IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: ECTOR COUNTY ENERGY CENTER LLC,[1] Debtor.	Chapter 11 Case No. 22-10320 (JTD) **Objection Deadline: September 27, 2022 at 4:00 p.m.** **Hearing Date: October 4, 2022 at 11:00 a.m. (ET)**

MOTION OF THE DEBTOR FOR AN ORDER (A) APPROVING THE ADEQUACY OF DISCLOSURE STATEMENT; (B) APPROVING PLAN SOLICITATION AND VOTING PROCEDURES; (C) APPROVING THE MANNER AND FORMS OF NOTICES AND BALLOTS; (D) ESTABLISHING CERTAIN DEADLINES IN CONNECTION WITH APPROVAL OF THE DISCLOSURE STATEMENT AND PLAN; (E) SCHEDULING A CONFIRMATION HEARING; AND (F) GRANTING RELATED RELIEF

Ector County Energy Center LLC,[2] the above-captioned debtor and debtor in possession (the "Debtor"), files this motion (the "Disclosure Statement Motion"), pursuant to sections 105(a), 1123(a), 1124, 1125, 1126, and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2002, 3016, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 3016-2 and 3017-1 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 substantially in the format set forth in **Exhibit A** hereto ("Disclosure Statement Order"): (a) approving the adequacy of the *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Docket No. 322] (as may be amended, modified,

[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] As is required of the Final APA, the Debtor has since filed with the Delaware Secretary of State's Office forms that have caused the change of the Debtor's name to "ECEC Wind-Down LLC," effective as of August 3, 2022. A motion to change the case caption is pending [D.E. 325].

or supplemented from time to time, the "Disclosure Statement"); (b) approving and establishing deadlines and procedures for, among other things, the solicitation and tabulation of votes to accept or reject the *Debtor's Liquidating Chapter 11 Plan* [Docket No. 323] (as may be amended, modified, or supplemented from time to time, the "Plan"), as more fully set forth below, as described herein "Solicitation Procedures"); (c) approving the forms of Ballots, substantially in the forms attached to the Disclosure Statement order as **Exhibits 2-A through 2-C**; (d) approving manner and forms of notices, as attached to the Disclosure Statement Order as **Exhibits 3-A, 3-B, 4 and 5**; (d) scheduling a hearing to consider confirmation of the Plan and establishing certain deadlines in connection with the foregoing; and (f) granting related relief, as set forth herein. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

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

2. The Debtor consents pursuant to Local Rule 9013-1(f) to the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 1123(a), 1124, 1125, 1126, and 1128; Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and 9006; and Local Rules 2002-1 and 3017-1.

BACKGROUND[3]

4. On April 11, 2022 (the "Petition Date"), the Debtor commenced the above-captioned voluntary chapter 11 case (the "Chapter 11 Case") in the Bankruptcy Court. No trustee, examiner, or official committee has been appointed in the Chapter 11 Case. The Debtor is operating its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. As of the Petition Date, the Debtor owned and operated a 330 MW natural gas-fired power generating facility located on 32.5 acres of Debtor-owned land in Ector County, Texas ("Power Plant") that conducted commercial operations within the Electric Reliability Council of Texas wholesale power market.

A. The Going-Concern Sale.

6. As has been detailed in several pleadings filed with this Court, the Debtor commenced this Chapter 11 Case with the primary purpose of conducting a sale of substantially all of its assets pursuant to section 363 of the Bankruptcy Code in the early months of the case to take advantage of favorable market conditions. To that end, the Debtor, together with its investment banker, Perella Weinberg Partners LP ("PWP") engaged in a robust pre-petition marketing process that resulted in the acceptance of an offer from Ector County Generation, LLC (the "Purchaser") to purchase, as stalking horse bidder, substantially all of the Debtor's assets for cash consideration of $91,250,000 (subject to certain adjustments) pursuant to section 363 of the Bankruptcy Code, subject to solicitation of higher and better bids and Bankruptcy Court approval, pursuant to an Asset Purchase Agreement dated March 3, 2022 (as amended) (the "Stalking Horse APA").[4]

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[3] Capitalized terms not defined herein shall have the meanings ascribed in the Plan and Disclosure Statement.

[4] Additional background regarding the Debtor and its operations is set forth in the (i) *Declaration of John Baumgartner, Chief Restructuring Officer, In Support of Chapter 11 Petition, First Day Motions, and Related Relief* (the "First Day Declaration") [D.E. 2], filed on April 11, 2022, and (ii) *Supplemental Declaration of John Baumgartner, Chief Restructuring Officer, in Support of Debtor's Reply to Direct Energy Marketing, LLC's Omnibus Objection to Debtor's (I) Motion to Use Cash Collateral and Grant Adequate Protection, (II) Bid Procedures Motion, and (III) Shared Services Motion* [D.E. 159], filed on May 24, 2022.

7. Through the previously filed *Motion of the Debtor for Orders (I)(A) Authorizing Debtor's Entry Into Asset Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving a Break-Up Fee and Reduced Break-Up Fee, (E) Approving the Notice Procedures, and (F) Setting a Date for the Sale Hearing; and (II) Authorizing and Approving (A) the Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests, and (B) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [Docket No. 7] (the "Sale Motion"), the Debtor sought approval of bidding procedures relating to, and ultimately, the sale of, the Power Plant and other of its business assets, to the Purchaser or the highest bidder for those assets pursuant to the Stalking Horse APA (the "Sale").

8. Following entry of the *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* [Docket No. 136] (the "Bidding Procedures Order"), PWP continued its broad marketing outreach to a large group of potential buyers, comprised of strategic investors already operating in the power production industry, participants in related industries potentially interested in vertical integration, hedge funds and private equity funds.

9. As a result of these efforts, the Debtor received one Qualified Bid (as defined in the Bidding Procedures Order) from LS Power Equity Advisors, LLC ("LS Power") in the amount of $96,000,000. Accordingly, on June 21, 2022, in accordance with the Bidding Procedures Order, after LS Power and Rockland each confirmed an intent to continue bidding, the Debtor and PWP conducted a virtual auction of the Debtor's assets in accordance with the Bidding Procedures Order on June 22,

2022. At the conclusion of the auction, the Purchaser's bid in the amount of $144,750,000 (less its Break-Up Fee and expense reimbursement), plus an additional $2.7 million in potential "Incentive Consideration," was chosen as the highest and best bid for the purchase of the Debtor's assets; LS Power's bid was selected as the Back-Up Bid.

10. The Sale to the Purchaser closed on July 13, 2022 in accordance with the Court's *Order (A) Authorizing and Approving the Sale of Acquired Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Dkt. No. 259] (the "Sale Order") and the terms of the Asset Purchase Agreement executed by the Debtor and the Purchaser attached to and approved through the Sale Order ("Final APA"). The Debtor is holding on deposit the cash proceeds from that transaction, totaling approximately $147,100,660, ("Sale Proceeds").

11. Following the closing of the Sale, the Debtor worked diligently to present a proposed plan of liquidation and accompanying disclosure statement to its creditor body, so that the net Sale Proceeds and other of the Debtor's cash assets can be distributed to creditors in accordance with the structure of, and in compliance with, the Plan Support Agreement entered into prior to the Petition Date after extensive pre-filing negotiations with the Prepetition Secured Lenders (the terms of which are described in the First-Day Declaration), and in accordance with the priority scheme of the Bankruptcy Code.

12. In furtherance of the effort, the Debtor moved for and obtained entry of the *Order (I) Establishing Bar Dates for Filing Proofs of Claim, Including Section 503(b)(9) Claims and (II) Approving the Form and Manner of Notice Thereof* [Dkt. No. 240] (the "Bar Date Order"), which set August 25, 2022 as the "general" bar date, and October 11, 2022 as the bar date for governmental units to file proofs of claims. The Debtor further worked with its noticing agent, Donlin, Recano &

Company, Inc. ("Donlin"), to provide notice of these deadlines in accordance with the Bar Date Order and related procedural rules. To prepare for the Plan solicitation process, the Debtor filed, on July 27, 2022, its *Application of Debtor for Entry of an Order Authorizing Retention and Appointment of Donlin, Recano & Company, Inc. as Claims and Balloting Agent Effective July 13, 2022* [Docket No. 301], seeking authority to expand the scope of Donlin's engagement to that of the Debtor's Claims and Balloting Agent ("Solicitation Agent") pursuant to section 327; that motion was granted on August 12, 2022 [Docket No. 333].

13. Given the then-looming expiration of the Debtor's exclusive plan filing period of Section 1121, the Debtor also filed its *Motion for Entry of An Order Pursuant to 11 U.S.C. § 1121(d) Extending the Exclusive Periods for Filing a Chapter 11 Plan and Solicitation of Acceptances Thereof* on August 8, 2022. [Docket No. 318] ("Exclusivity Motion"). Through the Exclusivity Motion, the Debtor requested that the Bankruptcy Court enter an order extending the 120-day exclusive period for the Debtor to file a plan established by 11 U.S.C. § 1121(b) through and including September 30, 2022, and extending the deadline for the Debtor to obtain acceptances of a plan by an additional sixty days, through and including November 30, 2022. The Exclusivity Motion is pending.

B. The Plan and Disclosure Statement.

14. In the meantime, the Debtor filed its Plan and Disclosure Statement on August 9, 2022; the Plan is a liquidating plan through which the Net Proceeds and other cash assets available following the closing of the Sale will be distributed to creditors by Class, following the Effective Date of the Plan. The Debtor is no longer operating.

15. As described in the Plan and Disclosure Statement, in accordance with sections 1122 and 1123, the Plan classifies Holders of Claims and Interests into Classes with respect to voting on the Plan and distributions, as follows:

Class	Estimated Recovery to Holders of Allowed Claims[5]	Voting Status
Unclassified Administrative Expense Claims	100%	N/A
Unclassified Priority Tax Claims	100%	N/A
Class 1 – Other Priority Claims	100%	Unimpaired (Deemed to have accepted)
Class 2 – Prepetition Term Lender Claims	22%	Impaired; Entitled to Vote
Class 3 – Prepetition Revolving Lender Claims	11%	Impaired; Entitled to Vote
Class 4 – Other Secured Claims	100%	Unimpaired (Deemed to have accepted)
Class 5A – General Unsecured Claims of Non-Texas MDL Plaintiffs	14.3%-100%	Impaired; Entitled to Vote
Class 5B – General Unsecured Claims of Texas MDL Plaintiffs	14.3%-100%	Impaired; Entitled to Vote
Class 6 – Equity Interests	Net cash after full payment with Interest of all other Classes	Impaired; Deemed to reject

16. Based on the foregoing (and as discussed in greater detail herein), the Debtor is only proposing to solicit votes to accept or reject the Plan from Holders of Prepetition Term Lender Claims in **Class 2**, Prepetition Revolving Lender Claims in **Class 3**, and General Unsecured Claims in **Class 5** (collectively, the "Voting Classes"). Within the Voting Classes, in order to vote, a creditor must hold a Claim in Class 2, 3, or 5 and have timely Filed a Proof of Claim that is not the subject of a

[5] The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court.

pending objection, or hold a Claim that is identified on the Schedules that is not listed as disputed, unliquidated or contingent, *or* be the Holder of a Claim that has been temporarily allowed for voting purposes only under Bankruptcy Rule 3018(a). As discussed below, through this Motion, the Debtor requests that, as part of the Solicitation Procedures, the Court establish a process for creditors and parties-in-interest to seek temporary allowance of disputed claims for voting purposes only, in accordance with Bankruptcy Rule 3018(a).

17. The Debtor is not proposing to solicit votes from Holders of Claims or Interests in Classes 1, 4, and 6 (collectively, the "Non-Voting Classes"). Holders of Claims in Classes 1 and 4 are Unimpaired (the "Unimpaired Classes") and are therefore presumed to accept the Plan. The Holder of Interests in Class 6 is not retaining any equity interest in the Debtor under the Plan, and is therefore deemed to reject the Plan.

18. Among the conditions of the Plan Support Agreement is that both the Prepetition Secured Lenders and the affiliates of the Debtor that are "obligors" for the Prepetition Term Lender Claims be released as of the Effective Date from all claims and causes of action that could be brought by the Debtor directly or derivatively on behalf of the Debtor. As is described in Article XII of the Disclosure Statement and Article X of the Plan, the Plan accordingly provides for those required releases of the Debtor's causes of action, but not of third-parties' claims, in order for the Debtor and its creditor-body to take advantage of the significant benefits of the Plan Support Agreement. These provisions are indicated in bold and otherwise highlighted to be prominently featured with the Plan and Disclosure Statement.

19. Following the Effective Date of the Plan, the Debtor will remain in existence in order to make the Distributions required under the Plan and to close the Chapter 11 Case, with a Plan-appointed Distribution Agent overseeing those processes. In addition, any unreleased and unresolved causes of action owned by the Debtor as of the Effective Date, if any, will be assigned to a creditors'

trust for administration by a Plan-appointed trustee, with any net recoveries to be delivered to the Distribution Agent for distribution by the Distribution Agent in accordance with the provisions of the Plan. Because the assets transferred to the Purchaser in the Asset Sale included all Avoidance Actions against parties other than the Prepetition Secured Lenders and the Debtor's affiliates, as well as litigation rights related to the Acquired Assets, and because the Plan provides for the release of any and all claims against the Prepetition Secured Lenders and the Debtor's affiliates, the Debtor does not anticipate that the Creditors' Trust will have substantial litigation rights to pursue. These provisions are described, in detail, in the Disclosure Statement, and in support of confirmation of the Plan, as proposed.

RELIEF REQUESTED

20. By this Motion and pursuant to Sections 105, 502, 1125, 1126 and 1128 of the Bankruptcy Code and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020 and Local Rules 3016-2 and 3017-1 for entry of the Disclosure Statement Order:

(a) approving the form of Disclosure Statement as adequate for solicitation purposes;

(b) approving the Solicitation Procedures described below, and in the proposed Disclosure Statement Order;

(c) approving the forms of Ballots, substantially in the forms attached to the Disclosure Statement order as **Exhibits 2-A, 2-B, and 2-C**;

(d) approving manner and forms of notices, as attached to the Disclosure Statement Order as follows:

1) *Non-Voting Status Notices*. Approving the form of notice, substantially in the form attached to the Disclosure Statement Order, as **Exhibits 3-A and 3-B** applicable to: (i) Holders of Claims and Interests that are not Impaired under the Plan and who are, pursuant to Bankruptcy Code section 1126(f), conclusively presumed to accept the Plan; and (ii) Holders of Claims and Interests that are Impaired under the Plan and who are, pursuant to Bankruptcy Code section 1126(g), conclusively deemed to reject the Plan (collectively, the "Non-Voting Status Notices").

2) *Confirmation Hearing Notice*. and approving the form and manner of notice of the Confirmation Hearing (as defined below) (the "Confirmation Hearing Notice"), substantially in the form attached to the Disclosure Statement Order as **Exhibit 4**.

3) *Plan Supplement Notice*. Approving the notice relating to the filing of the Plan Supplement (the "Plan Supplement Notice"), substantially in the form attached to the Disclosure Statement Order as **Exhibit 5**.

