims as of the Petition Date included: (a) the disputed, unliquidated claims alleged to have arisen out of Winter Storm Uri, including but not limited to those asserted by plaintiffs in over 113 personal injury and property damage lawsuits being administered in the

Texas MDL which the Debtor believes are covered by its prepetition insurance policies; (b) certain "default uplift charges" asserted by ERCOT as a means of redistributing unsatisfied payment obligations of ERCOT participants related to Winter Storm Uri; (c) accrued and unpaid trade and miscellaneous unsecured claims that accrued prior to the Petition Date in the estimated amount of approximately $1,162,000, exclusive of prepetition deposits funded in favor of certain suppliers later applied in recoupment of those claims; and (d) potential claims by executory contract counterparties arising from the rejection of those contracts not assumed and assigned to the Purchaser in connection with the Asset Sale under the Plan.

C. Events Leading Up to the Filing of Chapter 11.

1. Market Disruption and Litigation Resulting from Winter Storm Uri.

As noted above, the Power Plant was placed in service on or about September 28, 2015 and maintained continuous ordinary course peaker operations through the closing of the Asset Sale other than during the extraordinary and prolonged cold weather event that occurred in February 2021 referred to as "Winter Storm Uri."

During Winter Storm Uri, in February 2021, ERCOT invoked its "scarcity pricing" Protocols, setting electricity prices at $9,000/MWh during the emergency. In contrast, the average price during 2020 for the ERCOT day ahead market was $22/MWh. The impact of Winter Storm Uri on pricing and demand was felt throughout the Texas energy market.

The Debtor was among the ERCOT industry participants negatively impacted by Winter Storm Uri. As a result of the storm, the Debtor was unable to procure natural gas needed to power its turbines for a period of several days when production systems that fed into the gas pipelines froze, effectively preventing the Debtor from dispatching power at a time of extreme demand.

At the time of the storm, the Debtor was party to a HRCO embodied in an ISDA 2002 Master Agreement and associated Transaction Confirmation with Direct Energy dated October 18, 2017. Under the HRCO, Direct Energy paid a monthly premium to the Debtor for fixed pricing as to energy and ancillary services. The unprecedented conditions of Winter Storm Uri resulted in the Debtor being unable to deliver power or ancillary services. The Debtor asserted the Storm Uri-caused conditions that precluded its delivery of power rendered it unable to meet Direct Energy's demand for performance under the HRCO. Direct Energy contended that the Debtor failed to perform under the HRCO and purported to terminate the HRCO in May 2021. Direct Energy followed that purported termination with litigation in the New York Supreme Court asserting a claim for damages in excess of $400 million, of which $393 million was alleged to be owed for the month of February 2021.

Additional litigation arising from the impact of Winter Storm Uri was brought against the Debtor and other utilities and market participants. The Debtor was named as a defendant in approximately 113 personal injury and/or property damage tort lawsuits currently pending in the Texas state court system, litigation that has been stayed as a result of the filing of the Debtor's chapter 11 case, and may be named in additional suits. As indicated by the Debtor's Schedules, filed on May 13, 2022 [Dkt. No. 146], prior to the Petition Date, the Debtor had procured various forms of insurance coverage, including primary, umbrella and excess commercial general liability

policies that broadly insure against third-party claims asserted against the Debtor as a result of the Debtor's business activities in operating the Power Plant, including during Winter Storm Uri. Based on its assessment of the scope of the litigation claims asserted and threatened to date, the Debtor's management believes that its insurance coverage is sufficient to satisfy any damage claims that proceed to judgment against the Debtor as well as associated defense costs following the Plan's Effective Date.

2. Negotiation of and Entry into the Plan Support Agreement.

Following the purported termination of the HRCO, the Debtor shifted from generating revenue under a pre-agreed pricing model to primarily operating as a merchant peaker plant selling power and ancillary services in the Day Ahead and real-time markets. That shift resulted in uneven cash flow attendant upon changing from primarily a HRCO-driven revenue model with a contractually established stream of minimum monthly payments to selling energy in the ERCOT market based on competitive bid processes. The monthly expense burden resulting from the litigation relating to the purported HRCO termination and the over 113 personal injury and/or property damage cases has further caused uneven and difficult to predict cash flow.

Other energy producing companies impacted by the storm opted to address challenges arising from the storm by engaging in asset disposition transactions. Those transactions revealed a seemingly strong mergers and acquisitions ("M&A") market for ERCOT power generation assets, indicating that investors had an interest in acquiring generation assets. For example, Agilon Energy Holdings II LLC completed a robust bankruptcy court supervised sale process for its peaker plant during 2022 for a price of $439/kW. In 2021, Temple Generation I, LLC sold its combined cycle gas turbine plant for $560/kW.

The Debtor had twice before tested the M&A market, undertaking sale exploration processes in 2016 and again in 2018. Those processes, however, generated an insufficient level of interest to warrant engaging in a transaction. Sale efforts in 2018 generated expressions of interest in amounts that were less than half the per-kilowatt price realized in recent power plant deals. The apparent increase in market interest recently caused the Debtor to conclude that testing the market again was warranted. The Debtor also concluded that, as a practical matter, maximizing value for its creditors also turned on affording a purchaser the comfort that it would receive title to the Power Plant free and clear of liens, claims, and interests, which is attainable only through a sale under section 363 of the Bankruptcy Code. To that end, the Debtor hired an investment banker, Perella Weinberg Partners LP and Tudor, Pickering Holt & Co. ("PWP"), as well as Grant Thornton LLP ("Grant Thornton"),a financial advisory firm, and Holland & Knight as its lead restructuring counsel. In addition, a Special Committee of the Invenergy AMPCI Board of Managers,[4] inclusive of an independent member, Colin M. Adams of M3 Partners, was appointed to oversee all decisions relating to ECEC and the potential means of addressing its challenges with delegated authority over all board-level decisions regarding ECEC ("Special Committee"). The CRO, John Baumgartner of Grant Thornton, was later appointed to serve in January, 2022.

[4] Two Special Committee members, other than the independent director, serve on the Board of Managers of Invenergy AMPCI Thermal Power LLC, a joint venture in which Invenergy Clean Power LLC and AMPCI North America Thermal Power Acquisition LLC each hold a fifty percent (50%) interest.

The Prepetition Credit Agreement placed restrictions on both the Debtor's ability to undertake a sale of its assets and on the outcome for the Debtor's unsecured creditors in the event that a chapter 11 case were commenced in order to effectuate that sale. That agreement contained a general prohibition on asset sales with limited exceptions. One of those exceptions was that the Debtor could sell its assets if there were not a default under the Prepetition Credit Agreement, the sale price was not less than $75 million, and the Prepetition Term Lenders received at least $75 million, inclusive of the sale proceeds, at the conclusion of that transaction.

The Debtor had defaulted under the Prepetition Credit Agreement in May 2021 when Direct Energy terminated the HRCO, demanded payment of approximately $400 million and the Debtor did not make the demanded payment. Negotiations with the Prepetition Secured Lenders resulted in execution of an amendment to the Prepetition Credit Agreement that included a conditional and forfeitable waiver of that default. The filing of a chapter 11 case in order to effect the sale that the Debtor had determined was in the best interests of the Debtor and its Creditors would have been a second default. Failure to achieve a waiver of the default arising from a chapter 11 case's filing, or forfeiting the waiver of the default arising from not satisfying the Direct Energy $400 million HRCO termination claim, would have in effect precluded the Debtor from pursuing its sale strategy and obviated any obligation of the Prepetition Secured Lenders to limit their recovery upon a sale of the Debtor's assets to $75 million. The Prepetition Secured Lenders' waiver and consent was necessary in order to maximize value for and return to the Debtor's Creditors.

To that end, over the course of several months, the Debtor engaged in negotiations with an ad hoc group of the Prepetition Secured Lenders regarding the provisions of the Plan Support Agreement and a related fourth amendment of the Prepetition Credit Agreement. The collective impact of those two agreements was that the Prepetition Secured Lenders agreed to support the Chapter 11 Case and confirmation of a liquidating chapter 11 plan that enabled the asset sale process to proceed. The Plan Support Agreement also afforded the Debtor access to Prepetition Secured Lenders' cash collateral to fund the Chapter 11 Case, and limited the Prepetition Secured Lenders' recovery to $75 million on certain conditions, consequently making funds available for distribution to unsecured creditors that were otherwise committed to payment of the $340 million outstanding balance of the Prepetition Term Loans.

3. Prepetition Marketing Efforts.

The Debtor, assisted by PWP and the Debtor's other professionals, engaged in a robust prepetition marketing process. In particular, PWP worked closely with the Debtor's management and professional teams to develop a marketing strategy that started with the development and circulation of a "teaser" to solicit market interest, was followed by a confidential information memorandum provided to those who expressed an interest and executed a non-disclosure agreement, and then afforded broad due diligence to those parties through access to a virtual data room and management presentation.

Starting on December 1, 2021, PWP initiated a broad marketing outreach to a large group of potential buyers, comprised of strategic investors already operating in the power production industry, participants in related industries potentially interested in vertical integration, hedge funds, private equity funds, energy traders and other potential buyers. The list of these potential

buyers was developed by PWP, based upon its significant experience in the energy industry and expertise in the sale of power assets similar to those in this case, as well as PWP's knowledge of potential buyers who may have an interest in the Debtor's business. In aggregate, PWP contacted over one hundred and three (103) potentially interested parties. In response to the PWP marketing and outreach efforts, thirty-five (35) prospective bidders executed a non-disclosure agreement and gained access to a data room containing diligence information on the Debtor's business. On February 4, 2022, PWP received several binding bids to acquire the Debtor's business, while several additional parties indicated their interest in participating in a post-petition overbid process.

PWP presented the bids to the Debtor's management and the Special Committee, which has been designated with the corporate authority to make all decisions affecting the business and operations of, and take all actions deemed necessary, appropriate or advisable on behalf of, the Debtor. The Debtor and the Special Committee, in consultation with the Debtor's advisors, analyzed all of the bids received and selected the bid submitted by Rockland as the most favorable for the Debtor and its creditors to be the "stalking-horse" bid. In evaluating the bids received, the Debtor analyzed, among other things: (i) the form and amount of consideration offered; (ii) each bidder's ability to close; (iii) the structure of the proposed transaction; (iv) the proposed timeline; and (v) any execution or other risks. The Debtor also consulted with certain key stakeholders before and after the stalking horse bids were submitted.

After full consideration of market factors and upon consulting with the Debtor's advisors, the Debtor, upon authority and direction of the Special Committee, elected to initiate the Chapter 11 Case to pursue a sale of the Power Plant to the Stalking Horse Bidder or the highest bidder identified in a post-petition process to be conducted with authority of this Court pursuant to section 363 of the Bankruptcy Code, with the net proceeds to be distributed to the Debtor's creditors under a liquidating chapter 11 plan. The Chapter 11 Case was initiated on April 11, 2022.

ARTICLE V.

THE CHAPTER 11 CASE

The following is a brief description of certain major events that occurred during this Chapter 11 Case.

A. First Day Pleadings and Orders.

On the Petition Date, in addition to the voluntary petition for relief Filed by the Debtor under chapter 11 of the Bankruptcy Code, the Debtor also filed a number of pleadings and applications seeking certain "first day" relief, including the following:

1. Claims Agent Motion.

The Debtor Filed the *Application of Debtor for Entry of An Order Authorizing the Retention and Appointment of Donlin, Recano & Company, Inc. as Claims and Noticing Agent for the Debtor Effective as of the Petition Date* [Dkt. No. 3] (the "Claims Agent Motion"), requesting, among other things, authority to appoint a noticing and claims agent to assist with the Chapter 11 Case. An Order approving the Claims Agent Motion was entered on April 13, 2022 [Dkt. No. 69] (the "Claims Agent Order"). Donlin, Recano & Company, Inc. ("Donlin") is in possession of a

retainer delivered prepetition in the amount of $20,000, and will apply that retainer in payment of outstanding fees with approval of the Bankruptcy Court at a later date.

2. Cash Management Motion.

The Debtor Filed the *Motion of Debtor for Interim and Final Orders (i) Authorizing Debtor to (a) Continue Existing Cash Management System, and (b) Maintain Existing Bank Accounts and Business Forms; (ii) Waiving Requirements of 11 U.S.C. § 345(b); and (iii) Granting Related Relief* [Dkt. No. 4] (the "Cash Management Motion"), requesting, among other things, authority to maintain use of the Debtor's prepetition business forms, cash management system, and certain of its prepetition bank accounts. An interim Order approving the Cash Management Motion was entered on April 13, 2022 [Dkt. No. 71] (the "Interim Cash Management Order"), and a final Order approving the Cash Management Motion was entered on May 31, 2022 [Dkt. No. 184] (the "Final Cash Management Order").

3. Utilities Motion.

The Debtor Filed the *Motion of Debtor for Interim and Final Orders (i) Prohibiting Utility Providers from Altering, Revising or Discontinuing Utility Services, (ii) Approving Proposed Adequate Assurance of Payment to Utility Providers and Authorizing Debtor to Provide Additional Assurance, (iii) Establishing Procedures to Resolve Requests for Additional Assurance, and (iv) Granting Related Relief* [Dkt. No. 5] (the "Utilities Motion"), requesting, among other things, authorization to establish a deposit (the "Adequate Assurance Deposit") of $16,130.00 to guarantee payment to the Debtor's utility providers in order to allow the Debtor to operate without the threat of imminent termination of electricity, water, internet, and similar utility products and services. An interim Order approving the Utilities Motion was entered on April 18, 2022, and a final Order approving the Utilities Motion was entered on June 5, 2022 [Dkt. No. 123]. No disbursements have been made from the Adequate Assurance Deposit. With the Sale consummated and the post-petition utility bills having been paid by the Debtor, the Adequate Assurance Deposit has been re-designated as Cash on Hand.

4. Cash Collateral Motion.

The Debtor Filed the *Motion of Debtor for Interim and Final Orders (i) Authorizing the Debtor to Use Cash Collateral, (ii) Granting Adequate Protection to Prepetition Secured Lenders, (iii) Modifying Automatic Stay, (iv) Scheduling a Final Hearing, and (v) Granting Related Relief* [Dkt. No. 6] (the "Cash Collateral Motion"), requesting authority to, among other things, use the Prepetition Secured Lenders' cash collateral (the "Cash Collateral"), grant adequate protection liens, and modify the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement the terms of the Cash Collateral Motion. Interim Orders approving the Cash Collateral Motion were entered on April 14, 2022 [Dkt. No. 71] and May 6, 2022 [Dkt. No. 134] and a final Order approving the Cash Collateral Motion was entered on June 3, 2022 [Dkt. No. 195] (the "Final Cash Collateral Order").

As adequate protection against the diminution in value for the Debtor's use of Cash Collateral, if any, the Debtor sought to afford, and the Final Cash Collateral Order granted to the Prepetition Agent (on behalf of the Prepetition Secured Lenders) among other things, (i)

superpriority claims to secure any diminution in value of the Cash Collateral, (ii) liens on substantially all of the Debtor's assets to secure any diminution in value of the Cash Collateral, which liens include, but are not limited to, superpriority liens in the proceeds of Avoidance Actions, and (iii) all reasonable fees and expenses incurred or accrued, whether prior to or after the Petition Date, including and limited to reasonable fees and expenses of Davis Polk & Wardwell LLP and Richards, Layton & Finger P.A. as counsel to the Prepetition Agent and an ad hoc group of Prepetition Secured Lenders. As part of the adequate protection, the Debtor stipulated to the priority and amount of the Prepetition Secured Obligations, including that, among other things, the Prepetition Secured Obligations total not less than $476,873,518.82 arising from (i) the Prepetition Term Lender Guaranty Claim against the Debtor of at least $337,319,920.82, (ii) the Prepetition Term Loan Prepayment Claims against the Debtor of $75,000,000, plus reasonable fees and expenses of the Prepetition Agent and the Prepetition Term Lenders, including reasonable fees and expenses of counsel (but limited to reasonable fees and expenses of Davis Polk & Wardwell LLP and Richards, Layton & Finger P.A.) and (iii) the Prepetition Revolving Lender Guaranty Claims against the Debtor for an amount not less than $64,553,598, plus fees, expenses, and interests and any other amounts payable under the Prepetition Credit Agreement (the "Debtor Stipulations").

Direct Energy objected to entry of the first interim Cash Collateral Order through its *Omnibus Objection to Debtor's (I) Motion to Use Cash Collateral and Grant Adequate Protection, (II) Bid Procedures Motion, and (III) Shared Services Motion* [Dkt. No. 118] (the "Omnibus First Day Objection") and of the Final Cash Collateral Order through its *Objection to Debtor's Motion for Entry of a Final Order (I) Authorizing the Debtor to Obtain Post-Petition Financing Secured by Priming Liens, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Dkt. No. 156] arguing, among other things, that (i) the Debtor's obligation to deliver $75 million of the Asset Sale proceeds to the Prepetition Secured Lenders did not exist before the execution of Amendment No. 4 to the Prepetition Credit Agreement, rendering execution of that amendment improper, and (ii) the Debtor's waiver of marshaling rights was inappropriate, and marshaling rights should be preserved. In response to the Omnibus First Day Objection, the Debtor Filed the *Reply of Debtor to Direct Energy Marketing, LLC's Omnibus Objection to Debtor's (I) Motion to Use Cash Collateral and Grant Adequate Protection, (II) Bid Procedures Motion, and (III) Shared Services Motion* on May 24, 2022 [Dkt. No. 158], arguing that Direct Energy's objection was unfounded, because, among other reasons, the Debtor was a primary obligor to the obligations under the Prepetition Credit Agreement from the inception, and marshaling was inapplicable to non-debtor assets. In a hearing held on June 2, 2022, the Court overruled Direct Energy's objections to entry of the Final Cash Collateral Order, finding (i) the Debtor to have been primarily liable under the Prepetition Credit Agreement prior to execution of Amendment No. 4, such that execution of Amendment No. 4 could not have generated new obligations on the part of the Debtor, and (ii) that Direct Energy's marshaling theory was meritless as it was seeking to encompass non-debtor property, which is beyond the scope of marshaling. *See* June 2, 2022 Hr'g Tr. [Dkt. No. 198] at 9:8–9:13 ("As [the Court] previously mentioned, the credit agreement recognizes that the debtor was a guarantor of payment, not collectability, and that it was primary—primarily obligated, not merely a surety."); and *id.* at 8:9–8:10 ("While some exceptions have been recognized to the common debtor requirement, none of them are applicable here.").

Pursuant to the Final Cash Collateral Order, the Debtor Stipulations became binding on other parties in interest as of June 28, 2022 (the "Challenge Period Deadline") except to the extent

that a party challenged the Debtor Stipulations prior to that date or the Bankruptcy Court granted an extension. As discussed in greater detail in Article V(H) below, by motion dated May 25, 2022, Direct Energy sought derivative standing to pursue certain of the Debtor's causes of action. [Dkt. Nos. 163, 201]. That motion extended the Challenge Period Deadline, and the associated finality of the Debtor Stipulations until two days following entry of an Order denying Direct Energy's standing motion. Since the Derivative Standing Motion has been denied through Court Order, the Debtor Stipulations are in effect as to all parties-in-interest.

B. Shared Services Motion.

On April 12, 2022, the Debtor Filed the *Motion of Debtor for Entry of Order (i) Authorizing the Debtor to Continue to Perform under Shared Services Agreements, (ii) Authorizing Payment of Post-petition Obligations Accruing under Shared Services Agreements, and (iii) Granting Related Relief* [Dkt. No. 34] (the "Shared Services Motion"), requesting authority to, among other things, (i) continue to perform under the EMA and FMA, pursuant to which the Debtor receives administrative, operational and energy trading services from its non-debtor affiliates, Invenergy Services and Invenergy Thermal, necessary to ensure the day-to-day operations of the Power Plant; and (ii) reimburse Invenergy Thermal for certain retention payments paid to the individuals retained by Invenergy Thermal to operate the Power Plant on a day to day basis.

Through its Omnibus First Day Objection, Direct Energy objected to the relief requested in the Shared Services Motion. Primarily, Direct Energy asserted that the requested relief was inappropriate, because the employees to receive the payments were employed by Invenergy Thermal under the Shared Services Agreements and Invenergy Thermal was reimbursed for their salaries by the Debtor, and Invenergy Thermal was contractually obligated to continue performance prior to assumption or rejection, so the payments were to be made to "insiders" and therefore were impermissible under section 503(c) of the Bankruptcy Code. Through its Reply to the Omnibus First Day Objection, the Debtor argued that the relief sought in the Shared Services Motion was necessary and appropriate under the circumstances, and that no authority was sought for payments to "insiders," but rather payments to rank and file employees. On June 2, 2022, the Court entered an Order, in a form modified by the Debtor, approving the Shared Services Motion [Dkt. No. 194] on June 3, 2022.

C. Employment and Compensation of Debtor's Professionals and Advisors.

The Debtor has Filed retention applications for certain professionals to represent and assist in the administration of the Chapter 11 Case. Many of these professionals have been actively involved with the negotiation and development of the terms of the Plan and the transactions contemplated thereunder, and many of these professionals will continue to provide needed services throughout the Chapter 11 Case.

1. Retention of Holland & Knight.

The Debtor has retained Holland & Knight, LLP ("H&K") as its bankruptcy counsel. H&K is being compensated on an hourly basis subject to Bankruptcy Court approval through the fee application process. The Debtor will also reimburse H&K for all reasonable out of pocket expenses. H&K was approved as bankruptcy counsel pursuant to the *Order Authorizing Retention*

and Employment of Holland & Knight LLP as Counsel for Debtor and Debtor-in-Possession Effective as of the Petition Date [Dkt. No. 170]. H&K is holding a prepetition retainer of approximately $116,384.00.

2. Retention of Polsinelli.

The Debtor has retained Polsinelli PC ("Polsinelli") as its bankruptcy co-counsel. Polsinelli is being compensated on an hourly basis subject to Bankruptcy Court approval through the fee application process. The Debtor will also reimburse Polsinelli for all reasonable out of pocket expenses. Polsinelli was approved as bankruptcy co-counsel pursuant to the *Order Authorizing Retention and Employment of Polsinelli PC as Co-Counsel to the Debtor Effective as of the Petition Date* [Dkt. No. 173]. Polsinelli is holding a retainer of $50,000.00.

3. Retention of Grant Thornton and CRO.

The Debtor retained Grant Thornton LLP ("GT") to provide a chief restructuring officer and related professionals and services. GT is being compensated at a set monthly fee of $50,000 for the provision of a chief restructuring officer, and on an hourly basis for other related professionals and services, subject to Bankruptcy Court approval. The Debtor will also reimburse GT for all reasonable out of pocket expenses. GT was approved to provide these services pursuant to the *Order Granting Application of Debtor for Order Authorizing Debtor to (i) Employ and Retain Grant Thornton LLP to Provide the Debtor a Chief Restructuring Officer and Certain Additional Personnel, and (ii) Designate john D. Baumgartner as Debtor's Chief Restructuring Officer Effective as of the Petition Date* [Dkt. No. 183].

4. Retention of PWP.

On April 25, 2022, the Debtor Filed the *Application of Debtor or Order Authorizing the Employment and Retention of Perella Weinberg Partners LP as Investment banker to Debtor Effective as of the Petition Date* [Dkt. No. 96] (as supplemented at Dkt. No. 149, the "PWP Application"), seeking to retain Perella Weinberg Partners LP (together with its energy merchant and investment banking division, Tudor, Pickering, Holt & Co., "PWP") to serve as its investment banker and to advise the Debtor on various transaction opportunities that may arise through this Chapter 11 Case. The engagement agreement with PWP provides that PWP will receive a monthly advisory fee, and would also receive additional compensation in the form of a success fee depending upon what type of transaction was ultimately consummated. *See* Dkt. No. 149-1. On June 16, 2022, the Bankruptcy Court entered an Order approving the PWP Application (the "PWP Retention Order") [Dkt. No. 238]. As is discussed below, following the consummation of the Sale, the Debtor terminated the services of PWP and PWP has been paid for its services.

5. Retention of Crowell.

On May 10, 2022, the Debtor Filed the *Application of Debtor for Order Pursuant to Sections 327(e) and 328(a) of the Bankruptcy Code Authorizing the Employment and Retention of Crowell & Moring LLP as Special Litigation Counsel for Debtor and Debtor-in-Possession* [Dkt. No. 139] (the "Crowell Application"), seeking to retain Crowell & Moring LLP ("Crowell") as special litigation counsel to represent the Debtor in litigation initiated by Direct Energy. On June

16, 2022, the Bankruptcy Court entered an Order approving the Crowell Application [Dkt. No. 237]. Crowell is holding a retainer of approximately $155,191.00.

