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

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| In re:<br><br>ECTOR COUNTY ENERGY CENTER LLC,[1]<br><br>Debtor. | Chapter 11<br><br>Case No. 22-10320 (JTD)<br><br>**Re: Docket Nos. 7, 8** |

**ORDER (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**

Upon the motion (the "Motion")[2] of the above-captioned debtor and debtor-in-possession (the "Debtor"), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order (this "Bidding Procedures Order"): (a) approving the Debtor's entry into the Asset Purchase Agreement, (b) authorizing and approving the Bidding Procedures, in substantially the form attached hereto as Exhibit 1, (c) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (d) authorizing and approving the amount and payment of the Break-Up Fee and Reduced

[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, and the Debtor has a principal place of business at 8200 OB Holt Road, Goldsmith, Ector County, Texas, 79761. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com.

[2] Capitalized Terms used but not defined herein have the meaning ascribed to them in the Motion.

Break-Up Fee, including granting super-priority administrative expense status to the Break-Up Fee and Reduced Break-Up Fee, (e) approving the Notice Procedures, in substantially the form attached hereto as Exhibit 2 and Exhibit 3, (f) setting the time, date and place of the Sale Hearing, and (g) granting related relief, all as more fully described in the Motion; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined the relief requested in the Motion is in the best interests of the Debtor and its estate; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore;

**THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Rule 9014 of the Bankruptcy Rules. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. The statutory predicates for the relief requested herein are: (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014; and (iii) Local Rules 2002-1 and 6004-1. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Bidding Procedures Order is in the best interests of the Debtor and its estate.

D. Good and sufficient notice of the relief granted by this Bidding Procedures Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Bidding Procedures Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b).

E. The Debtor has demonstrated good and sufficient reasons for the Court to: (i) approve the Bidding Procedures, Break-Up Fee, and Reduced Break-Up Fee as allowed administrative expense claims; (ii) set the Auction and the Sale Hearing and approve the form and manner of notice of the Auction and the Sale Hearing; (iii) approve the procedures for assumption and assignment of the Assumed and Assigned Contracts, including the Cure Notice; and (iv) approve the form and manner of notice of all procedures, protections, schedules, and agreements described in the Motion and attached thereto. The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the value to be achieved for the Acquired Assets.

F. The payment of the Break-Up Fee and the Reduced Break-Up Fee, as applicable, as an allowed administrative expense claim, to Proposed Purchaser under the circumstances described in the Motion, the Asset Purchase Agreement, and this Bidding Procedures Order (i) is an actual and necessary cost and expense of preserving the Debtor's estate, within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (ii) is commensurate to the real and substantial benefit conferred upon the Debtor's estate by the Proposed Purchaser, (iii) is reasonable and appropriate, in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made and the efforts that have been and will be expended by the Proposed Purchaser, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Proposed Purchaser will continue to pursue its proposed acquisition of the Acquired Assets contemplated in the Asset Purchase Agreement. Pursuant to Section 11.3(d) of the Asset Purchase Agreement, approval of each of the Break-Up Fee and the Reduced Break-Up Fee is an integral part of the transactions contemplated by the Asset Purchase Agreement and, in the absence of the Debtor's obligation to pay the Break-Up Fee or the Reduced Break-Up Fee, as applicable, the Proposed Purchaser would not have entered into the Asset Purchase Agreement and is unwilling to commit to purchase the Acquired Assets under the terms of the Asset Purchase Agreement. The Break-Up Fee and Reduced Break-Up Fee, and the limitation on the Proposed Purchaser's liability in the event of a termination of the Asset Purchase Agreement as set forth in, and in accordance with, Section 10.2(b) of the Asset Purchase Agreement were material inducements to the Proposed Purchaser to submit a bid that will serve as a minimum or floor bid on which the Debtor, its creditors and other bidders can rely. The Proposed Purchaser has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible price given the circumstances for the Acquired Assets will be received. Accordingly, the Bidding Procedures, the Break-Up Fee, the Reduced Break-Up Fee, and the limitation on damages are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtor's estate.

G. The Sale Notice (substantially in the form attached hereto as Exhibit 2), as set forth in the Motion, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Sale Objection Deadline, the Assumption/Cure Objection Deadline, the Auction (if necessary), the Sale, and the Sale Hearing. No other or further notice is required, except as expressly set forth herein.

H. The Cure Notice (substantially in the form attached hereto as Exhibit 3) and the Cure Schedule, as set forth in the Motion, are appropriate and reasonably calculated to provide counterparties to the Assumed and Assigned Contracts (as defined below) with timely and proper notice of the potential/intended assumption and assignment of their executory contracts or unexpired leases, any cure costs relating thereto, and the procedures for the assumption and assignment of the Assumed and Assigned Contracts, and no other or further notice is required.

I. The entry of this Bidding Procedures Order is in the best interests of the Debtor and its estate. Based upon the foregoing and after due consideration and good cause appearing therefor:

**IT IS ORDERED, ADJUDGED AND DECREED, that:**

1. The Motion is GRANTED to the extent set forth herein with respect to all issues other than approval of the Sale.

2. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in this Chapter 11 Case.

**Bidding Procedures**

3. The Bidding Procedures attached hereto as Exhibit 1 are hereby APPROVED, and the Debtor is authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures.

**The Sale Schedule**

4. The dates and deadlines below are approved, but may also be modified by the Debtor to the extent permitted under the Bidding Procedures.

| Event | Date | Deadline |
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| Sale Notice | Within three (3) Business Days following entry of the Bidding Procedures Order | Date by which the Debtor will file and serve the Sale Notice (as defined below). |
| Cure Notice | May 27, 2022 | Date by which the Debtor will serve the Cure Notice (as defined below) upon each counterparty to an Assumed and Assigned Contract (as defined below) and file a global exhibit listing Cure Amounts (as defined below). |
| Deadline to Object to Assumption and Assignment of Executory Contracts/Cure Notice | June 17, 2022 | Deadline by which objections to the proposed assumption and assignment of the applicable Assumed and Assigned Contract, the proposed Cure Amounts, if any, or adequate assurance of future performance by the Proposed Purchaser must be filed with the Court and served. |
| Sale Objection Deadline | June 17, 2022 | Deadline by which objections to the Sale must be filed with the Court and served. |
| Bid Deadline | June 17, 2022 (five (5) days prior to the Auction) | Deadline by which the Debtor must ***actually receive*** binding Qualified Bids from Qualified Bidders (as defined below). |
| Auction (if necessary) | June 22, 2022 (five (5) days prior to Sale Hearing) | Date that an Auction for the Acquired Assets will be conducted, in person or via virtual meeting, whichever is appropriate at that time. |
| Deadline to file and serve Notice of Successful Bidder | 24 hours after the conclusion of the Auction | Deadline by which the Debtor will file and serve on all contract counterparties the Notice of Successful Bidder and Back-up Bidder, and the amount of the Successful Bid and Back-up Bid. |

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| Deadline for Contract Counterparties to Object to Adequate Assurance of Successful Bidder or Back-up Bidder *other than* the Proposed Purchaser | At the Sale Hearing | |
| Deadline to Object to Conduct of Auction or form of Sale Order and Purchase Agreement of Successful Bidder Other than the Proposed Purchaser | At the Sale Hearing | Deadline for objections related to the conduct of the Auction, if an auction takes place, and if the Auction results in a Successful Bidder other than the Proposed Purchaser, the deadline for objections relating to (i) the proposed purchase agreement between the Debtor and such Successful Bidder, and (ii) the proposed order approving the purchase agreement with such Successful Bidder. |
| Sale Hearing | June 27, 2022 (Petition Date + 75 days) | Date for a hearing at which the Court will consider approving the Sale of the Acquired Assets to the Successful Bidder or Back-Up Bidder, pursuant to the Sale Order. |

**<u>The Asset Purchase Agreement and Proposed Purchaser</u>**

5. Subject to the Bidding Procedures and approval at the Sale Hearing (as to which all parties' rights are reserved), the Debtor's entry into the Asset Purchase Agreement attached to the Motion as Exhibit C is hereby authorized. The Asset Purchase Agreement will serve as the "stalking horse" sale agreement.