(e) Scheduling a hearing to consideration confirmation of the Plan on **November 16, 2022 at 10:00 a:m (ET)** ("Confirmation Hearing"), and establishing certain deadlines in connection with the foregoing;

(f) *Solicitation Packages.* Finding that the materials and documents to be included in the Solicitation Packages (as defined below) that the Debtor will cause to be distributed to, among others, Holders of Claims and Interests entitled to vote to accept or reject the Plan, comply with Bankruptcy Rules 2002(d) and 3017(d); and

(g) *Confirmation Timeline.* Approving the dates and deadlines set forth in Section II(A) below and to be established by the Disclosure Statement Order, subject to modification as necessary, at the Court's convenience.

BASIS FOR RELIEF REQUESTED

I. The Disclosure Statement Contains Adequate Information and Should be Approved.

21. Pursuant to section 1125 of the Bankruptcy Code, a plan proponent must provide holders of impaired claims with a disclosure statement that contains "adequate information" regarding a proposed chapter 11 plan. "Adequate information" means:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,[6] that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan[.]

11 U.S.C. § 1125(a)(1).

22. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision whether to vote for the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94,

[6] In turn, "investor typical of holders of claims or interests of the relevant class" is defined in Section 1125(a)(2) as an investor having: (A) a claim or interest of the relevant class; (B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and (C) such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have.

100 (3d Cir. 1988) ("§ 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote"); *In re Monnier Bros.*, 755 F.2d 1336, 1341 (8th Cir. 1985); *In re Phx. Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987). Put another way, a disclosure statement and plan must, as a whole, provide information that is reasonably practicable to permit an informed judgment by impaired creditors entitled to vote concerning whether to vote for or against the plan before them. *See Krystol-Cadillac-Oldsmobile GMC Truck v. General Motors Corp.*, 337 F.3d 314, 322 (3d Cir. 2003).

23. A presiding court's determination regarding whether a disclosure statement does indeed contain "adequate information" involves a flexible exercise based on the facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.3d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case"); *First Am. Bank of N.Y. v. Century Glove, Inc.*, 81 B.R. 274, 279 (D. Del. 1988) (noting that adequacy of disclosure for a particular debtor will be determined based on how much information is available from outside sources); *see also*, *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) ("The determination of what is adequate information is subjective and made on a case-by-case basis. This determination is largely within the discretion of the bankruptcy court"); *In re PC Liquidation Corp.*, 383 B.R. 856, 865 (E.D.N.Y. 2008) ("The standard for disclosure is, thus, flexible and what constitutes 'adequate disclosure' in any particular situation is determined on a case-by-case basis, with the determination being largely within the discretion of the bankruptcy court").

A. The Form of Disclosure Statement Is Adequate.

24. Here, the Disclosure Statement contains ample information necessary for Holders of Claims in the Voting Classes to make an informed decision with respect to voting to accept or reject the Plan, including provisions providing, for instance, information concerning the Debtor's business,

assets and liabilities, a summary of the Plan's terms, the requirements for and alternatives to confirmation, and certain risk-factors, as well as, in Article XV, an overview of the Federal income tax consequences associated with Plan confirmation.

25. Through the Disclosure Statement, the Debtor has adequately and thoroughly provided a description of the factors precipitating the filing of this chapter 11 case, of the assets involved in the Sale and the consideration received in exchange, of the benefits of the Plan Support Agreement and risks if the Plan is not confirmed, of the proposed releases, of the various claims that have been asserted against the Debtor by priority and type and the amount of Professional Fees incurred to date and estimated to be incurred through the Effective Date, and the estimated range of distribution to holders of claims in each of the five creditor Classes of the Plan.

26. In addition, as is required of Bankruptcy Rule 3016(c), Article XII of the Disclosure Statement conspicuously and prominently describes the injunction, release, and exculpation provisions under the Plan and the acts that are enjoined and the entities that would be subject to the proposed injunction.

27. Based on the circumstances of this case, in particular, given that the Debtor's operating assets have previously been liquidated and that the Debtor seeks to implement the provisions of the Plan Support Agreement, a document has been on file with the Court since the Petition Date, to distribute the net sale proceeds on the Effective Date, rather than reorganization of its business and payment of creditors over time, the Debtor submits that the Disclosure Statement contains information that is more than "adequate" for its creditors to become informed enough to make a decision regarding whether to vote for or against the Plan.

B. <u>The Notice of Disclosure Statement to be Provided is Proper</u>.

28. In accordance with Bankruptcy Rule 3017(a), the Debtor has obtained from the Court a date and time for the hearing on the Disclosure Statement which will be held on **October 4, 2022**

at 11:00 AM (Eastern Time) (the "Disclosure Statement Hearing"), with **September 27, 2022 at 4:00 PM (Eastern Time)** as the deadline for parties in interest to object to the form of the Disclosure Statement.

29. Bankruptcy Rules 2002(b) and 2002(d) require at least twenty-eight days' notice by mail to all of a debtor's creditors and equity holder informing them of the time set for filing objections to, and the hearing to consider the approval of a disclosure statement.

30. As indicated by Affidavits of Service filed by Donlin or to be filed, notice of the hearing regarding approval of the Disclosure Statement and the objection deadline established by the Court was (or will shortly be) provided in compliance with Bankruptcy Rule 2002, 3017(a) and Local Rule 3017-1(a). Donlin will also post the Disclosure Statement Hearing Notice on its website at www.donlinrecano.com/ecec, where it can be reviewed without charge.

31. Accordingly, the Debtor submits that the Disclosure Statement contains adequate information within the meaning of Section 1125 of the Bankruptcy Code, and after appropriate notice having been provided by the Debtor prior to the Disclosure Statement Hearing, its form should be approved for solicitation purposes.

II. The Proposed Solicitation Schedule and Procedures Should Be Approved.

32. Through this Motion, upon approval of the Disclosure Statement pursuant to Section 1125, the Debtor also requests that this Court establish the timeline for and procedure for solicitation of votes towards the Plan and related Solicitation Procedures, pursuant to Section 1126, and Bankruptcy Rule 3017, Local Rule 3017-1, and Bankruptcy Rule 3018, leading up to the Confirmation Hearing, summarized as follows:

Event	**Proposed Date**[7]
Disclosure Statement Objection Deadline	September 27, 2022 at 4:00 pm EST
Disclosure Statement Hearing	October 4, 2022 at 11:00 a.m. EST
Voting Record Date	Entry of Disclosure Statement Order
Deadline to Serve Solicitation Package	Five days following entry of Disclosure Statement Order
Deadline to File Rule 3018(a) Motions	Fourteen days following entry of Disclosure Statement Order, at 4:00 p.m. EST
Deadline to Object to Rule 3018(a) Motions	Ten days following filing/service of Rule 3018(a) Motion, at 4:00 p.m. EST
Deadline to File Plan Supplement/Notice of Plan Supplement	November 1, 2022 at 4:00 p.m. EST
Plan/Confirmation Objection Deadline	November 9, 2022 at 4:00 p.m. EST
Voting Deadline	November 9, 2022
Deadline to File Voting Report	November 11, 2022 at 4:00 p.m. EST
Deadline to File Confirmation Brief and Reply to Plan Objection(s)	November 14, 2022 at 12:00 p.m. EST
Confirmation Hearing Date	November 16, 2022 at 10:00 a.m. EST

33. The basis for this proposed schedule, and related relief, is set forth in more detail below.

A. The Proposed Timeline Provides Appropriate Notice and Opportunity to be Heard.

1. *Voting Record Date.*

34. Bankruptcy Rule 3018(a) provides that, for purposes of soliciting votes in connection with the confirmation of a plan, "creditors and equity security holders shall include holders of stocks, bonds, debentures, notes and other securities *of record on the date the order approving the disclosure*

[7] All dates in this chart and elsewhere in the Motion are proposed dates that have not been set or approved by the Court. This chart is for illustrative purposes only and assumes the Disclosure Statement Hearing will be held on October 4, 2022.

statement is entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3018(a)(emphasis added).

35. In accordance with the Bankruptcy Rules, the Debtor requests that the Court establish the date upon which the Disclosure Statement Order enters as the "Record Holder Date" ("Voting Record Date") for purposes of determining the scope of Holders of Claims that shall be entitled to vote on the Plan, subject to the additional limitations described herein.

2. *Voting Deadline*.

36. As part of the solicitation process, Bankruptcy Rule 3017(c) provides that, "[o]n or before the approval of the disclosure statement, the court shall fix a time within which holders of claims and interests may accept or reject the plan." *See* Fed. R. Bankr. P. 3017(c).

37. As stated below and in the Disclosure Statement order, the Debtor will use reasonable efforts to cause the Solicitation Packages to be distributed by Donlin as Solicitation Agent by no later than seven days following entry of the Disclosure Statement Order, or as soon as reasonably practicable thereafter.

38. Based on this schedule, the Debtor proposes that the Court set **November 9, 2022** (the "Voting Deadline") as the deadline by which the Solicitation Agent must actually receive completed Ballots from Holders of Claims in the Voting Classes (or their counsel), in accordance with the Solicitation Procedures set forth in the Disclosure Statement Order.

39. Authority is requested to extend, for any reason deemed appropriate by the Debtor, the time within which Ballots may be accepted. Such extensions may be made by the Debtor by oral or written notice to the Solicitation Agent. Any instance in which the Voting Deadline is extended shall be highlighted and listed in the Voting Report (as defined below) to be filed by the Solicitation Agent.

40. Since the proposed deadline will provide Holders of Claims in Voting Classes with at least twenty-one (21) days to review the Solicitation Package and make an informed decision with

respect to whether to accept or reject the Plan before the Voting Deadline, which is consistent with the requirements set forth under Bankruptcy Rule 3017(d), the Debtor submits that the establishment of the Voting Deadline is appropriate.

3. *Confirmation Hearing and Objection Date*.

41. Section 1128(a) of the Bankruptcy Code provides that "[a]fter notice, the court shall hold a hearing on confirmation of a plan." 11 U.S.C. § 1128(a); *see also* Fed. R. Bankr. P. 3018(c)("[o]n or before approval of the disclosure statement, the court . . . may fix a date for the hearing on confirmation [of the plan]; Fed. R. Bankr. P. 2002(b)("Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (2) for filing objections and the hearing to consider confirmation of a chapter 9 or chapter 11 plan….").

42. In compliance with these provisions, the Debtor requests that this Court enter an order setting **November 16, 2022 at 10:00 a.m. (EST)** as the Confirmation Hearing and **November 9, 2022 at 4:00 p.m. (EST),** as the deadline (the "Confirmation Objection Deadline") for filing and serving objections to confirmation of the Plan ("Confirmation Objections").

43. The Debtor requests that the Court direct that Confirmation Objections, if any, must (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Rules, (c) set forth the name of the objector and the nature and amount of any claim or interest asserted by the objector against or in the Debtor (d) state with particularity the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection, and (e) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is actually received no later than the Confirmation Objection Deadline by the Notice Parties (as defined in the Disclosure Statement Order).

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44. The Debtor further requests that the Court permit the filing by the Debtor (and other parties in interest supporting the Plan) in support of confirmation of the Plan and/or a reply to any objections to confirmation of the Plan through and including **12:00 PM (EST) on November 14, 2022**.

4. *Other Deadlines*.

45. In addition, the Debtor proposes to file the Plan Supplement and the Plan Supplement Notice with the Court on or before **November 1, 2022 at 4:00 PM (EST)** (the "Exhibit Filing Date"), which is more than seven (7) days before the Voting Deadline, as contemplated by the Plan.

46. Finally, the Debtor proposes to cause its Solicitation Agent to prepare and file with the Court a voting report ("Voting Report") by **November 14, 2022 at 12:00 p.m. (EST).**

47. This schedule for consideration of and voting on the Plan being in compliance with the applicable Bankruptcy Rules and Local Rules, and as it is designed to enable the Debtor to pursue confirmation on an expeditious basis without minimizing the rights of its creditor body, the Debtor believes that implementation of this proposed timeline is necessary and appropriate.

III. The Plan Solicitation Procedures Should be Approved.

48. The Debtor is seeking approval of the Solicitation Procedures described in the Disclosure Statement Order, as summarized below, as in compliance with the applicable provisions of the Bankruptcy Code and Federal and Local Bankruptcy Rules.

A. Establishment of Voting Classes and Voting Claims, and the Procedure for Temporary Allowance, is Appropriate.

49. Pursuant to the Plan, and in compliance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims and Professional Claims asserted against the Debtor are not classified under the Plan (collectively, the "Unclassified Claims") and therefore,

not entitled to vote. See 11 U.S.C. § 1123(a)(1) (providing for classification of claims other than those claims specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code).

50. As stated above, the Debtor is also not soliciting votes from the Unimpaired Classes, as the holders of Claims in those Classes are deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Class 6 is likewise a Nonvoting Class since Class 6 Equity Interest holders are deemed to have rejected the Plan under Section 1126.

51. Holders of Claims in Classes 2, 3 and 5, the Voting Classes, are entitled to vote (for or against confirmation of the Plan using the requisite Ballot (discussed below). Not all holders of Claims within the Voting Classes, however, are statutorily entitled to vote.

B. Determination of Voting Claims.

52. Pursuant to section 1126(a) of the Bankruptcy Code, only holders of an "allowed claim" may vote to accept or reject a chapter 11 plan. A proof of claim is deemed "allowed" unless and until an objection is filed to such proof of claim. *See* 11 U.S.C. § 502(a). Claims that are (a) listed in the Schedules as contingent, unliquidated or disputed, (b) specified in Proofs of Claim in an unliquidated or zero-dollar amount or as contingent or disputed, or (c) the subject of pending objections are not allowed claims for purposes of Section 502(a). However, Bankruptcy Rule 3018(a) provides that the "court after notice and hearing may temporarily allow [any] claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed. R. Bankr. P. 3018(a).

53. The Debtor proposes that, consistent with Section 1126 of the Bankruptcy Code and *solely for the purpose of voting to accept or reject and not distribution on account of a Claim*, that, (only if these prerequisites are established, the "Voting Claims"):

(1) the holders of timely filed proofs of claim in the Voting Classes ("Filed Claims"); and

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

be entitled to vote with regard to such Claims, to the extent that the Filed Claim or Scheduled Claim has not been assumed or satisfied by the Purchaser in connection with the Sale or satisfied during the pendency of the Case pursuant to authority granted under a prior order of the Bankruptcy Court, *unless the Claim is the subject of a proceeding objecting to or seeking estimation of the amount of the Claim that is pending as of the Voting Record Date* ("Claim Objection Proceeding").

54. Moreover, the Debtor proposes that, with respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the Holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim only if: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date, or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer, and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the Holder of such Claim as of the Voting Record Date.

C. Temporary Allowance for Voting Purposes.

55. Notwithstanding the foregoing, nothing shall limit the right of the holder of a Claim classified within a Voting Class that is the subject of a Claim Objection Proceeding or other objection to allowance or assignment of the Claim ("Disputed Claim") to seek temporary allowance of its claim for voting purposes under Bankruptcy Rule 3018(a).

56. Bankruptcy Rule 3018(a) provides, in relevant part, that, "[n]otwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan." Fed R.