6. Fee Procedures for Debtor's Professionals and Advisors.

On April 25, 2022, the Debtor Filed the *Motion of Debtor for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Dkt. No. 97] (the "Fee Procedures Motion"), seeking authorization to establish a procedure for the monthly allowance and payment of compensation for the Debtor's professionals and advisors (the "Fee Procedures"). The Fee Procedures require monthly statements be submitted by each professional and advisor and allow parties twenty-one (21) days to review and, if necessary, object to any fees. At the end of that period, 80% of the fees (and all of the expenses) would be paid, with the remaining 20% being held back pending the submission and Court review of the interim fee applications, submitted by each professional and advisor every three months. On May 6, 2022, the Bankruptcy Court entered an Order approving the Fee Procedures Motion. As a result, the Debtor's Professionals have been receiving payments in accordance with the Fee Procedures for the duration of the Case.

7. Retention of Ordinary Course Professionals.

On July 1, 2022, the Debtor Filed the *Motion of Debtor for Entry of an Order Authorizing Retention and Payment of Professionals Utilized by Debtor in the Ordinary Course of Business* [Dkt. No. 271] (the "OCP Motion"), seeking approval of the proposed procedures to retain professionals (the "Ordinary Course Professionals") utilized by the Debtor in the ordinary course of business on an as needed basis and to pay such professionals for fees and expenses incurred, subject to certain limitations, without further Order of the Court. Specifically, the Debtor identified certain Ordinary Course Professionals and requested that within fifteen (15) days of the later to occur of (a) the entry of the proposed Order on the OCP Motion and (b) the date such Ordinary Course Professionals commence providing post-petition services to the Debtor, a declaration certifying that such Ordinary Course Professional does not hold or represent any interest adverse to the Debtor or its estate with respect to the matter on which the Ordinary Course Professional is retained. Additionally, the Debtor identified certain Ordinary Course Professionals it sought authorization to retain (the "Ordinary Course Professionals"), including the following:

(i) Locke Lord LLP to provide legal services in connection with the evaluation and potentially administration of claims arising out of the Texas MDL;

(ii) Michael Gray & Rodgers LLP to provide legal services in connection with real estate disputes; and

(iii) Stahl, Davies, Sewell, Chavarria & Friend, LLP to provide legal services in connection with real estate title and conveyance issues.

No objections to the OCP Motion were Filed prior to the July 19, 2022 objection deadline, although informal comments were received from the UST. The Bankruptcy Court entered the Order granting the OCP Motion on July 25, 2022 [Dkt. No. 299] ("OCP Order").

8. Payment of PWP Success Fee.

On July 20, 2022, the Debtor Filed the *Motion of Debtor for Entry of an Order Authorizing the Debtor's Payment of a Sale Fee to Perella Weinberg Partners LP* (the "PWP Success Fee Motion") [Dkt. No. 292], seeking authority to pay PWP a "success fee" in the amount $2,656,093 (the "Success Fee") in connection with the Asset Sale, in accordance with the terms of the PWP Application, as approved by the PWP Retention Order. Specifically, as set forth in the PWP Success Fee Motion, the Success Fee was calculated based on 2% of the $144,256,250 Transaction Value (as defined in the PWP Success Fee Motion). The Bankruptcy Court entered an Order approving the PWP Success Fee Motion on August 12, 2022 [Dkt. No. 332]. As a result, PWP has received payment of the Success Fee and all monthly fees, and its engagement has been terminated.

9. Retention of Donlin as Claims and Balloting Agent.

On July 27, 2022, the Debtor Filed the *Application of Debtor for Entry of an Order Authorizing Retention and Appointment of Donlin, Recano & Company, Inc. as Claims and Balloting Agent Effective July 13, 2022* (the "Balloting Agent Motion") [Dkt. No. 301], seeking authority to expand the scope of Donlin's retention under the Claims Agent Order to include various additional services, including those in connection with noticing, claims management and reconciliation, plan solicitation, balloting, preparation of an official ballot certification, providing a confidential data room as necessary, and management and coordination of distributions pursuant to a chapter 11 plan confirmed in the Chapter 11 Case. The Bankruptcy Court entered an Order approving the Balloting Agent Motion on August 12, 2022 [Dkt. No. 333].

D. Schedules, Claims Process and Bar Date.

1. Section 341(a) Meeting of Creditors. On May 16, 2022, the UST presided over the section 341(a) meeting of creditors in the Chapter 11 Case.

2. Schedules and Statements.

The Debtor Filed its schedule of assets and liabilities, schedules of executory contracts (collectively, the "Schedules"), and statement of financial affairs (collectively, the "Bankruptcy SOFAs") with the Bankruptcy Court on May 13, 2022, as amended on June 15, 2022. *See* Dkt. Nos. 146, 233. A copy of the Bankruptcy Schedules and Bankruptcy SOFAs may be obtained (i) free of charge, by visiting the Debtor's restructuring website at https://www.donlinrecano.com/Clients/ecec/Index, (ii) emailing Donlin at ececinfo@donlinrecano.com or calling at 1-800-361-2782, or (iii) writing to Donlin at Donlin, Recano & Company, Inc., Re: Ector County Energy Center LLC, P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219.

In the Schedules, the Debtor scheduled approximately $23.6 million in assets, comprised of, among other things, cash, real estate, equipment, and intellectual property, as outlined in the following chart:

Asset Type	Estimated Value of Debtor's Interest as of Petition Date
Cash on Hand	$3,600,825.00
Letter of Credit and Insurance Benefits	$9,450,569.00
Accounts Receivable	$735,437.49
Inventory (including natural gas)	$742,981.26
Then-contingent interest in escrow deposit account in connection with APA	$9,125,000.000
Equipment	Unknown
Intellectual and Intangible Property	Unknown
Real Estate	Unknown

These assets include prepetition retainers funded by the Debtor for its various professionals totaling approximately $322,000; these retainers will be applied to fees due to the professionals following confirmation with the Plan, in accordance with further Court orders. As stated below, the $1 million cash deposit held by Sequent Energy Management as of the Petition Date was applied to post-petition invoices issued as gas was supplied to the Debtor. Pursuant to a Stipulation entered into between the Debtor and ERCOT, filed on October 10, 2022 [Dkt. No. 414] and approved pursuant to an order dated October 11, 2022 [Dkt. No. 416], ERCOT has refunded all but $12,010.36 of cash posted in its favor during the prepetition period to the Debtor.

In the Schedules, the Debtor also scheduled approximately $807.2 million in liabilities as of the Petition Date, as summarized in the following chart:

Liability Type	Amount Scheduled
Secured Claims	$401,878,113.82
Priority Unsecured Claims	$444,954.14
General Unsecured Claims	$404,895,363.05

The largest portion of the general unsecured claims scheduled consisted of Direct Energy's Disputed General Unsecured Claim of $403 million, which liability the Debtor disputed, and ultimately negotiated terms for allowance of Direct Energy unsecured claim, as discussed further herein. By Stipulation, discussed above, ERCOT has also waived the right to assert a proof of claim against the Debtor for any unfunded settlement or default uplift charges, with its sole recourse limited to recoupment against the $12,010.36 remaining cash deposit. The $401,878,113.82 secured claim scheduled in favor of the Prepetition Secured Lenders will be satisfied, solely with respect to the Debtor under the Plan and Plan Support Agreement, through the $75 million payment to the Prepetition Secured Lenders in Class 2. The Scheduled priority debt owing to the Ector County Appraisal District for the Debtor's share of 2022 property taxes,

of approximately $390,971, has been satisfied in accordance with the Sale Order. The scheduled priority claim of the PUCT in the amount of $52,206 will be paid, in full, under the Plan, as will the priority tax claims asserted by the State of Texas Comptroller's office of approximately $30,027.41 unless not Allowed.

3. Bar Date(s).

Pursuant to the Bar Date Order, the Bankruptcy Court established August 25, 2022 as the last date by which Proofs of Claim (including Claims under Bankruptcy Code section 503(b)(9)) relating to the Debtor in this Chapter 11 Case were required to be Filed; the deadline for governmental units to file claims was set as October 11, 2022 (with the August 25, 2022 general bar date, the "Bar Dates").

4. Claims Reconciliation and Objections.

As of the passage of the Bar Dates, approximately 7,002 Proofs of Claim were filed. Of those claims, however, only approximately thirty-eight (38) consist of "trade claims" asserted by parties that had provided goods or services to the Debtor, including Direct Energy. That set also includes claims filed by regulatory and taxing authorities to replace scheduled amounts, with the State of Texas Comptroller's office asserting two prepetition, priority tax claims in the total amount of approximately $30,027.41, as well as post-petition claims for estimated franchise and sales and use taxes due of approximately $20,977, pending filing of associated tax returns by the Debtor. Four secured claims filed by the Prepetition Secured Lenders will be satisfied in accordance with the Plan as against the Debtor. Also included are various proofs of claim filed by Invenergy Services and Invenergy Thermal for claims arising under the Shared Services Agreements, as well as indemnification and contribution claims of the various Debtor-affiliates that are co-obligors under the Prepetition Credit Agreement, all of which claims will be subordinated to holders of General Unsecured Claims.

a. Class 5 Claims.

As referenced above, the Debtor's Schedules list General Unsecured Claims totaling $404,895,363.05, the majority of which consisted of a disputed claim scheduled as owing to Direct Energy in the amount of $403 million, prior to application of the $7 million letter of credit posted in Direct Energy's favor that was drawn on in August 2022. A portion of the Debtor's ordinary-course liabilities listed in the Schedules have been satisfied with authority of the Bankruptcy Court during the pendency of the Chapter 11 Case or in connection with the Asset Sale. Claims of the Debtor's gas suppliers listed in the Schedules, such as Sequent Energy Management, were fully satisfied through application of security deposits or letters of credit. After reconciliation of the filed claims to the Debtor's prepetition books and records and the Schedules, taking into consideration payments towards prepetition claims funded during the pendency of this case, and exclusive of unliquidated, contingent tort claims arising out of or related to Winter Storm Uri treated in Class 6, the Debtor estimates that the total allowable amount of Class 5 Claims, exclusive of the Direct Energy Allowed Claim, will not exceed $225,000, inclusive of the claim of the PUCT

set forth in the Debtor's Schedules. Direct Energy's Allowed Claim will be capped at $63 million, as discussed below.

b. Filed Proofs of Claim Representing Class 6 Claims.

Prior to the passage of the general Bar Dates, two law firms filed a collective set of approximately 6,953 proofs of claim on behalf of individuals and entities asserting unliquidated claims in "unspecified and to be determined" amounts for damages alleged to have been suffered as a result of the interruption of power delivery during Winter Storm Uri ("Unliquidated Claims"). An additional set of approximately ten proofs of claim were filed by claimants asserting that the Debtor is responsible for property damage (and in one instance, personal injury) alleged to be the result of the Debtor's conduct during Winter Storm Uri, in amounts totaling, by face amount, approximately $63 million ("Tort Claims"). Review of those claims revealed that they suffer from numerous deficiencies, ranging from an apparent lack of authority, insufficient supporting documentation, and no apparent connection to the Debtor. Accordingly, the Debtor filed the *First (Non-Substantive) Omnibus Objection to Certain Claims Filed with Insufficient Supporting Documentation* [Dkt. No. 417] (the "First Omnibus Objection") on October 14, 2022 seeking entry of an order disallowing the Unliquidated Claims. The Debtor has since negotiated consensual terms for resolution of the First Omnibus Objection, through a *Stipulation Regarding Debtor's First (Non-Substantive) Omnibus Objection to Certain Claims Filed with Insufficient Supporting Documentation* filed on November 15, 2022 [Docket No. 458], pursuant to which the Unliquidated Claims will be withdrawn, the holders of the Unliquidated Claims will not receive distribution under the Plan; instead, those claimants will have the option to, if so elected, continue with or initiate litigation against the Debtor following the Effective Date and seek recovery solely from coverage available under the Debtor's insurance policies. The Debtor is in the process of filing a Second Omnibus objection to the Tort Claims, on the basis that the Tort Claims are also not properly allowable on grounds similar to that raised in the First Omnibus Objection.

E. Exclusivity and Initial Plan.

Given the then-looming expiration of the Debtor's exclusive plan filing period under section 1121, the Debtor Filed its *Motion for Entry of An Order Pursuant to 11 U.S.C. § 1121(d) Extending the Exclusive Periods for Filing a Chapter 11 Plan and Solicitation of Acceptances Thereof* on August 8, 2022. [Dkt. No. 318] (the "Exclusivity Motion"), seeking entry of an order extending the 120-day exclusive period for the Debtor to File a plan established by 11 U.S.C. § 1121(b) through and including September 30, 2022, and extending the deadline for the Debtor to obtain acceptances of a plan by an additional sixty days, through and including November 30, 2022.

In light of the pending appeal and mediation, as described below, the Debtor Filed a motion seeking a further extension of the exclusivity periods, requesting entry of an order extending the Debtor's exclusive authority to file a chapter 11 plan until November 29, 2022, and to solicit acceptances thereof until January 30, 2022. [Dkt. No. 402] ("Second Exclusivity Motion"). An order granting the Second Exclusivity Motion entered on November 15, 2022 [Dkt. No. 459].

In the meantime, with the Sale closed, the Debtor Filed the *Liquidating Chapter 11 Plan*, dated August 9, 2022 [Dkt. No. 322] (the "Original Plan"), and accompanying *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Dkt. No. 322] (the "Original Disclosure Statement"), to provide a mechanism for the net Sale Proceeds and the Debtor's assets

to be distributed to creditors in accordance with the structure of, and in compliance with, the Plan Support Agreement. In furtherance of this process, the Debtor also filed its *Motion for an Order (A) Approving the Adequacy of 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* on August 18, 2022 [Dkt. No. 345] ("Solicitation Procedures Motion"), requesting that the Court (a) approve the adequacy of the Disclosure Statement; (b) approve and establish deadlines and procedures for, among other things, the solicitation and tabulation of votes to accept or reject the Plan; (c) approve the forms of ballots, (d) approve the manner and forms of notices; (e) schedule a hearing to consider confirmation of the Plan on November 16, 2022, and establish certain deadlines in connection with the hearing; and (f) grant related relief, as described in the Solicitation Procedures Motion.

A hearing to consider the Solicitation Procedures Motion, as well as the adequacy of the Disclosure Statement, was originally scheduled for October 4, 2022 at 11:00 PM (the "Disclosure Statement Hearing") with September 27, 2022 set as the deadline for creditors and other parties in interest to object to the relief requested in the Solicitation Procedures Motion. The only formal objection to the Solicitation Procedures Motion and form of Original Disclosure Statement was filed by Direct Energy; that objection, though, has been resolved, as set forth in Section V.I below. A hearing to consider approval of the *First Amended Disclosure Statement In Support of First Amended Liquidating Plan* (attaching the *First Amended Liquidating Chapter 11 Plan*) filed on November 14, 2022 [Dkt. No. 453 and 454, respectively], as well as the revised Solicitation Procedures filed by the Debtor on November 15, 2022 [Dkt. No. 461], was held on November 16, 2022 at 10:00 AM. At the conclusion of that hearing, the Court granted the Solicitation Procedures Motion through 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* dated November 16, 2022 [Docket No. [471] ("Solicitation Procedures Order"). In doing so, the Court approved the form of this *Modified First Amended Disclosure Statement of Debtor in Support of the Modified First Amended Plan of Liquidation* filed on November 16, 2022, and scheduled a hearing to consider confirmation of the Plan, as will be discussed, and as set forth in the Solicitation Procedures Order.

F. Monthly Operating Reports.

In accordance with the Bankruptcy Code and Bankruptcy Rules, the Debtor is required to File monthly operating reports, which disclose the Debtor's post-Petition Date cash balance and disbursements as of specified dates (each a "Monthly Operating Report"). The Debtor has been filing its Monthly Operating Reports throughout the pendency of this case, as required.

G. The Post-petition Financing Motion.

On May 10, 2022, the Debtor Filed the *Motion of the Debtor for Entry of a Final Order (i) Authorizing the Debtor to Obtain Post-petition Financing Secured by Priming Liens, (ii) Granting Liens and Providing Superpriority Administrative Expense Status, (iii) Granting Adequate Protection, (iv) Modifying the Automatic Stay, and (v) Granting Related Relief* [Dkt. No. 141] (the "DIP Motion"), requesting, among other things, authority to (i) obtain secured, superpriority post-

petition financing in an amount not to exceed $5,000,000 from ITOI as DIP lender, (ii) grant a superpriority administrative claim to secure the issuance of any of the post-petition financing (the "DIP Administrative Claim"), and (iii) superpriority liens on substantially all of the Debtor's assets, junior only to certain carve-outs outlined in the DIP Motion, including the Adequate Protection Liens on pre-petition Cash Collateral (the "DIP Liens"). Due to a combination of better-than-projected revenues primarily driven by unprojected heatwave-driven power demand and the occurrence of the Closing Date on July 12, 2022, earlier than the originally anticipated July 31, 2022 closing date, the Debtor withdrew the DIP Motion on July 25, 2022 [Dkt. No. 298].

H. The Sale Process.

As outlined in the Sale Motion, the Debtor engaged in a robust pre-petition marketing process led by its investment banker, PWP. PWP, together with the Debtor's representatives, identified strategic parties and financial investors likely to be interested in investing in the energy space. PWP initiated a marketing and sales process, contacting over 100 potentially interested strategic and financial parties, resulting in several binding bids and nine additional indications of interest in a post-petition bidding process.

At the conclusion of this marketing process, the Debtor negotiated the terms of a sale to the Stalking Horse Bidder pursuant to section 363 of the Bankruptcy Code, subject to solicitation of higher and better bids and Bankruptcy Court approval, and executed an Asset Purchase Agreement on March 3, 2022 (the "Stalking Horse APA"), with a subsequent amendment thereto on March 31, 2022. Additional information regarding the prepetition marketing process is set forth in the *Declaration of Alexander Svoyskiy in Support of Motion of Debtor for Orders (i)(a) Authorizing Debtor's Entry into Asset Purchase Agreement, (b) Authorizing and Approving the Bidding Procedures, (c) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (d) Authorizing and Approving a Break-up Fee and Reduced Break-up fee, (e) Approving the Notice Procedures, and (f) Setting a Date for the Sale Hearing; and (ii) Authorizing and Approving (a) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, and (b) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 8].

On the Petition Date, the Debtor Filed the *Motion of the Debtor for Orders (I)(A) Authorizing Debtor's Entry Into Asset Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving a Break-Up Fee and Reduced Break-Up Fee, (E) Approving the Notice Procedures, and (F) Setting a Date for the Sale Hearing; and (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 7], requesting, among other things, entry of an Order (a) approving certain bid procedures (the "Bid Procedures"), (b) approving entry into the Stalking Horse APA as a "stalking-horse bid," including a break-up fee in the amount of 3% and an expense reimbursement of up to an additional 0.5% of the Stalking Horse Bid (as defined below) to be paid to the Stalking Horse Bidder from the proceeds of the sale in the event that the Stalking Horse Bidder was outbid, (c) scheduling an auction and hearing to approve the sale transaction and approving the form and manner of notice thereof, and (d) establishing procedures relating to the assumption and assignment of executory contracts. The Sale Motion

also sought, at the conclusion of the bid process, an Order (a) approving the proposed sale, (b) authorizing the assumption and assignment of certain executory contacts and unexpired leases, and (c) granting certain related relief.

On May 6, 2022, the Bankruptcy Court entered an Order, which, among other things, approved the Bid Procedures, approved the Stalking Horse APA (in the amount of $91,250,000, the "Stalking Horse Bid"), established June 17, 2022 as the deadline for submission of qualifying third-party bids, and scheduled an auction, if necessary, for June 22, 2022 (the "Auction").

As more fully described in the *Supplemental Declaration of Alexander Svoyskiy in Support of Motion of the Debtor for Orders (I)(A) Authorizing Debtor's Entry Into Asset Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving a Break-Up Fee and Reduced Break-Up Fee, (E) Approving the Notice Procedures, and (F) Setting a Date for the Sale Hearing; and (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Dkt. No. 252], through the post-petition efforts of PWP, three (3) parties signed confidentiality agreements and conducted diligence in connection with the sale. One additional party, LS Power Equity Advisors, LLC ("LS Power"), submitted a timely Qualified Bid (as defined in the Bid Procedures Order) in the amount of $96,000,000.00. Accordingly, the Debtor held the Auction on June 22, 2022, at the conclusion of which the Stalking Horse Bidder's bid in the amount of $144,750,000 (less its Break-Up Fee and expense reimbursement), plus an additional $2.7 million in potential "Incentive Consideration," was chosen as the highest and best bid (the "Winning Bid"). The Debtor also notified LS Power that its bid of $144,500,000 plus up to $2,700,000 of Incentive Consideration was selected as the back-up bid (the "Back-Up Bid"). On June 22, 2022, the Special Committee approved the Winning Bid and the Back-Up Bid.

Following the Auction, on June 23, 2022, the Debtor Filed the *Notice of Successful Bidder* [Dkt. No. 249], notifying interested parties of the selection of the Winning Bid and the Back-Up Bid and results of the Auction. After a hearing on June 27, 2022 (the "Sale Hearing"), the Court entered the *Order (A) Authorizing and Approving the Sale of Acquired Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Dkt. No. 259] (the "Sale Order") authorizing the Asset Sale to the Purchaser. The Asset Sale closed on July 12, 2022, and the Debtor Filed the *Notice of Closing of Sale* [Dkt. No. 283] on July 13, 2022. The net Sale proceeds totaled approximately $144,256,250, prior to payment of the PWP Success Fee of $2,656,093, as of the Closing Date. The Winning Bid was over $50,000,000.00 greater than the original Stalking Horse Bid, which increase, due to the negotiated $75 million cap on the distribution to the Prepetition Term Lender Claims established in the Plan Support Agreement, will benefit the otherwise out of the money general unsecured creditors and potentially more junior stakeholders if the Plan is approved.

I. The Direct Energy Disputes, Claim Objection, and Mediation.

a) *Derivative Standing Motion*.

On May 25, 2022, Direct Energy Filed its *Motion for Order Authorizing Direct Energy Business Marketing LLC to Commence and Prosecute Claims on Behalf of the Estate* [Dkt. No. 163] (the "Derivative Standing Motion"), seeking approval to pursue certain avoidance actions, marshaling of assets, and other claims constituting property of the Debtor's estate. Relatedly, Direct Energy filed an amended Proposed Complaint on June 8, 2022 [Dkt. No. 201] outlining various causes of action that it alleged should be pursued by the Debtor, or by Direct Energy on the Debtor's behalf. On June 13, 2022, the Debtor Filed its *Objection of Debtor to Motion for Order Authorizing Direct Energy Marketing, LLC to Commence and Prosecute Claims on Behalf of the Estate* [Dkt. No. 207] (the "Debtor's Standing Motion Objection"), objecting to the Derivative Standing Motion. Additionally, both the Prepetition Agent and an ad hoc group of Prepetition Secured Lenders and ITOI Filed objections to the Derivative Standing Motion [Dkt. Nos. 208, 204]. Direct Energy Filed an Omnibus Reply in support of the Derivative Standing Motion on July 22, 2022 [Dkt. No. 246].