6. The Proposed Purchaser is deemed a Qualified Bidder and the Asset Purchase Agreement is deemed a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale, which status cannot be abrogated by subsequent amendment or modification to these Bidding Procedures. Notwithstanding anything herein to the contrary, the Proposed

Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Proposed Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing.

7. In the event of a competing bid, the Proposed Purchaser will be entitled, but not obligated, to submit successive Subsequent Bids and will be entitled in the calculation of the amount of the Proposed Purchaser's bid and any Subsequent Bids to a credit equal to the amount of the Break-Up Fee. For the avoidance of doubt, the Proposed Purchaser does not waive its right to the Break-Up Fee or the Reduced Break-Up Fee by placing a Subsequent Bid. Any proposal for a competing bid must be made in accordance with the Bidding Procedures.

**The Break-Up Fee, Reduced Break-Up Fee and Earnest Deposit**

8. To the extent due under the Asset Purchase Agreement and under the terms provided therein or under this Bidding Procedures Order and under the terms provided herein, the Debtor is authorized to pay, as an allowed administrative expense claim, the Proposed Purchaser (a)(x) a break-up fee in an amount equal to three percent (3%) of the aggregate Stalking Horse Bid Amount plus (y) an expense reimbursement in an amount not to exceed one-half of one percent (0.5%) of the aggregate Stalking Horse Bid Amount (collectively the "Break-Up Fee") or (b) a break-up fee in an amount equal to one percent (1%) of the aggregate Stalking Horse Bid Amount (the "Reduced Break-Up Fee"), as applicable. The Break-Up Fee or Reduced Break-Up Fee, as applicable, shall be payable in cash to Proposed Purchaser, and the Earnest Deposit, which was funded in its entirety on April 8, 2022, shall be returned to Proposed Purchaser under the terms of the Asset Purchase Agreement and this Bidding Procedures Order. Any expenses to be reimbursed to the Proposed Purchaser must be documented, with such documentation provided to the Debtor, any official committee appointed in this case, the United States Trustee and, provided it has not submitted a bid, Direct Energy Business Marketing, LLC ("Direct Energy"), who will have a 10

day review period. The Proposed Purchaser may redact the documentation provided to the Debtor, any official committee appointed in this case, the United States Trustee, and any other party having review rights, and such transmission of the documentation, even if not redacted, shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. The United States Trustee reserves the right to seek to obtain unredacted copies of such documentation. If there is an objection to any portion of the expenses to be reimbursed during that 10 day period, such expenses will not be reimbursed until the objection is resolved consensually or by the Court. Unless there is such an objection, no further or additional order from the Court shall be required prior to payment of the expense reimbursement and the Proposed Purchaser's professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court approval of professionals' fees payable by the Debtor and included in the expense reimbursement.

9. The obligation to pay the Break-Up Fee or the Reduced Break-Up Fee, as applicable, in accordance with the terms of the Asset Purchase Agreement and this Bidding Procedures Order shall not be discharged, modified, or otherwise affected by any chapter 11 plan in the Chapter 11 Case. The Break-Up Fee or the Reduced Break-Up Fee, as applicable, shall be an allowed administrative expense claim and shall be surcharged against any and all secured interests, provided, however, that the Break-Up Fee shall be placed in escrow by the Debtor from the proceeds of any sale to a Successful Bidder that is not the Proposed Purchaser, and the Proposed Purchaser shall be the only party entitled to payment from such escrowed funds and shall be paid the Break-Up Fee solely from such escrowed funds.

10. Except for the Proposed Purchaser, no other person or entity shall be entitled to any expense reimbursement, break-up fees, "topping," termination or other similar fee or payment in connection with any bid. Any bid (other than the Asset Purchase Agreement) that seeks allowance

or payment of any topping or other similar fee or expense reimbursement or similar consideration from the Debtor in connection with such bid, shall not be a Qualified Bid and shall not be a permitted bid at any Auction.

**Notice Procedures**

11. The Sale Notice, substantially in the form attached to hereto as Exhibit 2, is sufficient to provide effective notice to all interested parties of the Bidding Procedures, the Sale Objection Deadline, the Auction, the Sale, and the Sale Hearing contemplated under the Bidding Procedures, pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and is hereby approved, and made part of this Bidding Procedures Order as if fully set forth herein. The Sale Notice shall be served on: the Office of the U.S. Trustee; counsel to any official committee appointed in the Chapter 11 Case; counsel to Direct Energy; all parties who have filed requests for service under Bankruptcy Rule 2002; all entities known by the Debtor to have asserted any lien, claim, interest or encumbrance in or on any of the Acquired Assets; all counterparties to the Debtor's executory contracts and unexpired leases; the Internal Revenue Service; all state and local taxing authorities in the jurisdictions in which the Debtor has tax liability; the Environmental Protection Agency and any state environmental agencies in the states in which the Debtor has facilities; any other governmental agencies that regulate the Debtor's business; all persons and entities who have expressed an interest in acquiring the Debtor's assets; and all parties listed on the Debtor's creditor matrix.

12. Compliance with the foregoing provisions for the Sale Notice shall constitute sufficient notice of the Debtor's proposed Sale of the Acquired Assets free and clear of liens, claims, interests, and encumbrances, pursuant to section 363(f) of the Bankruptcy Code and otherwise, and, except as set forth in this Bidding Procedures Order, no other or further notice of the Sale shall be required to be provided by the Debtor.

**Sale Objection Procedures**

13. Any and all objections to the relief requested in the Motion pertaining to approval of the Sale of the Acquired Assets ("Sale Objection") must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules; (d) filed with the Court and served in accordance with the Local Rules on the Objection Notice Parties (defined below) on or before June 17, 2022 (the "Sale Objection Deadline"). The "Objection Notice Parties" and their addresses are as follows: (a) Debtor's counsel, (i) Holland & Knight LLP, Attn: John J. Monaghan, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116, Attn: David W. Wirt, Esq., 150 N. Riverside Plaza, Suite 2700, Chicago, Illinois 60606, bos-bankruptcy@hklaw.com, david.wirt@hklaw.com; and (ii) Polsinelli PC, Attn: Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, cward@polsinelli.com, mdipietro@polsinelli.com; (b) counsel to the Agent and Ad Hoc Group, (i) Davis, Polk & Wardwell, LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Joshua Sturm, Esq. (joshua.sturm@davispolk.com) and (ii) Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq. (collins@rlf.com); (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Juliet Sarkessian, Esq. (juliet.m.sarkessian@usdoj.gov); (d) counsel to the Proposed Purchaser, (i) Bracewell LLP, CityPlace I, 34th Floor, 185 Asylum Street, Hartford, CT 06103 Attn: Mark E. Dendinger, Esq. (mark.dendinger@bracewell.com) and 711 Louisiana St., Suite 2300, Houston, Texas 77002, Attn: Ryan S. Holcomb, Esq. (ryan.holcomb@bracewell.com); and (ii) Bayard, P.A., 600 N. King Street, Suite 400, P.O. Box 25130, Wilmington, DE 19899, Attn: Erin Fay, Esq. (efay@bayardlaw.com); (e) counsel to any statutory committee appointed in this Chapter 11 Case; and (f) Direct Energy, (i) Quinn Emanuel Urquhart & Sullivan LLP, 51 Madison Ave, New York, NY 10010, Attn: Benjamin I. Finestone, Esq.

(benjaminfinestone@quinnemanuel.com); and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com).