Bankr. P. 3018(a). Through this Motion, the Debtor requests that the Bankruptcy Court: (a) establish **the later of fourteen days following the Voting Record Date and October 20, 2022, at 4:00 PM (EST)** (the "Rule 3018(a) Motion Deadline"), as the deadline for the filing and serving of a motion requesting temporary allowance of a Disputed Claim for purposes of voting pursuant to Bankruptcy Rule 3018(a) (a "Rule 3018(a) Motion") in order for a Disputed Claim to be permitted to vote. Any objection or reply to a Reply 3018(a) Motion must be filed **within ten (10) days from service of the Rule 3018 (a) Motion** on the Notice Parties, and the movant.

57. The Debtor further proposes that only if the holder of a Disputed Claim files a timely Rule 3018(a) Motion shall that Disputed Claim holder be permitted to cast a provisional Ballot to accept or reject the Plan. If, and to the extent that, the Debtor and the holder of the Disputed Claim are unable to resolve the issues raised by a Rule 3018(a) Motion prior to the Voting Deadline by stipulation or stipulated order, then, at the Confirmation Hearing, the Bankruptcy Court shall determine whether the provisional Ballot should be counted as a vote on the Plan. Nothing in these procedures is intended to affect the Debtor's rights to object to, dispute, or contest any Proof of Claim or Rule 3018(a) Motion.

58. The Debtor submits that the foregoing procedures are reasonable given the circumstances of this case and consistent with the Bankruptcy Code and Bankruptcy Rules, and should be approved, to streamline the voting process for purposes of Section 1126.

D. The Forms of Ballots for Voting Classes and Notices of Non-Voting Status Should be Approved.

1. *Ballots*.

59. As stated above, the Debtor requests that the Bankruptcy Court approve the forms of Ballots, substantially in the forms attached to the Disclosure Statement Order as Exhibits 2-A, 2-B, and 2-C. Exhibit 2-A is the form of Ballot to be provided to holders of Claims in Class 2, the Prepetition Term Lender Claims ("Prepetition Term Lenders Ballot"); Exhibit 2-B is the form of

Ballot to be provided to holders of Claims in Class 3, the Prepetition Revolving Lender Claims ("Prepetition Revolving Lenders Ballot") (with the Prepetition Term Lenders Ballot, the "Prepetition Secured Lenders Ballots"); and Exhibit 2-C is the form of Ballot proposed for holders of General Unsecured Claims classified in Class 5A and Class 5B.

60. Bankruptcy Rule 3017(d) requires the Debtor to mail a form of ballot, which substantially confirms to Official Form 314, to "creditors and interest Holders entitled to vote on the plan." In turn, Bankruptcy Rule 3018(c) provides, in relevant part, as follows:

> *Form of Acceptance or Rejection*. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or authorized agent, and conform to the appropriate official form.

Fed. R. Bankr. P. 3018(c).

61. The Debtor proposes to distribute the Ballots to Holders of Claims and Interests in the Voting Classes as part of the Solicitation Package. Since the Ballots conform to Official Form No. 314 with certain necessary modifications to address the particular aspects of the Chapter 11 Case and include certain additional information that the Debtor believes to be relevant and appropriate for the Voting Classes, as well as to provide clarity to Holders of Voting Claims regarding the voting process, the Ballots should be approved for solicitation.

2. *Notices of Non-Voting Status*.

62. In addition, for those Holders of Claims and Interests in Non-Voting Classes that do not hold Voting Claims, the Debtor instead proposes to provide such Claim holders with an appropriate *Non-Voting Status Notice*, in the form set forth in either Exhibit 3-A or Exhibit 3-B to the Disclosure Statement Order, along with all other components of the Solicitation Package, other than a Ballot.

63. <u>Forms of Notices to Unimpaired Classes</u>: Holders of Claims that are not entitled to vote because they are unimpaired are otherwise presumed to accept the Plan under Bankruptcy Code

section 1126(f) and will receive the *Notice of Non-Voting Status - Deemed to Accept*, substantially in the form attached to the Disclosure Statement Order as Exhibit 3-A in lieu of a Ballot.

64. Forms of Notices to Impaired Classes: Certain holders of Claims or Interests that are not entitled to vote because they are Impaired and deemed to reject the Plan under Bankruptcy Code section 1126(g) will receive, in lieu of a Ballot, a *Notice of Non-Voting Status - Deemed to Reject***,** substantially in the form attached to the Disclosure Statement Order as Exhibit 3-B.

65. The Debtor believes that providing holders of claims in the Non-Voting Classes with the described Notice, along with the will provide more than ample information for holders of Claims and Interests in the Non-Voting Classes regarding the governing deadlines and procedure in order to protect their legal rights, in compliance with Federal Rule 3017.

E. Form of Solicitation Packages and Manner of Distribution and Notice to Parties Entitled to Vote and Other Claim Holders Should be Approved.

66. Bankruptcy Rule 3017(d) also specifies the materials to be distributed to holders of allowed claims or interests upon approval of a disclosure statement, unless the Court orders otherwise with respect to unimpaired classes, as follows: the plan or a court-approved summary of the plan; the disclosure statement approved by the court; notice of the time within which acceptances and rejections of such plan may be filed; and any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion. *See* Fed. R. Bankr. P. 3017(d).

67. The Solicitation Agent is prepared to, subject to Bankruptcy Court approval, assist the Debtor with providing creditors and parties in interest in this Chapter 11 Case with ample notice of the pendency of the Plan and upcoming Confirmation Hearing, and also, with providing holders of Voting Claims with timely access to all documents and information required of Rule 3017(d) for purpose of voting on the Plan.

1. *Voting Classes, Generally.*

68. In compliance with Rule 3017(d), the Debtor proposes to transmit to Holders of Claims and Interests in Voting Classes on or before the Solicitation Deadline, subject to the limitations contained therein and elsewhere in this Motion, by United States mail, first-class postage prepaid, personal service, or overnight delivery, a solicitation package (each a "Solicitation Package," and collectively, the "Solicitation Packages") containing the following:

a. the Disclosure Statement with all exhibits thereto, including the Plan, and the Disclosure Statement Order excluding exhibits, such as the Solicitation Procedures;

b. the Confirmation Hearing Notice, substantially in the form attached to the Disclosure Statement Order, as approved;

c. if the recipient is the holder of a Voting Claim, a Ballot in the form approved by the Disclosure Statement Order, and a postage-prepaid return envelope,; and

d. any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Package, including any letters in support of the Plan.

2. *Voting Classes 2 and 3* **-** *Prepetition Secured Lenders*.

69. Bankruptcy Rule 3017(e) provides that "the court shall consider the procedures for transmitting the documents and information required by Bankruptcy Rule 3017(d) to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate." *See Fed. R. Bankr. P. 3017(e).*

70. The Holders of the Prepetition Term Loan Claims and the Prepetition Revolving Lender Payment Claims are classified in Classes 2 and 3 of the Plan, each a Voting Class. The Prepetition Term Loan Claims are held, in many instances, by brokerage or fund managers or agents on behalf of the institutional investors holding the debt. In order to streamline the process for

solicitation of votes from the various Prepetition Secured Lenders and as is in compliance with the Prepetition Loan Documents and the responsibilities delegated by the Prepetition Secured Lenders to the Agent, the Debtor proposes to serve Solicitation Packages upon the Prepetition Agent, on behalf of the various Holders of the Prepetition Term Loan Claims and of the Prepetition Revolving Lender Payment Claims, with Class 2 and Class 3 Ballots.

71. The Agent will then be exclusively responsible for distribution of the Solicitation Packages, including the appropriate form of Ballot, to Holders of Prepetition Term Loan Claims and Prepetition Revolving Lender Payment Claims upon prompt receipt of the Solicitation Packages from the Solicitation Agent.[8] The individual Holders of Prepetition Term Loan Claims and Prepetition Revolving Lender Payment Claims will then be exclusively responsible for, unless otherwise agreed to by the Agent, completion and return of their respective Ballots to the Solicitation Agent by the Voting Deadline; the Agent shall not be entitled to vote for the Holders.

72. The Debtor submits that the foregoing process satisfies Bankruptcy Rule 3017(e).

3. *Holders of Claims in Non-Voting Classes and Unclassified Claims.*

73. Consistent with Sections 1126(f) and (g) of the Bankruptcy Code, the Debtor proposes to distribute to all Holders of Claims in Non-Voting Classes that are unimpaired, Classes 1 and 4, a *Notice of Non-Voting Status* in the form attached to the Disclosure Statement as Exhibit 3-A, specifying that the Class is deemed to accept the Plan. The Holder of Interest classified in Class 6, deemed to reject the Plan, will receive a Notice of Non-Voting Status set forth in Exhibit 3-B. These Notices will be in addition to the other documents comprising the Solicitation Package, but for a form of Ballot. In addition, a Solicitation Package without a Ballot will be served upon holders of Unclassified Claims.

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[8] The Agent may use its standard procedures to disseminate the voting materials as well as in the collection of votes and elections from the Holders.

74. Bankruptcy Rule 3017(d) permits a bankruptcy court to waive the requirement that a debtor's plan and disclosure statement be mailed to unimpaired classes, and in lieu thereof, may order that "notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request," as well as "notice of the time fixed for filing objections to and the hearing on confirmation" be mailed to such classes. *See* Fed. R. Bankr. P. 3017(d).

75. Here, given that the Debtor proposes to provide copies of the Solicitation Package to all holders of Claims or Interests, regardless as to whether the Holder's claim is impaired or unimpaired. Given this, the Debtor believes that the requirements of Bankruptcy Rule 3017 are satisfied with regard to holders of Non-Voting Claims, and also, with regard to Unclassified Claims.

4. *Rule 2002 Notice and Confirmation Hearing Notice.*

76. Additionally, the Debtor will serve or cause to be served a copy of the Solicitation Package, *without Ballots or a Notice of Non-Voting Status*, to all other parties that have filed requests for notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 (the "2002 List") as of the Voting Record Date, but are not otherwise receiving a Solicitation Package.

77. To be clear, as part of the notice process, the Debtor will also serve the Confirmation Hearing Notice on all known Holders of Claims and Interests and all parties included on the 2002 List as of the Voting Deadline, upon: (a) The U.S. Trustee; (b) all entities that are party to executory contracts and unexpired leases with the Debtor; (c) all entities that are party to litigation with the Debtor or their counsel; (d) all current and former employees, directors, and officers (to the extent that contact information for former employees, directors, and officers is available in the Debtor's records); (e) all regulatory authorities that regulate the Debtor's business; (f) the office of the attorney general for each state in which the Debtor maintain(ed) or conduct(ed) business; (g) all taxing authorities for the jurisdictions in which the Debtor maintain(ed) or conduct(ed) business; (h) the

Securities and Exchange Commission; no later than the Solicitation Deadline, or as soon as reasonably practicable thereafter.

78. This Notice will provide parties in interest with approximately twenty-eight (28) calendar days' notice of the Plan Objection Deadline, depending on the timing of entry of the Disclosure Statement Order, and more than twenty-eight (28) calendar days' notice of the Confirmation Hearing as required of Bankruptcy Rule 2002. The Confirmation Hearing Notice will include: (a) instructions as to how to view or obtain copies of the Disclosure Statement (with all exhibits, including the Plan), the Disclosure Statement Order, and all other materials included in the Solicitation Package (with the exception of the Ballot); (b) notice of the Voting Deadline; (c) notice of the Plan Supplement Deadline; (d) notice of the Plan Objection Deadline; and (e) notice of the Confirmation Hearing Date and information related thereto.

79. To provide another layer of notice to parties in interest in this Chapter 11 Case, the Debtor will post to Solicitation Agent's website various chapter 11 documents, including the following: (i) the Plan; (ii) the Disclosure Statement (with all exhibits); (iii) this Motion and any orders entered in connection with this Motion; and (iv) the Confirmation Hearing Notice, at www.donlinrecano/ecec.

80. The Debtor anticipates that some notices and/or Solicitation Packages may be returned by the United States Postal Service as undeliverable. The Debtor believes that it would be costly and wasteful to mail such notices and/or Solicitation Packages to the same addresses to which undeliverable notices were mailed. Therefore, the Debtor requests that the Court waive the strict notice provisions of Bankruptcy Rules 2002(b) and 3017(d) unless a new mailing address is provided to the Solicitation Agent and Debtor before the Voting Record Date.

5. *Publication Notice*.

81. Finally, Bankruptcy Rule 2002(1) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice." Accordingly, out of an abundance of caution, the Debtor additionally proposes to publish, at its sole discretion, the Confirmation Hearing Notice (or a substantially similar notice) on or prior to the date that is five business days after entry of the Disclosure Statement order, if later, in the national edition of *USA Today,* in order to ensure that sufficient notice of the Confirmation Hearing is provided to those parties in interest that do not otherwise receive notice by mail.

82. As set forth herein, since the Solicitation Procedures are designed to ensure full compliance with the text and spirit of Section 1126 and the pertinent Bankruptcy and Local Rules, providing all parties-in-interest, whether in Voting Classes or otherwise, with sufficient advance notice the Plan's treatment of Claims prior to the Confirmation Hearing. Given these factors, the Debtor submits that the Disclosure Statement Order should enter to implement these Procedures in furtherance of the confirmation process.

F. <u>The Proposed Ballot Tabulation Procedures Are Appropriate.</u>

1. *Voting Method*.

83. Pursuant to Bankruptcy Rule 3017(c), the Debtor proposes that, in order to be counted as votes to accept or reject the Plan, *all Ballots must be properly executed, completed and received by the Solicitation Agent by no later than 4:30 p.m. Eastern Standard Time on the Voting Deadline*.

84. The Debtor requests that the Disclosure Statement Order provide that Ballots shall only be accepted by the Solicitation Agent prior to expiration of the Voting Deadline, via first-class mail, overnight courier, or hand delivery, at the following addresses:

If by Regular Mail:

Donlin, Recano & Company, Inc.
Re: Ector County Energy Center LLC
Attn: Voting Department
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219

If by Messenger or Overnight Delivery:

Donlin, Recano & Company, Inc.
Re: Ector County Energy Center LLC
Attn: Voting Department
6201 15th Avenue
Brooklyn, NY 11219

85. In addition *and as an alternative to accepting hard copy Ballots via first class mail, overnight courier, and hand delivery*, if the Solicitation Agent and **only if the Debtor believes this method to be appropriate given the attributes of the Debtor's creditor body and number of Voting Claims**, the Debtor requests authorization to accept Ballots via electronic, online transmissions, solely through a customized online balloting portal on the Debtor's case website to be maintained by the Solicitation Agent ("E-Voting Portal"). In that instance, holders of Voting Claims (other than in Classes 2 and 3), *in addition to having the ability to use paper Ballots,* will therefore have the additional option of casting an electronic Ballot and electronically signing and submitting Ballots the E-Voting Portal (which allows a Holder to submit an electronic signature). Instructions for electronic, online transmission of Ballots will be set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballots submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective.

2. *Vote Tabulation Procedures*.

86. Pursuant to Sections 105 and 1126 of the Bankruptcy Code, the Debtor additionally requests that the Court, pursuant to section 105(a) of the Bankruptcy Code, establish the guidelines set forth below for tabulating votes to accept or reject the Plan:

- Votes Counted. The Debtor proposes that any timely received Ballot that contains sufficient information to permit the identification of the claimant and the amount of the Claim and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan.