The Bankruptcy Court held a hearing on the Derivative Standing Motion on August 17, 2022, and subsequently, on August 31, 2022, entered an order denying that motion (the "Derivative Standing Order") [Dkt. No. 355]. In denying the Derivative Standing Motion, the Court stated that applicable Delaware law regarding limited liability companies preclude the granting of derivative standing to parties not a member nor an assignee of a member. On September 6, 2022, Direct Energy filed a Notice of Appeal of the Derivative Standing Order to the United States District Court for the District of Delaware (the "District Court"), and the appeal was docketed as Case No. 22-cv-01176-MN [Dkt. No. 367].

b) *Direct Energy's Claim and The Debtor's Claim Objection.*

Prior to the Bar Date, Direct Energy filed a proof of claim asserting a general unsecured claim for damages arising upon termination of the HRCO in the amount of $403,142,555.72, Claim No. 13 ("Direct POC"). On October 14, 2022, the Debtor filed its *Objection of Debtor to Proof of Claim No. 13 Filed By Direct Energy Business Marketing, LLC*, [Dkt. No. 419], objecting to allowance of, and the allowed amount of, Direct Energy's asserted claim for Disputed Charges ("Claim Objection"). As set forth in the Claim Objection, the Debtor alleged that Direct Energy procured its HRCO with the Debtor by fraud, thereby rendering the HRCO void *ab initio*. Direct Energy's Claim was also challenged on the basis that Winter Storm Uri and its devastating consequences frustrated the purpose of the HRCO and that performance under the HRCO was excused under the *force majeure* doctrine. Alternatively, the Debtor asserted that the Disputed Charges were excessive and subject to reduction when properly calculated in accordance with section 562 of the Bankruptcy Code. A hearing regarding the Claim Objection was scheduled for November 16, 2022.

c) *The Mediation and Settlement Involving Disputes With Direct Energy.*

In addition to asserting the Direct POC, prior to the Petition Date, Direct Energy had commenced litigation against the Debtor in New York Superior Court seeking to recover damages

associated with termination of the HRCO. ITOI and Invenergy, LLC were also named as defendants on theories of "alter ego" and tortious interference with contract. That litigation was removed to the Bankruptcy Court after the Petition Date, and is pending as an adversary proceeding captioned as *Direct Energy Business Marketing, LLC v. Ector County Energy Center LLC et al.*, Adv. Proc. No. 22-50388-JTD ("Direct Litigation"). The litigation involving claims against the Debtor has been stayed. As stated in *Direct Energy Business Marketing, LLC's Limited Objection to Motion to Approve Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Dkt. No. 392] ("Disclosure Statement Objection"), Direct Energy contended that the Released Claims should not include claims against the non-Debtor defendants in the Direct Litigation, and that certain of what it asserted to be claims of the Debtor against its Credit Agreement co-obligors should not be released by the Debtor because they were valuable and would not be released in a chapter 7 liquidation.

With the Solicitation Procedures Motion pending and the Original Plan on file, the Debtor, Direct Energy, the Prepetition Agent (acting at the direction of the Prepetition Secured Lenders), and Invenergy, LLC and ITOI agreed to participate in mediation ("Mediation") in an attempt to negotiate terms for global settlement in an effort to achieve consensual confirmation. The Mediation was conducted at Holland & Knight's offices in New York, New York on October 25 and 26, 2022 with the Mediator overseeing the settlement process. Ultimately, a deal was reached, as summarized in the *Notice of Mediation Resolution* filed with the Court on October 28, 2022 [Dkt. No. 438] ("Direct Energy Compromise"). As negotiated during the Mediation, Direct Energy has agreed to receive an allowed general unsecured claim of up to $63 million in full satisfaction of the Direct POC, to be classified in Class 5 of the Plan. In addition, Direct Energy, the Prepetition Agent (acting at the direction of the Prepetition Secured Lenders), and the Debtor's affiliates have agreed to dismissal of the Direct Litigation and exchange of specified releases upon payment to Direct Energy by ITOI of $10 million, which will be held in escrow by the Debtor prior to the Effective Date, and paid to Direct Energy on the Plan Effective Date. In addition, the Prepetition Agent (acting at the direction of the Prepetition Secured Lenders) also agrees to discharge all of their claims other than the Prepetition Term Loan Prepayment Claim against the Debtor and permits the prompt distribution of remaining estate assets in exchange for specified releases under the Plan with the Debtor, ITOI and its affiliates, and Direct Energy and its affiliates of any direct or derivative causes of action related to the HRCO, the Prepetition Credit Agreement, the Debtor's bankruptcy proceeding, and all related facts. Any unsecured claim asserted by ITOI and other of the Debtor's affiliates will be subordinated to Class 5 claims, and not receive any distribution until Direct Energy has received payment under the Plan of $63 million.

In exchange for the foregoing settlement terms and consideration, Direct Energy has agreed to support the form and structure of the Plan, as contemplated by the Plan Support Agreement with the Disclosure Statement Objection to be withdrawn. The Debtor intends to request a hearing regarding confirmation of the Plan in December, 2022 with the Effective Date to occur prior to December 31, 2022.

J. The Global Settlement With The Prepetition Secured Lenders

As described in the First-Day Declaration, several pleadings filed with the Court, and above, the cornerstone of the Plan is and always has been an integrated global settlement among the Prepetition Secured Lenders, the Debtor and the Debtor's affiliates, including those affiliates

that are co-obligors under the Prepetition Credit Agreement, through the Plan Support Agreement, which was affirmed and incorporated in the Mediation Settlement. The global settlement contains the following key elements.

(a) The Prepetition Secured Lenders agree to (i) cap the recovery of Prepetition Term Lender Claims at $75 million and forego seeking recovery for the full approximately $340 million that the Debtor would otherwise be primarily liable for under the Prepetition Credit Agreement; (ii) allow the Debtor to use Cash Collateral during the Chapter 11 Case; (iii) provide carve-outs from the Prepetition Secured Parties' liens and claims for the Wind-Down Accounts; (iv) waive any Event of Default under the Prepetition Credit Agreement arising from the Debtor's filing for bankruptcy; and (v) provide a guaranteed floor recovery to unsecured creditors through a carveout of $5 million and an unlimited ceiling consisting of all of the upside of an asset sale above the sum of $75 million and fees and costs associated with the Chapter 11 Case;

(b) The Debtor's affiliates agree to (i) cap the amount that sale of the Debtor's assets will contribute to the approximately $340 million of Prepetition Term Lender Claims for which the Debtor is jointly, severally, and primarily liable to $75 million, in effect shifting from the Debtor to those affiliates at least $42 million of the Prepetition Term Loans that refinanced the $117 million construction loan used to acquire and construct the Power Plant; (ii) pay in full approximately $729,000 in payments received on the Petition Date alleged to be preferential transfers without challenge, reduction or offset; and (iii) forego the statutory right to insist upon assumption and assignment of the EMA and FMA and instead provide transition services to the Purchaser in order to ensure that the closing of the transaction occurs at a time that will enable the Debtor to realize $2.7 million in incentive compensation;

(c) The Debtor, in consideration of the agreements and undertakings of the Prepetition Secured Lenders and its affiliates, agrees to (i) release all claims against the Prepetition Secured Lenders and against its affiliates, including its co-obligors under the Prepetition Credit Agreement; and (ii) pay reasonable fees and expenses of the Prepetition Secured Lenders in connection with the Chapter 11 Case.

The compromises embodied in the Plan Support Agreement and set forth above have enabled unsecured creditors to receive the benefits associated with the over $50 million increase above the Stalking Horse Bid with which the Debtor entered the Chapter 11 Case that would otherwise have been claimed by the Prepetition Secured Lenders in reduction of the obligations of the Debtor's affiliates.

To effectuate the global settlement set forth in the Plan Support Agreement and in the Plan, the Plan includes exculpation provisions, an injunction provision, releases of all claims held by the Debtor, whether direct or derivatively brought, against the Prepetition Secured Parties and the Debtor's affiliates. These compromises are the product of good faith, arm's-length negotiations, were material inducements for the Consenting Lenders, the Debtor's affiliates and the Debtor to enter the Plan Support Agreement and propound or support, as applicable, the Plan and are

reasonable in light of the substantial and valuable contributions of the Consenting Lenders and the Debtor's affiliates. The compromises, therefore, are fair and reasonable and represent the sound business judgment of the Debtor in accordance with Bankruptcy Rule 9019. The Plan, therefore, shall be deemed a motion to approve the settlement and compromise of such Claims and causes of action and controversies pursuant to Bankruptcy Rule 9019. As a result of the Mediation, Direct Energy has agreed to support confirmation of the Plan containing the release of the Released Claims and Interests in accordance with the Plan Support Agreement, and will also be deemed a Released Party, as will ITOI and its affiliates.

K. The Debtor's Remaining Assets.

Following the closing and receipt of the proceeds of the Asset Sale, which is a condition precedent to the Effective Date, the Debtor has few Remaining Assets other than Cash on Hand, which includes the net proceeds of the Asset Sale, a refund in the net amount of $386,745 (after payment of associated attorneys' fees as authorized) received from the Ector County Appraisal District on account of an overpayment of property tax for 2021, as set forth in a compromise approved by the Court. *See Order Granting Motion of Debtor for Approval of Compromise with Ector County Appraisal District*, Dkt. No. 420, and retained working capital not transferred in the Asset Sale. A summary of the remaining cash assets, and Cash on Hand, is contained in the Liquidation Analysis, attached hereto as **Exhibit B**.

ARTICLE VI.

CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedure.

1. Confirmation Hearing.

A hearing before the Bankruptcy Court has been scheduled **December 21, 2022 at 11:00 AM (EST)** at the United States Bankruptcy Court, 824 North Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 5 to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Debtor without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by Filing a notice with the Bankruptcy Court.

2. Procedure for Objections.

As set forth in the Solicitation Procedures Order, any objection to approval or confirmation of the Plan must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be Filed with the Bankruptcy Court and served on the Notice Parties identified in the Solicitation Procedures Order by **December 15, 2022, at 4:00 p.m. EST**. Unless an objection is timely Filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation.

The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in this Chapter 11 Case are that the Plan be: (i) accepted by all impaired classes of Claims and Equity Interests, or if rejected by an impaired class, that the Plan is accepted by at least one impaired class "does not discriminate unfairly" against and is "fair and equitable" with respect to such class; and (ii) feasible. In addition, to confirm the Plan, the Bankruptcy Court must also find that the Plan has (a) classified claims and interests in a permissible manner, (b) complies with any other requirements of chapter 11 of the Bankruptcy Code, and (c) the Plan has been proposed in good faith.

a. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as the Debtor's assets have principally been liquidated and the Plan provides for the distribution of all of the Cash proceeds of the Debtor's assets to Holders of Claims that are Allowed in accordance with the Plan, for purposes of this test, based on the Debtor's analysis, the Post-Effective Debtor and the Distribution Agent will have sufficient assets to accomplish tasks under the Plan. Therefore, the Debtor believes that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

b. Best Interests of Creditors

The Bankruptcy Court will also consider whether the Plan is in the "best interests" of Creditors. The "best interests of creditors" test requires that each Holder of a Claim that has not voted to accept the Plan and belongs to an impaired Class receive or retain under the Plan property of a value that is not less than the value such Holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. To determine what members of each impaired Class of Claims would receive if the Debtor were liquidated, the Bankruptcy Court must determine the dollar amount that a liquidation of the Debtor's assets would generate in the context of a chapter 7 liquidation. The amount available for satisfaction of Claims would consist of the proceeds resulting from the liquidation, reduced by, among other things, the Claims of secured creditors to the extent of the value of their collateral, and the costs and expenses of the liquidation.

Here, the Debtor's Assets have already been sold in connection with the Asset Sale such that conversion of the Chapter 11 Case to a case under chapter 7, therefore, is not likely to alter the amount that is available for distribution - the "liquidation" has already occurred. Conversion will, however, likely dramatically alter the amount of those proceeds distributed to general unsecured creditors.

Implementation of the Plan in accordance with the Plan Support Agreement will provide substantially higher recovery to general unsecured creditors than would be received upon conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code. In particular, prior to the Petition Date, the Debtor negotiated the Plan Support Agreement with the Prepetition

Agent and the ad hoc group of Prepetition Secured Lenders, in which the Consenting Lenders agreed to support a plan that subordinates over $265 million of their approximately $340 million senior secured claim to over $20 million in "carve outs" of their collateral for payments related to the Chapter 11 Case, including a guaranteed minimum distribution of at least $5,000,000.00 to otherwise out of the money general unsecured creditors. The Consenting Lenders also agreed to cap their recovery from the Sale Proceeds at $75 million, affording unsecured creditors one hundred percent of the upside to the Debtor's sale efforts. This structure, ultimately, at the higher Sale price, made approximately $50 million more available for distribution than under the original Stalking Horse Bid.

These funds, though, are not available under the Plan Support Agreement if the chapter 11 Case is converted to one under chapter 7. Put differently, because the proceeds from the Asset Sale are substantially less than the amount of the Prepetition Term Lender Claims, if the Chapter 11 Case were converted to a chapter 7 case, the Prepetition Secured Lenders will no longer be bound to the Plan Support Agreement and would have no obligation to cap their Claims, and the Prepetition Secured Lenders would assert a claim to all of the Asset Sale proceeds. Conversion to chapter 7, therefore, would result in unsecured creditors having no source of recovery other than potential litigation claims. The Debtor does not believe that there is material value to any of the Debtor's causes of action should they not be released in the Plan in accordance with the Plan Support Agreement. In order to approach materiality in connection with a "best interests of creditors" test, the projected return from pursuit of the released claims net of legal, accounting, and expert witness fees would have to approach approximately the $65 million amount from the Asset Sale proceeds that would be expected to be received by general unsecured creditors under the Plan in accordance with the Plan Support Agreement.

Further, in a chapter 7 liquidation, the Estate will be burdened with the additional expenses and commissions of a chapter 7 trustee and the case will be delayed by such a trustee's appointment and need to become familiar with this Chapter 11 Case. Accordingly, the Debtor submits that the pool of assets available for distributions is much higher under the Plan than it would be if the Chapter 11 Case were converted to a case under chapter 7 of the Bankruptcy Code.

Attached as **Exhibit B** is a liquidation analysis prepared by the Debtor's financial advisors reflecting a greater Distribution to Holders of Claims and Equity Interests pursuant to the Plan than Creditors would receive in a hypothetical chapter 7 liquidation. Accordingly, the Debtor believes the Plan satisfies the "best interests" of creditors test.

c. Classification of Claims and Equity Interests.

Section 1122 of the Bankruptcy Code requires the Plan to place a claim or equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Plan creates separate Classes to deal respectively with priority Claims, secured Claims, unsecured Claims, and Equity Interests. The Debtor believes that the Plan's classifications place substantially similar Claims or Equity Interests in the same Class and thus, meet the requirements of section 1122 of the Bankruptcy Code.

d. No Third-Party Releases

All claims and potential causes of action proposed to be released in the Plan are the Debtor's claims and causes of action, including any potential alter ego claims against any of the Debtor's affiliates, which constitute property of the estate under controlling Third Circuit precedent. As such, *no third-party releases of claims held by parties in interest in their own right are provided in the Plan*.

B. Voting Procedures.

1. Impaired Claims and Equity Interests.

Pursuant to Bankruptcy Code section 1126, only the Holders of Claims in Classes "Impaired" by the Plan that may receive a payment or Distribution under the Plan may vote on the Plan. Pursuant to Bankruptcy Code section 1124, a Class of Claims may be "Impaired" if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims treated in such Class. The Holders of Claims not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. The Holders of Claims in any Class that will not receive any payment or Distribution or retain any property pursuant to the Plan are deemed to reject the Plan and do not have the right to vote. YOU SHOULD REVIEW THE SOLICITATION PROCEDURES ORDER AND NOTICE OF CONFIRMATION HEARING ACCOMPANYING THIS DISCLOSURE STATEMENT CAREFULLY FOR THE VOTING REQUIREMENTS AND PROCEDURE APPROVED BY THE BANKRUPTCY COURT.

2. Eligibility to Vote on the Plan.

Unless otherwise ordered by the Bankruptcy Court, Holders of Claims in Class 2, Class 3, Class 5, Class 6 and Class 7 (collectively, the "Voting Classes") are entitled to vote towards the Plan, to the extent holding Voting Claims (as described herein). For the purpose of voting to accept or reject and not distribution on account of a Claim, only (and only if these prerequisites are established, the "Voting Claims"):

(1) Holders that that have filed Proofs of Claim in the Voting Classes; and

(2) claimants in the Voting Classes (that did not file a proof of claim) whose Claims were listed in the Schedules as not being unliquidated, contingent, or Disputed ("Scheduled Claims"),

shall be entitled to vote with regard to such Claims, to the extent that the Filed Claim or Scheduled Claim has not been assumed or satisfied by the Purchaser in connection with the Asset Sale or satisfied during the pendency of the Chapter 11 Case pursuant to authority granted under a prior Order of the Bankruptcy Court, *unless the 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* ("Claim Objection Proceeding"). Notwithstanding the foregoing, nothing shall limit the right of the Holder of a Claim classified within a Voting Class that is the subject of a Claim Objection Proceeding or other objection to allowance or assignment of the Claim ("Disputed Claim") or other party in interest to seek temporary allowance of a Disputed Claim for voting purposes under Bankruptcy Rule 3018(a). In order to vote on the Plan, claimants must hold a Claim in one of the Voting

Classes and have Filed a Proof of Claim or have a Claim that is identified on the Schedules that is not listed as Disputed, unliquidated or contingent, or be the Holder of a Disputed Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

Holders of Claims or Equity Interests having a Claim or Equity Interest in more than one Class that is entitled to vote may vote in each Class in which they hold a separate Claim or Equity Interest by casting a Ballot in each Class. Whether a Holder of Claim or Equity Interest votes on the Plan or not, such Holder will be bound by the terms of the Plan if the Plan is confirmed by the Bankruptcy Court. This Disclosure Statement is being distributed for informational purposes to all Holders of Claims and Equity Interests and parties-in-interest without regard to any such party's right to vote.

3. Solicitation Notice.

All parties in interest will receive a notice containing (a) notice of the Confirmation Hearing; (b) the email address, DRCVote@donlinrecano.com, at which parties in interest may request copies of the Plan, ballot, and related documents; and (c) a telephone number, 1 (800) 361-2782, through which parties in interest can request to obtain paper copies of the Plan, ballot, and related documents. Holders of Claims in the Voting Classes will be provided a notice and a Ballot. Each Holder of a Claim in the Voting Classes should complete its respective ballot by (i) indicating such Holder's decision to either accept or reject the Plan in the boxes provided on the Ballot, and (ii) signing and returning the Ballot to the address set forth on the Ballot or through the Solicitation Agent's online voting portal (please note that envelopes and prepaid postage will be included with the Ballot). BALLOTS RETURNED BY FACSIMILE OR EMAIL TRANSMISSION ARE NOT ALLOWED AND WILL NOT BE COUNTED. ONCE YOU HAVE DELIVERED YOUR BALLOT, YOU MAY NOT CHANGE YOUR VOTE, EXCEPT FOR CAUSE SHOWN TO THE BANKRUPTCY COURT AFTER NOTICE AND A HEARING.

4. Procedure/Voting Deadlines.

IN ORDER FOR YOUR BALLOT TO COUNT, YOU MUST COMPLETE, DATE, SIGN (UNLESS SUBMITTED THROUGH THE E-FILING PORTAL) AND PROPERLY MAIL A PAPER BALLOT TO THE CLAIMS AND BALLOTING AGENT AT THE FOLLOWING ADDRESS:

If by Regular Mail:	**If by Messenger or Overnight Delivery:**
Donlin, Recano & Company, Inc. Re: ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC) Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC) Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

The Claims and Balloting Agent must RECEIVE original ballots by mail or overnight delivery, on or before **December 15, 2022 at 4:00 p.m. (ET)** (the "**Voting Deadline**").

Any Ballot that is timely received and contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan. The following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

(a) any Ballot that partially rejects and partially accepts the Plan;
(b) any Ballot that both accepts and rejects the Plan;
(c) any Ballot that neither accepts nor rejects the Plan;
(d) any Ballot sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), any indenture trustee, common representative or the Debtor's financial or legal advisors, or to the Court;
(e) any Ballot returned by facsimile or any electronic means other than via the online balloting portal;
(f) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
(g) any Ballot cast by an Entity that does not hold a Claim in the Class indicated in this Ballot;
(h) any Ballot submitted by a holder not entitled to vote pursuant to the Plan;
(i) any unsigned Ballot (unless submitted via the online balloting portal);
(j) any non-original Ballot (unless submitted via the online balloting portal); and/or
(l) any Ballot filed by a party that is not the holder of a Voting Claim, as defined in the Disclosure Statement Order.

5. Acceptance of the Plan.

As a Creditor, your acceptance of the Plan is important. In order for the Plan to be accepted by an impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Plan. In order to be confirmed, at least one impaired Class of creditors, excluding the votes of insiders, must actually vote to accept the Plan. The Debtor urges that you vote to accept the Plan. **YOU ARE URGED TO COMPLETE THE BALLOT PROVIDED TO YOU, IF YOU HOLD A CLAIM IN A VOTING CLASS, SO IT WILL BE RECEIVED BY THE VOTING DEADLINE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY AND IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE BALLOT.**

ARTICLE VII.

SUMMARY OF TREATMENT OF UNCLASSIFIED CLAIMS

As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims, and Professional Claims have not been classified and thus are

excluded from the Classes of Claims and Interests set forth in Article V of the Plan. These unclassified Claims are treated as follows:

A. Administrative Expense Bar Date.

Administrative Expense Claims (including substantial contribution claims, if any, but excluding Professional Claims) and requests for payment that have not been paid in the ordinary course, assumed by the Purchaser, released, or otherwise settled must be Filed no later than the Administrative Expense Bar Date (except for claims pursuant to 28 U.S.C. § 1930 and administrative tax claims pursuant to 11 U.S.C. § 503(b)(1)(D), for which no request for payment is required, and except for Claims under Bankruptcy Code section 503(b)(9), which must be Filed by the general Bar Date of August 25, 2022). Holders of Administrative Expense Claims (other than Professional Claims) that do not File claims and request payment on or before the Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or its Estate and such Administrative Expense Claims shall be deemed released against the Debtor. The deadline for submission by Professionals for Bankruptcy Court approval of accrued but unpaid Professional Claims shall be thirty (30) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court.

B. Administrative Expense Claims.

Subject to the Administrative Expense Bar Date and any other provisions in the Plan, except to the extent that any Person entitled to payment of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the date that is the later of the Effective Date and seven (7) Business Days after such Administrative Expense Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtor, if any, may be paid in full in the ordinary course of business in accordance with the terms and conditions of the particular transactions and any applicable agreements.

Professional Claims shall be subject to approval by the Bankruptcy Court. Each Holder of a Professional Claim seeking an award by the Bankruptcy Court of compensation for services rendered and/or reimbursement of expenses incurred through and including the Effective Date (other than substantial contribution claims under section 503(b)(4) of the Bankruptcy Code) must File and serve its respective application for allowance of such Professional Claim no later than the date that is thirty (30) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. Objections to applications of such Professionals for compensation and/or reimbursement of expenses must be Filed and served on the Post-Effective Date Debtor and the requesting Professional no later than thirty (30) days (or such longer period as may be allowed by Order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was served. Cash payments of Allowed Professional Claims shall be paid (a) first, from any pre-Effective Date retainer or deposit held by the Holder of such Claim; and (b) second, to the extent any such pre-Effective Date retainer or deposit is insufficient to satisfy such Holder's Allowed Professional Claim in full, from the Professional Fee Escrow Account. The balance of any pre-Effective Date retainer or deposit held by the Holder of a Professional

Claim not used in satisfaction of such Professional Claim shall be paid to the Post-Effective Date Debtor seven (7) Business Days following satisfaction in full of such Holder's Professional Claim.

C. Priority Tax Claims.

Except to the extent the Holder of an Allowed Priority Tax Claim agrees to different and less favorable treatment, each Holder of an Allowed Priority Tax Claim, if any, shall receive in full satisfaction of such Allowed Priority Tax Claim payment in Cash equal to the unpaid portion of such Allowed Priority Tax Claim on the date that is the later of the Effective Date and seven (7) Business Days after such Allowed Priority Tax Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable.

D. Payment of Statutory Fees.

All fees due and payable pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717 ("Quarterly Fees") prior to the Effective Date, shall be paid in full by the Distribution Agent from Cash on Hand on the Effective Date. On and after the Effective Date and through the date of the entry of the final decree closing the Chapter 11 Case, (i) Quarterly Fees shall be paid by the Distribution Agent in full in Cash until the entry of a final decree or until the Chapter 11 Case is closed, converted, or dismissed, and (ii) the Distribution Agent shall File with the Bankruptcy Court post-Confirmation quarterly reports and any pre-Confirmation monthly reports not Filed as of the Confirmation Hearing in conformity with the U.S. Trustee guidelines. Notwithstanding anything else in the Plan, the UST shall not be required to File a claim for Quarterly Fees.

ARTICLE VIII.

SUMMARY OF PLAN TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Classified Claims, Generally.