14. Failure to object to the relief requested in the Motion shall be deemed to be "consent" for purposes of Bankruptcy Code section 363(f). All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as they pertain to the entry of this Bidding Procedures Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.

**Assumption and Assignment Procedures**

15. The form of Cure Notice attached hereto as Exhibit 3 is hereby authorized, approved, and made part of this Bidding Procedures Order as if fully set forth herein.

16. The Debtor shall serve the Cure Notice upon each counterparty to an Assumed and Assigned Contract by no later than twenty business days prior to the Sale Hearing (defined below). The Cure Notice shall identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed and Assigned Contract in order to cure any defaults that exist under such contract.

17. The Debtor shall file a notice of the Successful Bidder within 24 hours of the conclusion of the Auction and send such notice by overnight mail, and also by email if the contract counterparty has provided an email address to the Debtor or the Debtor otherwise has actual notice of such counterparty's email address, to all counterparties of Assumed and Assigned Contracts. The notice of Successful Bidder shall include the name of the Successful Bidder and of the Back-up Bidder, and the amount of the Successful Bid and of the Back-up Bid. If the Successful Bidder or Back-up Bidder is a special purpose entity, the notice shall also identify the entity or entities that are the primary equity holders, or otherwise control, the special purpose entity.

18. To the extent there is a contract added to the list of contracts to be assumed by the Debtor and assigned to the Successful Bidder pursuant to the Successful Bidder's asset purchase agreement selected at the Auction, each such contract will be listed on an exhibit to the Successful Bidder's asset purchase agreement, and such contract counterparties will be sent a separate Cure Notice setting forth such contract's proposed cure amount by overnight mail or, in the event that the contract counterparty has provided the Debtor with actual notice of its email address, by email, in each case within 24 hours of the conclusion of the Auction.

19. The inclusion of a contract, lease, or other agreement on the Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that (a) such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights with respect thereto shall be reserved; or (b) obligate the Debtor to assume any Assumed and Assigned Contract listed thereon or the Successful Bidder(s) to take assignment of such Assumed and Assigned Contract. Only those Assumed and Assigned Contracts that are included on a schedule of assumed and acquired contracts attached to the final asset purchase agreement with the Successful Bidder(s) (including amendments or modifications to such schedules in accordance with such asset purchase agreement) will be assumed and assigned to the Successful Bidder(s).

20. If an Assumed and Assigned Contract is assumed and assigned pursuant to court order, then unless the counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice by the Assumption/Cure Objection Deadline, the counterparty shall receive at the time of the assumption and assignment (as set forth in the Motion) the Cure Amount as set forth in the Cure Notice, if any. Any objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the

amount, if any, specified by the Debtor in the Cure Notice, and set forth any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

21. If any counterparty objects (an "Assumption/Cure Objection") for any reason to (i) the assumption and assignment of an Assumed and Assigned Contract, (ii) the Cure Amount for an Assumed and Assigned Contract, or (iii) the ability of the Proposed Purchaser to provide adequate assurance of future performance in connection with an Assumed and Assigned Contract, such counterparty must file an Assumption/Cure Objection and serve it on the Objection Notice Parties no later than (i) **4:00 p.m. (prevailing Eastern Time) on June 17, 2022** or (ii) such later date as may be specified in the Cure Notice (the "Assumption/Cure Objection Deadline"), provided, however, counterparties may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed and Assigned Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed and Assigned Contract solely in the event that the Proposed Purchaser is not the Successful Bidder. Any counterparty to an Assumed and Assigned Contract who receives a Cure Notice and wishes to receive evidence of Qualified Bidders' ability to provide adequate assurance of future performance under section 365 of the Bankruptcy Code may make such a request in writing (an "Adequate Assurance Notice Request") to Holland & Knight LLP, Attn: John J. Monaghan, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116; Attn: David W. Wirt, Esq., 150 N. Riverside Plaza, Suite 2700, Chicago, Illinois 60606, or by emailing bos-bankruptcy@hklaw.com and david.wirt@hklaw.com, **by 4:00 p.m. (prevailing Eastern time) on June 10, 2022**. Within 24 hours of the determination that Potential Bids are Qualified Bids, the Debtor shall send, by email, the evidence submitted by Qualified Bidders in their Qualified Bids

of their ability to provide adequate assurance of future performance to any counterparty that has submitted a timely Adequate Assurance Notice Request.

22. Any Cure Amount for an Assumed and Assigned Contract that is assumed and assigned shall be paid within ten (10) days following closing of a transaction with the Successful Bidder in accordance with the provisions of the asset purchase agreement executed by the Debtor and the Successful Bidder. The Successful Bidder will be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed and Assigned Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed and Assigned Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's asset purchase agreement. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court. Nothing herein shall restrict the ability of the Debtor to reject or terminate a contract or lease that has not been designated as an Assumed and Assigned Contract as of the Closing Date, except to the extent provided in the asset purchase agreement that is the Successful Bid.

**Other Relief Granted**

23. The Auction is scheduled to begin on or before **June 22, 2022, at 10:00 a.m. (prevailing Eastern Time)**, or at such other date and time as the Court may determine, at a location to be determined, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction, which Auction may be cancelled or adjourned. All creditors may attend the Auction.

24. The Sale Hearing, at which the Debtor shall seek approval of the Successful Bid, shall be held in this Court on or before **June 27, 2022, at 10:00 a.m. (prevailing Eastern Time)**,

or at such other date and time convenient to the Court. The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing, and/or filing a notice on the Court's docket and noticed by the Debtor.

25. All entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of the Court with respect to all matters related to the terms and conditions of the transfer of Acquired Assets, the Auction, and any transaction contemplated herein.

26. To the extent that any chapter 11 plan confirmed in the Chapter 11 Case or any order confirming any such plan or any other order in the Chapter 11 Case (including any order entered after any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code) alters, conflicts with, or derogates from the provisions of this Bidding Procedures Order, the provisions of this Bidding Procedures Order shall control. The Debtor's obligations under this Bidding Procedures Order shall survive conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, confirmation of a chapter 11 plan in the Chapter 11 Case, or discharge of claims thereunder and shall be binding upon the Debtor, a chapter 7 trustee, and the reorganized or reconstituted Debtor, as the case may be, after the effective date of any confirmed chapter 11 plan in the Chapter 11 Case (including any order entered after any conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code).

27. In the event there is a conflict between this Bidding Procedures Order and the Motion, this Bidding Procedures Order shall control and govern.

28. Without prejudice to the Proposed Purchaser's rights under the Asset Purchase Agreement, in the event there is a conflict between this Bidding Procedures Order and the Asset Purchase Agreement, this Bidding Procedures Order shall control and govern.

29. Nothing in this Bidding Procedures Order or the Motion shall be deemed to or constitute the assumption or assignment of an executory contract or unexpired lease.

30. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation or interpretation of this Bidding Procedures Order.

31. This Bidding Procedures Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004 or 6006 or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted. The Debtor is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Bidding Procedures Order, and may, in its discretion and without further delay, take any action and perform any act authorized under this Bidding Procedures Order.

**Dated: May 6th, 2022**
**Wilmington, Delaware**

**JOHN T. DORSEY**
**UNITED STATES BANKRUPTCY JUDGE**



83349100.1

# Exhibit 1

## Bidding Procedures

# **BIDDING PROCEDURES**

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the proposed sale of certain assets and assumption of certain liabilities as set forth in the Asset Purchase Agreement (the "Sale").

Ector County Energy Center LLC as debtor and debtor-in-possession (the "Debtor") has determined that (A) the sale of the Purchased Assets (as defined below) as set forth in the Asset Purchase Agreement originally dated as of March 3, 2022, and as amended on March 31, 2022, by and among the Debtor and Ector County Generation LLC (the "Asset Purchase Agreement") should be subject to competitive bidding as set forth herein; (B) the transfer of the Debtor's rights, title and interests in and to the Purchased Assets should be subject to approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"); and (C) the Sale should be subject to such other closing conditions as set forth in the Asset Purchase Agreement.