- The foregoing general procedures will be subject to the following exceptions:

  (1) if a Claim is deemed Allowed in accordance with the Plan, such Claim is Allowed for voting purposes in the deemed Allowed amount set forth in the Plan;

  (2) if a Claim for which a Proof of Claim has been timely filed lists a contingent or unliquidated claim amount, and *that is not subject to a pending objection*, the Debtor proposes that such Claim be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at $1.00;

  (3) if a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

  (4) if a Claim is *not* listed on the Debtor's Schedules, or is scheduled at zero, in an unknown amount, or, as unliquidated, contingent, or disputed, and a Proof of Claim was *not* (i) timely filed by the deadline for filing Proofs of Claim, or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, the Debtor proposes that such Claim be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c); *provided however* that a Claim listed in the Schedules as contingent, unliquidated, or disputed for which the bar date has not yet passed, including the Governmental Bar Date (as defined in the Bar Date Order), shall vote in the amount of $1.00;

  (5) if an objection to a Claim or any portion thereof has been Filed prior to the Voting Deadline, then the Debtor proposes that such Claim be temporarily disallowed for voting purposes only and not for the purposes of the allowance or distribution, except to the extent and in the manner as may be set forth in the objection or an order granting such claimant's Rule 3018(a) Motion;

  (6) for purpose of tabulating votes, each Holder of Prepetition Term Loan Claims and of Prepetition Revolving Lender Payment Claims classified in Classes 2 and 3 will be entitled to vote the principal amount of its Claim(s) in the respective Voting Class, 2 or 3, held (directly or beneficially) as of the Voting Record Date, subject to verification in amount (in the event of any dispute or for clarification) by the Solicitation Agent of those applicable records maintained by the Agent under the Prepetition Loan Documents; and

(7) any Ballot cast in an amount in excess of the Allowed amount of the relevant Claim will only be counted to the extent of such Allowed Claim.

- Votes Not Counted. The Debtor further proposes that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

(1) Any Ballot received after the Voting Deadline unless the Debtor shall have granted an extension of the Voting Deadline in writing with respect to such Ballot;

(2) Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;

(3) Any Ballot cast by a person or entity that does not hold a Claim in a Voting Class;

(4) Any Ballot that is properly completed, executed and timely filed, but (a) does not indicate an acceptance or rejection of the Plan, (b) indicates both an acceptance and rejection of the Plan, or (c) partially accepts and partially rejects the Plan;

(5) Any Ballot submitted by telecopy, facsimile, e-mail, or other electronic means not using the Solicitation Agent's E-Voting Portal (if established, and as described in the respective Ballot);

(6) Any unsigned Ballot, provided however, for the avoidance of doubt, any Ballot timely submitted through the E-Voting Portal shall be deemed to contain an original signature;

(7) Any Ballot sent to any party other than the Solicitation Agent; or

(8) Any Ballot not cast in accordance with the procedures approved in the Disclosure Statement Order.

- Duplicate Votes. Any duplicate Ballots will only be counted once.

- Changing Votes. Whenever two or more Ballots are cast which attempt to vote the same Claim prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots, *provided, however*, that where an ambiguity exists as to which Ballot was the latest received, the Solicitation Agent reserves the right to contact the creditor and tabulate the vote according to such voter's stated intent. This procedure is without prejudice to the Debtor's rights to object to the validity of the superseding Ballot(s) on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot is consistent with the practice under various state and federal corporate and securities laws.

- No Vote Splitting; Effect. The Debtor proposes that the Court clarify that claim splitting is not permitted and order that creditors who vote must vote all of their Claims within a particular Class to either accept or reject the Plan.

- Vote Aggregation: Separate Claims held by a single creditor in a particular Class may be aggregated and treated as if such creditor held one Claim in such Class, in which case all votes related to such Claim will be treated as a single vote to accept or reject the Plan; *provided, however*, that if separate affiliated entities, including any funds or accounts that are advised or managed by the same entity or by affiliated entities, hold Claims in a particular Class, these Claims will not be aggregated and will not be treated as if such creditor held one Claim in such Class, and the vote of each affiliated entity or managed fund or account will be counted separately as a vote to accept or reject the Plan.

87. The Debtor, with the assistance of the Solicitation Agent, will file a Voting Report which shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (collectively, in each case, the "Irregular Ballots"). The Voting Report shall indicate the Debtor's intentions with regard to each Irregular Ballot. Unless waived or as ordered by the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.

88. Since the proposed vote tabulation procedures are necessary to avert any confusion resulting from incompletely or inconsistently executed Ballots and will simplify the voting and tabulation process, in compliance with the requirements of Section 1126(c) and Bankruptcy Rule 3017(a) and Rule 3018, and consistent with the practice in this judicial district, the Debtor requests that tabulation protocol be approved.

IV. CONCLUSION

89. The Debtor has drafted the procedures requested above relating to the Plan solicitation and confirmation process with the goal of achieving confirmation expeditiously only after careful

consideration of its obligations as plan proponent, and of concerns for due process and fairness to the creditor body. Since the proposed Solicitation Procedures and notice are in compliance with the applicable provisions of the Bankruptcy Code, Federal Rules and Bankruptcy Rules, and will advance the interests of all parties to this case, the Debtor respectfully submits that allowance of this Motion is necessary and appropriate, and requests that the Court enter the Disclosure Statement Order and schedule a Confirmation Hearing, to move the Chapter 11 Case towards its intended conclusion.

RESERVATION OF RIGHTS

90. Nothing contained in this Motion or any actions taken by the Debtor pursuant to relief granted in the Disclosure Statement Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against the Debtor; (b) a waiver of the Debtor's or any other party-in-interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (f) a waiver or limitation of the Debtor's or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtor or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid and the Debtor and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens.

NOTICE

Notice of this Motion has been provided to: (a) the United States Trustee for the District of Delaware; (b) the parties appearing on the List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), including Direct Energy (through its counsel); (c) counsel to the Agent and the Ad Hoc Group (i) Davis Polk & Wardwell LLP, Attn: Brian Resnick, Esq. and

Joshua Sturm, Esq., and (ii) Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq.; (d) the Internal Revenue Service, and all other state taxing authorities in jurisdictions in which the Debtor historically conducted business; (e) all applicable governmental and regulatory agencies governing the Debtor's industry, in the states in which the Debtor historically conducted business; and (f) all parties requesting notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties").

WHEREFORE, the Debtor respectfully requests that the Bankruptcy Court enter the Disclosure Statement Order granting the relief requested in the Motion and such other and further relief as may be just and proper.

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#175701019_v3

Dated: August 18, 2022
Wilmington, Delaware

Respectfully submitted,

*/s/ Christopher A. Ward*_______________

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
ECTOR COUNTY ENERGY CENTER LLC,[1]	Case No. 22-10320 (JTD)
Debtor.	**Objection Deadline: September 27, 2022 at 4:00 p.m.** **Hearing Date: October 4, 2022 at 11:00 a.m. (ET)**

NOTICE OF MOTION

PLEASE TAKE NOTICE that the above-captioned debtor and debtor in possession (the "**Debtor**") has filed the *Motion of the Debtor for an Order (A) Approving the Adequacy of Disclosure Statement; (B) Approving Plan Solicitation and Voting Procedures; (C) Approving the Manner and Forms of Notices and Ballots; (D) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Plan; (E) Scheduling a Confirmation Hearing; and (F) Granting Related Relief* (the "**Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

PLEASE TAKE FURTHER NOTICE that objections, if any, to entry of an order approving the Motion must be filed on or before **September 27, 2022 at 4:00 p.m. (ET)** (the "**Objection Deadline**") with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and served so actually to be received by the Objection Deadline upon (a) Debtor's counsel, (i) Holland & Knight LLP, Attn: John J. Monaghan, Esq., Lynne Xerras, Esq., and Kathleen St. John, Esq., 10 Saint James Avenue, 11th Floor, Boston, Massachusetts 02116, (john.monaghan@hklaw.com; lynne.xerras@hklaw.com;

[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.

kathleen.stjohn@hklaw.com) and (ii) Polsinelli PC, Attn: 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 and the Ad Hoc Group, Davis Polk & Wardwell LLP, Attn: Brian Resnick, Esq. and Joshua Sturm, Esq., 450 Lexington Avenue, New York, NY 10017 (brian.resnick@davispolk.com; 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); and (d) counsel to any Official Committee appointed in this Chapter 11 Case.

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Motion will be held on **October 4, 2022 at 11:00 a.m. (ET)** before the Honorable John T. Dorsey, at the Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801. Only those objections made in writing and timely filed and served by the Objection Deadline will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 18, 2022
Wilmington, Delaware

Respectfully submitted,

*_/s Christopher A. Ward_*___________________

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Debtor in Possession

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: ECTOR COUNTY ENERGY CENTER LLC,[1] Debtor.	Chapter 11 Case No. 22-10320 (JTD) **Re: Docket Nos. 322, 323, ____**

ORDER (A) APPROVING FORM OF DISCLOSURE STATEMENT; (B) APPROVING PLAN SOLICITATION AND VOTING PROCEDURES; (C) APPROVING THE MANNER AND FORMS OF NOTICES AND BALLOTS; (D) ESTABLISHING CERTAIN DEADLINES IN CONNECTION WITH APPROVAL OF THE DISCLOSURE STATEMENT AND PLAN; (E) SCHEDULING A CONFIRMATION HEARING AND (F) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of Ector County Energy Center LLC, the above-captioned debtor and debtor in possession (the "Debtor"), for entry of an order, pursuant to Bankruptcy Code sections 105(a), 1124, 1125, 1126, and 1128, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, and Local Rules 3016-2 and 3017-1: (a) approving the adequacy of the *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Docket No. 322] (as may be amended, modified, or supplemented from time to time, the "Disclosure Statement"); (b) approving and establishing deadlines and procedures for, among other things, the solicitation and tabulation of votes to accept or reject the *Debtor's Liquidating Chapter 11 Plan* [Docket No. 323] (as may be amended, modified, or supplemented from time to time, the "Plan"), including,

[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. A motion to change the case caption to reflect the changing of the Debtor's corporate name is pending.

[2] Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or the Plan, as applicable.

but not limited to, the filing of motions for temporary allowance of Claims pursuant to Rule 3018 and objections to confirmation of the Plan ("Solicitation Procedures"), as described herein (c) approving the forms of Ballots; (d) approving the manner and forms of certain related notices; (e) scheduling a hearing to consider confirmation of the Plan and establishing certain deadlines in connection with the foregoing; and (f) granting related relief, as set forth therein; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court being able to issue a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and opportunity to be heard having been provided and it appearing that no further notice of the Motion is required; a hearing having been held on October 4, 2022 to consider approval of the Disclosure Statement (the "Hearing") after due and proper notice of the Hearing; and upon the record of the Motion and after due deliberation; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein:

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Disclosure Statement contains "adequate information" regarding the Plan within the meaning of section 1125 of the Bankruptcy Code. No further information is necessary or required.

B. The Disclosure Statement complies with Bankruptcy Rule 3016(c) and describes in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction, exculpation, and release provisions contained in the Plan, with such provisions also included in the Ballots and the Confirmation Hearing Notice.

C. Notice of the Hearing to consider this Motion, provided in the manner described in the Motion and as indicated in affidavits of service filed by Donlin prior to entry of this Order, was sufficient and appropriate under the circumstances and complied with all applicable requirements of the Bankruptcy Code, Bankruptcy Rules, and Local Rules. No further notice is required.

D. The Solicitation Procedures described in detail in the Motion provide a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code and the applicable Bankruptcy Rules and Local Rules.

E. The proposed method for establishing Voting Claims and the procedure for temporary allowance of Claims is appropriate and in compliance with sections 1126(a) and 502(a) of the Bankruptcy Code, and Bankruptcy Rule 3018(a).

F. The procedures set forth below and as described in the Motion regarding service of the Confirmation Hearing Notice and distribution of the contents of the Solicitation Package comply with Bankruptcy Rules 2002 and 3017 and constitute sufficient notice to all interested parties of the Voting Record Date, the Voting Deadline, the Plan Objection Deadline, the Confirmation Hearing, the Plan, and the procedures for solicitation of votes to accept or reject the Plan.

G. The proposed method for providing direct notice of the Plan and Confirmation Hearing by the Solicitation Agent on behalf of the Debtor, including through service of the Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 4**, along with the publication notice of the Plan and Confirmation Hearing described in the Motion, provides due, proper and sufficient notice of the Plan, the Confirmation Hearing, the opportunity to vote on the Plan, and the deadline for filing objections to classification within or confirmation of the Plan, complies with Bankruptcy Rule 2002 and 3017 and Local Rule 9006-1, and satisfies the requirements of due process with respect to all known and unknown creditors. No further notice is required.

H. Pursuant to the Plan, Holders Claims in Class 1 (Other Priority Claims) and Class 4 (Other Secured Claims) are unimpaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and not entitled to vote on the Plan on account of such Claims. The Holder of Interests classified in Class 6 is conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. In addition, in compliance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims and Professional Claims asserted against the Debtor are not classified under the Plan (collectively, the "Unclassified Claims") and therefore, not entitled to vote.

I. Holders of Claims in Class 2, Class 3 and Class 5 are entitled to vote towards the Plan, subject to the limitations set forth herein. The forms of the Ballots attached hereto as **Exhibits 2-A**, **2-B**, and **2-C** (i) are sufficiently consistent with Official Form No. B314, for purpose of solicitation of votes for the Voting Classes (ii) adequately address the particular needs of the Chapter 11 Case, and (iii) provide adequate instructions and information for each Holder of Claims in the Voting Classes to vote to accept or reject the Plan. No further information or instructions are necessary.

J. The forms of Non-Voting Status Notices attached hereto as **Exhibits 3A** and **3-B**, comply with the Bankruptcy Code, Bankruptcy Rule 3017(d), and applicable Local Rules, and provide adequate notice to Holders of Claims and Interests in the Non-Voting Classes (or other

Holders of Claims and Interests that are otherwise deemed not entitled to vote to accept or reject the Plan) of their non-voting status; no further notice is required.

K. The time period set forth below during which the Debtor may solicit votes on the Plan is a reasonable period of time for Claim and Interest holders to make an informed decision as to whether to accept or reject the Plan.

NOW THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, as set forth herein.

I. Approval of the Disclosure Statement and the Disclosure Statement Hearing Notice

2. The Disclosure Statement is APPROVED as containing "adequate information" within the meaning of section 1125(a) of the Bankruptcy Code.

3. The Hearing and *Notice of the Hearing* [Docket No. ____] filed by the Debtor and the accompanying affidavits of service were in compliance with the Orders of this Court and the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules for the United States Bankruptcy Court for the District of Delaware, and no further notice or hearing is required with respect to the Disclosure Statement.

4. The Disclosure Statement provides Holders of Claims and Interests and other parties in interest with sufficient notice of the release, exculpation, and injunction provisions contained in Article X of the Plan for purposes of Bankruptcy Rule 3016(c).

II. Confirmation Hearing and Objections.

5. A hearing regarding confirmation of the Plan ("Confirmation Hearing") is scheduled for **November 16, 2022 at 10:00 A.M. EST**, before the Honorable John T. Dorsey, at the U.S. Bankruptcy Court, District of Delaware ("Bankruptcy Court"), 824 N. Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware, 19801. The Confirmation Hearing may be conducted virtually, at the discretion of the Bankruptcy Court, and as will be forth in the

Confirmation Hearing Notice and the respective form of hearing agenda filed by the Debtor in advance of the Confirmation Hearing. The Debtor may adjourn or continue the Confirmation Hearing from time to time, without further motion, unless subsequently ordered.