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

Class	Status
Class 1 – Other Priority Claims	Unimpaired (Deemed to Accept)
Class 2 – Prepetition Term Lender Claims	Impaired (Entitled to Vote)
Class 3 – Prepetition Revolving Lender Claims	Impaired (Entitled to Vote)

Class 4 – Other Secured Claims	Unimpaired (Deemed to Accept)
Class 5 - General Unsecured Claims That Are Not Class 6 Claims or Class 7 Claims	Impaired (Entitled to Vote)
Class 6 - Personal Injury, Property Damage, or Claims Arising out of Winter Storm Uri Allowed As General Unsecured Claims	Impaired (Entitled to Vote)
Class 7 - Claims Of Insiders and Affiliates Including Intercompany Claims	Impaired (Entitled to Vote)
Class 8 – Equity Interests	Impaired (Deemed to Reject)

B. Brief Summary of Treatment of Claims and Equity Interests.

The following table summarizes the classification and treatment of Claims and Equity Interests under the Plan based upon a review by the Debtor of Claims identified in its Schedules, Proofs of Claim Filed by Creditors, the Claims that were designated as Assumed Payables in connection with the Asset Sale and satisfied or assumed by the Purchaser, and the Cure Costs in connection with Assumed Contracts transferred to the Purchaser. No representation can be or is being made with respect to whether the estimated percentage recoveries shown below will actually be realized by the Holders of Allowed Claims in any particular Class at this time.

Class	Estimated Allowed Claims	Treatment	Estimated Recovery to Holders of Allowed Claims
Unclassified Administrative Expense Claims (Including Professional Fee Reserve)	Est. between $7.5 million and $8 million	Paid in Full unless the Holder agrees to less favorable treatment	100%
Unclassified Priority Tax Claims	$31,000 approx.	Paid in Full unless the Holder agrees to less favorable treatment	100%
Class 1 – Other Priority Claims	$0.00	Paid in Full unless the Holder agrees to less favorable treatment	100%
Class 2 – Prepetition Term Lender Claims	$337,319,920	Holders of Allowed Prepetition Term Lender Claims shall receive, on account of, and in full, final and complete satisfaction, settlement,	22%

Class	Estimated Allowed Claims	Treatment	Estimated Recovery to Holders of Allowed Claims
		and release of, and in exchange for, the Prepetition Term Lender Claims, on the Effective Date, their Pro Rata share of Cash in an amount equal to the Prepetition Term Lender Prepayment Claim. On the Effective Date, the balance of any Prepetition Term Lender Claims in excess of the Prepetition Term Lender Prepayment Claim shall be, and shall be deemed to be, released and waived solely as to the Debtor, and shall not affect any claims against ITOI or the Prepetition Non-Debtor Subsidiary Guarantors.	
Class 3 – Prepetition Revolving Lender Claims	$64,663,598	Holders of Allowed Prepetition Revolving Lender Claims shall receive, on account of, and in full, final and complete satisfaction, settlement, and release of, and in exchange for, the Prepetition Revolving Lender Claims, payment in full in Cash for any unsatisfied balance of their reasonable fees and expenses, including reasonable fees and expenses of counsel (but limited to the reasonable fees and expenses of Davis Polk & Wardwell LLP and Richards, Layton & Finger, P.A.). On the Effective Date, the Prepetition Revolving Lender Guaranty Claim shall be, and shall be deemed to be, released and waived solely as to the Debtor, and shall not affect any claims against ITOI or the Prepetition Non-Debtor Subsidiary Guarantors.	1.1% (towards legal fees and expenses)
Class 4 – Other Secured Claims	$0.00	Unless otherwise agreed to by Holders of Allowed Class 4 Claims and the Debtor or Post-Effective Date Debtor, on the date that is the	100%

Class	Estimated Allowed Claims	Treatment	Estimated Recovery to Holders of Allowed Claims
		later of the Effective Date and seven (7) Business Days after such Allowed Class 4 Claim becomes an Allowed Claim, Holders of Allowed Class 4 Claims, if any, shall receive, on account of, and in exchange for, such Allowed Class 4 Claim at the election of the Post-Effective Date Debtor, (i) such treatment in accordance with section 1124 of the Bankruptcy Code as may be determined by the Bankruptcy Court; (ii) payment in full, in Cash, of such Allowed Class 4 Claim; (iii) satisfaction of any such Allowed Class 4 Claim by delivering the collateral securing any such Claims and paying any interest fees, costs and/or expense required to be paid under section 506(b) of the Bankruptcy Code; or (iv) providing such Holder with such treatment in accordance with section 1129(b) of the Bankruptcy Code as may be determined by the Bankruptcy Court.	
Class 5 - General Unsecured Claims That Are Not Class 6 or Class 7 General Unsecured Claims	Up to $63,225,000.00	Holders of Allowed Class 5 Claims, other than Direct Energy, shall receive, on the Effective Date or seven (7) Business Days after such Allowed Class 5 Claim becomes an Allowed Claim, payment in full in Cash equal to their Allowed General Unsecured Claim (without post-petition interest). Direct Energy on the Effective Date shall receive the balance of the Distributable Value after satisfaction of or reserve for the Allowed Class 5 Claims not constituting the Direct Energy Allowed Claim to the extent	100%

Class	Estimated Allowed Claims	Treatment	Estimated Recovery to Holders of Allowed Claims
		necessary to satisfy the Direct Energy Allowed Claim up to the amount of the Direct Energy Allowed Claim Cap. In the event that, upon Distribution on the Effective Date of the Distributable Value, Distributions to Direct Energy total less than the Direct Energy Allowed Claim Cap, from time to time after the Effective Date, Direct Energy shall receive payment in Cash of any amounts released from the reserve established hereunder for Class 5 Claims not constituting Allowed Claims as of the Effective Date and funds pursuant to the Wind-Down Reserves Waterfall until Distributions to Direct Energy total an amount equal to the Direct Energy Allowed Claim Cap.	
Class 6 - General Unsecured Claims Resulting from Winter Storm Uri	Unknown	Holders of Allowed Class 6 Claims shall receive, on account of such Allowed Class 6 Claims: (i) on the Effective Date, authority and relief from any stay, injunction, order or prohibition against liquidating, but not collecting, the amount of each such Holder's Allowed Class 6 Claim; (ii) on the Effective Date, authority and relief from any stay, injunction, order or prohibition against recovering any Allowed Class 6 Claim from and solely to the extent of the Insurance Policies; and (iii) full payment of any uninsured balance from and to the extent of the Class 6 Reserve Amount.	Est. 100%
Class 7 - Affiliate, Insider, and Inter-	Approx. $1.262 million	Class 7 Claims are fully subordinated to the Allowed Claims	Unknown

Class	Estimated Allowed Claims	Treatment	Estimated Recovery to Holders of Allowed Claims
Company General Unsecured Claims		of all other Classes of Claims. Holders of Allowed Class 7 Claims shall receive, on account of such Allowed Class 7 Claims, Pro Rata Distribution of any Distributable Value and any amounts of the Wind-Down Reserves Waterfall remaining after payment in full of all Allowed Claims in Classes 1 through 6 until such Class 7 Claims are paid in full.	
Class 8 – Equity Interests	N/A	Class 8 Equity Interests will be eliminated, extinguished, and canceled on the Effective Date; *provided, however*, that, despite such cancellation, Holders of Allowed Class 8 Equity Interests will receive all Distributable Value remaining, if any, after all Allowed Class 7 Claims are paid in full with Interest at the Legal Rate.	Cancelled but with distribution rights to the extent all Claims are paid in full with Interest.

C. Modification of Treatment of Claims and Equity Interests.

The Debtor reserves the right to modify the Plan in accordance with the provisions of section 1127 of the Bankruptcy Code and Article XI of the Plan to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

D. Acceptance by Impaired Classes.

Each Impaired Class of Claims that will (or may) receive or retain property or any interest in property under the Plan shall be entitled to vote to accept or reject the Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

E. Voting Presumptions.

Claims in Unimpaired Classes are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject

the Plan. Claims and Equity Interests in Classes that do not entitle the Holders thereof to receive or retain any property under the Plan are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

ARTICLE IX.

IMPLEMENTATION OF PLAN AND EFFECT OF CONFIRMATION OF THE PLAN

A. Overview of the Plan.

The Plan is primarily the mechanism for distributing the proceeds of the Asset Sale in a manner that complies with, and therefore takes advantage of, the provisions of the Plan Support Agreement. As a result of the Asset Sale, on the Closing Date the Debtor held approximately $154 million in Cash for distribution. Under the Plan Support Agreement, the Prepetition Secured Lenders conditionally agreed to forego the right to demand delivery of one hundred percent of the Asset Sale proceeds as the proceeds of their collateral until their approximately $340 million Prepetition Term Lender Claims were paid in full, and instead agreed to accept $75 million in full satisfaction of the Debtor's liability for that debt. That commitment by the Prepetition Secured Lenders, which would make approximately $75 million available for purposes other than paying the Prepetition Term Lender Claims and is estimated to make approximately $65 million available for distribution to general unsecured creditors, depending on the amount of Professional Fees incurred through entry of a Final Decree, however, was conditioned on the Prepetition Secured Lenders receiving certain consideration, including the Debtor's issuance of general releases to the Prepetition Secured Lenders and to the Debtor's affiliates. The Plan, therefore, provides for the limitation of distributions towards to Prepetition Term Lenders to the agreed $75 million and further provides for the Plan Support Agreement-required releases.

The Plan's distribution provisions track the provisions of the Bankruptcy Code. Holders of secured claims are paid the proceeds of their collateral to the extent of their Allowed Claims or as otherwise agreed, with the key agreement here being the Prepetition Term Lenders' conditional agreement to limit their recovery to $75 million. Holders of Allowed Priority Claims are then paid in full from Cash generated through the Asset Sale. In order to assure ongoing compliance with the obligation to pay Allowed Priority Claims in full and to further comply with Bankruptcy Code requirements that a plan be feasible, Cash reserves are established to satisfy Administrative Expense Claims allowed after the Effective Date and to pay the projected post-Effective Date costs of implementing the Plan, including prosecuting appeals, if any, and Claims objections. To the extent those reserves are not used, the funds will be re-allocated for distribution to junior claimants and interest holders.

After satisfaction of Plan obligations to secured and priority claimants and the establishment of reserves, the balance of the funds will be distributed in accordance with the Plan to unsecured claimants holding Allowed Claims and, in the event that those Allowed Claims are paid in full with Interest at the Legal Rate, to Ector County Energy Holdings LLC as the sole equity holder of the Debtor.

B. Means of Plan Implementation.

On the Effective Date, all assets still constituting property of the Estate that are not released under the Plan will vest in the Post-Effective Date Debtor. That Post-Effective Date Debtor will be administered and controlled by John Baumgartner of Grant Thornton, LLP as Distribution Agent. Mr. Baumgartner has acted as chief restructuring officer of the Debtor during the Chapter 11 Case. The Distribution Agent's role will include making distributions and funding reserves in accordance with the Plan, overseeing post-Effective Date actions such as appeals and claims objections and otherwise assuring the Post-Effective Date Debtor's compliance with the Plan. The Post-Effective Date Debtor, by and through the Distribution Agent, will also be empowered to take such further actions, including executing, delivering and recording documents for and on behalf of the Debtor and the Post-Effective Date Debtor, as may be necessary to effectuate the Plan. Finally, the Distribution Agent will also be tasked with administrative obligations, such as providing periodic reporting to the UST, making payment of fees to the UST, filing all tax returns for the Debtor, and seeking entry of a final decree closing the Chapter 11 Case.

C. Funding of Reserves and Distributions to Creditors.

On the Effective Date or as soon thereafter as is reasonably practicable, the Distribution Agent shall cause the Cash on Hand to be used to fund the Wind-Down Reserve Accounts. The Wind-Down Reserve Accounts consist of a Cash reserve of no more than $1 million for Class 5 Claims that are Disputed (other than the Direct Energy Allowed Claim) plus any potentially filed Rejection Damages Claims, a reserve of $500,000 to be set aside for holders of Allowed Class 6 Claims to the extent that those Claims are allowed as General Unsecured Claims in amounts that exceed available insurance coverage. In addition, on the Effective Date, the Debtor or the Disbursing Agent will cause the Cash received from Invenergy Thermal and Invenergy Services in return of payments funded by the Debtor prior to the Petition Date under the Shared Services Agreement of approximately and $688,770.81 and $40,841.08, respectively, to fund a Wind Down Account in the amount of $1.25 million to satisfy post-Effective Date costs and expenses, and quarterly fee obligations that will become due to the Office of the United States Trustee. The Debtor shall also establish the Professional Fee Escrow Account and shall fund such Professional Fee Escrow Account with Cash on Hand, in an amount corresponding to the total unpaid amount of the Professional Fees of the Debtor, the Prepetition Agent and the ad hoc group of Prepetition Secured Lenders that have been incurred or are projected to be incurred prior to the Effective Date. Upon the funds in the Wind-Down Reserve Accounts becoming unnecessary for their originally intended purpose, or no longer required to be held, funds held in those reserves will be released and distributed in accordance with the Wind-Down Reserves Waterfall.

On the Effective Date, the Distribution Agent shall cause the Cash on Hand to be distributed to, or reserved for, as applicable, Distributions to: (a) Allowed Administrative Expense Claims (other than Professional Claims, which shall be paid in accordance with Article VII(A)(12) of the Plan), (b) Allowed Priority Tax Claims, (c) Allowed Other Priority Claims, (d) Allowed Other Secured Claims, (e) Allowed Prepetition Term Lender Claims, and (f) Allowed Prepetition Revolving Lender Claims (if anything additional).

Also on the Effective Date, the Distribution Agent shall cause the Cash on Hand representing the Class 5 Allocation (remaining after payment as described in the preceding

paragraph) to be distributed to, or reserved for, as applicable, Holders of General Unsecured Class 5 Claims. Those Holders of Non-Direct Energy Class 5 Claims that are Allowed as of the Effective Date shall, on the Effective Date, receive payment in full of their Allowed Non-Direct Energy Class 5 Claim. Thereafter the Distribution Agent shall, within ten (10) days of a Non-Direct Energy Class 5 Claim being Allowed, cause payment in full of such Allowed Non-Direct Energy Class 5 Claim to be distributed from that portion of the Class 5 Allocation reserved hereunder. Thereafter the Distribution Agent shall, within seven (7) business days of a Non-Direct Energy Class 5 Claim being Allowed, cause payment in full of such Allowed Non-Direct Energy Class 5 Claim to be distributed from that portion of the Class 5 Allocation reserved in accordance with the Plan.

Furthermore, on the Effective Date, the Distribution Agent shall cause the balance of the Class 5 Allocation not distributed or reserved for Non-Direct Energy Class 5 Claims to be distributed to Direct Energy up to the amount of $63 million. In the event that, after that Effective Date Distribution, the amount distributed to Direct Energy is *less than* $63 million, 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 $63 million.

Holders of Allowed Class 6 Claims will, as of the Effective Date, be afforded relief from any stays, injunctions or restrictions related to the Chapter 11 Case or the Plan on pursuit of their Claims and to recover any judgment, award or settlement amount from and to the extent of available insurance coverage. To the extent that a Class 6 Claimant receives an Allowed General Unsecured Claim in excess of available insurance coverage, the Distribution Agent shall pay the Class 6 Claimant the amount equal to its Allowed Class 6 Claim from then-held funds in the Class 6 Reserve. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Class 6 Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, Order or approval of the Bankruptcy Court.

In total, the payments to be funded under the Plan for: (a) the Allowed Priority Tax Claims, (b) Allowed Other Secured Claims, (c) Allowed Non-Direct Energy Class 5 Claims, and (d) the Class 6 Reserve, will not exceed $2 million.

ARTICLE X.

PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

A. Distributions Generally.

Distributions will only be made to Holders of Allowed Claims. No Distributions will be made to Holders of Disputed Claims until and unless all objections to the claims have been either fully adjudicated or resolved. The Post-Effective Date Debtor will have until the Claims Objection Deadline to File any such objection. Distributions to Holders of Disputed Claims that are later Allowed will be made on the later of (i) seven (7) Business Days after a Claim becomes an Allowed Claim, and (ii) thirty (30) days after the expiration of the Claims Objection Deadline and if no objection has been Filed.

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank, an electronic wire, or ACH transfer. If made by check, the Distributions will be delivered: (1) at the addresses set forth on the Proofs of Claim Filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Distribution Agent after the date of any related Proof of Claim; or (3) at the address reflected in the Schedules if no Proof of Claim is Filed.

B. Objections to and Resolution of Claims.

The Post-Effective Date Debtor shall have the right to File objections to Claims after the Effective Date and to continue to prosecute any objections Filed by the Debtor prior to the Effective Date. All objections shall be litigated to entry of a Final Order; *provided, however*, that the Post-Effective Date Debtor shall have the sole authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court.

ARTICLE XI.

INJUNCTION, EXCULPATION, AND RELEASE

The Plan Support Agreement conditions the Prepetition Secured Lenders' commitment to cap their distribution at $75 million upon the issuance of certain releases and exculpations. More specifically, the Plan Support Agreement requires that the Plan contain "customary releases and exculpations" of the Prepetition Secured Lenders and each of the Debtor's affiliates, as well as their respective "officers, directors, agents, financial advisors accountants, investment bankers, consultants, attorneys, employees, partners, affiliates and representatives," from any claims that could be asserted directly or derivatively, "for any act, omission, transfer or occurrence that the Company had, has or may have as of the Plan Effective Date against such entities and individuals . . . ." In order to meet that requirement and preserve access to funds projected to yield a distribution to unsecured creditors approaching $65 million rather than delivering all $150 million currently held by the Debtor that constitutes the Prepetition Secured Lenders' Cash Collateral, the Plan includes the following provisions. These provisions are also in accordance with the terms of the Direct Energy Compromise.

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 Article IX(A) of the Plan 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 the 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 the 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 the 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).

ARTICLE XII.

EXECUTORY CONTRACTS AND INSURANCE POLICIES

A. Deemed Rejection of Executory Contracts Other Than Insurance Policies.

The Plan is a liquidating chapter 11 plan. The Debtor has consummated the Asset Sale, and in that transaction assumed and assigned a number of Executory Contracts to the Purchaser. The Debtor is no longer conducting active energy production operations. The Debtor believes that none of its previously unassigned Executory Contracts provides the potential for any net realizable

value. Therefore, the Plan provides that, on the Effective Date, each Executory Contract not previously assumed, assumed and assigned, or rejected pursuant to an Order of the Bankruptcy Court, other than Insurance Policies, shall be deemed rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for any Executory Contract (a) that is the subject of a separate motion or notice to assume pending as of the Confirmation Hearing, (b) that previously expired or terminated pursuant to its own terms, or (c) that has previously been assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court (including, without limitation, in connection with the Asset Sale). Rejected Contracts shall be deemed terminated upon rejection, *provided, further* that rejection of any Rejected Contract pursuant to the Plan or otherwise will not constitute a termination of obligations owed to the Debtor under such contract or lease that survive breach under applicable law.

The Debtor, however, does not anticipate that any previously unassigned Executory Contracts or Unexpired Leases will be assumed prior to the Effective Date.

To the extent that the Insurance Policies issued to, or entered into by, the Debtor prior to the Petition Date constitute Executory Contracts, the Debtor shall be deemed to have assumed all of the Debtor's unexpired Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date; notwithstanding the foregoing, however, Cure Claims shall not be required to be filed in connection with the deemed assumption of Insurance Policies in effect as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the assumption of each of the Insurance Policies. In addition, after the Effective Date, Post-Effective Date Debtor shall not terminate or otherwise reduce the coverage under any of the Insurance Policies with respect to conduct occurring prior thereto, and all directors and officers of the Debtor who served in such capacity at any time prior to the Effective Date shall be entitled from the applicable insurers to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date.

B. Rejection Damages Claims.

Under the Bankruptcy Code, rejection of an executory contract constitutes a breach of the rejected agreement effective immediately prior to the commencement of the Chapter 11 Case. Non-debtor counterparties to rejected Executory Contracts may, as a result of the presumed breach, assert claims for damages arising under the rejected Executory Contract. Unless otherwise provided by a Bankruptcy Court Order, any Proofs of Claim asserting Rejection Damages Claims pursuant to the Plan or otherwise must be Filed no later than on or before the date that is thirty (30) days after the Effective Date. Any Proofs of Claim for Rejection Damages Claims that are not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the Debtor, or the Estate, without the need for any objection by any Person or further notice to or action, Order, or approval of the Bankruptcy Court, and any such Rejection Damages Claim shall be deemed fully satisfied and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. 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 the 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 or Unexpired Lease, that portion of the Allowed Rejection Damages Claim that is secured shall be treated as an 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 Non-Direct Energy Class 5 Claim.

ARTICLE XIII.

CERTAIN RISK FACTORS TO BE CONSIDERED

Prior to voting on the Plan, each Holder of a Claim entitled to vote should consider carefully the risk factors described below, as well as all of the information contained in the Plan, including the exhibits hereto. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

A. Estimated Distributions Could be Lower than Projected.

The actual value of the Distributions and other rights that are proposed to be granted pursuant to the Plan could be less valuable than projected for a variety of reasons, including:

1. The amount of Claims in each Class could be different than the estimates in the Plan, which could dilute the Pro Rata share of Distributions to Holders of Claims in such Class. For example, among other things, certain unknown or Disputed Claims may be submitted and/or allowed after the filing of the Plan, a delay in the entry of the Confirmation Order and/or the occurrence of the Effective Date may cause greater than expected Administrative Expense Claims, and/or certain Claims could be reclassified and entitled to treatment in a particular Class that is different than the Class in which the Debtor estimated the Claim. The estimated Claims and Creditor recoveries set forth in the Plan are based on various assumptions, and the actual Allowed amounts of Claims may significantly differ from the estimates. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims in any particular Class may vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the percentage recoveries to Holders of Allowed Claims under the Plan, and the Debtor makes no assurances as to the value of any recoveries.

2. Your Claim may be disallowed, subordinated, and/or recharacterized. Except as otherwise provided in the Plan, the Debtor reserves the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in the Plan cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated Distributions described in the Plan. Further,

other parties in interest may object to the amount or classification of any Claim under the Plan in accordance with the Bankruptcy Code.

3. The timing of Distributions could be delayed due to, among other things, a delay in the entry of the Confirmation Order and/or the occurrence of the Effective Date.

4. The Plan may be amended or modified, which may affect, among other things, the amount and timing of Distributions, procedures for making Distributions, and/or other rights proposed to be granted under the Plan (including any proposed releases).

B. Risk of Non-Confirmation of the Plan and/or Non-Occurrence of Effective Date.

Although the Debtor believes that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Failure to obtain confirmation of the Plan could result in the Requisite Consenting Lenders asserting a right to terminate the Plan Support Agreement and risks loss of the benefits of the Plan Support Agreement, including loss of the Prepetition Secured Lenders' agreement to cap their recovery from the Prepetition Term Lender Claims at $75 million. Were that to occur, there is risk that the Prepetition Term Lenders would assert the full balance for which the Debtor is primarily liable of approximately $340 million as a secured claim and further seek to recover all proceeds of the Asset Sale. This scenario would render approximately $65 million of value unavailable to satisfy General Unsecured Claims.

In addition, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate a re-solicitation of votes. For example, the Debtor sought to classify Claims in classes with other substantially similar Claims, but there is no guarantee that the Bankruptcy Court will approve such classifications and may require the Debtor to reclassify such Claims. While the Debtor believes that any reclassification would not necessarily require a re-solicitation of votes (because, for example, any reclassification may not cause any prejudice, affect the voting results, and/or render the Plan unconfirmable), there can be no guarantee that the Bankruptcy Court will not require re-solicitation. If the Plan is not confirmed or is confirmed but does not go effective, it is unclear what Distribution, if any, Holders of Allowed Claims would ultimately receive with respect to their Claims. Finally, as set forth more fully in Article X of the Plan, the Effective Date of the Plan is subject to a number of conditions precedent. If such conditions precedent are not waived or not met, the Effective Date will not take place. There can be no assurance that the conditions precedent will be met or waived, and therefore there can be no assurance that the Effective Date will occur.

C. Alternative Plan.

If the Plan is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan. The Prepetition Term Lenders' commitments under the Plan Support Agreement to cap their recovery at $75 million rather than seeking all Asset Sale proceeds in satisfaction of the full approximately $340 million principal balance under the Prepetition Term Loans, however, are conditioned on confirmation of a chapter 11 plan containing the provisions

set forth in the Plan. An alternative plan not containing the terms set forth in the Plan risks loss of the benefits of the Plan Support Agreement with an attendant loss of access to over $65 million in Asset Sale proceeds that, under the Plan, are made available to Distribution to unsecured creditors. Accordingly, the Debtor believes that the Plan enables Creditors to realize the best return under the circumstances.