On April 11, 2022, 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) the Assumption and Assignment of Certain Contracts* (the "Sale Motion").

On [________], 2022, the Bankruptcy Court entered an order approving, among other things, the Bidding Procedures set forth herein (the "Bidding Procedures Order"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

## Bidding Process

The Bidding Procedures set forth herein describe, among other things, the Purchased Assets available for sale, the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Purchased Assets, the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Bids (as defined below), respectively, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined below), the ultimate selection of the Successful Bidder (as defined below), and the Bankruptcy Court's approval thereof (collectively, the "Bidding Process"). In the event that the Debtor and any party disagree as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court shall have jurisdiction to hear and resolve such dispute.

## Assets to Be Sold

The Debtor is offering for sale, in one or more transactions, substantially all or some substantial portion of the Debtor's assets (the "Purchased Assets"). If there are any inconsistencies between the terms of the Asset Purchase Agreement and these Bidding Procedures with respect to the Purchased Assets, the terms of the Asset Purchase Agreement shall control.

Free of Any and All Claims and Interests

The Debtor has requested the Bankruptcy Court's approval to sell all of its rights, title, and interests in and to the Purchased Assets, or any portion thereof, free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Claims and Interests") to the extent permitted by sections 363 and 365 of the Bankruptcy Code and other applicable law, such Claims and Interests to attach to the net proceeds of the Sale of such Purchased Assets, with the same with the same priority, validity, force and effect as such Claims and Interests had in the Purchased Assets, subject to any claims and defenses the Debtor may possess with respect thereto, except to the extent otherwise set forth in the Asset Purchase Agreement.

Participation Requirements

Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtor, in order to participate in the Bidding Process, prior to the Bid Deadline (as defined below), each person other than the Proposed Purchaser who wishes to participate in the Bidding Process (a "Potential Bidder") must deliver the following **by electronic mail** to the Debtor as follows: (i) Ector County Energy Center LLC, Attn: John Baumgartner, CRO, john.baumgartner@us.gt.com, with copy to: ann.huynh@us.gt.com; (ii) Debtor's counsel: (a) Holland & Knight LLP, John J. Monaghan, Esq. and David W. Wirt, Esq., bos-bankruptcy@hklaw.com, david.wirt@hklaw.com; and (b) Polsinelli PC, Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., cward@polsinelli.com, mdipietro@polsinelli.com; and (iii) Debtor's investment banker: Perella Weinberg Partners L.P., Attn: Alexander Svoyskiy, Jonathan Sherman, and Sam Tanzer, asvoyskiy@pwpartners.com, jsherman@tphco.com, and stanzer@pwpartners.com:

(i) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor. In the event that the Potential Bidder has already entered into an acceptable confidentiality agreement with the Debtor, it must provide a statement waiving any of its rights under such confidentiality agreement that are in conflict with the Bidding Procedures or that would otherwise prohibit disclosures regarding the Potential Bidder, or any Sale it may enter into;

(ii) sufficient information, as determined by the Debtor, which may include current audited financial statements and latest unaudited financial statements of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets (or any portion thereof), current audited financial statements and latest unaudited financial statements of the equity holders of the Potential Bidder who will guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtor and its financial advisors to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the Sale; and

(iii) a statement demonstrating to the Debtor's satisfaction, a bona fide interest in purchasing the Purchased Assets from the Debtor.

A Potential Bidder that has complied with the requirements described above, and that the Debtor determines in its reasonable business judgment, after consultation with (i) its counsel and financial advisors (ii) counsel to Direct Energy Business Marketing LLC ("Direct Energy"), provided that Direct Energy is not a Potential Bidder, and (iii) and any Official Committee appointed in this Chapter 11 Case (the "Official Committee") is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, will be deemed a "Qualified Bidder." For the avoidance of doubt, the Proposed Purchaser will be deemed a Qualified Bidder, and the stalking horse bid from the Proposed Purchaser shall be deemed a Qualified Bid for purposes of these Bidding Procedures, which status cannot be abrogated by subsequent amendment or modification to these Bidding Procedures.

As promptly as practicable after a Potential Bidder delivers the information required above, the Debtor will determine, in consultation with (i) its counsel and advisors, (ii) counsel to Direct Energy, provided that Direct Energy is not a Potential Bidder, and (iii) any Official Committee, and will notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. At the same time that the Debtor notifies the Potential Bidder that it is a Qualified Bidder, the Debtor will allow the Qualified Bidder to begin or continue to conduct due diligence with respect to the Purchased Assets as provided in the following paragraph. In the event that the Debtor determines that a Potential Bidder is not a Qualified Bidder, the Debtor, within twenty-four (24) hours of making such determination, will notify the United States Trustee of its decision, including in such notice the identity of the Potential Bidder and a brief description of the basis for the Debtor's determination.

## Due Diligence

The Debtor may, in an exercise of its reasonable business judgment, and subject to competitive and other business considerations, afford each Qualified Bidder and any person seeking to become a Qualified Bidder that has executed a confidentiality agreement with the Debtor such due diligence access to materials and information relating to the Purchased Assets as the Debtor deems appropriate. Due diligence access may include management presentations as may be scheduled by the Debtor, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Debtor, in its reasonable business judgment, may agree. The Debtor's investment banker, Perella Weinberg Partners LP/Tudor Pickering Holt & Co ("PWP"), will coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. No additional due diligence for any party other than a Qualified Bidder who has submitted a Qualified Bid will continue after the Bid Deadline (as defined below). The Debtor may, in its discretion, coordinate diligence efforts such that multiple Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. The Debtor will provide the Proposed Purchaser with access to a data room containing all informational packages provided to Qualified Bidders, information related to the Sale or any other transaction and updates, modifications or supplements to such information and materials. Neither the Debtor (nor any of its representatives) will be obligated to furnish any information relating to the Purchased Assets to any person other than to Qualified Bidders. The Debtor makes no representation or warranty as to the information to be provided through this due diligence process or otherwise, except to the extent set forth in any purchase agreement(s) with any Successful Bidder executed and delivered by the Debtor. In the event that the Debtor determines not to provide certain diligence information to a Qualified Bidder, the Debtor, within twenty-four (24) hours of reaching such determination, will notify the United States Trustee of the Debtor's decision, including in such notice the identity of such Qualified Bidder and a general description of the diligence information not provided.

Bid Deadline

A Qualified Bidder that desires to make a Bid (as defined below) will deliver written copies of its Bid by electronic mail to the Debtor as follows: (i) Ector County Energy Center LLC, Attn: John Baumgartner, CRO, john.baumgartner@us.gt.com, with copy to ann.huynh@us.gt.com; (ii) Debtor's counsel: (a) Holland & Knight LLP, John J. Monaghan, Esq. and David W. Wirt, Esq., bos-bankruptcy@hklaw.com, david.wirt@hklaw.com; and (b) Polsinelli PC, Attn: Christopher Ward, Esq. and Michael DiPietro, Esq., cward@polsinelli.com, mdipietro@polsinelli.com; and (iii) Debtor's investment banker: Perella Weinberg Partners LP, Attn: Alexander Svoyskiy, Jonathan Sherman, and Sam Tanzer, asvoyskiy@pwpartners.com, jsherman@tphco.com, and stanzer@pwpartners.com; so as to be received not later than **June 17, 2022, at 4:00 p.m. (ET)** the "Bid Deadline"). As soon as practicable after receipt of a Bid, but in no event more than 24 hours after receipt of a Bid, Debtor's counsel shall provide copies of the Bid and all related documents to (i) the Official Committee; (ii) the agent under the Prepetition Credit Facility (the "Agent"); (iii) Direct Energy provided that Direct Energy is not a Potential Bidder; and (iv) counsel to the Proposed Purchaser.