6. Any objection to confirmation of the Plan or to classification of a Claim within the Plan ("Confirmation Objection") must be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware, 19801, **so as to be received no later than November 9, 2022 at 4:00 P.M. EST** (the "Objection Deadline").

7. Confirmation Objections, if any, shall (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Rules, (c) set forth the name of the objector and the nature and amount of any Claim or Interest asserted by the objector against or in the Debtor, (d) state with particularity the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection, and (e) be filed by the Objection Deadline and served upon: (a) counsel to the Debtor (i) Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, Attn: John J. Monaghan, Esq. and Lynne B. Xerras, Esq. (john.monaghan@hklaw.com; lynne.xerras@hklaw.com) and (ii) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801, Attn: Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., (cward@polsinelli.com; mdipietro@polsinelli.com); (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Juliet M. Sarkessian (Juliet.M.Sarkessian@usdoj.gov); and (c) counsel to the Agent and the Ad Hoc Group, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian Resnick, Esq. and Joshua Sturm, Esq. (brian.resnick@davispolk.com; joshua.sturm@davispolk.com). (collectively, the "Notice Parties").

8. ANY CONFIRMATION OBJECTION NOT FILED AND SERVED AS SET FORTH IN THIS ORDER SHALL BE DEEMED WAIVED AND SHALL NOT BE CONSIDERED BY THE COURT.

9. Any brief in support of confirmation of the Plan or Reply to a Confirmation Objection shall be filed so as to be received no later than **November 14, 2022 at 12:00 P.M. EST** (or, in the event that the Confirmation Hearing is adjourned, the date that is three (3) business days prior to the adjourned hearing), and served upon the Notice Parties and any party that files a Confirmation Objection.

III. Voting Record Date and Voting Deadline.

10. In accordance with Bankruptcy Rule 3018(a), the date upon which this Order enters be deemed the "Record Holder Date" for purposes of determining the scope of Holders of Claims that shall be entitled to vote on the Plan ("Voting Record Date"), subject to the additional limitations described herein.

11. The Court establishes **November 9, 2022** (the "Voting Deadline") as the deadline by which the Solicitation Agent must actually receive completed Ballots from Holders of Claims in the Voting Classes (or from their counsel), in accordance with the Solicitation Procedures set forth herein, and the provisions of this Order.

12. The Debtor may extend, for any reason deemed appropriate by the Debtor, the Voting Deadline. Any instance in which the Voting Deadline is extended shall be highlighted and listed in the Voting Record (as defined below) to be filed by the Solicitation Agent.

13. The following is a summary of the schedule for solicitation of votes and confirmation of the Plan established through this Order (subject to modification by the Debtor as necessary in consultation with the U.S. Trustee's office or further order of the Court) as more specifically delineated throughout this Order:

Event	**Date/Deadline[3]**
Voting Record Date	Date of entry of this Order
Deadline to Serve Solicitation Package	Five days following entry of this Order
Deadline to File Rule 3018(a) Motions	Fourteen days following entry of this Order, at 4:00 p.m. EST
Deadline to Object to Rule 3018(a) Motions	Ten days following filing/service of Rule 3018(a) Motion, at 4:00 p.m. EST
Deadline to File Plan Supplement/Notice of Plan Supplement	November 1, 2022 at 4:00 p.m. EST
Deadline to Object to Plan Classification/Confirmation	November 9, 2022 at 4:00 p.m. EST
Voting Deadline	November 9, 2022
Deadline to File Voting Report	November 11, 2022 at 4:00 p.m. EST
Deadline to File Confirmation Brief and Reply to Plan Objection(s)	November 14, 2022 at 12:00 p.m. EST
Confirmation Hearing	November 16, 2022 at 10:00 a.m. EST

IV. Ballots and Non-Voting Status Notice

14. Holders of Claims in Class 2, Class 3 and Class 5 are entitled to vote towards the Plan, to the extent holding Voting Claims (as described herein). The forms of Ballots attached hereto as **Exhibits 2-A**, **2-B**, and **2-C** for the Voting Classes are hereby approved. Ballots shall be distributed by the Debtor or Solicitation Agent to Holders of Claims in the Voting Classes, accompanied by a pre-addressed, postage prepaid return envelope.

15. Ballots need not be provided to Holders of Claims or Interests in the Non-Voting Classes (Classes 1, 4 and 6). The forms of Non-Voting Status Notices attached hereto as

[3] Unless subsequently extended by Bankruptcy Court order.

<u>Exhibits 3A</u> and **<u>3-B</u>** are hereby approved for distribution to Holders of Claims in the Non-Voting Classes.

V. Plan Solicitation Procedures

A. <u>Determination of Voting Claims</u>.

16. For the purpose of voting to accept or reject and not distribution on account of a Claim, only (and only if these prerequisites are established, the "<u>Voting Claims</u>"):

(1) the holders of timely filed proofs of claim in the Voting Classes ("<u>Filed Claims</u>"); and

(2) claimants (that did not file a proof of claim) whose claims were listed in the Schedules as not being unliquidated, contingent, or disputed ("<u>Scheduled Claims</u>"),

shall be entitled to vote with regard to such Claims, to the extent that the Filed Claim or Scheduled Claim has not been assumed or satisfied by the Purchaser in connection with the Sale or satisfied during the pendency of the Case pursuant to authority granted under a prior order of the Bankruptcy Court, *unless the Claim is the subject of a proceeding objecting to or seeking estimation of the amount of the Claim that is pending as of the Voting Record Date* ("<u>Claim Objection Proceeding</u>").

17. With respect to any transferred Claim, the transferee shall be entitled to receive a Solicitation Package and, if the Holder of such Claim is entitled to vote with respect to the Plan, cast a Ballot on account of such Claim only if: (a) all actions necessary to effectuate the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date, or (b) the transferee files by the Voting Record Date (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer, and (ii) a sworn statement of the transferor supporting the validity of the transfer. In the event a Claim is transferred after the Voting Record Date, the transferee of such Claim shall be bound by any vote on the Plan made by the Holder of such Claim as of the Voting Record Date.

B. Temporary Allowance For Voting Purposes.

18. Notwithstanding the foregoing, nothing shall limit the right of the holder of a Claim classified within a Voting Class that is the subject of a Claim Objection Proceeding or other objection to allowance or assignment of the Claim ("Disputed Claim") or other party in interest to seek temporary allowance of a Disputed Claim for voting purposes under Bankruptcy Rule 3018(a).

19. Any motion seeking temporary allowance of a Disputed Claim for purposes of voting towards the Plan (a "Rule 3018(a) Motion") shall be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware, 19801, so as to be received no later than **fourteen calendar days following entry of this Order at 4:00 P.M. EST** (the "Rule 3018(a) Motion Deadline") and timely served upon the Notice Parties (and any Holder of the Disputed Claim, if not the moving party) in order for a Disputed Claim to be permitted to cast a provisional Ballot to accept or reject the Plan. The Debtor and other parties-in-interest shall have until the later of **the tenth day following the filing and service of a Rule 3018(a) Motion, at 4:00 PM EST**, to file and serve on the Notice Parties (and any Holder of the Disputed Claim) any response or objection to a timely filed Rule 3018(a) Motion.

20. If, and to the extent that, the Debtor and the holder of the Disputed Claim are unable to resolve the issues raised by a Rule 3018(a) Motion prior to the Voting Deadline by stipulation or stipulated order, then, at the Confirmation Hearing, the Bankruptcy Court shall rule on the Rule 3018 Motion and determine whether the provisional Ballot should be counted as a vote on the Plan.

21. Nothing in this Order shall otherwise affect the Debtor's rights to object to, dispute, or contest any Proof of Claim or Rule 3018(a) Motion.

C. Approval of the Form of, and Distribution of, Solicitation Packages

1. *Voting Classes*.

22. Within five calendar days after entry of this Order ("Solicitation Deadline"), the Debtor shall cause the Solicitation Agent to transmit to Holders of Claims and Interests in Voting Classes, subject to the limitations contained elsewhere in this Order, by United States mail, first-class postage prepaid, personal service, or overnight delivery, a solicitation package (each a "Solicitation Package," and collectively, the "Solicitation Packages") containing the following:

a. the Disclosure Statement with all exhibits thereto, including the Plan, and this Order (excluding exhibits in draft form);

b. the Confirmation Hearing Notice, as approved;

c. if the recipient is the holder of a Voting Claim, a Ballot in the form approved, and a postage-prepaid return envelope; and

d. any supplemental documents filed with the Bankruptcy Court and any documents that the Bankruptcy Court orders to be included in the Solicitation Package, including any letters in support of the Plan.

23. The Solicitation Package prepared to solicit the votes of the various Holders of the Prepetition Term Loan Claims and the Prepetition Revolving Lender Payment Claims classified in Classes 2 and 3 of the Plan, each a Voting Class, shall be served, in the first instance, on the Agent, on behalf of the various Holders of the Prepetition Term Loan Claims and of the Prepetition Revolving Lender Payment Claims, with Class 2 and Class 3 Ballots.

24. The Agent will then be exclusively responsible for distribution of the Solicitation Packages, including the appropriate form of Ballot, to Holders of Prepetition Term Loan Claims and Prepetition Revolving Lender Payment Claims upon prompt receipt of the Solicitation Packages from the Solicitation Agent.[4] The individual Holders of Prepetition Term Loan Claims

[4] The Agent may use its standard procedures to disseminate the voting materials as well as in the collection of votes and elections from the Holders.

and Prepetition Revolving Lender Payment Claims will then be exclusively responsible for, unless otherwise agreed to by the Agent, completion and return of their respective Ballots to the Solicitation Agent by the Voting Deadline in the manner set forth herein.

2. *Holders of Claims In Non-Voting Classes and Unclassified Claims*.

25. On or prior to the Solicitation Deadline, the Debtor shall cause the Solicitation Agent to distribute to (i) Holders of Claims in Non-Voting Classes that are unimpaired, Classes 1 and 4, a *Notice of Non-Voting Status* in the form attached to the Disclosure Statement as Exhibit 3-A, specifying that the Class is deemed to accept the Plan; or (ii) the Holder of Interest classified in Class 6, deemed to reject the Plan, a Notice of Non-Voting Status set forth in Exhibit 3-B. These Notices will be in addition to the other documents comprising the Solicitation Package, but for a form of Ballot.

26. In addition, the Debtor shall cause the Solicitation Agent to distribute to Solicitation Package, without a Ballot, upon holders of Unclassified Claims.

3. *Rule 2002 Notice and Confirmation Hearing Notice*.

27. On or prior to the Solicitation Deadline or as soon as reasonably practicable thereafter, the Debtor shall be further required to serve or cause to be served a copy of the Solicitation Package, *without Ballots or a Notice of Non-Voting Status*, but with a Confirmation Hearing Notice, to all other parties that have filed requests for notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the Voting Record Date, but are not otherwise receiving a Solicitation Package, including, but not limited to: (a) the U.S. Trustee; (b) all entities that are party to executory contracts and unexpired leases with the Debtor; (c) all entities that are party to litigation with the Debtor or their counsel; (d) all current and former employees, directors, and officers (to the extent that contact information for former employees, directors, and officers is

available in the Debtor's records); (e) all regulatory authorities that regulate the Debtor's business; (f) the office of the attorney general for each state in which the Debtor maintain(ed) or conduct(ed) business; (g) all taxing authorities for the jurisdictions in which the Debtor maintain(ed) or conduct(ed) business; and (h) the Securities and Exchange Commission.

28. The Debtor shall also cause the Solicitation Agent to post on the Solicitation Agent's website various chapter 11 documents, including the following: (i) the Plan (and any related documents, including the Plan Supplement)(defined below); (ii) the Disclosure Statement (with all exhibits); (iii) the Motion and this Order; and (iv) the Confirmation Hearing Notice, at www.donlinrecano/ecec.

29. The Debtor and its Solicitation Agent are hereby authorized at their discretion, but not required, to publish the Confirmation Hearing Notice (or a substantially similar notice) on or prior to the date that is five business days after the Solicitation Deadline, in the national edition of *USA Today*, if deemed necessary and appropriate to ensure that sufficient notice of the Confirmation Hearing is provided to those parties in interest that do not otherwise receive notice by mail.

30. The Debtor is not required to give notice of any kind to any Person or Entity to whom the Debtor mailed the Disclosure Statement Hearing Notice and received the Disclosure Statement Hearing Notice returned by the United States Postal Service marked "undeliverable as addressed," "moved - left no forwarding address," "forwarding order expired," or any similar reason, unless the Debtor has been informed in writing by such Person or Entity of that Person's or Entity's new address.

31. The notice relating to the filing of the Plan Supplement (the "<u>Plan Supplement Notice</u>"), substantially in the form attached hereto as **Exhibit 5**, is hereby approved. The Debtor

shall file the Plan Supplement and the Plan Supplement Notice with the Bankruptcy Court on or before **November 1, 2022 at 4:00 PM**, with such documents to also be served upon the parties served with the Solicitation Package as soon as practicable thereafter.

32. The Debtor shall be permitted to amend the documents contained in, and exhibits to, the Plan Supplement through the Plan Effective Date in accordance with the Plan and any orders related thereto.

VI. Vote Tabulation Procedures

a. Voting Method.

33. In order for a Ballot to be counted as a vote to accept or reject the Plan, *all Ballots must be properly executed, completed and received by the Solicitation Agent by no later than the Voting Deadline*.

34. Ballots shall only be accepted by the Solicitation Agent prior to expiration of the Voting Deadline, **via first-class mail, overnight courier, or hand delivery**, at the following addresses:

If by Regular Mail:	**If by Messenger or Overnight Delivery:**
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

35. In addition *and as an alternative to accepting hard copy Ballots via first class mail, overnight courier, and hand delivery*, if the Solicitation Agent and *only if the Debtor believe this method to be appropriate given the attributes of the Debtor's creditor body and number of Voting Claims*, the Debtor and the Solicitation Agent shall be authorized (at their sole and exclusive discretion) to accept Ballots via electronic, online transmissions, solely through a customized

online balloting portal on the Debtor's case website to be maintained by the Solicitation Agent ("E-Voting Portal"). In that instance, holders of Voting Claims (other than in Classes 2 and 3), *in addition to having the ability to use paper Ballots*, will therefore have the additional option of casting an electronic Ballot and electronically signing and submitting Ballots the E-Voting Portal (which allows a Holder to submit an electronic signature). Instructions for electronic, online transmission of Ballots will be set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballots submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective.

36. Notwithstanding the foregoing, Holders of Claims classified in Classes 2 and 3 shall not be entitled to vote using the E-Voting Portal.

b. Vote Tabulation Procedures.