D. Risks Associated with Forward-Looking Statements.

The financial information contained in the Plan has not been audited. In preparing the Plan, the Debtor relied on financial data derived from its books and records as available as of the date of the preparation of the Plan as well as upon review of the various proofs of claim filed by creditors to date. Although the Debtor has exercised its reasonable business judgment to ensure the accuracy of the financial information provided in the Plan, and while the Debtor believes that such financial information fairly reflects its financial condition, the Debtor is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies**.**

ARTICLE XIV.

CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtor and to Holders of Claims and Equity Interests. This discussion is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS, all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, and each Holder's status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtor and the Holders of Claims and Equity Interests. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtor or the Holders of Claims or Equity Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to Holders of Claims or Equity Interests subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, S corporations, partnerships or other pass-through entities for U.S. federal income tax purposes (or their owners), persons required to report income on an "applicable financial statement," regulated investment companies, foreign taxpayers,

persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Equity Interests as part of a "straddle," "hedge," "constructive sale" or "conversion transaction" with other investments). If a partnership or other entity taxable as a partnership for U.S. federal income tax purposes holds a Claim, the tax treatment of a partner generally will depend upon the status of the partner and the activities of the partnership. Partners in a partnership holding any such Claims are urged to consult their tax advisors. This discussion does not address foreign, state, local or estate and gift taxation, or the Medicare tax on certain net investment income.

EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN.

A. Tax Consequences to the Debtor.

The Debtor is a disregarded entity for U.S. federal income tax purposes under the Tax Code and regulations promulgated thereunder. Therefore, tax consequences resulting from confirmation of the Plan will not directly impact the Debtor, but instead will be realized by the first regarded taxpayer in the Debtor's ownership structure.

The first regarded taxpayer in the Debtor's ownership structure may realize cancellation of indebtedness ("COD") income. Pursuant to the Tax Code and subject to certain exemptions, a taxpayer generally must recognize COD income to the extent that such taxpayer's indebtedness is discharged for an amount less than the indebtedness' adjusted issue price. Generally, the amount of COD income, subject to certain statutory and judicial exceptions, is the excess of (i) the adjusted issue price of the discharged indebtedness less, (ii) the sum of any Cash and the fair market value (determined at the date of the exchange) of the other property, if any, given in exchange for such discharged indebtedness. Certain exemptions may apply to reduce the COD income required to be included in gross income. In particular, exemptions may apply where the COD income is the result of a discharge that occurs in connection with a bankruptcy case or where the COD income is taken into account by a taxpayer that is insolvent (but only to the extent of the insolvency). However, as to pass through tax entities, those exemptions only apply if the regarded taxpayer qualifies for the exemption based on its insolvency or its being a debtor in a bankruptcy case. The Debtor's status as a chapter 11 debtor or insolvency, therefore, will not afford the regarded taxpayer the benefits of the exemptions.

In addition, the regarded taxpayer must recognize any gain or loss realized on the Asset Sale. To determine the amount of gain or loss, the total consideration (net of selling expenses) received in the Asset Sale must be allocated among the Acquired Property in accordance with the Tax Code. The gain or loss realized with respect to each asset is then determined separately by subtracting the adjusted basis in such asset from the amount of consideration received for such asset.

B. Tax Consequences to Creditors.

1. U.S. Holders of Claims.

a. General

As used in the discussion herein, the term "U.S. Holder" means a beneficial owner of a Claim that is for U.S. federal income tax purposes: an individual who is a citizen or resident of the United States; a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof, or the District of Columbia; or an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

Generally, a U.S. Holder of a Claim will recognize gain or loss equal to the difference between the "amount realized" by such U.S. Holder in exchange for its Claim and such U.S. Holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the Cash and the fair market value of any other consideration received by the U.S. Holder under the Plan in respect of the U.S. Holder's Claim (other than any Cash or other property, if any, allocated to accrued by unpaid interest, as discussed below). To the extent applicable, the character of any recognized gain or loss (e.g., ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the U.S. Holder, the nature of the Claim in the U.S. Holder's hands, the purpose and circumstances of its acquisition, the U.S. Holder's holding period of the Claim, and the extent to which the U.S. Holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the Holder's hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year. Under current U.S. federal income tax law, non-corporate U.S. Holders may be eligible for reduced rates of taxation in respect of long-term capital gains recognized by them. The deductibility of capital losses is subject to limitations.

b. Treatment of Accrued Interest.

Each U.S. Holder of an Allowed Claim will be treated as having received interest income to the extent the Cash or property paid to such U.S. Holder is attributable to accrued but unpaid interest, if any, on the relevant Claim. In the case in which the amount of Cash and property received is less than the principal and accrued but unpaid interest on the relevant Claim, the extent to which a U.S. Holder's allocable share of Cash or property received is attributable to accrued but unpaid interest is unclear. The Plan provides that, to the extent any Allowed Claim is comprised of indebtedness and accrued but unpaid interest thereon, any Distribution on such Claim shall be allocated for U.S. federal income tax purposes first in satisfaction of the principal amount of the Allowed Unsecured Claim held by the recipient Holder and thereafter to the portion of the claims attributable to any accrued but unpaid interest. It is possible, however, that the IRS could successfully challenge such allocation. In connection with the allocation of consideration between principal and accrued but unpaid interest, Holders of Allowed Unsecured Claims should consult their tax advisors to determine the amount of consideration received under the Plan that is allocable to accrued but unpaid interest.

A U.S. Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A U.S. Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a Distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such U.S. Holder otherwise realizes a gain or loss with respect to its Claim. A U.S. Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such U.S. Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

c. Information Reporting and Backup Withholding.

In connection with the consummation of the Plan, the Debtor and the Post-Effective Date Debtor, as applicable, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all Distributions under the Plan shall be subject to any such withholding and reporting requirements. The Plan requires all Holders of Allowed Claims and/or Equity Interests receiving Distributions under the Plan, as a condition to receiving any such Distribution, to provide the Distribution Agent with a completed and executed IRS Form W-8 or IRS Form W-9, as applicable, or similar form.

In general, information reporting requirements may apply to Distributions to U.S. Holders. Additionally, under the backup withholding rules, a U.S. Holder may be subject to backup withholding (currently at a rate of 24%) with respect to Distributions, unless a U.S. Holder provides the applicable withholding agent with a taxpayer identification number, certified under penalties of perjury, as well as certain other information, or otherwise establishes an exemption from backup withholding. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a credit against a U.S. Holder's U.S. federal income tax liability, if any, and may entitle a U.S. Holder to a refund, provided the required information is timely furnished to the IRS.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. U.S. Holders of Claims or Equity Interests are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan and Disclosure Statement would be subject to these regulations and require disclosure on the Holder's tax returns.

2. Non-U.S. Holders of Claims

A Non-United States Person[5] generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan.

C. Importance of Obtaining Professional Tax AdviceTHE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON THE PARTICULAR CIRCUMSTANCES OF A HOLDER OF CLAIMS OR EQUITY INTERESTS. ACCORDINGLY, HOLDERS OF CLAIMS OR EQUITY INTERESTS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE XV.

CONDITIONS TO THE EFFECTIVE DATE

A. Conditions Precedent to the Effective Date.

The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived in accordance with Article X.B of the Plan:

1. The Plan Support Agreement shall not have been terminated as to the parties thereto and remains in full force and effect, and the Debtor and other parties thereto shall be in compliance therewith;

2. The Debtor shall have implemented the Asset Sale and all transactions contemplated by the Plan Support Agreement in a manner consistent in all respects with the Plan Support Agreement;

3. The Debtor shall have paid or reimbursed all fees and out-of-pocket expenses of counsel to the Prepetition Agent and ad hoc group of Prepetition Secured Lenders (as defined in the Plan Support Agreement);

4. The Mediation Settlement Agreement shall have been executed by all parties, and the ITOI Settlement Payment shall have been paid to the Debtor in accordance with the Mediation Settlement Agreement, to be held in escrow for the benefit of Direct Energy and ITOI in

[5] A "Non-United States Person" in this context shall mean a Holder of a Claim that is not subject to either federal or state income taxation unless such Holder (a) is engaged in a trade or business in the United States to which income, gain, or loss from the exchange is "effectively connected" for United States federal income tax purposes, or (b) is an individual, is present in the United States for 183 days or more during the taxable year of the exchange, and certain other requirements are met.

accordance with an escrow agreement that provides for delivery of such funds to Direct Energy on the Effective Date of the Plan, or to ITOI upon entry of an order by the Bankruptcy Court denying confirmation of the Plan;

5. The Confirmation Order shall have become a Final Order;

6. The total as of the entry of the Confirmation Date of (i) Allowed Class 1 Claims; (ii) the Allowed Class 4 Claims (iii) the Class 5 Claims not constituting the Direct Energy Allowed Claim; and (iv) the Class 6 Reserve Amount, does not exceed $2 million.

7. All actions, documents, and agreements necessary to implement this Plan, including, without limitation, all actions, documents, and agreements necessary to implement any actions or transactions contemplated under this Plan shall have been effected or executed.

8. There shall not be in effect any (i) Order entered by any court of any competent jurisdiction; (ii) any Order, opinion, ruling or other decision entered by any administrative or governmental Entity or (iii) applicable law, prohibiting or making illegal the consummation of any material transactions or provisions contemplated by this Plan.

B. Waiver of Conditions to Confirmation and Effective Date.

Each of the conditions to the Effective Date may be waived, in whole or in part, by agreement, without notice to or an Order of the Bankruptcy Court, *provided* that (i) with respect to the conditions to Effective Date set forth in Article X.A. 1, 2, and 3 of the Plan, such waiver requires the consent of each of the Debtor and the Prepetition Agent (acting at the direction of the Requisite Consenting Lenders), (ii) with respect to the conditions to Effective Date set forth in Article X.A. 4, 5, 7 and 8 of the Plan, such waiver requires the consent of each of the Debtor, ITOI, Direct Energy, and the Prepetition Agent (acting at the direction of the Requisite Consenting Lenders), and (iii) with respect to the condition to Effective Date set forth in Article X.A. 6 of the Plan, such waiver requires solely the consent of the Debtor and Direct Energy. The Debtor shall provide written notice of any requested waiver to the applicable party for which consent is required.

C. Substantial Consummation.

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

ARTICLE XVI.

RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

1. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

2. To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim;

3. To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

4. To issue such Orders in aid of execution and consummation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

5. To consider any amendments to, or modifications of, the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

6. To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code;

7. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;

8. To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

9. To enter a final decree closing the Chapter 11 Case;

10. To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

11. To adjudicate any dispute regarding an alleged default under the Plan and enforce remedies upon any actual default under the Plan;

12. To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending in the Bankruptcy Court on the Effective Date or Filed prior to the Effective Date;

13. To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;

14. To determine any other matters that may arise in connection with or related to the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Plan;

15. To enforce, interpret, and determine any disputes arising in connection with any stipulations, Orders, judgments, injunctions, exculpations, and rulings entered in

connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

16. To resolve disputes concerning any reserves with respect to Disputed Claims or other Claims as provided in the Plan or the administration thereof pursuant to the Plan;

17. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Date, the Confirmation Hearing for the purpose of determining the treatment of a Claim or Equity Interest under the Plan or for any other purpose; and

18. To resolve any other matter or for any purpose specified in the Plan, the Confirmation Order, or any other document entered into in connection with any of the foregoing.

The Bankruptcy Court shall retain nonexclusive jurisdiction to hear any other matter not inconsistent with the Bankruptcy Code. If the Bankruptcy Court abstains from exercising, or declines to exercise jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, the provisions of Article XI of the Plan shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

ARTICLE XVII.

MISCELLANEOUS PROVISIONS

A. Amendment or Modification of the Plan.

Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtor, at any time before the Confirmation Date, *provided that* the Plan, as altered, amended or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code; *provided further that* any such alteration, amendment, or modification must not conflict with the terms of the Sale Order; *provided further that* the Debtor shall have the prior written consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, and the Debtor shall have complied with section 1125 of the Bankruptcy Code. The Debtor shall not propose any material modifications to the Plan without consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders.

B. Severability.

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, in consultation with the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, shall have the power to alter or interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or

interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. Revocation or Withdrawal of the Plan.

The Debtor may revoke or withdraw the Plan at any time before the Confirmation Date and File subsequent plans. If the Plan is revoked or withdrawn, or if confirmation or consummation of any plan does not occur, then, with respect to any such revoked or withdrawn Plan, (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing, allowance or limiting to an amount certain of any Claim or Equity Interests or Class of Claims or Equity Interests), unless otherwise agreed to by the Debtor and any counterparty to such settlement or compromise, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (x) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Person; (y) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor; or (z) constitute an admission of any sort by the Debtor or any other Person.

D. Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor and any and all present and former the Holders of Claims, and the Holders of Equity Interests (irrespective of whether their Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor, and each of respective successors and assigns of the foregoing Persons and Entities.

E. Notices.

The Plan provides that any notice, request, or demand required or permitted to be made or provided under this Plan to or upon the Debtor, the Post-Effective Date Debtor, the Prepetition Agent, Direct Energy, or ITOI shall be (a) in writing; (b) served by email; and (c) deemed to have been duly given or made when actually delivered, addressed as follows:

(i) if to the Debtor, to:

John J. Monaghan
Lynne B. Xerras
Kathleen M. St. John
Holland & Knight LLP

10 Saint James Avenue, 11th Floor
Boston, Massachusetts 02116
john.monaghan@hklaw.com
lynne.xerras@hklaw.com
kathleen.stjohn@hklaw.com;

-and-

Christopher A. Ward
Polsinelli PC
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
cward@polsinelli.com;

(ii) if to the Prepetition Agent and/or the ad hoc group of Prepetition Secured Lenders, to:

Brian M. Resnick
Joshua Y. Sturm
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
brian.resnick@davispolk.com
joshua.sturm@davispolk.com;

-and-

Mark D. Collins
Amanda R. Steele
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801
collins@RLF.com
steele@RLF.com;

(iii) if to Direct Energy, to:

Benjamin I. Finestone
Kate Scherling
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
benjaminfinestone@quinnemanuel.com
katescherling@quinnemanuel.com;

-and-

K. John Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
johnshaffer@quinnemanuel.com;

-and-

Michael R. Nestor
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
mnestor@ycst.com;

(iv) if to ITOI, to:

Sarah Gilbert
Crowell & Moring LLP
590 Madison Avenue
New York, NY 10022
sgilbert@crowell.com;

-and-

William D. Sullivan
William A. Hazeltine
Sullivan Hazeltine Allinson LLC
919 North Market Street, Suite 420
Wilmington, DE 19801
bsullivan@sha-llc.com
whazeltine@sha-llc.com

F. Governing Law.

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

G. Withholding and Reporting Requirements.

In connection with the consummation of the Plan, the Debtor and the Post-Effective Date Debtor, as applicable, shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all Distributions under the Plan shall be subject to any such withholding and reporting requirements. All Holders of Allowed Claims and/or

Equity Interests receiving Distributions under the Plan, as a condition to receiving any Distribution, shall provide the Distribution Agent with a completed and executed tax form W-8 or Tax Form W-9, or similar form.

H. Allocation of Distributions between Principal and Interest.

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount of the Claim first (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

I. Headings.

Headings are used in the Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Plan and/or Disclosure Statement, as applicable, for any other purpose.

J. Exhibits/Schedules.

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full therein.

K. Filing of Additional Documents.

On or before substantial consummation of the Plan, the Debtor, or Post-Effective Date Debtor, as applicable, shall File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. In the event that the Plan is not consummated, neither the Plan, this Disclosure Statement, nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding, or controversy within or outside the Bankruptcy Court involving the Debtor.

L. No Admissions.

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by any Entity with respect to any matter set forth therein.

M. Successors and Assigns.

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

N. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained therein, or the taking of any action by the Debtor, the Post-Effective Date

Debtor, or the Distribution Agent, as applicable, with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any of their respective rights with respect to the Debtor, Holders of Claims or Equity Interests or each other before the Effective Date.

O. Implementation.

The Debtor, Post-Effective Date Debtor, and/or the Distribution Agent, as applicable, shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in the Plan.

P. Inconsistency.

In the event of any inconsistency among the Plan and any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and the Sale Order, the provisions of the Sale Order shall govern.

Q. Closing of Chapter 11 Case.

Upon substantial consummation, the Distribution Agent may cause the Post-Effective Date Debtor to move for a final decree to close the Chapter 11 Case and to request such other Order as may be just.

R. Entire Agreement.

The Plan and the Plan Documents set forth the entire agreement and understanding among the parties-in-interests relating to the subject matter of the Plan and supersede all prior discussions and documents.

S. Default under the Plan.

Except or otherwise provided for in the Plan, after the Effective Date, in the event of an alleged default under the Plan, any party alleging such default shall provide written notice of default (the "Plan Default Notice") to the Post-Effective Date Debtor at the address set forth in Article XIII(E) of the Plan (as may be updated from time to time) and shall contemporaneously File such Plan Default Notice with the Bankruptcy Court. The Post-Effective Date Debtor shall have five (5) Business Days from the receipt of a Plan Default Notice to cure any actual default that may have occurred. Following receipt of a Plan Default Notice, the Post-Effective Date Debtor shall not distribute, liquidate, or otherwise dispose of assets of the Post-Effective Date Debtor without the consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, unless and until the earlier of (a) the cure of the breach that is the basis for the Plan Default Notice, and (b) the Bankruptcy Court determines whether a default under the Plan has occurred or such default has been cured by the Post-Effective Date Debtor. The Post-Effective Date Debtor and any other party-in-interest shall have the right to dispute an alleged default that has occurred and to notify the party alleging such default that the Post-Effective Date Debtor or such other party-in-interest contends no default has occurred. The Bankruptcy Court shall retain jurisdiction over any such dispute and any remedy with respect thereto.

ARTICLE XVIII.

CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtor believes that confirmation and consummation of the Plan is preferable to all other alternatives. **THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS AND URGES ALL SUCH HOLDERS THAT ARE ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN AND TO COMPLETE AND SUBMIT THEIR BALLOTS SO THAT THEY WILL BE RECEIVED BY THE SOLICITATION AGENT ON OR BEFORE THE VOTING DEADLINE.**

Dated: November 16, 2022

ECEC WIND-DOWN LLC (F/K/A ECTOR COUNTY ENERGY CENTER LLC)

By: */s/ John Baumgartner*
Name: John Baumgartner
Title: Chief Restructuring Officer

EXHIBIT A

LIQUIDATING CHAPTER 11 PLAN

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 No. 454**

MODIFIED FIRST AMENDED LIQUIDATING CHAPTER 11 PLAN OF DEBTOR

Dated: November 16, 2022
Wilmington, Delaware

/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
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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
Telephone: (617) 523-2700
Facsimile: (617) 523-6850
john.monaghan@hklaw.com
lynne.xerras@hklaw.com
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
Telephone: (312) 263-3600
Facsimile: (312) 578-6666
david.wirt@hklaw.com
phillip.nelson@hklaw.com

Counsel to the Debtor and Debtor in Possession

[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.

TABLE OF CONTENTS

Page

I.

INTRODUCTION

The Debtor in this Chapter 11 Case hereby proposes its *Modified First Amended Liquidating Chapter 11 Plan* (as defined below, the "Plan") pursuant to section 1129 of the Bankruptcy Code. The Debtor is the proponent of the Plan within the meaning of Bankruptcy Code section 1129. The Plan is a liquidating chapter 11 plan, providing for the Distribution of approximately $150 million in proceeds generated through the going concern sale of substantially all of the Debtor's operating assets to Holders of Allowed Claims in accordance with the terms of this Plan and the priority of claims provisions in the Bankruptcy Code.

II.

DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions.

Capitalized terms used but not otherwise defined herein shall have the respective meanings specified below, unless the context otherwise requires:

1. "**Acquired Property**" means the Debtor's assets and properties that were purchased, and contracts and liabilities that were assumed, by the Purchaser pursuant to the Asset Purchase Agreement and Sale Order.

2. "**Administrative Expense Bar Date**" means, for all Administrative Expense Claims other than Professional Claims and Claims arising under section 503(b)(9) of the Bankruptcy Code, December 16, 2022 at 4:00 p.m. (prevailing Eastern time). For the avoidance of doubt, Claims arising under Bankruptcy Code section 503(b)(9) were required to be Filed by the general Bar Date for Proofs of Claim.

3. "**Administrative Expense Claim**" means any right to payment constituting actual and necessary costs and expenses of preserving the Estate under Bankruptcy Code sections 503(b)

and 507(a)(2) including, without limitation: (a) Professional Claims, (b) any fees or charges assessed against the Estate under section 1930 of title 28 of the United States Code, and (c) all Claims arising under Bankruptcy Code section 503(b)(9); *provided, however*, that, for the avoidance of doubt, a Claim that is or was assumed by the Purchaser shall not be an Administrative Expense Claim.

4. "**Allowed**" means, with reference to any Claim, proof of which was timely and properly Filed or, if no Proof of Claim was Filed, that has been or hereafter is listed by the Debtor in the Schedules as liquidated in amount and not Disputed or contingent and, in each case, as to which: (a) no objection to allowance has been interposed within the applicable period fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bankruptcy Court; or (b) an objection has been interposed and such Claim has been allowed, in whole or in part, by a Final Order. Except for any Claim that is expressly Allowed herein, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or Disputed and for which no Proof of Claim has been Filed as required in the Bar Date Order is not considered Allowed and such Person or Entity shall not be treated as a Holder with respect to such Claim for the purposes of voting and Distributions under the Plan.

5. "**Asset Purchase Agreement**" means the agreement for the purchase and sale of the Acquired Property between the Debtor and Purchaser, as approved by the Bankruptcy Court pursuant to the Sale Order, as amended, restated or otherwise modified from time to time, if any.

6. "**Asset Sale**" means the sale of the Acquired Property to the Purchaser pursuant to the Asset Purchase Agreement and the Sale Order.

7. "**Avoidance Actions**" means any and all actual or potential avoidance, recovery, subordination or other Claims or causes of action that may be brought by or behalf the Debtor or

its Estate pursuant to any applicable section of the Bankruptcy Code, including sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 553, and 724(a), and/or applicable non-bankruptcy law.

8. "**Ballot**" means the form or forms distributed to certain Holders of Claims or Equity Interests that are entitled to vote on the Plan by which such parties may indicate acceptance or rejection of the Plan.

9. "**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time.

10. "**Bankruptcy Court**" or "**Court**" means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Case or, if such Court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

11. "**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

12. "**Bar Date**" means the date or dates established by the Bankruptcy Court as the deadline for Holders of Claims against the Debtor to file Proofs of Claim in the Chapter 11 Case pursuant to the Bar Date Order, specifically August 25, 2022 for all Proofs of Claim other than Proofs of Claim Filed by Governmental Units, for which the Bar Date was October 11, 2022.

13. "**Bar Date Order**" means the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims and (II) Approving Form and Manner of Notice Thereof* [Dkt. No. 240] (as amended, supplemented, or otherwise modified from time to time).

14. "**Business Day**" means any day, excluding Saturdays, Sundays, or "legal holidays" (as defined in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York, New York.

15. "**Cash**" means legal tender of the United States of America and equivalents thereof.

16. "**Cash on Hand**" means the Cash held by the Debtor's Estate as of the Effective Date, excluding the amounts held in, or funded into, the Wind-Down Reserve Accounts.

17. "**Chapter 11 Case**" means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor, ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC), Case No. 22-10320 (JTD), currently pending in the Bankruptcy Court.

18. "**Claim**" shall have the meaning set forth in Bankruptcy Code section 101(5).

19. "**Claims and Balloting Agent**" means Donlin, Recano & Company, Inc.

20. "**Claims Objection Deadline**" means thirty (30) days after the Effective Date or such later date as may be approved by the Bankruptcy Court.

21. "**Class**" means any group of Claims or Equity Interests established by the Plan pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

22. **"Class 5 Allocation**" means one hundred percent of the Distributable Value after satisfaction of the Distributions required under this Plan to be made to the Holders Allowed Claims in Classes 1, 2, 3 and 4 up to the amount of the total of all Allowed Class 5 Claims.

23. "**Class 5 Claims**" means Claims held by Holders of General Unsecured Claims against the Debtor that are not Class 6 Claims or Class 7 Claims.