Qualified Bid

An offer, solicitation, or proposal (each, a "Bid") that is submitted in writing by a Qualified Bidder and satisfies each of the following requirements, as determined by the Debtor, in its reasonable business judgment shall constitute a "Qualified Bid":

(i) *Purchased Assets*. Each Bid must state that the applicable Qualified Bidder offers to purchase all or a portion of the Purchased Assets, upon the terms and conditions substantially as set forth in the Asset Purchase Agreement, including, without limitation, with respect to certainty and timing of closing, or upon alternative terms and conditions that the Debtor reasonably determines are no less favorable than the terms and conditions of the Asset Purchase Agreement.

(i) *Purchase Price; Minimum Bid*. Each Bid must clearly set forth the purchase price to be paid (the "Purchase Price"). The Purchase Price shall include (a) cash in an amount not less than five percent (5%) greater than the Stalking Horse Bid Amount; and (b) otherwise be on terms no less favorable than the Asset Purchase Agreement.

(ii) *Binding and Irrevocable*. Each Bid must include a letter stating that the Qualified Bidder's Bid is irrevocable until the Bankruptcy Court approves the selection of the Successful Bidder (as defined below) and the Back-Up Bidder (as defined below), provided that if such Qualified Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (i) closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) thirty (30) days after the Outside Closing Date (as defined in the Asset Purchase Agreement);

(iii) *Marked Agreement*. Each Bid must include a duly authorized and executed asset purchase agreement, including the Purchase Price for the Purchased Assets expressed in U.S. Dollars, together with all exhibits and schedules thereto and such additional ancillary agreements as may be required by the bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), as well as, copies of such materials marked to show those amendments and modifications to the Asset Purchase Agreement (a "Marked Agreement") and the proposed order for approval of the Sale by the Bankruptcy Court proposed by the Qualified Bidder. Each Bid may not contain additional termination rights, covenants, financing or due diligence contingencies, shareholder, board of director or other internal approval contingencies, or closing conditions, other than as may be included in the Asset Purchase Agreement (it being agreed and understood that such Bid shall modify the Asset Purchase Agreement as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Proposed Purchaser as the stalking horse bidder, such as the Break-Up Fee and the Reduced Break-Up Fee).

(iv) *Demonstrated Financial Capability*. Each Bid must include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Marked Agreement.

(v) *Identity*. Each Bid must fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise sponsoring or participating in connection with such Bid, and the complete terms of any such participation. Each Bid must fully disclose any relationship or connection that the Potential Bidder submitting such Bid has with the Debtor or with any officer, director, member, or manager of the Debtor, or with any affiliate of the Debtor or any of the officers, directors, members or managers of any affiliate of the Debtor.

(vi) *As-Is, Where-Is*. Each Bid must include an acknowledgement and representation that the Qualified Bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid; (c) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (d) is not entitled to any expense reimbursement or break-up fee in connection with its Bid.

(vii) *Affirmative Statement*. Each Bid shall be accompanied by an affirmative statement that: (i) all Qualified Bidders submitting such Bid have acted in good faith consistent with section 363(m) of the Bankruptcy Code and not in any manner prohibited by section 363(n) of the Bankruptcy Code; (ii) all Qualified Bidders submitting such Bid have and will continue to comply with the Bidding Procedures; and (iii) with the exception of the Proposed Purchaser as the stalking horse bidder, all Qualified Bidders submitting such Bid waive any entitlement to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and waive any substantial contribution (administrative expense) claims under section 503(b) of the Bankruptcy Code related to the bidding for the Debtor's assets or otherwise participating the Auction.

(viii) *Authorization*. Each Bid must include evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of transaction contemplated by the Marked Agreement and the Sale.

(ix) *Good Faith Deposit*. Each Bid must be accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to the Earnest Deposit (i.e. 10% of the Stalking Horse Bid Amount), which the Debtor shall hold in trust, to be dealt with as provided for under "Good Faith Deposits" herein.

(x) *Executory Contracts*. Each Bid must identify with particularity which executory contracts or unexpired leases the Qualified Bidder wishes to assume, include an acknowledgment and representation that the Qualified Bidder will assume the Debtor's obligations under such executory contracts and unexpired leases arising from and after the closing, and identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing.

(xi) *Adequate Assurance*. Each Bid must include evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future under the contracts and leases proposed in its Bid to be assumed by the Debtor and assigned to the

Qualified Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases.

(xii) *Consent to Jurisdiction*. Each Bid must state that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court.

(xiii) *Additional Information*. Each Bid must contain any other information reasonably requested by the Debtor.

(xiv) *Bid Deadline*. Each Bid must be received by the Bid Deadline.

The Debtor will determine, in its reasonable business judgment, whether to entertain Bids for the Purchased Assets that do not conform to one or more of the requirements specified herein and deem such Bids to be Qualified Bids. Notwithstanding the foregoing, Proposed Purchaser will be deemed a Qualified Bidder, and the Asset Purchase Agreement will be deemed a Qualified Bid, for purposes of the Bidding Procedures, which status cannot be abrogated by subsequent amendment or modifications to these Bidding Procedures.

## Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, items such as the Purchase Price and the net value (including assumed liabilities and the other obligations to be performed or assumed by the Qualified Bidder) provided by such Bid, the claims likely to be created by such Bid in relation to other Bids, the counterparties to the transactions, the proposed revisions to the relevant transaction documents, the effect of the transactions on the value of the ongoing business of the Debtor (including ongoing relationships with partners, customers and suppliers), other factors affecting the speed, certainty and value of the transactions (including any regulatory approvals required to close the transactions), the Purchased Assets included or excluded from the Bid, the transition services required post-closing and any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Debtor, in consultation with its counsel and advisors and any Official Committee.

## No Qualified Bids.

No Qualified Bids. If the Debtor does not receive any Qualified Bids other than the Asset Purchase Agreement, the Auction (as defined below) shall be cancelled and the Debtor shall report the same to the Bankruptcy Court and, subject to requiring and obtaining approvals of the Bankruptcy Court and satisfaction of the conditions set forth in the Asset Purchase Agreement, the Debtor shall promptly proceed to seek entry of the appropriate order approving the Sale transactions with Proposed Purchaser pursuant to the terms and conditions set forth in the Asset Purchase Agreement.

## Auction Process

If the Debtor receives at least one Qualified Bid other than the Asset Purchase Agreement, the Debtor will conduct an auction (the "Auction") for the Purchased Assets, which shall be transcribed or recorded on video, to begin on **June 22, 2022 at 10:00 a.m. (ET)**, (or at another date and time convenient to the Bankruptcy Court), at a location to be determined, including by virtual meeting, as shall be timely communicated to all entities entitled to attend the Auction, which Auction may be cancelled or adjourned. The Debtor reserves its right to hold the Auction virtually. The Auction shall run in accordance with the following procedures:

(i) The Debtor and any Qualified Bidder that has timely submitted a Qualified Bid, and each of their respective advisors, shall be entitled to attend the Auction, in person or by virtual meeting, whichever is appropriate at that time. In accordance with Local Rule 6004-1, all creditors are also entitled to attend the Auction.

(ii) Only Qualified Bidders will be entitled to make any subsequent Bids at the Auction.

(iii) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale transactions.

(iv) At least two (2) days prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to participate in the Auction; provided that in the event a Qualified Bidder elects not to participate in the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (i) the Bankruptcy Court's approval of the selection of the Successful Bidder and Back-Up Bidder and (ii) if such Qualified Bidder is selected as the Successful Bidder or the Back-Up Bidder, the earlier of (x) closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (y) thirty (30) days after the Outside Closing Date (as defined in the Asset Purchase Agreement). At least one (1) day prior to the Auction, the Debtor will provide a summary of all Qualified Bids to all Qualified Bidders that have informed the Debtor of their intent to participate in the Auction and will state which Qualified Bid or combination of Qualified Bids the Debtor believes, in its reasonable business judgment, is the highest or otherwise best offer (the "Starting Bid").