37. Additionally, the procedure set forth herein shall govern the process for the Debtor and the Solicitation Agent to tabulate Ballots received as votes to accept or reject the Plan:

- Votes Counted. Any timely received Ballot that contains sufficient information to permit the identification of the claimant and the amount of the Claim and is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan, subject to the following exceptions:

  (1) if a Claim is deemed Allowed in accordance with the Plan, such Claim is Allowed for voting purposes in the deemed Allowed amount set forth in the Plan;

  (2) if a Claim for which a Proof of Claim has been timely filed lists a contingent or unliquidated claim amount, *that is not subject to a pending objection*, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at $1.00;

  (3) if a Claim has been estimated or otherwise allowed for voting purposes by order of the Court, such Claim is temporarily allowed

in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(4) if a Claim is *not* listed on the Debtor's Schedules, or is scheduled at zero, in an unknown amount, or, as unliquidated, contingent, or disputed, and a Proof of Claim was *not* (i) timely filed by the deadline for filing Proofs of Claim, or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, such Claim shall be disallowed for voting purposes and for purposes of allowance and distribution pursuant to Bankruptcy Rule 3003(c); *provided however* that a Claim listed in the Schedules as contingent, unliquidated, or disputed for which the bar date has not yet passed, including the Governmental Bar Date (as defined in the Bar Date Order), shall vote in the amount of $1.00;

(5) if an objection to a Claim or any portion thereof has been Filed prior to the Voting Deadline, such Claim shall be temporarily disallowed for voting purposes only and not for the purposes of the allowance or distribution, except to the extent and in the manner as set forth in the objection or an order granting a Rule 3018(a) Motion;

(6) for purpose of tabulating votes, each Holder of Prepetition Term Loan Claims and of Prepetition Revolving Lender Payment Claims classified in Classes 2 and 3 will be entitled to vote the principal amount of its Claim(s) in the respective Voting Class, 2 or 3, held (directly or beneficially) as of the Voting Record Date, subject to verification in amount (in the event of any dispute or for clarification) by the Solicitation Agent of those applicable records maintained by the Agent under the Prepetition Loan Documents; and

(7) any Ballot cast in an amount in excess of the Allowed amount of the relevant Claim will only be counted to the extent of such Allowed Claim.

- Votes Not Counted. The following Ballots shall not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

(1) Any Ballot received after the Voting Deadline unless the Debtor shall have granted an extension of the Voting Deadline in writing with respect to such Ballot;

(2) Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;

(3) Any Ballot cast by a person or entity that does not hold a Claim in a Voting Class;

(4) Any Ballot that is properly completed, executed and timely filed, but (a) does not indicate an acceptance or rejection of the Plan, (b) indicates both an acceptance and rejection of the Plan, or (c) partially accepts and partially rejects the Plan;

(5) Any Ballot submitted by telecopy, facsimile, e-mail, or other electronic means not using the Solicitation Agent's E-Voting Portal (if established, and as described in the respective Ballot and above);

(6) Any unsigned Ballot, provided however, for the avoidance of doubt, any Ballot timely and properly submitted through the E-Voting Portal (other than by the Holder of a Class 2 or Class 3 Claim) shall be deemed to contain an original signature;

(7) Any Ballot sent to any party other than the Solicitation Agent; or

(8) Any Ballot not cast in accordance with the procedures approved herein.

- Duplicate Votes. Any duplicate Ballots will only be counted once.

- Changing Votes. Whenever two or more Ballots are cast which attempt to vote the same Claim prior to the Voting Deadline, the last Ballot received prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots, *provided*, *however*, that where an ambiguity exists as to which Ballot was the latest received, the Solicitation Agent shall have the right to contact the Holder of the Claim and tabulate the vote according to such voter's stated intent. This procedure is without prejudice to the Debtor's rights to object to the validity of the superseding Ballot(s) on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot is consistent with the practice under various state and federal corporate and securities laws.

- No Vote Splitting; Effect. Claim splitting is not permitted and Holders of Claims must vote all of their Claims within a particular Class to either accept or reject the Plan.

- Vote Aggregation: Separate Claims held by a single creditor in a particular Class may be aggregated and treated as if such creditor held one Claim in such Class, in which case all votes related to such Claim will be treated as a single vote to accept or reject the Plan; *provided, however*, that if separate affiliated entities, including any funds or accounts that are advised or managed by the same entity or by affiliated entities, hold Claims in a particular Class, these Claims will not be aggregated and will not be treated as if such creditor held one Claim in such Class, and the vote of each affiliated entity or managed fund or account will be counted separately as a vote to accept or reject the Plan.

38. The Debtor, with the assistance of the Solicitation Agent, shall file a Voting Report which shall, among other things, delineates every Ballot that does not conform to the voting instructions as established through this Order, or that contains any form of irregularity including, but not limited to, Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile or damaged (collectively, the "Irregular Ballots") on or before **November 11, 2022 at 4:00 P.M. (EST).** The Voting Report shall indicate the Debtor's intentions with regard to each Irregular Ballot.

39. Unless waived or as ordered by the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted.

VII. Miscellaneous

40. The Debtor is authorized to take all actions necessary to implement the relief granted in this Order.

41. To the extent there is any conflict or inconsistency between the terms of this Order and the terms set forth in the Ballots, the Non-Voting Status Notices, the Confirmation Hearing Notice, and/or any other document approved by this Order, the terms of this Order shall control.

42. The Debtor shall have authority to make non-substantive and nonmaterial changes to the Disclosure Statement, the Plan, the Ballots, the Non-Voting Status Notices, the Disputed Claim Non-Voting Status Notices, the Plan Supplement Notice, and the Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, insert dates, and to make conforming changes among any materials in the Solicitation Package prior to mailing. If such changes are made, the Debtor shall promptly file a notice on the Court's docket reflecting all such changes in a manner that highlights each such change.

43. Notwithstanding any applicable Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

44. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit 1 to Order

RESERVED

Exhibit 2-A to Order

(Form of Class 2 Ballot)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

BALLOT FOR VOTING TO ACCEPT OR REJECT
THE DEBTOR'S LIQUIDATING CHAPTER 11 PLAN

CLASS 2-PREPETITION TERM LENDER CLAIMS

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS BALLOT.

THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY DONLIN, RECANO & CO., INC. ("DONLIN" OR THE "SOLICITATION AGENT") BY ________________ (THE "VOTING DEADLINE").

The Solicitation Agent, on behalf of Ector County Energy Center LLC (the "Debtor"), is soliciting votes to accept or reject the *Liquidating Chapter 11 Plan*, dated August 9, 2022 [Docket No. 322] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Plan")[2] from the holders of Claims against the Debtor who are entitled to vote.

You are receiving this ballot (the "Ballot") because you hold a Claim against the Debtor as of _______________ (the "Voting Record Date"). Your Claim is classified under the Plan in Class 2 (Prepetition Term Lender Claims) and, therefore, you are entitled to vote to accept or reject the Plan.

The rights and treatment for each Class are described in the accompanying *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Docket No. 322] (as may be amended, modified, or supplemented from time to time, the "Disclosure Statement") approved by the United States Bankruptcy Court, District of Delaware (J. Dorsey)("Bankruptcy Court"),

[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 herein but not otherwise defined shall have the meanings ascribed in the Plan.

pursuant to an Order dated __________, 2022 ("Disclosure Statement Order").[3] Each of the Disclosure Statement, Plan and Disclosure Statement Order, and the other documents that you have received along with this Ballot ("Solicitation Package"), as well as other pleadings filed in the Debtor's pending chapter 11 case, are available on the Debtor's case website at https://www.donlinrecano.com/Clients/ecec/ (the "Case Website"). The Solicitation Package you are receiving with this Ballot provides instructions detailing how to access electronic versions and request hard copies format versions of each of the (a) Order as entered by the Bankruptcy Court (without any exhibits) and (b) the Disclosure Statement as approved by the Court. If you need to obtain additional solicitation materials, you may (i) visit the Debtor's Case Website; (ii) write the Solicitation Agent at Donlin, Recano & Company, Inc., P.O. Box 199403, Blythebourne Station, Brooklyn, NY 11219, United States of America; (iii) email ececinfo@donlinrecano.com or (iv) call the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.). You may also access these materials for a fee via PACER at http://www.deb.uscourts.gov.

Pursuant to the Disclosure Statement Order, the Bankruptcy Court has approved the Disclosure Statement as containing adequate information under section 1125 of the Bankruptcy Code. Bankruptcy Court approval of the Disclosure Statement does not mean that the Plan has been confirmed by the Bankruptcy Court. Rather, the Ballots will be counted, and the Court will use the tabulation of the Ballots as part of its determination as to whether or not to confirm (approve) the Plan. Moreover, this Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Ballot in error, please contact the Solicitation Agent **immediately** at the address, telephone number or email address set forth above.

You should review the Disclosure Statement and the Plan before you submit this Ballot. You may wish to seek independent legal advice concerning the Disclosure Statement, the Plan and/or the classification and treatment of your Claim.

If a controversy arises regarding whether any Claim is properly classified under the Plan, the Bankruptcy Court shall, upon proper motion and notice, determine such controversy at the Confirmation Hearing. If the Bankruptcy Court finds that the classification of any Claim is improper, then such Claim shall be reclassified and the Ballot previously cast by the holder of such Claim shall be counted in, and the Claim shall receive the treatment prescribed in, the Class in which the Bankruptcy Court determines such Claim should have been classified, without the necessity of resoliciting any votes on the Plan.

[3] Other capitalized terms not herein defined shall have the meanings ascribed in the Plan.

IMPORTANT NOTICE FOR ALL CREDITORS

PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.

CLASS 2 – PREPETITION TERM LENDER CLAIMS BALLOT

PLEASE COMPLETE THE FOLLOWING:

Item 1. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of a Prepetition Term Lender Claim in the following aggregate amount:

Amount[4]: ______________________

Item 2. Vote on the Plan.

The holder of the Claim(s) against the Debtor set forth in Item 1 votes to (please check only one):

❒ **ACCEPT** (vote FOR) the Plan	❒ **REJECT** (vote AGAINST) the Plan

Item 3. Acknowledgments and Certification. By signing this Ballot, the undersigned certifies that the undersigned has been provided with a copy of or information regarding where to obtain the Disclosure Statement, including the Plan and all other exhibits thereto, the Order without exhibits and a Confirmation Hearing Notice. The undersigned further acknowledges that (a) it is the holder of the claims identified in Item 1 above and/or (b) it has full power and authority to vote to accept or reject the Plan; and (c) further acknowledges that the Debtor's solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement.

Name of Claimant: ____

Signature: ____

Name of Signatory (if different than Claimant): ____

[4] For voting purposes only, subject to tabulation rules.

If authorized by Agent, Title of Agent ______________________________

Street Address: ______________________________

Street Address: ______________________________

(continued) ______________________________

City, State, Zip Code: ______________________________

Telephone Number: ______________________________

Email Address: ______________________________

Date Completed: ______________________________

VOTING DEADLINE: ____________________

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, and if the Voting Deadline is not extended, your vote will not be counted.

For your vote to be counted, this Ballot must be properly completed, signed and returned so that it is actually received by the Solicitation Agent, by the Voting Deadline.

SUBMISSION OF A HARD COPY BALLOT

You may submit your Ballot (with an original signature) in the envelope provided or:

By first class mail to:	**Via overnight courier or hand delivery to:**
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

GENERAL INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. The Debtor is soliciting the votes of holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions (the "Ballot Instructions") but not defined therein or herein shall have the meaning set forth in the Plan. **Please read the Plan and Disclosure Statement carefully before completing this Ballot.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one Class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Ballot is counted, you **must** complete and submit this hard copy Ballot. **Ballots will not be accepted by facsimile or other electronic means.**

4. **Use of Hard Copy Ballot.** To ensure that your hard copy Ballot is counted, you must: (a) complete your Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) clearly sign and return your original Ballot in the enclosed pre-addressed envelope or via first class mail, overnight courier, or hand delivery to:

By first class mail to:	**Via overnight courier or hand delivery to:**
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

5. Your Ballot **must** be returned to the Solicitation Agent so as to be **actually received** by the Solicitation Agent on or before the Voting Deadline.

7. If a Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it will not be counted. Additionally, **the following Ballots will not be counted**:

   (a) any Ballot that partially rejects and partially accepts the Plan;
   (b) any Ballot that both accepts and rejects the Plan;
   (c) any Ballot that neither accepts nor rejects the Plan;
   (d) any Ballot sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), any indenture trustee, common representative or the Debtor's financial or legal advisors;

(e) any Ballot sent by facsimile or any electronic means other than via the online balloting portal;
(f) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
(g) any Ballot cast by an Entity that does not hold a Claim in the Class indicated in Item 1 of the Ballot;
(h) any Ballot submitted by a holder not entitled to vote pursuant to the Plan;
(i) any unsigned Ballot;
(j) any non-original Ballot (excluding those Ballots submitted via the online balloting portal); and/or
(k) any Ballot that is not in compliance with the voting requirements of the Disclosure Statement Order.

8. The method of delivery of Ballot to the Solicitation Agent is at the election and risk of each holder of a Claim. Except as otherwise provided herein, such delivery will be considered made only when the Solicitation Agent **actually receives** the originally executed Ballot. In all cases, holders should allow sufficient time to assure timely delivery.

9. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the latest, timely received and properly completed Ballot will supersede and revoke any earlier received Ballots.

10. You must vote all of your Claims within a Class either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Claims within a Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder with multiple Claims within such Class for the purpose of distributing ballots and counting votes.

11. This Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

12. **Please be sure to sign and date your Ballot**.

13. If you hold Claims in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims indicated on that ballot, so please complete and return each ballot that you received.

Please return your Ballot promptly

If you have any questions regarding this Ballot, these Ballot Instructions or the procedures for voting, please contact the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.) or by email to ececinfo@donlinrecano.com.

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, unless otherwise extended with consent of the Debtor or Court order, the vote transmitted hereby will not be counted.

Exhibit 2-B to Order

(Form of Class 3 Ballot)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

BALLOT FOR VOTING TO ACCEPT OR REJECT
THE DEBTOR'S LIQUIDATING CHAPTER 11 PLAN

CLASS 3 - PREPETITION REVOLVING LENDER CLAIMS

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS BALLOT.

THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY DONLIN, RECANO & CO., INC. ("DONLIN" OR THE "SOLICITATION AGENT") BY ________________ (THE "VOTING DEADLINE").

The Solicitation Agent, on behalf of Ector County Energy Center LLC (the "Debtor"), is soliciting votes to accept or reject the *Liquidating Chapter 11 Plan*, dated August 9, 2022 [Docket No. 322] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Plan")[2] from the holders of Claims against the Debtor who are entitled to vote.

You are receiving this ballot (the "Ballot") because you hold a Claim against the Debtor as of _______________ (the "Voting Record Date"). Your Claim is classified under the Plan in Class 3 (Prepetition Revolving Lender Claims) and, therefore, you are entitled to vote to accept or reject the Plan.