24. "**Class 5 Disputed Claims Reserve**" means a reserve in an amount equal to the total of all Class 5 Claims that are Disputed plus the amount determined by the Distribution Agent

to be necessary to satisfy Rejection Damages Claims of non-Debtor counterparties to Executory Contracts other than Holders of Class 7 Claims.

25. "**Class 6 Claims**" means Claims for personal injury, property damage or other causes of action or Claims against the Debtor for damages alleged to have arisen as a result of Winter Storm Uri whether or not asserted in the Texas MDL that are Allowed in an amount in excess of the insurance coverage for such Claims under the Insurance Policies.

26. "**Class 6 Reserve**" means a reserve to be established on the Effective Date, which shall be funded with the Class 6 Reserve Amount.

27. "**Class 6 Reserve Amount**" means Cash in the amount of $500,000.

28. "**Class 7 Claims**" means Claims of insiders and affiliates of the Debtor, including, but not limited to, Claims asserted by Invenergy Services and Invenergy Thermal and any Intercompany Claims.

29. "**Clerk**" means the clerk of the Bankruptcy Court.

30. "**Confirmation Date**" means the date on which the Confirmation Order is entered on the Docket.

31. "**Confirmation Hearing**" means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

32. "**Confirmation Order**" means the Order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.

33. "**Consenting Lenders**" means, collectively, the lenders that are signatories to, or who execute a joinder agreement to, the Plan Support Agreement.

34. "**Creditor**" means any Person that is a Holder of a Claim against the Debtor.

35. "**CRO**" means John Baumgartner, of Grant Thornton LLP, solely in his capacity as the chief restructuring officer of the Debtor.

36. "**Cure Costs**" means all costs required of the Debtor to: (a) cure a default by the Debtor under an Executory Contract pursuant to section 365 of the Bankruptcy Code, and (b) permit the Debtor to assume such Executory Contract under section 365 of the Bankruptcy Code.

37. "**D&O Policies**" means all primary and excess insurance policies that provide coverage for liability related to the actions or omissions of the Debtor's former and current directors and officers, and, if applicable, "tail" or "runoff" coverage for such policies.

38. "**Debtor**" means ECEC Wind-Down LLC (f/k/a Ector County Energy Center LLC).

39. "**Depositary Agreement**" means that certain *Depositary Agreement*, dated as of August 28, 2018, Invenergy Thermal, the Subsidiary Guarantors (as defined in the Prepetition Credit Agreement), Invenergy Thermal Operating I Holdings LLC, the Prepetition Agent, and the Depositary Bank.

40. "**Depositary Bank**" means The Bank of New York Mellon, in its capacity as the Depositary Bank under the Depositary Agreement.

41. "**Derivative Standing Motion**" means the *Motion for Order Authorizing Direct Energy Business Marketing, LLC to Commence and Prosecute Claims on Behalf of the Estate* [Dkt. No. 163], and the proposed complaint, and the allegations, claims and causes of action asserted therein, attached as an exhibit to the Derivative Standing Motion, as amended, supplemented, or otherwise modified from time to time.

42. "**Direct Energy**" means Direct Energy Business Marketing, LLC.

43. "**Direct Energy Allowed Claim**" means the lesser of the Direct Energy Allowed Claim Cap or the amount that is equal to the Class 5 Allocation less the total of all Allowed Non-Direct Energy Class 5 Claims.

44. "**Direct Energy Allowed Claim Cap**" means $63 million.

45. "**Direct Energy Appeal**" means the appeal by Direct Energy to the U.S. District Court in the District of Delaware with respect to the Bankruptcy Court's Order denying the Derivative Standing Motion [Dkt. No. 355].

46. **"Direct Energy Bankruptcy Court Litigation"** means the adversary proceeding captioned *Direct Energy Business Marketing, LLC v. Ector County Energy Center, LLC, Invenergy LLC and Invenergy Thermal Operating I, LLC*, Adv. Proc. No. 22-50388 (JTD), pending in the Bankruptcy Court.

47. "**Direct Energy State Court Litigation**" means the lawsuit commenced by Direct Energy against the Debtor and Invenergy LLC in the Supreme Court of the State of New York, County of New York, Commercial Division (Index No. 653977/2021).

48. "**Disclosure Statement**" means the *Modified First Amended Disclosure Statement of the Debtor in Support of Modified First Amended Liquidating Chapter 11 Plan* [Dkt. No. 468] Filed by the Debtor, together with all annexed exhibits, either in its present form or as may be altered, amended, supplemented or modified from time to time.

49. "**Disputed**" means any Claim or Equity Interest, or any portion thereof, that is: (a) listed on the Schedules as unliquidated, disputed, and/or contingent for which no Proof of Claim in a liquidated and non-contingent amount has been Filed, or (b) the subject of an objection or request for estimation Filed by the Debtor, the Post-Effective Date Debtor, or any other party in

interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order.

50. "**Distributable Value**" means Cash on Hand (which excludes, for the avoidance of doubt, the amounts required to fund the Wind-Down Reserve Accounts) net of (a) the amount of Allowed Administrative Expense Claims including, but not limited to, Professional Claims; and (b) the amount of all Allowed and unpaid Priority Tax Claims, except to the extent that Holders of such Claims agree to lesser treatment.

51. "**Distribution**" means any distribution to the Holders of Allowed Claims or Equity Interests.

52. "**Distribution Agent**" means the CRO, John Baumgartner, of Grant Thornton LLP (or such other person as is subsequently appointed by the Post-Effective Date Debtor to serve in that role if Mr. Baumgartner becomes unable or unwilling to serve as the Distribution Agent).

53. "**Distribution Matrix**" means the Claims lists and data compiled by the Debtor and, to the extent there are any revisions following the Effective Date, the Post-Effective Date Debtor, that will serve as the basis for Distributions to be made under the Plan.

54. "**Docket**" means the docket in the Chapter 11 Case maintained by the Clerk.

55. "**Effective Date**" means the date specified by the Debtor in a notice Filed with the Bankruptcy Court as the date on which the Plan shall take effect, which date shall be the first Business Day on which the conditions specified in Article X of the Plan have been satisfied or waived in accordance with the Plan and no stay of the Confirmation Order is in effect, unless notwithstanding the applicability Bankruptcy Rule 3020(e), the Confirmation Order provides that the Plan is immediately effective and no stay is in effect.

56. "**Effective Date Allowed Claim Payments**" means the Distributions required to be made in accordance with Articles VII(A)(8), (9) and (10) of the Plan.

57. "**EMA**" means that certain Energy Management Agreement dated November 2, 2017, by and between the Debtor and Invenergy Services LLC to generally provide energy management, fuel management, and power management services to the Debtor as participant in the ERCOT market.

58. "**Entity**" means an entity as defined in Bankruptcy Code section 101(15).

59. "**Equity Interests**" means all equity interests in the Debtor, including, but not limited to, all issued, unissued, authorized, or outstanding shares or membership interests together with any warrants, options, or contract rights to purchase or acquire such interests at any time.

60. "**ERCOT**" means the Electric Reliability Council of Texas.

61. "**Estate**" means the estate of the Debtor created upon the commencement of the Chapter 11 Case pursuant to Bankruptcy Code section 541.

62. "**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.

63. "**Executory Contract**" means a contract or lease to which the Debtor is a party and that is subject to assumption, assumption and assignment, or rejection under section 365 of the Bankruptcy Code.

64. "**File, Filed, or Filing**" means file, filed, or filing with the Bankruptcy Court in the Chapter 11 Case.

65. "**Final Cash Collateral Order**" means the *Final Order (I) Authorizing the Debtor to Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lenders, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [Dkt. No. 195].

66. "**Final Decree**" means a Final Order entered by the Bankruptcy Court pursuant to section 350 of the Bankruptcy Code and Rule 3022 of the Bankruptcy Rules closing the Chapter 11 Case.

67. "**Final Order**" means an Order of the Bankruptcy Court that has entered and is not stayed, or has not been reversed, stayed, modified or amended and as to which the time to appeal, to petition for certiorari, or to move for reargument or rehearing has expired.

68. "**FMA**" means that certain Facilities Management Agreement dated November 25, 2014, by and between the Debtor and Invenergy Services Thermal US LLC to generally provide administration services for all project agreements and financing documents, and general operation and oversight of the Power Plant.

69. "**GAAP**" means the Generally Accepted Accounting Principles.

70. "**General Unsecured Claim**" means any unsecured Claim against the Debtor that is not Secured or entitled to priority under the Bankruptcy Code or any Final Order and that is not an Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Prepetition Term Lender Claim, or Prepetition Revolving Lender Claim, Other Secured Claim; *provided, however*, that, for the avoidance of doubt, a Claim that was assumed by the Purchaser or that has been satisfied in full during the pendency of the Case shall not be a General Unsecured Claim.

71. "**Governmental And Regulatory Approvals**" means all approvals required under applicable non-bankruptcy law from any Governmental Authority, ERCOT, PUCT or any other

Governmental Unit, regulatory authority or other person or Entity that was a condition to the Purchaser's operation of the Power Plant.

72. "**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other Entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

73. "**Governmental Unit**" shall have the meaning set forth in Bankruptcy Code section 101(27).

74. "**Holder**" means the beneficial holder of any Claim or Equity Interest.

75. "**HRCO**" means that certain "Heat Rate Call Option for Energy and Ancillary Services," as set forth in a Transaction Confirmation and ISDA 2002 Master Agreement, dated October 18, 2017, to which the Debtor and Direct Energy were parties.

76. "**Insurance Policies**" means all insurance policies of the Debtor, including any D&O Policies.

77. "**Intercompany Claims**" mean Claims against the Debtor that are held by the Debtor's parent(s), affiliates, and/or subsidiaries, other than Claims that arise under the Shared Services Agreements.

78. "**Invenergy Services**" means Invenergy Services LLC.

79. "**Invenergy Services Settlement**" means the settlement, effectuated pursuant to this Plan, of any and all of the Debtor's claims against Invenergy Services (including in connection with the receipt of an allegedly preferential transfer by Invenergy Services prior to the Petition Date), in return for a payment by Invenergy Services to the Debtor of $40,841.08.

80. "**Invenergy Thermal**" means Invenergy Services Thermal US LLC.

81. "**Invenergy Thermal Settlement**" means the settlement, effectuated pursuant to this Plan, of any and all of the Debtor's claims against Invenergy Thermal (including in connection with the receipt of an allegedly preferential transfer by Invenergy Thermal prior to the Petition Date), in return for a payment by Invenergy Thermal to the Debtor of $688,770.81.

82. "**IRS**" means the Internal Revenue Service.

83. "**ITOI**" means Invenergy Thermal Operating I LLC.

84. "**ITOI Settlement Payment**" means the payment of $10 million required to be paid by ITOI to Direct Energy as part of the Mediation Settlement.

85. "**Lien**" means any "lien" as defined under section 101(37) of the Bankruptcy Code.

86. "**Local Rules**" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

87. **"Mediation"** means the mediation ordered and conducted pursuant to the *Order Regarding Mediation* [Dkt. No. 399].

88. "**Mediation Settlement**" means the agreement reached by and among Direct Energy, Invenergy LLC, ITOI, and the Prepetition Agent (acting at the direction of the Prepetition Secured Parties), during the Mediation in full settlement of and exchange for mutual releases of any and all claims held by and among them, as described in the Mediation Settlement Agreement.

89. **"Mediation Settlement Agreement"** means the document memorializing the Mediation Settlement by and among Direct Energy, ITOI, Invenergy LLC, and the Prepetition Agent (acting at the direction of the Prepetition Secured Parties), which, among other things, provides for (a) mutual releases by and among Direct Energy, ITOI, Invenergy LLC, and their respective parent companies, subsidiaries, affiliates (not including the Debtor itself), principals,

officers, managers, directors, employees, and agents (the "Direct Energy Affiliates" and the "ITOI Affiliates" respectively), which will fully release and discharge each other from and against any and all manner of claims, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys' fees and costs, that any of the Direct Energy Affiliates now have, have had or in the future may have against any of the ITOI Affiliates and that the ITOI Affiliates now have, have had or in the future may have against any of the Direct Energy Affiliates; (b) mutual releases by and between the Direct Energy Affiliates, on one hand, and the Prepetition Agent (acting at the direction of the Prepetition Secured Parties) and their Related Persons (collectively, the "Secured Parties Affiliates"), on the other, which will fully release each other from and against any and all manner of claims, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity, whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys' fees and costs, that any of the Direct Energy Affiliates or the Secured Parties Affiliates now have, have had, or in the future may have against one another; with each of (a) and (b) arising out of, related to or in connection with, directly or indirectly: (i) the HRCO; (ii) the Prepetition Credit Agreement; (iii) the Derivative Standing Motion; (iv) the Direct Energy Bankruptcy Court Litigation; (v) the Direct Energy State Court Litigation; (vi) the Debtor's bankruptcy proceeding; or (vii) the Power Plant and its operations; and (c) mutual releases by and between the ITOI Affiliates, on one hand, and the Prepetition Agent, acting on behalf of the Secured Parties Affiliates, on the other hand, which will fully release each other from and against any and all manner of claims, causes of actions, suits, debts, dues, accounts, bonds, covenants, contracts,

agreements, judgments, losses, damages, liabilities and demands of any kind whatsoever in law or in equity in each of sub-clauses (i) and (iii)-(vii) above, whether known or unknown, suspected or unsuspected, contingent or fixed, including attorneys' fees and costs, that any of the ITOI Affiliates or Secured Parties Affiliates now have, have had or in the future may have against one another, *provided, however*, nothing in this clause (c) shall affect the claims, debt, rights and obligations arising under or in connection with the Prepetition Credit Agreement and related documents, and *provided further,* with regard to the mutual releases set forth in sub-clauses (a)-(c) herein, nothing herein shall release obligations under the Mediation Settlement Agreement.

90. **"Non-Direct Energy Class 5 Claims"** means all Allowed Class 5 Claims, other than the Direct Energy Allowed Claim.

91. "**Order**" means any award, decision, writ, injunction, judgment, order, or decree entered, issued, made, or rendered by any Governmental Authority (including the Bankruptcy Court), or by any arbitrator.

92. "**Other Priority Claim**" means a Claim that is entitled to priority in payment under Bankruptcy Code section 507, other than an Administrative Expense Claim or Priority Tax Claim; *provided, however*, that, for the avoidance of doubt, a Claim that is or was assumed by the Purchaser shall not be an Other Priority Claim.

93. "**Other Secured Claim**" means any Secured Claim other than a Prepetition Term Lender Claim or Prepetition Revolving Lender Claim; *provided, however*, that, for the avoidance of doubt, a Claim that is or was assumed by the Purchaser shall not be an Other Secured Claim. For the avoidance of doubt, Other Secured Claims include only the portion of such Claim that is an Allowed Secured Claim; any deficiency with respect to such Claims shall be treated as a General Unsecured Claim.

94. "**Permitted Investment**" shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States of America as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least $1,000,000,000, *provided, however*, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

95. "**Person**" shall have the meaning set forth in Bankruptcy Code section 101(41).

96. "**Petition Date**" means April 11, 2022.

97. "**Plan**" means this *Modified First Amended Liquidating Chapter 11 Plan*, including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time.

98. "**Plan Default Notice"** means the written notice of an alleged default of a provision of the Plan issued in accordance with Article XII.S below.

99. "**Plan Documents**" means all documents, forms, lists and agreements contemplated under this Plan (including, any exhibits to the Plan) to effectuate the terms and conditions hereof.

100. "**Plan Support Agreement**" means that certain plan support agreement, dated April 4, 2022, by and among the Debtor, the Prepetition Agent, and each of the lenders that are signatories thereto.

101. "**Post-Effective Date Debtor**" means the Debtor after the Effective Date.

102. "**Power Plant**" means the 330 megawatt natural gas-fired electricity-generating facility owned and operated by the Debtor, located on 32.5 acres of Debtor-owned land in Ector County, Texas, just outside of Odessa, that is part of the Permian Basin.

103. "**Prepetition Agent**" means Credit Suisse AG, Cayman Islands, as administrative agent and collateral agent, pursuant to the Prepetition Credit Agreement.

104. "**Prepetition Credit Agreement**" means that certain Amended and Restated Credit and Guaranty Agreement, dated as of August 22, 2019 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, including that certain Amendment No. 4, dated as of April 4, 2022), by and among Invenergy Thermal Operating I LLC, as borrower, the Debtor and certain of its non-Debtor affiliates, as Subsidiary Guarantors, each of the banks and other financial institutions party thereto, as Lenders, the financial institutions from time to time parties thereto as issuing banks in respect of revolving letters of credit, and Credit Suisse AG, Cayman Islands, as administrative agent and collateral agent.

105. "**Prepetition Guarantors**" means, collectively, the Debtor and certain non-Debtor affiliates that were primary obligors of Prepetition Secured Obligations as guarantors pursuant to the Prepetition Credit Agreement.

106. "**Prepetition Liens**" means the first-priority security interests in and Liens upon the Debtor's real and personal property assets and the proceeds thereof, which secure the Prepetition Secured Obligations pursuant to the Prepetition Security Agreement.

107. "**Prepetition Loan Documents**" means, collectively, the Prepetition Credit Agreement and the "Loan Documents" (as defined in the Prepetition Credit Agreement), pursuant to which the Prepetition Secured Lenders agreed to provide term loans and revolving loans Secured by the Prepetition Liens.

108. "**Prepetition Non-Debtor Subsidiary Guarantors**" means, collectively, the Prepetition Guarantors other than the Debtor.

109. "**Prepetition Revolving Lender Claims**" means, collectively, the Claims of the Prepetition Revolving Lenders arising under the Prepetition Loan Documents, which include the Prepetition Revolving Lender Guaranty Claims.

110. "**Prepetition Revolving Lender Guaranty Claims**" means contingent Secured Claims held by the Prepetition Revolving Lenders based on the guaranty under the Prepetition Credit Agreement in the amount of $64,553,598.00 plus fees, expenses, interest, and any other amounts payable under the Prepetition Credit Agreement.

111. "**Prepetition Revolving Lenders**" means, collectively, the revolving loan lenders party to the Prepetition Credit Agreement.

112. "**Prepetition Secured Lenders**" means, collectively, the Prepetition Term Lenders and the Prepetition Revolving Lenders.

113. "**Prepetition Secured Obligations**" means, collectively, all of the obligations owed by the Debtor pursuant to the Prepetition Loan Documents.

114. "**Prepetition Secured Parties**" means, collectively, the Prepetition Secured Lenders and Prepetition Agent.

115. "**Prepetition Security Agreement**" means that certain Pledge and Security Agreement dated August 28, 2018 by and among ITOI, the Prepetition Guarantors, and the Prepetition Secured Parties.

116. "**Prepetition Term Lender Claims**" means, collectively, the Claims held by the Prepetition Term Lenders arising under the Prepetition Loan Documents, which include Prepetition Term Lender Guaranty Claims and Prepetition Term Lender Prepayment Claim.

117. "**Prepetition Term Lender Guaranty Claims**" means those Secured Claims held by the Prepetition Term Lenders under the Prepetition Credit Agreement in the amount of $337,319,920.82 plus fees, expenses, interest and any other amounts payable under and as provided in the Prepetition Credit Agreement.

118. "**Prepetition Term Lender Prepayment Claim**" means an Allowed Secured Claim for $75,000,000.00, plus the Allowed amount of the reasonable fees and expenses of the Prepetition Agent and the Prepetition Term Lenders, including reasonable fees and expenses of counsel (but limited to the reasonable fees and expenses of Davis Polk & Wardwell LLP and Richards, Layton & Finger, P.A.).

119. "**Prepetition Term Lenders**" means, collectively, each of the term loan lenders party from time to time to the Prepetition Credit Agreement.

120. "**Priority Tax Claim**" means a Claim that is entitled to priority in payment under Bankruptcy Code section 507(a)(8); *provided, however*, that, for the avoidance of doubt, a Claim that is or was assumed by the Purchaser shall not be a Priority Tax Claim.

121. "**Pro Rata**" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

122. "**Professional**" means any professional Person employed in the Chapter 11 Case pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 pursuant to an Order of the Bankruptcy Court who is to be compensated for services rendered pursuant to Bankruptcy Code sections 327, 328, 329, 330, 331, or 363.

123. "**Professional Claims**" means all Claims for compensation and reimbursement of expenses by Professionals relating to services and expenses after the Petition Date through the Effective Date to the extent Allowed by the Bankruptcy Court.

124. "**Professional Fee Escrow Account**" means the account to be established on the Effective Date, which shall be funded with Cash, including, to the extent necessary, in an amount corresponding to the total aggregate unpaid amount of Professional fees of the Debtor and the advisors engaged by the Prepetition Agent and an ad hoc group of Prepetition Secured Lenders that have been or have been projected by the CRO to be incurred prior to the Plan Effective Date, which reserve shall be used to pay such fees if and when allowed on a final basis, to the extent applicable, as further described in Articles IV.B and VII(A)(12) of this Plan.

125. "**Proof of Claim**" means a written proof of claim Filed against the Debtor in the Chapter 11 Case.

126. "**PUCT**" means the Public Utilities Commission of Texas.

127. "**Purchaser**" means Ector County Generation LLC, the Entity that purchased the Acquired Property pursuant to the Asset Purchase Agreement and Sale Order

128. **"Rejected Contracts**" means those Executory Contracts, other than Insurance Policies, that are rejected pursuant to Section 365 and Article VI.A of the Plan.

129. "**Rejection Damages Claim**" means a Claim for damages alleged to have arisen as a result of the rejection of Rejected Contract.

130. "**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).

131. "**Released Claims and Interests**" has the meaning ascribed in Article IX.A herein.

132. "**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.

133. "**Remaining Assets**" means all property held by the Debtor's Estate on the Effective Date, including, without limitation, any real and personal property, Cash on Hand and any rights and defenses retained by the Debtor or the Post-Effective Date Debtor pursuant to the Plan. For the avoidance of doubt, the Remaining Assets do not include the Released Claims and Interests.

134. "**Requisite Consenting Lenders**" has the meaning ascribed to it in the Plan Support Agreement.

135. "**Sale Order**" means the Order entered by the Bankruptcy Court approving the Asset Sale and the terms of the Asset Purchase Agreement [Dkt. No. 259].

136. "**Schedules**" means the schedules of assets and liabilities, the lists of Holders of Equity Interests, and the statements of financial affairs Filed by the Debtor under Bankruptcy Code section 521 and Bankruptcy Rule 1007 on May 13, 2022 [Dkt. No. 146], and all amendments and modifications thereto.

137. "**Secured**" means, when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to this Plan or a Final Order as a Secured Claim.

138. "**Shared Services Agreements**" means, collectively, the FMA and EMA, pursuant to which the Debtor receives administrative, operational and energy trading services from its Shared Services Counterparties.

139. "**Shared Services Counterparties**" means the Debtor's non-Debtor affiliates Invenergy Thermal and Invenergy Services that are parties to the FMA and EMA, respectively.

140. "**Special Committee**" means the special committee of the Invenergy AMPCI Thermal Power LLC Board of Managers, inclusive currently of an independent director, with delegated authority over all board-level decisions regarding the Debtor.

141. "**Texas MDL**" means the litigation initiated against the Debtor, as a defendant, by various Texas residents and businesses, as plaintiffs, asserting personal injury and/or property damage claims against power generators and other companies in connection with Winter Storm Uri that is currently pending before Texas state court system.

142. "**Treasury Regulations**" means the regulations, including temporary regulations or any successor regulations, promulgated under the United States Internal Revenue Code, as amended from time to time.

143. "**Unclaimed Distribution**" means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

144. "**Unclaimed Distribution Deadline**" means sixty (60) days after the date on which the Distribution Agent makes a Distribution of Cash or other property under the Plan to a Holder of an Allowed Claim.

145. "**Unimpaired**" means, with respect to a Claim, Equity Interest, or Class of Claims or Equity Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

146. "**UST**" means the Office of the United States Trustee for the District of Delaware.

147. "**Voting Deadline**" means December 15, 2022 at 4:00 p.m. prevailing Eastern Time.

148. "**Wind-Down Account**" means the account to be established on the Effective Date, which shall be funded with Cash in an amount of $1.25 million, inclusive of the amounts received in the Invenergy Services Settlement and the Invenergy Thermal Settlement. Funds held in the Wind-Down Account may be used to fund costs and expenses, including, but not limited to, Professional fees, operating costs to be incurred by the Post-Effective Date Debtor and/or Distribution Agent from the Effective Date and quarterly fees payable to the Office of the United States Trustee, together totaling $250,000, through entry of the Final Decree.