(v) All Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction with the understanding that the true identity of each Qualified Bidder at the Auction will be fully disclosed to all other Qualified Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other Qualified Bidders throughout the entire Auction; provided that all Qualified Bidders wishing to participate in the Auction must have at least one individual representative with authority to bind such Qualified Bidder attend the Auction in person.

(vi) The Debtor, after consultation with (i) its counsel and financial advisors, (ii) counsel to Direct Energy, provided that Direct Energy is not a Potential Bidder, and (iii) any Official Committee appointed in this Chapter 11 Case may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent

Bids or requiring Subsequent Bids be the Qualified Bidders' final and best bids) for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Local Rules, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction.

(vii) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent Bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtor determines, in consultation with (i) its counsel and advisors; (ii) counsel to Direct Energy provided that Direct Energy is not a Potential Bidder, and (iii) any Official Committee appointed in this Chapter 11 Case, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each incremental Bid at the Auction shall provide net value to the estate of at least $250,000 over the Starting Bid or the Leading Bid, as the case may be; provided that the Debtor shall retain the right, in consultation with (i) its counsel and advisors; (ii) counsel to Direct Energy provided that Direct Energy is not a Potential Bidder; and (iii) any Official Committee appointed in this Chapter 11 Case, to modify the increment requirements at any time at or prior to the Auction after informing each participating Qualified Bidder. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the Bid or combination of Bids (and the value of such Bid(s)) that it believes to be the highest or otherwise better offer (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.

(viii) The Proposed Purchaser shall be permitted to include as part of any and all of its subsequent Bids a credit for the Break-Up Fee. For the avoidance of doubt, the Proposed Purchaser shall not be deemed to waive its entitlement to the Break-Up Fee or the Reduced Break-Up Fee upon submitting a higher or otherwise better Bid than the Asset Purchase Agreement at the Auction.

(ix) Each Bid made at the Auction shall be irrevocable until the Bankruptcy Court approves the selection of the Successful Bidder (as defined below) and the Back-Up Bidder (as defined below), provided that if a Bid is selected as the Successful Bid or the Back-Up Bid, it shall remain irrevocable until the earlier of (i) closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) thirty (30) days after the Outside Closing Date (as defined in the Asset Purchase Agreement).

Reservation of Rights

Except as otherwise provided in the Asset Purchase Agreement, the Bidding Procedures or the Bidding Procedures Order, the Debtor, after consultation with (i) its counsel and advisors, (ii) counsel to Direct Energy, provided that Direct Energy is not a Potential Bidder and (iii) any Official Committee appointed in this Chapter 11 Case: (i) may determine after each round of bidding at the Auction which Qualified Bid, if any, is the highest or otherwise best offer and the value thereof; (ii) may reject, at any time, any Bid that the Debtor determines is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtor, its estate, and stakeholders as determined by the Debtor; (iii) may extend the deadlines set forth herein; and (iv) may continue or cancel the Auction or Sale Hearing in open court without further notice.

## Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with (i) its counsel and advisors, (ii) counsel to Direct Energy provided that Direct Energy is not a Potential Bidder, and (iii) any Official Committee appointed in this Chapter 11 Case, will (i) review each Qualified Bid and evaluate each Qualified Bid as set forth in the section titled "Evaluation of Competing Bids" herein, (ii) identify the highest or otherwise best offer or offers for the Purchased Assets received at the Auction (one or more such Bids, collectively the "Successful Bid" and the bidder(s) making such Bid, collectively, the "Successful Bidder") and (iii) communicate to the Qualified Bidders the identity of the Successful Bidder, the Back-Up Bidder, if any, and the details of the Successful Bid and Back-Up Bid (as defined below), if any. The determination of the Successful Bid and Back-Up Bid by the Debtor, at the conclusion of the Auction, shall be final, subject to approval by the Bankruptcy Court. The Debtor's selection of and presentation to the Bankruptcy Court of the Successful Bid and, if applicable, the Back-Up Bid will not constitute the Debtor's acceptance of either of such Bids, which acceptance will only occur upon the approval of such Bids by the Bankruptcy Court at the Sale Hearing.

The Debtor will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid (or, under certain circumstances described herein, the Back-Up Bidder) upon the approval of such Successful Bid (or Back-Up Bidder if applicable) by the Bankruptcy Court at the Sale Hearing.

## Closing with Back-Up Bidders

If the Debtor receives one or more additional Qualified Bid(s), then, at the Sale Hearing, the Debtor will seek approval of the Successful Bid, and, at the Debtor's election, the next highest or otherwise best Qualified Bid (the "Back-Up Bid" and, such bidder, the "Back-Up Bidder"). Following Court approval of the Sale to the Successful Bidder, if the Successful Bidder fails to consummate the Sale for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and the Debtor will be authorized, but not directed, to effectuate a Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid of such Back-Up Bidder without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the earlier of (i) the thirtieth (30th) day after the Outside Closing Date (as defined in the Asset Purchase Agreement) or (ii) the consummation of the Sale to the Successful Bidder (the "Back-Up Bid Expiration Date"). Any provision in the Back-Up Bid conditioning such Bid on a closing prior to the Back-Up Bid Expiration Date shall be void. All the Qualified Bids other than the Successful Bid and the Back-

Up Bid shall be deemed rejected by the Debtor on and as of the date of approval of the Successful Bid and the Back-Up Bid by the Bankruptcy Court.

Failure to Close

If the Successful Bidder fails to consummate the transaction in accordance with the terms of the applicable agreement executed by the Successful Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Debtor shall: (i) solely to the extent provided for in the applicable purchase agreement or Asset Purchase Agreement with the Proposed Purchaser, retain the Successful Bidder's Good Faith Deposit; (ii) solely to the extent provided for in the applicable purchase agreement or Asset Purchase Agreement with the Proposed Purchaser, maintain the right to pursue all available remedies, whether legal or equitable; and (iii) be free to consummate the proposed transaction with the Back-Up Bidder pursuant to the Back-Up Bid, without the need for an additional hearing or Order of the Bankruptcy Court.

Good Faith Deposits

The Good Faith Deposit of any Back-Up Bidder shall be retained by the Debtor until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder within five (5) Business Days thereafter or, if the Back-Up Bid becomes the Successful Bid, shall be applied to the Purchase Price to be paid by the Back-Up Bidder in accordance with the terms of the Back-Up Bid. The Good Faith Deposits of Qualified Bidders not selected as either the Successful Bidder or Back-Up Bidder shall be returned to such bidders within five (5) Business Days of the date of the selection of the Successful Bidder and the Back-Up Bidder. The Good Faith Deposit of the Successful Bidder will be dealt with in accordance with the terms of the Successful Bid. With respect to the Proposed Purchaser, the Asset Purchase Agreement provides that the Earnest Deposit is the sole and exclusive remedy of the Debtor in the event the Asset Purchase Agreement is terminated.

Sale Hearing

The Debtor will seek entry of the Sale Order from the Bankruptcy Court at the Sale Hearing to begin on **June 27, 2022 at 10:00 a.m. (ET)**, (or at another date and time convenient to the Bankruptcy Court) to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bidding Procedures.