The rights and treatment for each Class are described in the accompanying *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Docket No. 322] (as may be amended, modified, or supplemented from time to time, the "Disclosure Statement") approved by the United States Bankruptcy Court, District of Delaware (J. Dorsey)("Bankruptcy Court"),

[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 herein but not otherwise defined shall have the meanings ascribed in the Plan.

pursuant to an Order dated __________, 2022 ("Disclosure Statement Order").[3] Each of the Disclosure Statement, Plan and Disclosure Statement Order, and the other documents that you have received along with this Ballot ("Solicitation Package"), as well as other pleadings filed in the Debtor's pending chapter 11 case, are available on the Debtor's case website at https://www.donlinrecano.com/Clients/ecec/ (the "Case Website"). The Solicitation Package you are receiving with this Ballot provides instructions detailing how to access electronic versions and request hard copies format versions of each of the (a) Order as entered by the Bankruptcy Court (without any exhibits) and (b) the Disclosure Statement as approved by the Court. If you need to obtain additional solicitation materials, you may (i) visit the Debtor's Case Website; (ii) write the Solicitation Agent at Donlin, Recano & Company, Inc., P.O. Box 199403, Blythebourne Station, Brooklyn, NY 11219, United States of America; (iii) email ececinfo@donlinrecano.com or (iv) call the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.). You may also access these materials for a fee via PACER at http://www.deb.uscourts.gov.

Pursuant to the Disclosure Statement Order, the Bankruptcy Court has approved the Disclosure Statement as containing adequate information under section 1125 of the Bankruptcy Code. Bankruptcy Court approval of the Disclosure Statement does not mean that the Plan has been confirmed by the Bankruptcy Court. Rather, the Ballots will be counted, and the Court will use the tabulation of the Ballots as part of its determination as to whether or not to confirm (approve) the Plan. Moreover, this Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Ballot in error, please contact the Solicitation Agent **immediately** at the address, telephone number or email address set forth above.

You should review the Disclosure Statement and the Plan before you submit this Ballot. You may wish to seek independent legal advice concerning the Disclosure Statement, the Plan and/or the classification and treatment of your Claim.

If a controversy arises regarding whether any Claim is properly classified under the Plan, the Bankruptcy Court shall, upon proper motion and notice, determine such controversy at the Confirmation Hearing. If the Bankruptcy Court finds that the classification of any Claim is improper, then such Claim shall be reclassified and the Ballot previously cast by the holder of such Claim shall be counted in, and the Claim shall receive the treatment prescribed in, the Class in which the Bankruptcy Court determines such Claim should have been classified, without the necessity of resoliciting any votes on the Plan.

[3] Other capitalized terms not herein defined shall have the meanings ascribed in the Plan.

IMPORTANT NOTICE FOR ALL CREDITORS

PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.

CLASS 3 – PREPETITION REVOLVING LENDER CLAIMS

PLEASE COMPLETE THE FOLLOWING:

Item 1. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of a Prepetition Term Lender Claim in the following aggregate amount:

Amount[4]: ______________________

Item 2. Vote on the Plan.

The holder of the Claim(s) against the Debtor set forth in Item 1 votes to (please check only one):

❒ **ACCEPT** (vote FOR) the Plan	❒ **REJECT** (vote AGAINST) the Plan

Item 3. Acknowledgments and Certification. By signing this Ballot, the undersigned certifies that the undersigned has been provided with a copy of or information regarding where to obtain the Disclosure Statement, including the Plan and all other exhibits thereto, the Order without exhibits and a Confirmation Hearing Notice. The undersigned further acknowledges that (a) it is the holder of the claims identified in Item 1 above and/or (b) it has full power and authority to vote to accept or reject the Plan; and (c) further acknowledges that the Debtor's solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement.

Name of Claimant: ____

Signature: ____

Name of Signatory (if different than Claimant): ____

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[4] For voting purposes only, subject to tabulation rules.

If authorized by Agent, Title of Agent	______________________________
Street Address:	______________________________
Street Address:	______________________________
(continued)	______________________________
City, State, Zip Code:	______________________________
Telephone Number:	______________________________
Email Address:	______________________________
Date Completed:	______________________________

VOTING DEADLINE: ____________________

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, and if the Voting Deadline is not extended, your vote will not be counted.

For your vote to be counted, this Ballot must be properly completed, signed and returned so that it is actually received by the Solicitation Agent, by the Voting Deadline.

SUBMISSION OF A HARD COPY BALLOT

You may submit your Ballot (with an original signature) in the envelope provided or:

By first class mail to:	**Via overnight courier or hand delivery to:**
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

GENERAL INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. The Debtor is soliciting the votes of holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions (the "Ballot Instructions") but not defined therein or herein shall have the meaning set forth in the Plan. **Please read the Plan and Disclosure Statement carefully before completing this Ballot.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one Class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Ballot is counted, you **must** complete and submit this hard copy Ballot. **Ballots will not be accepted by facsimile or other electronic means.**

4. **Use of Hard Copy Ballot.** To ensure that your hard copy Ballot is counted, you must: (a) complete your Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) clearly sign and return your original Ballot in the enclosed pre-addressed envelope or via first class mail, overnight courier, or hand delivery to:

By first class mail to:	Via overnight courier or hand delivery to:
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

5. Your Ballot **must** be returned to the Solicitation Agent so as to be **actually received** by the Solicitation Agent on or before the Voting Deadline.

7. If a Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it will not be counted. Additionally, **the following Ballots will not be counted**:

   (a) any Ballot that partially rejects and partially accepts the Plan;
   (b) any Ballot that both accepts and rejects the Plan;
   (c) any Ballot that neither accepts nor rejects the Plan;
   (d) any Ballot sent to the Debtor, the Debtor's agents (other than the Solicitation Agent), any indenture trustee, common representative or the Debtor's financial or legal advisors;

(e) any Ballot sent by facsimile or any electronic means other than via the online balloting portal;
(f) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim;
(g) any Ballot cast by an Entity that does not hold a Claim in the Class indicated in Item 1 of the Ballot;
(h) any Ballot submitted by a holder not entitled to vote pursuant to the Plan;
(i) any unsigned Ballot;
(j) any non-original Ballot (excluding those Ballots submitted via the online balloting portal); and/or
(k) any Ballot that is not in compliance with the voting requirements of the Disclosure Statement Order.

8. The method of delivery of Ballot to the Solicitation Agent is at the election and risk of each holder of a Claim. Except as otherwise provided herein, such delivery will be considered made only when the Solicitation Agent **actually receives** the originally executed Ballot. In all cases, holders should allow sufficient time to assure timely delivery.

9. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the latest, timely received and properly completed Ballot will supersede and revoke any earlier received Ballots.

10. You must vote all of your Claims within a Class either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Claims within a Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder with multiple Claims within such Class for the purpose of distributing ballots and counting votes.

11. This Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

12. **Please be sure to sign and date your Ballot**.

13. If you hold Claims in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims indicated on that ballot, so please complete and return each ballot that you received.

Please return your Ballot promptly

If you have any questions regarding this Ballot, these Ballot Instructions or the procedures for voting, please contact the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.) or by email to ececinfo@donlinrecano.com.

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, unless otherwise extended with consent of the Debtor or Court order, the vote transmitted hereby will not be counted.

Exhibit 2-C to Order

(Form of Class 5 Ballot)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

BALLOT FOR VOTING TO ACCEPT OR REJECT
THE DEBTOR'S LIQUIDATING CHAPTER 11 PLAN

CLASS 5-GENERAL UNSECURED CLAIMS

(SUB-CLASSES 5A AND 5B)

PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS BALLOT.

THIS BALLOT MUST BE COMPLETED, EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY DONLIN, RECANO & CO., INC. ("DONLIN" OR THE "SOLICITATION AGENT") BY ____________ 2022 (THE "VOTING DEADLINE").

The Solicitation Agent, on behalf of Ector County Energy Center LLC (the "Debtor"), is soliciting votes to accept or reject the *Liquidating Chapter 11 Plan*, dated August 9, 2022 [Docket No. 322] (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "Plan")[2] from the holders of Claims against the Debtor that are entitled to vote.

You are receiving this ballot (the "Ballot") because you hold a Claim against the Debtor as of **___________, 2022** (the "Voting Record Date"). Your Claim is classified under the Plan in Class 5 (General Unsecured Claims) and, therefore, you are entitled to vote to accept or reject the Plan.

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

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed in the Plan.

The rights and treatment for each Class are described in the accompanying *Disclosure Statement of the Debtor in Support of Liquidating Chapter 11 Plan* [Docket No. 322] (as may be amended, modified, or supplemented from time to time, the "Disclosure Statement") approved by the United States Bankruptcy Court, District of Delaware (J. Dorsey) ("Bankruptcy Court"), pursuant to an Order dated __________, 2022 ("Disclosure Statement Order").[3] Each of the Disclosure Statement, Plan and Disclosure Statement Order, and the other documents that you have received along with this Ballot ("Solicitation Package"), as well as other pleadings filed in the Debtor's pending chapter 11 case, are available on the Debtor's case website at https://www.donlinrecano.com/Clients/ecec/ (the "Case Website"). The Solicitation Package you are receiving with this Ballot provides instructions detailing how to access electronic versions and request hard copies format versions of each of the (a) Order as entered by the Bankruptcy Court (without any exhibits) and (b) the Disclosure Statement as approved by the Court. If you need to obtain additional solicitation materials, you may (i) visit the Debtor's Case Website; (ii) write the Solicitation Agent at Donlin, Recano & Company, Inc., P.O. Box 199403, Blythebourne Station, Brooklyn, NY 11219, United States of America; (iii) email ececinfo@donlinrecano.com or (iv) call the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.). You may also access these materials for a fee via PACER at http://www.deb.uscourts.gov.

Pursuant to the Order, the Bankruptcy Court has approved the Disclosure Statement as containing adequate information under section 1125 of the Bankruptcy Code. Bankruptcy Court approval of the Disclosure Statement does not mean that the Plan has been confirmed by the Bankruptcy Court. Rather, the Ballots will be counted, and the Court will use the tabulation of the Ballots as part of its determination as to whether or not to confirm (approve) the Plan. Moreover, this Ballot may not be used for any purpose other than for voting to accept or reject the Plan and making certain certifications with respect to the Plan. If you believe that you have received this Ballot in error, please contact the Solicitation Agent **immediately** at the address, telephone number or email address set forth above.

You should review the Disclosure Statement and the Plan before you submit this Ballot. You may wish to seek independent legal advice concerning the Disclosure Statement, the Plan and/or the classification and treatment of your Claim.

If a controversy arises regarding whether any Claim is properly classified under the Plan, the Bankruptcy Court shall, upon proper motion and notice, determine such controversy at the Confirmation Hearing. If the Bankruptcy Court finds that the classification of any Claim is improper, then such Claim shall be reclassified and the Ballot previously cast by the holder of such Claim shall be counted in, and the Claim shall receive the treatment prescribed in, the Class in which the Bankruptcy Court determines such Claim should have been classified, without the necessity of resoliciting any votes on the Plan.

[3] Other capitalized terms not herein defined shall have the meanings ascribed in the Plan.

In order for your vote to be counted, this Ballot or an E-Ballot (as defined below) must be properly completed, signed (if not submitted via E-Ballot) and returned to the Solicitation Agent so that it is <u>actually received</u> no later than <u>4:00 p.m. (prevailing Eastern Time) _______________, 2022</u> unless such time is extended in writing upon request of counsel to the Debtor, John J. Monaghan, Esq. and Lynne B. Xerras, Esq., Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116, 617-523-2700 (john.monaghan@hklaw.com; lynne.xerras@hklaw.com).

<u>IMPORTANT NOTICE FOR ALL CREDITORS</u>

PLEASE TAKE NOTICE THAT IF THE PLAN IS CONFIRMED BY THE COURT, ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTOR (INCLUDING THOSE HOLDERS WHO ABSTAIN FROM VOTING ON OR WHO VOTE TO REJECT THE PLAN, AND THOSE HOLDERS WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE CONFIRMED PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER.

<u>CLASS 5 – GENERAL UNSECURED CLAIMS BALLOT</u>

PLEASE COMPLETE THE FOLLOWING:

<u>Item 1</u>. Amount of Claim.

The undersigned hereby certifies that as of the Voting Record Date, the undersigned was the holder of General Unsecured Claim(s) in the following aggregate amount:

Amount[4]: ______________________

<u>Item 2.</u> Subclass of Claim.

The Claim(s) against the Debtor set forth in Item 1 belongs in the following subclass (please check only <u>one</u>):

❒ **<u>Subclass 5A</u>**	❒ **<u>Subclass 5B</u>**

As set forth in the Plan, (i) Subclass 5A consists of General Unsecured Claims of Non-Texas MDL Plaintiffs, and (ii) Subclass 5B consists of General Unsecured Claims of Texas MDL Plaintiffs.

[4] For voting purposes only, subject to tabulation rules.

Item 3. Vote on the Plan.

The holder of the Claim(s) against the Debtor set forth in Item 1 votes to (please check only one):

❒ **ACCEPT** (vote FOR) the Plan	❒ **REJECT** (vote AGAINST) the Plan

Item 4. Acknowledgments and Certification. By signing this Ballot, the undersigned certifies that the undersigned has been provided with a copy of or information regarding where to obtain the Disclosure Statement, including the Plan and all other exhibits thereto, the Order without exhibits and a Confirmation Hearing Notice. The undersigned further acknowledges that (a) it is the holder of the claims identified in Item 1 above and/or (b) it has full power and authority to vote to accept or reject the Plan; and (c) further acknowledges that the Debtor's solicitation of votes is subject to all terms and conditions set forth in the Disclosure Statement.

Name of Claimant: ______________________________

Signature: ______________________________

Name of Signatory (if different than Claimant):

____

If authorized by Agent, Title of Agent ______________________________

Street Address: ______________________________

Street Address: ______________________________

(continued) ______________________________

City, State, Zip Code: ______________________________

Telephone Number: ______________________________

Email Address: ______________________________

Date Completed: ______________________________

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, and if the Voting Deadline is not extended, your vote will not be counted.

For your vote to be counted, this Ballot must be properly completed, signed and returned so that it is actually received by the Solicitation Agent, by the Voting Deadline.

PLEASE SUBMIT A BALLOT BY *ONE* OF THE FOLLOWING METHODS:

SUBMISSION OF A HARD COPY BALLOT

You may submit your Ballot (with an original signature) in the envelope provided or:

By first class mail to:	**Via overnight courier or hand delivery to:**
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

SUBMISSION THROUGH THE ONLINE E-BALLOTING PORTAL

Alternatively, to submit your Ballot via the Solicitation Agent's online balloting portal, visit __________________. Click on the "E-Ballot" section of the website and follow the instructions to submit your Ballot.

IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:

Unique E-Ballot ID# :_____________________________________

The Solicitation Agent's online balloting portal is the sole manner in which Ballots will be accepted via electronic or online transmission ("E-Ballot"). Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.

Each E-Ballot ID# is to be used solely for voting only those Claims described in Item 1 of your Ballot. Please complete and submit an electronic Ballot for each E-Ballot ID# you receive, as applicable. Creditors who cast a Ballot using the Solicitation Agent's online portal should NOT also submit a paper Ballot.

INSTRUCTIONS FOR COMPLETING THIS BALLOT

1. The Debtor is soliciting the votes of holders of Claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions (the "Ballot Instructions") but not defined therein or herein shall have the meaning set forth in the Plan. **Please read the Plan and Disclosure Statement carefully before completing this Ballot.**

2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims in at least one Class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Disclosure Statement for more information.