149. "**Wind-Down Reserve Accounts**" means, collectively, the Professional Fee Escrow Account, the Class 5 Disputed Claims Reserve, the Class 6 Reserve and the Wind-Down Account.

150. "**Wind-Down Reserves Waterfall**" has the meaning ascribed in Article VII(A)(15).

151. "**Winter Storm Uri**" means the extraordinary and prolonged cold weather event that occurred across the State of Texas in February 2021.

B. Interpretation; Application of Definitions and Rules of Construction.

For purposes of this Plan, except as expressly defined elsewhere in this Plan or unless the context otherwise requires, all capitalized terms used herein shall have the meanings ascribed to them in Article II of this Plan. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter genders. Unless otherwise specified, each section, article, schedule, or exhibit reference in the Plan is to the respective section in, article of, schedule to, or exhibit to the Plan. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. The terms "and" and "or," as used herein, shall be construed both conjunctively and disjunctively, and each shall include the other whenever applicable.

The rules of construction contained in Bankruptcy Code section 102 shall apply to the construction of the Plan. A term used herein that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

III.

CLASSIFICATION OF CLAIMS AND INTERESTS

A. Classification of Claims and Equity Interests.

The classification of the Claims and Equity Interests listed below shall be for all purposes, including voting, confirmation and Distribution pursuant to this Plan. As of the Voting Deadline, any Class that does not contain any Claims will be deemed deleted automatically from the Plan, and any Class that does not contain an Allowed Claim (or a Claim temporarily or provisionally Allowed by the Bankruptcy Court for voting purposes) will be deemed automatically deleted from the Plan solely with respect to voting on confirmation of the Plan.

Class	Description	Status	Entitlement To Vote
Unclassified	Administrative Expense Claims	Unclassified	No
Unclassified	Priority Tax Claims	Unclassified—Deemed to accept	No
Class 1	Other Priority Claims	Unimpaired—Deemed to accept	No
Class 2	Prepetition Term Lender Claims	Impaired	Yes
Class 3	Prepetition Revolving Lender Claims	Impaired	Yes
Class 4	Other Secured Claims	Unimpaired—Deemed to accept	No
Class 5	General Unsecured Claims that are Not Class 6 or Class 7 Claims	Impaired	Yes
Class 6	General Unsecured Claims for Personal Injury, Property	Impaired	Yes

Class	Description	Status	Entitlement To Vote
	Damage, or Other Causes of Action or Claims Arising out of Winter Storm Uri		
Class 7	Claims Of Insiders and Affiliates Including Intercompany Claims	Impaired	Yes
Class 8	Equity Interests	Not retaining equity—Deemed to reject	No

IV.

TREATMENT OF UNCLASSIFIED CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims, and Professional Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in Article V hereof. These unclassified Claims are treated as follows:

A. Administrative Expense Bar Date.

Administrative Expense Claims (including substantial contribution claims, if any, but excluding Professional Claims) and requests for payment that have not been paid in the ordinary course, assumed by the Purchaser, released, or otherwise settled must be Filed no later than the Administrative Expense Bar Date (except for claims pursuant to 28 U.S.C. § 1930 and administrative tax claims pursuant to 11 U.S.C. § 503(b)(1)(D), for which no request for payment is required; and except for Claims under Bankruptcy Code section 503(b)(9), which must have been Filed by the general Bar Date of August 25, 2022). Holders of Administrative Expense Claims (other than Professional Claims) that do not file claims and request payment on or before

the Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtor or its Estate and such Administrative Expense Claims shall be deemed released against the Debtor. The deadline for submission by Professionals for Bankruptcy Court approval of accrued but unpaid Professional Claims shall be thirty (30) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court.

B. Administrative Expense Claims.

Subject to the Administrative Expense Bar Date and any other provisions herein, except to the extent that any Person entitled to payment of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the date that is the later of the Effective Date and seven (7) Business Days after such Administrative Expense Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable; *provided, however*, that Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtor, if any, may be paid in full in the ordinary course of business in accordance with the terms and conditions of the particular transactions and any applicable agreements.

Professional Claims shall be subject to approval by the Bankruptcy Court. Each Holder of a Professional Claim seeking an award by the Bankruptcy Court of compensation for services rendered and/or reimbursement of expenses incurred through and including the Effective Date (other than substantial contribution claims under section 503(b)(4) of the Bankruptcy Code) must file and serve its respective application for allowance of such Professional Claim no later than the date that is thirty (30) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court. Objections to applications of such Professionals for compensation and/or reimbursement of expenses must be Filed and served on the Post-Effective Date Debtor and the

requesting Professional no later than thirty (30) days (or such longer period as may be allowed by Order of the Bankruptcy Court) after the date on which the applicable application for compensation or reimbursement was served. Cash payments of Allowed Professional Claims shall be paid (a) first, from any pre-Effective Date retainer or deposit held by the Holder of such Claim; and (b) second, to the extent any such pre-Effective Date retainer or deposit is insufficient to satisfy such Holder's Allowed Professional Claim in full, from the Professional Fee Escrow Account. The balance of any pre-Effective Date retainer or deposit held by the Holder of a Professional Claim not used in satisfaction of such Professional Claim shall be paid to the Post-Effective Date Debtor seven (7) Business Days following satisfaction in full of such Holder's Professional Claim.

C. Priority Tax Claims.

Except to the extent the Holder of an Allowed Priority Tax Claim agrees to different and less favorable treatment, each Holder of an Allowed Priority Tax Claim, if any, shall receive in full satisfaction of such Allowed Priority Tax Claim payment in Cash equal to the unpaid portion of such Allowed Priority Tax Claim on the date that is the later of the Effective Date and seven (7) Business Days after such Allowed Priority Tax Claim becomes an Allowed Claim, or as soon thereafter as is reasonably practicable.

D. Payment of Statutory Fees.

All fees due and payable prior to the Effective Date, pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717, shall be paid by the Distribution Agent from Cash on Hand. On and after the Effective Date and through the date of the entry of the Final Decree closing the Chapter 11 Case, (i) all fees payable pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717, shall be paid by the

Distribution Agent from the Wind-Down Account; and (ii) the Distribution Agent shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the UST.

V.

TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

A. Treatment of Claims and Equity Interests.

1. CLASS 1 – OTHER PRIORITY CLAIMS

a. Classification. Class 1 consists of Other Priority Claims against the Debtor.

b. Impairment and Voting. Class 1 is Unimpaired by the Plan. Holders of Class 1 Claims are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

c. Treatment. Unless otherwise agreed to by Holders of Allowed Class 1 Claims and the Debtor or Post-Effective Date Debtor, as applicable, Holders of Allowed Class 1 Claims, if any, shall receive, on the date that is the earlier of the Effective Date and seven (7) Business Days after such Class 1 Claim becomes an Allowed Claim, on account of, and in full, final, and complete satisfaction, settlement, and release of, and in exchange for their Allowed Claims, Cash equal to one hundred percent (100%) of their Allowed Claims.

2. CLASS 2 – PREPETITION TERM LENDER CLAIMS

a. Classification. Class 2 consists of the Prepetition Term Lender Claims against the Debtor.

b. Impairment and Voting. Class 2 is impaired by the Plan. Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

c. Treatment. Holders of Allowed Prepetition Term Lender Claims shall receive, on account of, and in full, final and complete satisfaction, settlement, and release of, and in exchange for, the Prepetition Term Lender Claims, on the Effective Date, their Pro Rata Share of payment in Cash in an amount equal to the Prepetition Term Lender Prepayment Claim. On the Effective Date, the balance of any Prepetition Term Lender Claims in excess of the Prepetition Term Lender Prepayment Claim shall be, and shall be deemed to be, released and waived solely as to the Debtor, and shall not affect any claims against ITOI or the Prepetition Non-Debtor Subsidiary Guarantors.

3. CLASS 3 – Prepetition Revolving Lender Claims

a. Classification. Class 3 consists of the Prepetition Revolving Lender Claims against the Debtor.

b. Impairment and Voting. Class 3 is impaired by the Plan. Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

a. Treatment. Holders of Allowed Prepetition Revolving Lender Claims shall receive, on account of, and in full, final and complete satisfaction, settlement, and release of, and in exchange for, the Prepetition Revolving Lender Claims, on the Effective Date, payment in full in Cash for any unsatisfied balance of their reasonable fees and expenses, including reasonable fees and expenses of counsel (but limited to the reasonable fees and expenses of Davis Polk & Wardwell LLP and Richards, Layton & Finger, P.A.). On the Effective Date, the Prepetition Revolving Lender Guaranty Claim shall be, and shall be deemed to be, released and waived solely as to the Debtor, and shall not affect any claims against ITOI or the Prepetition Non-Debtor Subsidiary Guarantors.

4. CLASS 4 – OTHER SECURED CLAIMS

a. Classification. Class 4 consists of all Other Secured Claims against the Debtor.

b. Impairment and Voting. Class 4 is Unimpaired by the Plan. Holders of Class 4 Claims are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

c. Treatment. Unless otherwise agreed to by Holders of Allowed Class 4 Claims and the Debtor or Post-Effective Date Debtor, on the date that is the later of the Effective Date or seven (7) Business Days after such Allowed Class 4 Claim becomes an Allowed Claim, Holders of Allowed Class 4 Claims, if any, shall receive, on account of, and in exchange for, such Allowed Class 4 Claim at the election of the Post-Effective Date Debtor, (i) such treatment in accordance with section 1124 of the Bankruptcy Code as may be determined by the Bankruptcy Court; (ii) payment in full, in Cash, of such Allowed Class 4 Claim; (iii) satisfaction of any such Allowed Class 4 Claim by delivering the collateral securing any such Claims and paying any interest fees, costs and/or expense required to be paid under section 506(b) of the Bankruptcy Code; or (iv) providing such Holder with such treatment in accordance with section 1129(b) of the Bankruptcy Code as may be determined by the Bankruptcy Court.

5. CLASS 5 – GENERAL UNSECURED CLAIMS (OTHER THAN CLASS 6 OR CLASS 7 GENERAL UNSECURED CLAIMS)

a. Classification. Class 5 consists of General Unsecured Claims against the Debtor.

b. Impairment and Voting. Class 5 is impaired by the Plan. Holders of Class 5 Claims are entitled to vote to accept or reject the Plan.

c. Treatment. Holders of Allowed Class 5 Claims other than Direct Energy shall receive, on the Effective Date on the date that is the later of the Effective Date or seven (7) Business Days after such Allowed Class 5 Claim becomes an Allowed Claim, payment in full in Cash equal to their Allowed General Unsecured Claim (without interest). Direct Energy on the Effective Date shall receive, on the Effective Date, the balance of the Class 5 Allocation after satisfaction of or reservation for the Allowed Class 5 Claims not constituting the Direct Energy Allowed Claim to the extent necessary to satisfy the Direct Energy Allowed Claim, up to the amount of the Direct Energy Allowed Claim Cap. In the event that, upon Distribution on the Effective Date of the Distributable Value, Distributions to Direct Energy total less than the Direct Energy Allowed Claim Cap, from time to time after the Effective Date, Direct Energy shall receive payment in Cash of any amounts released from the reserve established hereunder for Class 5 Claims not constituting Allowed Claims as of the Effective Date and funds pursuant to the Wind-Down Reserves Waterfall until total Distributions to Direct Energy total an amount equal to the Direct Energy Allowed Claim Cap.

6. CLASS 6 – GENERAL UNSECURED CLAIMS RESULTING FROM WINTER STORM URI.

a. Classification. Class 6 consists of the Class 6 General Unsecured Claims asserted against the Debtor constituting claims arising out of the events of Winter Storm Uri, whether arising under contract, tort other theories and whether for personal injury or property damage, in each case to the extent those claims are Allowed in amounts that exceed the available insurance coverage.

b. Impairment and Voting. Class 6 is impaired by the Plan. Holders of Class 6 Claims are entitled to vote to accept or reject the Plan.

c. Treatment. Holders of Allowed Class 6 Claims shall receive, on account of such Allowed Class 6 Claims: (i) on the Effective Date, authority and relief from any stay, injunction, order or prohibition against liquidating, but not collecting, the amount of each such Holder's Allowed Class 6 Claim; (ii) on the Effective Date, authority and relief from any stay, injunction, order or prohibition against recovering any Allowed Class 6 Claim from and solely to the extent of the Insurance Policies; and (iii) full payment of any uninsured balance from and to the extent of the Class 6 Reserve Amount.

7. CLASS 7– AFFILIATE, INSIDER AND INTERCOMPANY CLAIMS.

a. Classification. Class 7 consists of all Claims held by affiliates and insiders of the Debtor, including any intercompany claims.

b. Impairment and Voting. Class 7 is impaired by the Plan. Holders of Class 7 Claims are entitled to vote to accept or reject the Plan.

c. Treatment. Class 7 Claims are fully subordinated to the Allowed Claims of all other Classes of Claims. Holders of Allowed Class 7 Claims shall receive, on account of such Allowed Class 7 Claims, Pro Rata Distribution of any Distributable Value and any amounts of the Wind-Down Reserves Waterfall remaining after payment in full of all Allowed Claims in Classes 1 through 6 until such Class 7 Claims are paid in full.

8. CLASS 8– EQUITY INTERESTS.

a. Classification. Class 8 consists of the Equity Interests in the Debtor.

b. Impairment and Voting. Class 8 is impaired under the Plan. The Holders of the Class 8 Equity Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

c. Treatment. Class 8 Equity Interests will be eliminated, extinguished, and cancelled on the Effective Date; *provided, however*, that, despite such cancellation, Holders of Allowed Class 8 Equity Interests will receive all Distributable Value remaining, if any, after all Allowed Class 5, 6 and 7 Claims are paid in full.

B. Modification of Treatment of Claims and Equity Interests.

The Debtor reserves the right to modify the Plan in accordance with the provisions of section 1127 of the Bankruptcy Code and Article XI of the Plan to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

C. Acceptance by Impaired Classes.

Each Impaired Class of Claims that will (or may) receive or retain property or any interest in property under this Plan shall be entitled to vote to accept or reject this Plan. An Impaired Class of Claims shall have accepted this Plan if (i) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept this Plan and (ii) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept this Plan.

D. Voting Presumptions.

Claims in Unimpaired Classes are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan. Claims and Equity Interests in Classes that do not entitle the Holders thereof to receive or retain any property under this Plan are conclusively deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

VI.

EXECUTORY CONTRACTS

A. Deemed Rejection of Executory Contracts.

On the Effective Date, except as otherwise provided in this Plan, each Executory Contract not previously assumed, assumed and assigned, or rejected pursuant to an Order of the Bankruptcy Court, other than Insurance Policies treated in Article VI.E below, shall be deemed *rejected* as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for any Executory Contract (a) that is the subject of a separate motion or notice to assume pending as of the Confirmation Hearing, (b) that previously expired or terminated pursuant to its own terms, or (c) that has previously been assumed and assigned, or rejected pursuant to a Final Order of the Bankruptcy Court (including, without limitation, in connection with the Asset Sale). Rejected Contracts shall be deemed terminated upon rejection, *provided, further* that rejection of any Rejected Contract pursuant to the Plan or otherwise will not constitute a termination of obligations owed to the Debtor under such contract or lease that survive breach under applicable law.

B. Effect of Confirmation Order and Effective Date on Executory Contracts.

Except as otherwise previously approved by an Order of the Bankruptcy Court, subject to the occurrence of the Effective Date, entry of the Confirmation Order by the Bankruptcy Court shall constitute an Order, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, approving the rejection of the Rejected Contracts pursuant to the preceding provision of the Plan. Unless otherwise indicated herein, assumptions, assumptions and assignments, and rejections of Executory Contracts pursuant to this Plan shall be effective as of the Effective Date. Each Executory Contract assumed pursuant to this Plan or by Bankruptcy Court Order and not assigned to a third-party on or before the Effective Date shall vest in and be fully enforceable by the Post-

Effective Date Debtor in accordance with its terms, except as such terms may have been modified by the provisions of this Plan or any Order of the Bankruptcy Court authorizing its assumption pursuant to section 365 of the Bankruptcy Code.

To the maximum extent permitted by law, to the extent any provision (including, without limitation, any "change of control" provision) in any Executory Contract assumed pursuant to this Plan (if any) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract, then such provision shall be deemed modified such that the assumption and assignment contemplated by this Plan shall not entitle the counterparty thereto to terminate such Executory Contract or to exercise any other default-related rights with respect thereto, except for asserting and pursuing a Claim for Cure Costs.

C. Rejection Damages Claims.

Unless otherwise provided by a Bankruptcy Court Order, any Proofs of Claim asserting Rejection Damages Claims must be Filed no later than on or before the date that is thirty (30) days after the Effective Date. Any Proofs of Claim for Rejection Damages Claims that are not timely Filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against the Debtor or the Estate without the need for any objection by any Person or further notice to or action, Order, or approval of the Bankruptcy Court, and any such Rejection Damages Claim shall be deemed fully satisfied and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. 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. Unless otherwise specified, each Executory Contract assumed or rejected by the Debtor shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract.

D. Assumption or Assumption and Assignment of Executory Contracts; Cure Costs.

Payment of the Cure Costs associated with any Executory Contract assumed pursuant to previous Court order as part of the Asset Sale shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, under such Executory Contract occurring at any time prior to the effective date of the assumption and assignment. Any Proofs of Claim Filed with respect to an Executory Contract that has been assumed and assigned prior to the Effective Date and with respect to which the Allowed Cure Cost has been paid shall be deemed disallowed and expunged without further notice, action, Order, or approval of the Bankruptcy Court.

E. Insurance Policies.

To the extent that the Insurance Policies issued to, or entered into by, the Debtor prior to the Petition Date constitute Executory Contracts, notwithstanding anything in the Plan to the contrary, the Debtor shall be deemed to have *assumed* all of the Debtor's unexpired Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date; notwithstanding the foregoing, however, Cure Claims shall not be required to be filed in connection with the deemed assumption of Insurance Policies in effect as of the Effective Date.

Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, confirmation of the Plan shall not discharge, impair or otherwise modify any advancement, indemnity or other obligations of the Insurance Policies.

In addition, after the Effective Date, Post-Effective Date Debtor shall not terminate or otherwise reduce the coverage under any of the Insurance Policies with respect to conduct occurring prior thereto, and all directors and officers of the Debtor who served in such capacity at any time prior to the Effective Date shall be entitled from the applicable insurers to the full benefits of any such policy for the full term of such policy regardless of whether such directors and officers remain in such positions after the Effective Date.

F. Reservation of Rights.

Nothing contained in this Plan shall constitute an admission by the Debtor that any contract or contractual obligation or arrangement is in fact an Executory Contract or that the Debtor has any liability thereunder. Except as may be otherwise expressly set forth in another provision of the Plan, nothing in the Plan will waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, cause of action, or other rights of the Debtor under any Executory or non-Executory Contract. Nothing in the Plan will increase, augment, or add to any of the duties,

obligations, responsibilities, or liabilities of the Debtor under any Executory or non-Executory Contract.

VII.

IMPLEMENTATION AND EFFECT OF CONFIRMATION OF THE PLAN

A. Means for Implementation of the Plan.

In addition to the provisions set forth elsewhere in the Plan, the following shall constitute the means for implementation of the Plan:

1. Authority to Act. From and after the Effective Date, all matters expressly provided for under the Plan that would otherwise require approval of the stockholders, equity security holders, officers, directors, partners, managers, members, or other owners of the Debtor shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date, as applicable, pursuant to applicable laws, without any requirement of further vote, consent, approval, authorization or other action by such stockholders, equity security holders, officers, directors, partners, managers, members or other owners of such Entities or notice to, Order of or hearing before the Bankruptcy Court.

2. Vesting of Assets. Except as otherwise provided in this 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, except as expressly preserved under the Plan.

3. Continued Legal Existence. Except as provided otherwise in this Plan, the Post-Effective Date Debtor will continue to exist after the Effective Date as a separate legal Entity, with all the powers of such an Entity under applicable law in the jurisdiction in which the Debtor is organized, and pursuant to its operating agreement and other organizational documents in effect

as of the Effective Date (provided that such organizational documents shall be amended to prohibit the Post-Effective Date Debtor from issuing non-voting equity securities to the extent necessary to comply with section 1123(a) of the Bankruptcy Code).

4. Effectuating Documents; Further Transactions. The Debtor and Post-Effective Date Debtor, and its officers and designees, are authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law.

5. Appointment of Distribution Agent. On the Effective Date, the Distribution Agent shall be deemed appointed without the necessity of further action, and afforded the rights, obligations, duties and protections set forth in this Article VIII and as otherwise set forth in the Plan.

6. Officers and Special Committee Members. On the Effective Date, each of the members of the Special Committee shall be deemed to have resigned in such capacity. The Debtor shall be managed, as of the Effective Date, by the Distribution Agent.

7. Funding of the Wind-Down Reserve Accounts. On the Effective Date or as soon thereafter as is reasonably practicable, the Distribution Agent shall cause the Cash on Hand to be used to fund the Wind-Down Reserve Accounts.

8. Funding of and Distributions to Priority and Secured Claims. On the Effective Date, the Distribution Agent shall cause the Cash on Hand to be distributed to, or reserved for, as applicable, Distributions to: (a) Allowed Administrative Expense Claims (other than Professional Claims, which shall be paid in accordance with Article VII(A)(12) herein), (b) Allowed Priority Tax Claims, (c) Allowed Other Priority Claims, (d) Allowed Other Secured Claims, (e) Allowed

Prepetition Term Lender Claims, and (f) Allowed Prepetition Revolving Lender Claims. Any amounts reserved hereunder in excess of amounts needed to satisfy Allowed Claims shall be subject to the Wind-Down Reserves Waterfall.

9. Distributions to Holders of General Unsecured Claims Other Than Direct Energy. On the Effective Date, the Distribution Agent shall cause the funds subject to the Class 5 Allocation to be distributed to, or reserved for, as applicable, Holders of Non-Direct Energy Class 5 Claims. Those Holders of Non-Direct Energy Class 5 Claims that are Allowed as of the Effective Date shall, on the Effective Date, receive payment in full of their Allowed Non-Direct Energy Class 5 Claim. Thereafter the Distribution Agent shall, within ten (10) days of a Non-Direct Energy Class 5 Claim being Allowed, cause payment in full of such Allowed Class 5 Claim to be distributed from that portion of the Class 5 Allocation reserved hereunder.

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. Post-Effective Date Transfers. After the Debtor or Distribution Agent, as applicable, has, first, funded the Wind-Down Reserve Accounts and, second, made the Effective Date Allowed Claim Payments, the Debtor or Distribution Agent, as applicable, shall (a) be deemed to transfer the remainder of the property of the Estate, including any Cash on Hand and Remaining Assets to the Post-Effective Date Debtor free and clear of all Liens, claims,

encumbrances, and interests. The Distribution Agent shall use the proceeds of such assets to fund Distributions in accordance with the Plan.

12. Professional Fee Escrow Account. On the Effective Date, the Debtor shall establish the Professional Fee Escrow Account and shall fund such Professional Fee Escrow Account with Cash on Hand, in an amount corresponding to the total unpaid amount of the Professional fees of the Debtor, the Prepetition Agent and an ad hoc group of Prepetition Secured Lenders that have been incurred or are projected to be incurred prior to the Effective Date. On the date that is the later of the Effective Date and the date that such Claims become Allowed Claims, the Distribution Agent shall pay using the funds held in the Professional Fee Escrow Account, all Allowed Professional Claims. The Professional Fee Escrow Account shall be maintained in trust for the Professionals and funds therein shall not be considered property of the Debtor's Estate and shall not vest with the Post-Effective Date Debtor. The amount of Professional Claims owing to the Professionals shall be paid in Cash to such Professionals when such Claims are Allowed by a Final Order. For the avoidance of doubt, the legal fees of the Prepetition Agent and the ad hoc group of Prepetition Secured Lenders shall be paid in accordance with paragraph 8(b) of the Final Cash Collateral Order and shall not be subject to the fee applicable process. When all Allowed Professional Claims are paid in full in Cash, amounts remaining in the Professional Fee Escrow Account, if any, shall revert to the Post-Effective Date Debtor and constitute an asset subject to further disposition as provided for herein in accordance with the Wind-Down Reserves Waterfall.