# Exhibit 2

## Sale Notice

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

| | |
|---|---|
| In re:<br><br>ECTOR COUNTY ENERGY CENTER LLC,[1]<br><br>Debtor. | Chapter 11<br><br>Case No. 22-10320 (JTD) |

**NOTICE OF BIDDING PROCEDURES, AUCTION DATE, AND SALE HEARING**

**PLEASE TAKE NOTICE** that on April 11, 2022, 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) the Assumption and Assignment of Certain Contracts* [Docket No. 7] (the "Sale Motion"). The Debtor seeks, among other things, to sell substantially all of its assets (the "Purchased Assets") at an auction free and clear of all liens, claims, encumbrances and other interests, and to assume and assign certain leases and executory contracts in connection therewith, pursuant to sections 105, 363, and 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [______], 2022, the Bankruptcy Court entered an Order [Docket No. __] approving, among other things, the Bidding Procedures set forth herein (the "Bidding Procedures Order").[2] The Bidding Procedures Order set the key dates and times related to the Sale of the Purchased Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

**PLEASE TAKE FURTHER NOTICE** that, among other things, by the Bidding Procedures Order, the Bankruptcy Court approved the Debtor's entry into an Asset Purchase Agreement with Ector County Generation LLC, an acquisition entity affiliated with Rockland

[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, and the Debtor has a principal place of business at 8200 OB Holt Road, Goldsmith, Ector County, Texas, 79761. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

Capital, LLC (together with its assignees or designees, the "Proposed Purchaser"), as a "stalking horse" agreement, subject to higher and better competing bids.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the terms of the Bidding Procedures, an auction (the "Auction") to sell the Purchased Assets, which shall be transcribed or recorded on video, before the Honorable John T. Dorsey, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), located at 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 5 on **June 22, 2022, at 10:00 a.m. (prevailing Eastern Time)**, or at such other time as the Bankruptcy Court may determine. The Auction may be conducted virtually, as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction. The Auction is open to all creditors to attend. Within twenty-four (24) hours after the conclusion of the Auction, the Debtor shall file a notice with the Bankruptcy Court identifying the Successful Bidder, the Back-up Bidder, and the amount of both bids. All notices referenced in this paragraph will be made available at the website maintained by Donlin, Recano & Company, Inc. ("Donlin Recano"), the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com, or by telephoning Donlin Recano at (619) 246-1628.

**PLEASE TAKE FURTHER NOTICE** that the Motion seeks entry of an order (the "Sale Order") that is expected to provide, among other things, that any Successful Bidder will have no responsibility for, and the Purchased Assets will be sold free and clear of, any successor liability, including the following: (a) any liability or other obligation of the Debtor's estate or related to the Purchased Assets other than as expressly set forth in the Sale Order or in the Asset Purchase Agreement with the Successful Bidder; or (b) any claims against the Debtor, its estate, or any of its predecessors or affiliates.

**PLEASE TAKE FURTHER NOTICE** that a hearing will be held to approve the Sale of the Purchased Assets to the Successful Bidder (the "Sale Hearing") before the Bankruptcy Court, located at 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 5, on **June 27, 2022, at 10:00 a.m. (prevailing Eastern Time)**, or at such other time as the Bankruptcy Court may determine. The Sale Hearing may take place virtually, which information will be included in the agenda the Debtor will file with the Court two business days before the Sale Hearing, and which will be available at that time at the website of Donlin Recano, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com, or by telephoning Donlin Recano at (619) 246-1628. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and filing of a notice of the adjournment on the Court's docket.

**PLEASE TAKE FURTHER NOTICE** that objections to the Sale (a "Sale Objection") (other than an objection to the assumption and assignment of certain executory contracts and unexpired leases, as detailed in the Motion and the *Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor That May be Assumed and Assigned*), must: (a) be in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules; (d) filed with the Court and served on the Objection Notice Parties (defined below) in accordance with the Local Rules, **on or before June 17, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). Sale Objections must be served on the following parties (collectively, the "Objection Notice Parties"), which service shall be made through the CM/ECF court filing system, with courtesy copies to be served by email: (a) Debtor's counsel, (i) Holland & Knight LLP, Attn: John J. Monaghan, Esq. and David W. Wirt, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116, bos-bankruptcy@hklaw.com, david.wirt@hklaw.com; and (ii) Polsinelli PC, Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., cward@polsinelli.com, mdipietro@polsinelli.com, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801; (b) counsel to the Agent, (i) Davis, Polk & Wardwell, LLP, 450 Lexington Avenue, New York, NY 10017 Attn. Joshua Sturm (joshua.sturm@davispolk.com) and (ii) Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq. (collins@rlf.com); (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Juliet Sarkessian, Esq. (juliet.m.sarkessian@usdoj.gov); (d) counsel to the Proposed Purchaser, (i) Bracewell LLP, CityPlace I, 34th Floor, 185 Asylum Street, Hartford, CT 06103 Attn: Mark E. Dendinger, Esq. (mark.dendinger@bracewell.com) and 711 Louisiana St., Suite 2300, Houston, Texas 77002, Attn: Ryan S. Holcomb, Esq. (ryan.holcomb@bracewell.com); and (ii) Bayard, P.A., 600 N. King Street, Suite 400, P.O. Box 25130, Wilmington, DE 19899, Attn: Erin Fay, Esq. (efay@bayardlaw.com); (e) counsel to any Official Committee appointed in this Chapter 11 Case; and (f) counsel to Direct Energy Business Marketing, LLC, (i) Quinn Emanuel Urquhart & Sullivan LLP, 51 Madison Ave, New York, NY 10010, Attn: Benjamin I. Finestone, Esq. (benjaminfinestone@quinnemanuel.com); and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com).

**PLEASE TAKE FURTHER NOTICE** that counterparties to contracts that may be assumed and assigned will receive a separate notice regarding cure amounts and adequate assurance of future performance.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE MAY BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO SUCH SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE ASSET PURCHASE AGREEMENT WITH THE SUCCESSFUL BIDDER OR THE SALE ORDER.**

**PLEASE TAKE FURTHER NOTICE** that this Notice of the Bidding Procedures, Auction Date, and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order, and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may obtain such documents free of charge at the website maintained by Donlin, Recano & Company, the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com, or by telephoning Donlin Recano at (619) 246-1628.

Dated: May __, 2022
Wilmington, Delaware

Respectfully submitted,

*/s/ Draft*_________________

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*Proposed Counsel for the Debtor and Debtor in Possession*

# Exhibit 3

## Cure Notice

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

| | |
|---|---|
| In re:<br><br>ECTOR COUNTY ENERGY CENTER LLC,[1]<br><br>Debtor. | Chapter 11<br><br>Case No. 22-10320 (JTD) |

**NOTICE TO COUNTERPARTIES TO**
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**
**OF THE DEBTOR THAT MAY BE ASSUMED AND ASSIGNED**

**PLEASE TAKE NOTICE** that on April 11, 2022, 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) the Assumption and Assignment of Certain Contracts* [Docket No. 7] (the "Sale Motion"). The Debtor seeks, among other things, to sell substantially all of its assets (the "Purchased Assets") at an auction free and clear of all liens, claims, encumbrances and other interests, and to assume and assign certain leases and executory contracts in connection therewith, pursuant to sections 105, 363, and 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that on [____], 2022, the Bankruptcy Court entered an Order [Docket No. __] approving, among other things, the Bidding Procedures set forth therein (the "Bidding Procedures Order").[2] The Bidding Procedures Order set the key dates and times related to the Sale of the Purchased Assets.

**PLEASE TAKE FURTHER NOTICE** that, among other things, by the Bidding Procedures Order, the Bankruptcy Court approved the Debtor's entry into an Asset Purchase Agreement with Ector County Generation LLC, an acquisition entity affiliated with Rockland Capital, LLC (together with its assignees or designees, the "Proposed Purchaser") as a "stalking horse" agreement, subject to higher and better competing bids.

[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, and the Debtor has a principal place of business at 8200 OB Holt Road, Goldsmith, Ector County, Texas, 79761. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that the Motion also seeks Court approval of the sale (the "Sale") of the Purchased Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to Section 363 of the Bankruptcy Code, with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale with the same priority, validity and enforceability as they had prior to such Sale. As part of the sale, the Debtor will assume and assign to the Successful Bidder certain executory contracts and unexpired leases pursuant to Section 365 of the Bankruptcy Code (the "Assumed and Assigned Contracts"), which may include your executory contract and/or unexpired lease with the Debtor.

If the only Qualified Bidder is the Proposed Purchaser, no Auction will take place, and the Debtor will proceed with seeking approval of the sale, and assumption and assignment of the Assumed and Assigned Contracts, to the Proposed Purchaser. If there is more than one Qualified Bidder, an Auction, which shall be transcribed or recorded on video, will take place before the Honorable John T. Dorsey, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), located at 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 5 on **June 22, 2022, at 10:00 a.m. (prevailing Eastern Time)**. Within twenty-four (24) hours after the conclusion of the Auction, the Debtor shall file a notice with the Bankruptcy Court identifying the Successful Bidder, the Back-up Bidder, and the amount of both bids, which notice will be made available at the website maintained by Donlin, Recano & Company, Inc. ("Donlin Recano"), the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com. In addition, the Debtor shall send such notice by overnight mail to, and also by email if the Debtor has actual knowledge of or has received notice of the email address from, all counterparties of Assumed and Assigned Contracts. If you wish to receive such notice by email, please provide your email address to counsel to the Debtor by email to bos-bankruptcy@hklaw.com.

**PLEASE TAKE FURTHER NOTICE** that an evidentiary hearing (the "Sale Hearing") to approve the Sale and authorize the assumption and assignment of the Assumed and Assigned Contracts will be held before the Bankruptcy Court, located at 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 5, on **June 27, 2022, at 10:00 a.m. (prevailing Eastern Time)**. The Sale Hearing may take place virtually, which information will be included in the agenda the Debtor will file with the Court two business days before the Sale Hearing, and which will be available at that time at the website of Donlin Recano, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com, or by telephoning Donlin Recano at (619) 246-1628. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and filing of a notice of the same on the Court's docket.

**PLEASE TAKE FURTHER NOTICE** that, consistent with the Bidding Procedures Order, the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assumed and Assigned Contracts are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the "Cure Amount" is the amount, if any, which the Debtor asserts is owed to cure any defaults existing under the Assumed and Assigned Contracts.

**PLEASE TAKE FURTHER NOTICE** that if you (i) object to the assumption and assignment to the Proposed Purchaser of the Assumed and Assigned Contracts on Exhibit A to which you are a party; (ii) disagree with the Cure Amount shown for the Assumed and Assigned Contracts on Exhibit A to which you are a party or (iii) object to the Proposed Purchaser's ability to provide adequate assurance of future performance the Assumed and Assigned Contracts on Exhibit A to which you are a party, you must file in writing with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and serve on the Objection Notice Parties (defined below), an objection (the "Assumption/Cure Objection") on or before **June 17, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the "Assumption/Cure Objection Deadline"). Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. The "Objection Notice Parties" and their addresses are as follows: (a) Debtor's counsel, (i) Holland & Knight LLP, Attn: John J. Monaghan, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116, Attn: David W. Wirt, Esq., 150 N. Riverside Plaza, Suite 2700, Chicago, Illinois 60606, bos-bankruptcy@hklaw.com, david.wirt@hklaw.com; and (ii) Polsinelli PC, Attn: Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, cward@polsinelli.com, mdipietro@polsinelli.com; (b) counsel to the Agent and Ad Hoc Group, (i) Davis, Polk & Wardwell, LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Joshua Sturm, Esq. (joshua.sturm@davispolk.com) and (ii) Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq. (collins@rlf.com); (c) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Juliet Sarkessian, Esq. (juliet.m.sarkessian@usdoj.gov); (d) counsel to the Proposed Purchaser, (i) Bracewell LLP, CityPlace I, 34th Floor, 185 Asylum Street, Hartford, CT 06103 Attn: Mark E. Dendinger, Esq. (mark.dendinger@bracewell.com) and 711 Louisiana St., Suite 2300, Houston, Texas 77002, Attn: Ryan S. Holcomb, Esq. (ryan.holcomb@bracewell.com); and (ii) Bayard, P.A., 600 N. King Street, Suite 400, P.O. Box 25130, Wilmington, DE 19899, Attn: Erin Fay, Esq. (efay@bayardlaw.com); (e) counsel to any statutory committee appointed in this Chapter 11 Case; and (f) Direct Energy Business Marketing LLC, (i) Quinn Emanuel Urquhart & Sullivan LLP, 51 Madison Ave, New York, NY 10010, Attn: Benjamin I. Finestone, Esq. (benjaminfinestone@quinnemanuel.com); and (ii) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. (mnestor@ycst.com). If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive on or before the tenth (10th) day following the closing of the transaction with the Successful Bidder (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any counterparty to an Assumed and Assigned Contract that fails to timely file and serve an objection to the Cure Amounts may be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit A.

**PLEASE TAKE FURTHER NOTICE** any counterparty to an Assumed and Assigned Contract may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed and Assigned Contract solely with respect to such Successful Bidder's ability to provide adequate assurance of future performance under the Assumed and Assigned Contract but only in the event that the Proposed Purchaser is not the Successful Bidder. Any counterparty to an Assumed and Assigned Contract who receives a Cure Notice and wishes to receive evidence of the Qualified Bidders' ability to provide adequate assurance of future performance under section

365 of the Bankruptcy Code may make such a request in writing (an "Adequate Assurance Notice Request") to Holland & Knight LLP, Attn: John J. Monaghan, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116; Attn: David W. Wirt, Esq., 150 N. Riverside Plaza, Suite 2700, Chicago, Illinois 60606, or by emailing bos-bankruptcy@hklaw.com and david.wirt@hklaw.com, by **_:00 _.m. (Eastern) ________, 2022**. Within 24 hours of the determination that Potential Bids are Qualified Bids, the Debtor shall send, by email, the evidence submitted by the Qualified Bidders in their Qualified Bids of their ability to provide adequate assurance of future performance to any counterparty that has submitted a timely Adequate Assurance Notice Request.

**PLEASE TAKE FURTHER NOTICE** that the Cure Amount relating to any Assumed and Assigned Contract and any payment required in connection with providing adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, et seq. will be paid in accordance with the asset purchase agreement entered by the Successful Bidder on or before the tenth ($10^{th}$) day (or as soon thereafter as it practicable) following the later of the closing of the transaction with the Successful Bidder or the entry by the Bankruptcy Court of a final order determining such amounts.

**PLEASE TAKE FURTHER NOTICE** that, in the event that the Debtor and a counterparty to an Assumed and Assigned Contract cannot resolve an Assumption/Cure Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption/Cure Objection, such Assumed and Assigned Contract will not be assumed and assigned until after the Court has made its determination with respect to the Assumption/Cure Objection.

**PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in the asset purchase agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and its estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed and Assigned Contracts.

**PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the Debtor or the Successful Bidder to assume any Assumed and Assigned Contracts or to pay any Cure Amount.

**PLEASE TAKE FURTHER NOTICE** that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may obtain such documents free of charge at the Debtor's case website maintained by Donlin Recano, the Debtor's claims and noticing agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com, or by telephoning Donlin Recano at (619) 346-1628.

**PLEASE TAKE FURTHER NOTICE** THAT IF YOU DO NOT TIMELY FILE AND SERVE AN ASSUMPTION/CURE OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY COUNTERPARTY TO ANY ASSUMED AND ASSIGNED CONTRACT WHO DOES NOT FILE A TIMELY ASSUMPTION/CURE OBJECTION TO THE CURE AMOUNT

FOR SUCH ASSUMED AND ASSIGNED CONTRACT AND/OR TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF SUCH ASSUMED AND ASSIGNED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT AND/OR TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AND ASSIGNED CONTRACT TO THE SUCCESSFUL BIDDER.

Dated: May _, 2022
Wilmington, Delaware

Respectfully submitted,

*/s/ Draft*_________________

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*Proposed Counsel for the Debtor and Debtor in Possession*