13. Wind-Down Account. In accordance with this Plan, on the Effective Date, the Debtor, Post-Effective Date Debtor, or Distribution Agent, as applicable, shall establish the Wind-Down Account, and, thereafter, the Distribution Agent shall apply the funds held in the Wind-Down Account to the costs and expenses, including, but not limited to, Professional fees and

operating costs to be incurred by the Post-Effective Date Debtor and/or Distribution Agent from the Effective Date through entry of a Final Decree in the Chapter 11 Case, as well as quarterly fees payable to the Office of the United States Trustee through entry of the Final Decree.

14. 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 such settlements to the Wind-Down Account.

15. Wind-Down Reserves Waterfall. On the following schedule, and in no event later than the dissolution of the Post-Effective Date Debtor, the Distribution Agent shall remove all funds held in reserves, escrows or accounts and distribute such funds, first to Direct Energy until such time as total payments to Direct Energy equal the Direct Energy Claim Cap, then *Pro Rata* to the Holders of Allowed Class 7 Claims and, thereafter, to the Holders of Class 8 Equity Interests (the "Wind-Down Reserves Waterfall"). Such release and Distribution shall occur no later than the following:

a. Professional Fee Escrow Account: Within ten (10) days following the later of Effective Date or the adjudication of all final fee applications of Professionals;

b. Class 5 Disputed Claims Reserve: Within ten (10) days following the earlier of final adjudication of the final Disputed Class 5 Claim or entry of the Final Decree, provided that the Distribution Agent may, at his discretion, make periodic Distributions from the Class 5 Disputed Claims Reserve from and after the Effective Date upon his determination that the amounts held in such reserve exceed the total of the amounts necessary to satisfy the Disputed Class 5 Claims upon or in the event of their being Allowed;

c. Wind-Down Account: Within ten (10) days following the entry of the Final Decree.

d. Class 6 Reserve: Within ten (10) days following satisfaction of all Holders of Allowed Class 6 Claims or dissolution of the Post-Effective Date Debtor.

16. Powers and Duties of Post-Effective Date Debtor. Subject to the terms of the Plan, the Post-Effective Date Debtor shall: (i) be the representative of the Estate pursuant to Bankruptcy Code section 1123 and serve as the Estate's representative before the Bankruptcy Court or any other court as necessary with respect to all issues and (ii) have the rights and powers set forth in the Plan. Subject to the terms of the Plan, the Post-Effective Date Debtor shall be authorized, empowered, and directed to take all actions necessary to comply with the Plan and exercise and fulfill its duties and obligations arising hereunder, including the rights and duties set forth in this Plan to (i) review, investigate and (if appropriate) object to or seek equitable subordination of Claims against the Estate that have not been previously Allowed and to assert any rights of setoff, or other legal or equitable defenses of the Debtor; (ii) investigate, prosecute and/or settle all causes of action that have not been otherwise disposed of, settled or released without further order of the Court; (iii) voluntarily engage in arbitration or mediation with respect to any cause of action that has not been otherwise disposed of, settled or released; (iv) invest any Cash held by the Post-Effective Date Debtor in any Permitted Investment, at his or her sole discretion, with no obligation to invest such Cash or proceeds and no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds; (v) open, maintain, and administer bank accounts as necessary and appropriate to carry out the powers and duties of the Post-Effective Date Debtor; (vi) prepare and file tax returns for the Debtor; (vii) seek estimation of contingent or unliquidated Claims under Bankruptcy Code section 502(c) or determinations of tax liabilities

under Bankruptcy Code section 505; (viii) prepare and file quarterly financial reports after the Effective Date; (ix) comply with applicable Orders of the Bankruptcy Court over the matters set forth herein, and all applicable laws and regulations concerning the matters set forth herein; (x) enter into any agreement that is necessary or convenient to carry out the Plan; (xi) obtain any funding necessary for the prosecution of the causes of action that have not been otherwise disposed of, settled or released; (xii) take all other actions in furtherance of the implementation of the Plan, including executing all agreements, instruments, and other documents necessary to perform the Post-Effective Date Debtor's duties under the Plan; (xiii) to the extent that the Distribution Agent is unable and/or unwilling to make Distributions, calculate and make all Distributions; (xiv) after the Estate is fully administered, bring a motion seeking entry of a Final Decree. Except as otherwise set forth in the Plan, the Post-Effective Date Debtor may take any and all actions that it deems reasonably necessary or appropriate to defend against any Claim, including, without limitation, the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to prosecute, settle or defend against any Claim, including, without limitation, the retention of Professionals, experts and consultants; and (b) enter into any settlement agreement in good faith.

17. Claims Paid or Payable by Third Parties.

a. Claims Paid by Third Parties. The Debtor, Post-Effective Date Debtor, or Distribution Agent, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claim objection having to be Filed and without any further notice to or action, Order or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not the Debtor. To the extent a Holder of such Claim receives a Distribution on account of such Claim and

receives payment from a party that is not the Debtor on account of such Claim, such Holder shall repay, return or deliver any Distribution to the Debtor, Post-Effective Date Debtor, or Distribution Agent, as applicable, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan. The Debtor, Post-Effective Date Debtor, or Distribution Agent, as applicable, reserves all of its rights, remedies, claims and actions against any such Holders who fail to repay or return any such Distribution.

b. Claims Payable by Third Parties. No Distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to the Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtor's insurers agrees to satisfy in full or in part a Claim, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be Filed and without any further notice to or action, Order or approval of the Bankruptcy Court.

VIII.
PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

A. Method of Payment.

Unless otherwise expressly agreed in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank, an electronic wire, or ACH transfer.

B. Objections to and Resolution of Claims.

The Post-Effective Date Debtor shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order; *provided, however*, that

the Post-Effective Date Debtor shall have the sole authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court.

C. Claims Objection Deadline.

The Post-Effective Date Debtor and any other party in interest to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claims no later than the Claims Objection Deadline; *provided*, *however*, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion and notice by the Post-Effective Date Debtor for cause.

D. No Distribution Pending Allowance.

Notwithstanding any other provision of the Plan, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Plan.

E. Distribution After Allowance.

Except as otherwise provided herein, by the earlier of (i) seven (7) Business Days after a Claim becomes an Allowed Claim, and (ii) thirty (30) days after the expiration of the Claims Objection Deadline and if no objection has been Filed, the Distribution Agent shall distribute all Cash or other property to which a Holder of an Allowed Claim is then entitled.

F. Investment of Segregated Cash and Property.

To the extent practicable, the Distribution Agent may invest any Cash or other property segregated on account of a Disputed Claim, any undeliverable Distribution, or any proceeds thereof in any Permitted Investment; *provided, however*, that the Distribution Agent shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds.

G. Delivery of Distributions.

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective Proofs of Claim Filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Distribution Agent after the date of any related Proof of Claim; or (3) at the address reflected in the Schedules if no Proof of Claim is Filed and the Distribution Agent has not received a written notice of a change of address. The Distribution Agent shall be entitled to conclusively rely on the Distribution Matrix for purposes of making Distributions.

1. Undeliverable Distributions. If the Distribution to the Holder of any Claim is returned to the Distribution Agent as undeliverable, no further Distribution shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Distribution Agent until the earlier of (i) such time as a Distribution becomes deliverable, or (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

2. Upon an undeliverable Distribution becoming an Unclaimed Distribution, the amount of the Unclaimed Distribution shall be conclusively deemed to be part of the Class 5 Disputed Claim Reserve.

3. The Distribution Agent shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions, *provided, however*, nothing contained in the Plan shall require the Distribution Agent to locate any Holder or an Allowed Claim.

H. Unclaimed Distributions.

Any Cash or other property to be distributed under the Plan shall revert to the Post-Effective Date Debtor to be distributed to Holders of Allowed Claims and Equity Interests in accordance with this Plan if it is not claimed by the applicable Entity on or before the Unclaimed

Distribution Deadline, without any further motion or Bankruptcy Court Order. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, such Unclaimed Distributions shall be distributed in accordance with the Wind-Down Reserves Waterfall, and any claim or right of the Holder of such Allowed Claims or Equity Interests shall be discharged and forever barred.

I. Minimum Distributions.

Notwithstanding anything herein to the contrary, the Distribution Agent shall not be required to make Distributions or payments of less than $50.00.

J. Limitation on Liability of Distribution Agent.

No recourse shall ever be had, directly or indirectly, against the Distribution Agent or his or her attorneys, advisors or other Professionals by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, or note, or upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Distribution Agent under the Plan. All such liabilities, covenants, and agreements of the Distribution Agent, his attorneys, advisors, or other Professionals, whether in writing or otherwise, under the Plan shall be enforceable, if at all, only against, and shall be satisfied only out of, the Remaining Assets. Every undertaking, contract, covenant or agreement entered into in writing by the Distribution Agent shall provide expressly against the personal liability of the Distribution Agent. The Distribution Agent and his or her agents, attorneys, advisors and other Professionals shall not be liable for any act they may do, or omit to do hereunder in good faith and in the exercise of their respective best judgment, and the fact that such act or omission was advised, directed or approved by an attorney acting as counsel for the Distribution Agent shall be conclusive evidence of such good faith and best judgment; *provided*, *however*, that this Article VIII(J) shall not apply

to any bad faith, fraud, gross negligence, or willful misconduct by the Distribution Agent or its agents, attorneys, advisors or other Professionals.

K. Reliance of Distribution Agent on Documents.

The Distribution Agent may rely, and shall be protected in acting or refraining from acting, upon any certificates, opinions, statements, instruments or reports believed by it to be genuine and to have been signed or presented by the proper Entity, including, without limitation, claims lists and data provided to the Distribution Agent by the Claims and Balloting Agent, the Debtor, or the Debtor's financial advisor, upon which the Distribution Agent shall base Distributions.

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. <u>Exculpation.</u>

On the Effective Date, except as otherwise specifically provided in this 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. <u>Release by Debtor and Estate.</u>

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise expressly provided in this 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. 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 foregoing Release provisions or other provisions of this Plan in any pending litigation in which the Debtor is a party, including to cause the dismissal of the Direct Energy Litigation against the Debtor, with prejudice, and dismissal of the Direct Energy Appeal by motion or other appropriate pleading.

E. Setoffs, Recoupment and Counterclaims.

Except as otherwise expressly provided for in this Plan and/or the Confirmation Order, pursuant to the Bankruptcy Code (including sections 553 and 558), applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim or Equity Interest, the Debtor or the Post-Effective Date Debtor, as applicable, may set off and/or recoup against any Allowed Claim, Equity Interest or Distributions to be made pursuant to this Plan on account of such Allowed Claim or Equity Interest (before such Distribution is made), any claims or rights of any nature that the Debtor or Post-Effective Date Debtor, as applicable, may hold against the Holder of such Allowed Claim or Equity Interest, to the extent such Claims or rights against such Holder have not been otherwise compromised or settled on or before the Effective Date (whether pursuant to this Plan or otherwise); *provided, however*, that neither the failure to effectuate such a setoff or recoupment nor the allowance of any Claim or Equity Interest pursuant to this Plan shall constitute a waiver, abandonment or release by the Debtor, the Post-Effective Date Debtor or its successor, as

applicable, of any such claims or rights that the Debtor, the Post-Effective Date Debtor or its successor, as applicable, may possess against such Holder as of the Effective Date.

F. Release of Liens.

Except as otherwise provided in this Plan or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this 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.

G. Good Faith.

As of the Confirmation Date, the Debtor shall be deemed to have solicited acceptance or rejections of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code.

X.

CONDITIONS TO THE EFFECTIVE DATE

A. Conditions Precedent to the Effective Date.

The Plan shall not become effective unless and until the following conditions shall have been satisfied or waived in accordance with Article X.B below:

1. The Plan Support Agreement shall not have been terminated as to the parties thereto and remains in full force and effect, and the Debtor and other parties thereto shall be in compliance therewith;

2. The Debtor shall have implemented the Asset Sale and all transactions contemplated by the Plan Support Agreement in a manner consistent in all respects with the Plan Support Agreement;

3. The Debtor shall have paid or reimbursed all fees and out-of-pocket expenses of counsel to the Prepetition Agent and ad hoc group of Prepetition Secured Lenders (as defined in the Plan Support Agreement);

4. The Mediation Settlement Agreement shall have been executed by all parties, and the ITOI Settlement Payment shall have been paid to the Debtor in accordance with the Mediation Settlement Agreement, to be held in escrow for the benefit of Direct Energy and ITOI in accordance with an escrow agreement that provides for delivery of such funds to Direct Energy on the Effective Date of the Plan, or to ITOI upon entry of an order by the Bankruptcy Court denying confirmation of this Plan;

5. The Confirmation Order shall have become a Final Order;

6. The total as of the entry of the Confirmation Date of (i) Allowed Class 1 Claims; (ii) the Allowed Class 4 Claims (iii) the Class 5 Claims not constituting the Direct Energy Allowed Claim; and (iv) the Class 6 Reserve Amount, does not exceed $2 million.

7. All actions, documents, and agreements necessary to implement this Plan, including, without limitation, all actions, documents, and agreements necessary to implement any actions or transactions contemplated under this Plan shall have been effected or executed.

8. There shall not be in effect any (i) Order entered by any court of any competent jurisdiction; (ii) any Order, opinion, ruling or other decision entered by any administrative or governmental Entity or (iii) applicable law, prohibiting or making illegal the consummation of any material transactions or provisions contemplated by this Plan.

B. Waiver of Conditions to Confirmation and Effective Date.

Each of the conditions to the Effective Date may be waived, in whole or in part, by agreement, without notice to or an Order of the Bankruptcy Court, *provided* that (i) with respect to the conditions to Effective Date set forth in Article X. A. 1, 2, and 3, such waiver requires the consent of each of the Debtor and the Prepetition Agent (acting at the direction of the Requisite Consenting Lenders), (ii) with respect to the conditions to Effective Date set forth in Article X. A. 4, 5, 7 and 8, such waiver requires the consent of each of the Debtor, ITOI, Direct Energy, and the Prepetition Agent (acting at the direction of the Requisite Consenting Lenders), and (iii) with respect to the condition to Effective Date set forth in Article X.A. 6, such waiver requires solely the consent of the Debtor and Direct Energy. The Debtor shall provide written notice of any requested waiver to the applicable party for which consent is required.

C. Substantial Consummation.

On the Effective Date, this Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

XI.

RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

1. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

2. To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim;

3. To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;

4. To issue such Orders in aid of execution and consummation of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

5. To consider any amendments to, or modifications of, the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

6. To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code;

7. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;

8. To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

9. To enter a Final Decree closing the Chapter 11 Case;

10. To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

11. To adjudicate any dispute regarding an alleged default under the Plan and enforce remedies upon any actual default under the Plan;

12. To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending in the Bankruptcy Court on the Effective Date, or Filed prior to the Effective Date;

13. To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided herein;

14. To determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Plan;

15. To enforce, interpret, and determine any disputes arising in connection with any stipulations, Orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

16. To resolve disputes concerning any reserves with respect to Disputed Claims or other Claims as provided in the Plan or the administration thereof pursuant to the Plan;

17. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Date, the Confirmation Hearing for the purpose of determining the treatment of a Claim, or Equity Interest hereunder or for any other purpose; and

18. To resolve any other matter or for any purpose specified in this Plan, the Confirmation Order, or any other document entered into in connection with any of the foregoing.

The Bankruptcy Court shall retain nonexclusive jurisdiction to hear any other matter not inconsistent with the Bankruptcy Code. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, the provisions of this Article XI shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

XII.

MISCELLANEOUS PROVISIONS

A. Amendment or Modification of the Plan.

Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtor, at any time before the Confirmation Date, *provided that* the Plan, as altered, amended or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, *provided further* that any such alteration, amendment, or modification must not conflict with the terms of the Sale Order, *provided further* that the Debtor shall have the prior written consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, and the Debtor shall have complied with section 1125 of the Bankruptcy Code. The Debtor shall not propose any

material modifications to the Plan without consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders.

B. Severability.

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Plan is invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, in consultation with the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. Revocation or Withdrawal of the Plan.

The Debtor may revoke or withdraw this Plan at any time before the Confirmation Date and File subsequent plans. If the Plan is revoked or withdrawn, or if confirmation or consummation of any plan does not occur, then, with respect to any such revoked or withdrawn Plan, (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing, allowance or limiting to an amount certain of any Claim or Equity Interests or Class of Claims or Equity Interests), unless otherwise agreed to by the Debtor and any counterparty to such settlement or compromise, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan, and no acts

taken in preparation for consummation of the Plan, shall (x) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Person; (y) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor; or (z) constitute an admission of any sort by the Debtor or any other Person.

D. Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtor and any and all present and former the Holders of Claims, and the Holders of Equity Interests (irrespective of whether their Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases and injunctions described in the Plan, each Entity acquiring property under the Plan, any and all non-Debtor parties to Executory Contracts with the Debtor, and each of respective successors and assigns of the foregoing Persons and Entities.

E. Notices.

Any notice, request, or demand required or permitted to be made or provided under this Plan to or upon the Debtor, the Post-Effective Date Debtor, the Prepetition Agent, Direct Energy, or ITOI shall be (a) in writing; (b) served by email; and (c) deemed to have been duly given or made when actually delivered, addressed as follows:

(i) if to the Debtor, to:

John J. Monaghan
Lynne B. Xerras
Kathleen M. St. John
Holland & Knight LLP
10 Saint James Avenue, 11th Floor
Boston, Massachusetts 02116
john.monaghan@hklaw.com

lynne.xerras@hklaw.com
kathleen.stjohn@hklaw.com;

-and-

Christopher A. Ward
Polsinelli PC
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
cward@polsinelli.com;

(ii) if to the Prepetition Agent and/or the ad hoc group of Prepetition Secured Lenders, to:

Brian M. Resnick
Joshua Y. Sturm
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
brian.resnick@davispolk.com
joshua.sturm@davispolk.com;

-and-

Mark D. Collins
Amanda R. Steele
Richards, Layton & Finger, P.A.
920 North King Street
Wilmington, DE 19801
collins@RLF.com
steele@RLF.com;

(iii) if to Direct Energy, to:

Benjamin I. Finestone
Kate Scherling
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010
benjaminfinestone@quinnemanuel.com
katescherling@quinnemanuel.com;

-and-

K. John Shaffer
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
johnshaffer@quinnemanuel.com;

-and-

Michael R. Nestor
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
mnestor@ycst.com;

(iv) if to ITOI, to:

Sarah Gilbert
Crowell & Moring LLP
590 Madison Avenue
New York, NY 10022
sgilbert@crowell.com;

-and-

William D. Sullivan
William A. Hazeltine
Sullivan Hazeltine Allinson LLC
919 North Market Street, Suite 420
Wilmington, DE 19801
bsullivan@sha-llc.com
whazeltine@sha-llc.com

F. Governing Law.

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

G. Withholding and Reporting Requirements.

In connection with the consummation of the Plan, the Debtor and the Post-Effective Date Debtor as applicable, shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. All Holders of Allowed Claims and/or Equity Interests receiving Distributions under the Plan, as a condition to receiving any Distribution, shall provide the Distribution Agent with a completed and executed IRS form W-8 or IRS Form W-9, as applicable, or similar form.

H. Allocation of Distributions between Principal and Interest.

To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount of the Claim first (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

I. Headings.

Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

J. Exhibits/Schedules.

All exhibits and schedules to the Plan are incorporated into and are a part of the Plan as if set forth in full herein.

K. Filing of Additional Documents.

On or before substantial consummation of the Plan, the Debtor, or Post-Effective Date Debtor, as applicable, shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of

the Plan. In the event that this Plan is not consummated, neither this Plan, the Disclosure Statement nor any statement contained therein may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside the Bankruptcy Court involving the Debtor.

L. No Admissions.

Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by any Entity with respect to any matter set forth herein.

M. Successors and Assigns.

The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

N. Reservation of Rights.

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained herein, or the taking of any action by the Debtor, the Post-Effective Date Debtor, or the Distribution Agent, as applicable, with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any of their respective rights with respect to the Debtor, Holders of Claims or Equity Interest or each other before the Effective Date.

O. Implementation.

The Debtor, Post-Effective Date Debtor, and/or the Distribution Agent, as applicable, shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in this Plan.

P. Inconsistency.

In the event of any inconsistency among the Plan and any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern. In the event of

any inconsistency between the Plan and the Sale Order, the provisions of the Sale Order shall govern.

Q. Closing of Chapter 11 Case.

Upon substantial consummation, the Distribution Agent may cause the Post-Effective Date Debtor to move for a Final Decree to close the Chapter 11 Case and to request such other Order as may be just.

R. Entire Agreement.

This Plan and the Plan Documents set forth the entire agreement and understanding among the parties-in-interests relating to the subject matter hereof and supersede all prior discussions and documents.

S. Default Under Plan.

Except or otherwise provided for in this Plan, after the Effective Date, in the event of an alleged default under this Plan, any party alleging such default shall provide written notice of default (the "Plan Default Notice") to the Post-Effective Date Debtor at the address set forth in Article XII(E) above (as may be updated from time to time) and shall contemporaneously File such Plan Default Notice with the Bankruptcy Court. The Post-Effective Date Debtor shall have five (5) Business Days from the receipt of a Plan Default Notice to cure any actual default that may have occurred. Following receipt of a Plan Default Notice, the Post-Effective Date Debtor shall not distribute, liquidate, or otherwise dispose of assets of the Post-Effective Date Debtor without the consent of the Prepetition Agent, acting at the direction of the Requisite Consenting Lenders, unless and until the earlier of (a) the cure of the breach that is the basis for the Plan Default Notice, and (b) the Bankruptcy Court determines whether a default under the Plan has occurred or such default has been cured by the Post-Effective Date Debtor. The Post-Effective Date Debtor and any other party-in-interest, shall have the right to dispute an alleged default that

has occurred and to notify the party alleging such default that the Post-Effective Date Debtor or such other party-in-interest contends no default has occurred. The Bankruptcy Court shall retain jurisdiction over any such dispute and any remedy with respect thereto.

Dated: November 16, 2022

ECEC WIND-DOWN LLC (f/k/a ECTOR COUNTY ENERGY CENTER LLC)

By: */s/ John Baumgartner*
Name: John Baumgartner
Title: Chief Restructuring Officer

EXHIBIT B

LIQUIDATION ANALYSIS

LIQUIDATION ANALYSIS
Ector County Energy Center
Updated 11/14/2022 (Eighth Reporting Period 13 WCF Budget with Actual results through 10/30/2022)
$ in Thousands

Liquidation Analysis (assuming conversion on October 30, 2022)	Plan Estimate (as of 10.30.22)	Chapter 7 Alternative
Assets Available to the Estate		
Cash Balance as of 10/30/2022	142,542	142,542
Additions for Cash on Deposit with Counterparties	1,724	1,724
Addition for Affiliate avoidance Action Settlement[1]	730	500
Other Causes of Action[2]	-	1,000
Distributable Value	**144,995**	**145,765**
Administrative & Other Priority Claims[3]	421	421
Professional Fee Holdback Reserve[4]	7,344	3,946
Wind-Down Reserve[5]	1,250	-
Chapter 11 Professional Carveout[6]	-	1,000
Chapter 7 Trustee Carveout[7]	-	50
Chapter 7 Trustee Advisors[8]	-	450
Chapter 7 Trustee Commission[9]	-	4,373
Total Admin and Priority	9,014	10,239
Net Distributable Value Available to Creditor Classes	**135,981**	**135,526**
Secured Lender Distribution[10]	**75,000**	**135,526**
Available for General Unsecured Distribution[11]	**60,981**	**-**

Comments

1 Under Chapter 7, assumes reduction because settlement necessary rather than full voluntary payment
2 For demonstration purposes only: Debtor believes there is nominal or no value in Other Causes of Action
3 Assumes payment of Chapter 11 administrative claims in accordance with the Plan Support Agreement ("PSA")
4 Assumes payment of Chapter 11 professional fee claims incurred before the "Trigger Notice" (assumed October 30) in accordance with the PSA
5 Wind-Down Reserve unnecessary in the event of conversion
6 Assumes PSA Carveout to cover post-Trigger Notice chapter 11 professional fees
7 Assumes PSA Carveout
8 Assumes $500,000 in Trustee fees and application of the $50,000 Triger Notice Carveout
9 Assumes 3% of Distributable Assets and disregards payment limitation to unsecured assets
10 Secured lender distribution capped by PSA at $75 million in Chapter 11 Plan scenario; uncapped under Chapter 7 liquidation scenario
11 In a Liquidation under a Chapter 7, the Trustee must recover over $60 million from other sources in order to approach the value that Plan provides to GUC.