3. To ensure that your Ballot is counted, you **must** complete and submit this hard copy Ballot by mail or an E-Ballot. **Ballots will not be accepted by facsimile or other electronic means (other than via the online balloting portal).**

4. **Use of Hard Copy Ballot.** To ensure that your hard copy Ballot is counted, you must: (a) complete your Ballot in accordance with these instructions; (b) clearly indicate your decision either to accept or reject the Plan in the boxes provided in Item 3 of the Ballot; and (c) clearly sign and return your original Ballot in the enclosed pre-addressed envelope or via first class mail, overnight courier, or hand delivery to:

By first class mail to:	Via overnight courier or hand delivery to:
Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department P.O. Box 199043 Blythebourne Station Brooklyn, NY 11219	Donlin, Recano & Company, Inc. Re: Ector County Energy Center LLC Attn: Voting Department 6201 15th Avenue Brooklyn, NY 11219

5. **Use of Online Ballot Portal**. To ensure that your E-Ballot is counted, please follow the instructions of the Debtor's case administration website at ___________________ (click the "E-Ballot" link). You will need to enter your unique E-Ballot identification number indicated above. The online balloting portal is the sole manner in which Ballots will be accepted via electronic or online transmission. **Ballots will not be accepted by facsimile or electronic means (other than the online balloting portal).**

6. Your Ballot (whether submitted by hard copy or through the online balloting portal) **must** be returned to the Solicitation Agent so as to be **actually received** by the Solicitation Agent on or before the Voting Deadline. **The Voting Deadline is _______________**.

7. If a Ballot is received after the Voting Deadline and if the Voting Deadline is not extended, it will not be counted. Additionally, **the following Ballots will not be counted**:

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

8. The method of delivery of Ballot to the Solicitation Agent is at the election and risk of each holder of a Claim. Except as otherwise provided herein, such delivery will be considered made only when the Solicitation Agent **actually receives** the originally executed Ballot. In all cases, holders should allow sufficient time to assure timely delivery.

9. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the latest, timely received and properly completed Ballot will supersede and revoke any earlier received Ballots.

10. You must vote all of your Claims within a Class either to accept or reject the Plan and may **not** split your vote. Further, if a holder has multiple Claims within a Class, the Debtor may, in its discretion, aggregate the Claims of any particular holder with multiple Claims within such Class for the purpose of distributing ballots and counting votes.

11. This Ballot does **not** constitute, and shall not be deemed to be, (a) a Proof of Claim or (b) an assertion or admission of a Claim.

12. **Please be sure to sign and date your Ballot**.

13. If you hold Claims in more than one Class under the Plan you may receive more than one ballot coded for each different Class. Each ballot votes **only** your Claims indicated on that ballot, so please complete and return each ballot that you received.

Please return your Ballot promptly

If you have any questions regarding this Ballot, these Ballot Instructions or the procedures for voting, please contact the Solicitation Agent at (800) 361-2782 (toll-free U.S.) or +1 (503) 597-7731 (if calling from outside the U.S.) or by email to ececinfo@donlinrecano.com.

THE SOLICITATION AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

If the Solicitation Agent does not actually receive this Ballot on or before the Voting Deadline, which is on ______________, the vote transmitted hereby will not be counted, unless the Voting Deadline is extended.

<u>Exhibit 3-A to Order</u>

(Form of Class 1 and Class 4 Non-Voting Status Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

NON-VOTING STATUS NOTICE WITH RESPECT TO UNIMPAIRED CLASSES (CLASS 1 AND CLASS 4) DEEMED TO ACCEPT THE DEBTOR'S LIQUIDATING CHAPTER 11 PLAN

PLEASE TAKE NOTICE THAT on [●], 2022, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (A) Approving Form of Disclosure Statement; (B) Approving Plan Solicitation and Voting Procedures; (C) Approving the Manner and Forms of Notices and Ballots; (D) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Plan; (E) Scheduling a Confirmation Hearing; and (F) Granting Related Relief* [Docket No. [●]] (the "Disclosure Statement Order"): (a) approving the form of the *Debtor's Disclosure Statement in Support of Liquidating Chapter 11 Plan*, including all exhibits and schedules thereto (as may be modified, amended or supplemented from time to time, the "Disclosure Statement"); (b) approving solicitation and voting procedures with respect to the *Debtor's Liquidating Chapter 11 Plan* (as may be modified, amended or supplemented from time to time, the "Plan");[2] (c) approving the manner and forms of notices and ballots; (d) establishing certain deadlines in connection with the approval of the Disclosure Statement and Plan; and (e) scheduling a confirmation hearing.

PLEASE TAKE FURTHER NOTICE THAT the Disclosure Statement, the Plan, the Disclosure Statement Order, and all other documents and materials included in the Solicitation Package may be obtained from Donlin, Recano & Company, Inc. (the "Solicitation Agent"), by: (a) calling the Solicitation Agent at (800) 361-2782 (toll free); (b) visiting the Debtor's case website at www.donlinrecano.com/ecec; and/or by (c) emailing the Solicitation Agent at ececinfo@donlinrecano.com. You may also obtain copies of any pleadings filed in the Chapter 11 Case for a fee via PACER at: http://www.deb.uscourts.sov.

[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 meaning given to such terms in the Plan or Disclosure Statement, as applicable.

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because, under the terms of the Plan you are a Holder of an unimpaired Claim classified in either Class 1 or Clas 4 under the Plan, each a Class that (a) is deemed, pursuant to Bankruptcy Code section 1126(f), to **accept** the Plan; and (b) is **not entitled to vote on the Plan**. Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtor and Related Voting and Objection Deadlines* (the "Confirmation Hearing Notice") is being provided for your information only. If, notwithstanding this notice of your non-voting status, you believe that you may have a Claim or Interest against the Debtor that entitles you to vote on the Plan, you should immediately request the appropriate Ballot by contacting

PLEASE TAKE FURTHER NOTICE THAT AS SET FORTH IN THE CONFIRMATION HEARING NOTICE ARTICLE X OF THE PLAN CONTAINS INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS. YOU ARE ADVISED TO REVIEW AND CONSIDER THE TERMS OF THE PLAN TO DETERMINE IF YOUR RIGHTS ARE IMPACTED.

PLEASE TAKE FURTHER NOTICE THAT if you have any questions about the status of any of your Claim(s) and/or Interest(s), you should contact the Solicitation Agent in accordance with the instructions provided above.

[*signature page follows*]

Dated: [●], 2022
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT

POLSINELLI PC
Christopher A. Ward (Del. Bar No. 3877)
Michael V. DiPietro (Del Bar No. 6781)
222 Delaware Avenue, Suite 1101
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Telephone: 302-252-0920
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cward@polsinelli.com
mdipietro@polsinelli.com

-and-

HOLLAND & KNIGHT LLP
John J. Monaghan (admitted *pro hac vice*)
Lynne B. Xerras (admitted *pro hac vice*)
Kathleen M. St. John (admitted *pro hac vice*)
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-and-

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Phillip W. Nelson (admitted *pro hac vice*)
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phillip.nelson@hklaw.com

Counsel to the Debtor and
Debtor in Possession

<u>Exhibit 3-B to Order</u>

(Form of Class 6 Non-Voting Status Notice)

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

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

NON-VOTING STATUS NOTICE WITH RESPECT TO IMPAIRED CLASS 6 DEEMED TO REJECT THE DEBTOR'S LIQUIDATING CHAPTER 11 PLAN

PLEASE TAKE NOTICE THAT on [●], 2022, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (A) Approving Form of Disclosure Statement; (B) Approving Plan Solicitation and Voting Procedures; (C) Approving the Manner and Forms of Notices and Ballots; (D) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Plan; (E) Scheduling a Confirmation Hearing; and (F) Granting Related Relief* [Docket No. [●]] (the "Disclosure Statement Order"): (a) approving the form of the *Debtor's Disclosure Statement in Support of Liquidating Chapter 11 Plan*, including all exhibits and schedules thereto (as may be modified, amended or supplemented from time to time, the "Disclosure Statement"); (b) approving solicitation and voting procedures with respect to the *Debtor's Liquidating Chapter 11 Plan* (as may be modified, amended or supplemented from time to time, the "Plan");[2] (c) approving the manner and forms of notices and ballots; (d) establishing certain deadlines in connection with the approval of the Disclosure Statement and Plan; and (e) scheduling a confirmation hearing.

PLEASE TAKE FURTHER NOTICE THAT the Disclosure Statement, the Plan, the Disclosure Statement Order, and all other documents and materials included in the Solicitation Package may be obtained from Donlin, Recano & Company, Inc. (the "Solicitation Agent"), by: (a) calling the Solicitation Agent at (800) 361-2782 (toll free); (b) visiting the Debtor's case website at www.donlinrecano.com/ecec; and/or by (c) emailing the Solicitation Agent at ececinfo@donlinrecano.com. You may also obtain copies of any pleadings filed in the Chapter 11 Case for a fee via PACER at: http://www.deb.uscourts.sov.

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because, under the terms of the Plan you are a Holder of Impaired Interest(s) in Class 6 under the Plan, a

[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 meaning given to such terms in the Plan or Disclosure Statement, as applicable.

Class that (a) is deemed, pursuant to Bankruptcy Code section 1126(g), to **reject** the Plan; and (b) **is not entitled to vote on the Plan**. Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtor and Related Voting and Objection Deadlines* (the "Confirmation Hearing Notice") is being provided for your information only. If, notwithstanding this notice of your non-voting status, you believe that you may have a Claim or Interest against the Debtor that entitles you to vote on the Plan, you should immediately request the appropriate Ballot by contacting

PLEASE TAKE FURTHER NOTICE THAT AS SET FORTH IN THE CONFIRMATION HEARING NOTICE ARTICLE X OF THE PLAN CONTAINS INJUNCTION, RELEASE, AND EXCULPATION PROVISIONS. YOU ARE ADVISED TO REVIEW AND CONSIDER THE CONFIRMATION HEARING NOTICE CAREFULLY TO DETERMINE IF YOUR RIGHTS WILL BE AFFECTED UNDER THE PLAN.

PLEASE TAKE FURTHER NOTICE THAT if you have any questions about the status of any of your Claim(s) and/or Interest(s), you should contact the Solicitation Agent in accordance with the instructions provided above.

[*signature page follows*]

Dated: [●], 2022
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT

POLSINELLI PC
Christopher A. Ward (Del. Bar No. 3877)
Michael V. DiPietro (Del Bar No. 6781)
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-and-

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John J. Monaghan (admitted *pro hac vice*)
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-and-

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phillip.nelson@hklaw.com

Counsel to the Debtor and
Debtor in Possession

Exhibit 4 to Order

(Form of Confirmation Hearing Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: ECTOR COUNTY ENERGY CENTER LLC,[1] Debtor.	Chapter 11 Case No. 22-10320 (JTD) **Re: Docket Nos. 322, ___**

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

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

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider Confirmation of the Plan (the "Confirmation Hearing") will commence **November 16, 2022 at 10:00 A.M. EST**, before the Honorable John T. Dorsey, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, 5th Floor, Courtroom #5, Wilmington, Delaware 19801, which may be held telephonically and/or by video conference, unless the Court determines, in its discretion, that a hearing should be conducted on-site.

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[1] The last four digits of the Debtor's federal tax identification are 6852. The Debtor's mailing address is One South Wacker Drive, Suite 1900, Chicago, IL, 60606, and the Debtor has a principal place of business at 8200 OB Holt Road, Goldsmith, Ector County, Texas, 79761. More information about the Debtor and this case is available on the website maintained by Donlin, Recano & Company, Inc., the Debtor's solicitation agent, at www.donlinrecano.com/ecec, or can be requested by e-mail at ececinfo@donlinrecano.com. A motion to change the case caption to reflect the changing of the Debtor's corporate name is pending.

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

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

CRITICAL INFORMATION REGARDING VOTING ON THE PLAN

Voting Record Date. The voting record date is **[●], 2022** (the "Voting Record Date"), which is the date for determining which Holders of Claims and Interests are entitled to vote on the Plan.

Voting Deadline. The deadline for voting on the Plan is **November 9, 2022, at 4:00 p.m. EST** (the "Voting Deadline"). If you received a Solicitation Package including a Ballot and intend to vote on the Plan, you must: (a) follow the instructions carefully; (b) complete all of the required information on the Ballot; and (c) execute and return your completed Ballot according to and as set forth in detail in the voting instructions so that it is actually received by the Debtor's administrative agent, Donlin, Recano & Company, Inc. (the "Solicitation Agent") on or before the Voting Deadline. A failure to follow such instructions may disqualify your vote.

CRITICAL INFORMATION REGARDING OBJECTING TO THE PLAN

Plan Objection Deadline. The deadline for filing objections to confirmation of the Plan or to classification of a Claim within the Plan (a "Confirmation Objection") is **November 9, 2022 at 4:00 p.m. EST** (the "Objection Deadline"). All Confirmation Objections must: (a) be in writing; (b) comply with the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court; (c) set forth the name of the objector and the nature and amount of any Claim or Interest asserted by the objector against or in the Debtor; (d) state, with particularity, the legal and factual bases for the objection and, if practicable, a proposed modification to the Plan that would resolve such objection; and (e) be filed with the Court (contemporaneously with a proof of service) and served upon the following parties (the "Notice Parties") so as to be ***actually received*** on or before the Objection Deadline:

a. counsel to the Debtor, (i) Holland & Knight LLP, 10 St James Ave #1200, Boston, MA 02116 (Attn: John J. Monaghan, Esq. (bankruptcy@hklaw.com)) and 150 N Riverside Plaza, Chicago, IL 60606 (Attn: David W. Wirt, Esq. (david.wirt@hklaw.com)); and (ii) Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, DE 19801 (Attn: Christopher A. Ward, Esq. and Michael V. DiPietro, Esq., (cward@polsinelli.com, mdipietro@polsinelli.com));

b. the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Juliet Sarkessian (juliet.m.sarkessian@usdoj.gov)); and

c. counsel to the Agent and the Ad Hoc Group, (i) Davis Polk & Wardwell LLP, Attn: Brian Resnick, Esq. and Joshua Sturm, Esq., 450 Lexington Avenue, New York, NY 10017 (brian.resnick@davispolk.com; joshua.sturm@davispolk.com) and (ii)

Richards, Layton & Finger, P.A., Attn: Mark D. Collins, Esq., 920 N. King Street, Wilmington, DE 19801 (collins@rlf.com).

Deadline for Brief in Support of Confirmation of the Plan or Reply to Confirmation Objections. Any brief in support of confirmation of the Plan or Reply to a Confirmation Objection shall be filed so as to be received no later than **November 14, 2022 at 12:00 P.M. EST** (or, in the event that the Confirmation Hearing is adjourned, the date that is three (3) business days prior to the adjourned hearing) and served upon the Notice Parties and any party that files a Confirmation Objection.

Obtaining Solicitation Materials. The materials in the Solicitation Package are intended to be self-explanatory. If you should have any questions or if you would like to obtain additional solicitation materials (or paper copies of solicitation materials if you received an electronic version), please feel free to contact the Solicitation Agent by: (a) visiting, free of charge, the Debtor's bankruptcy website at: www.donlinrecano.com/ecec, or (b) calling the Debtor's restructuring hotline at (800) 416-3743 (Toll Free U.S.) or 1 (646) 378-0794 (Non-U.S. Parties). You may also obtain copies of any pleadings filed in the Chapter 11 Case for a fee via PACER at: www.deb.uscourts.gov. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may not advise you as to whether you should vote to accept or reject the Plan.

The Plan Supplement. The Debtor will file the Plan Supplement (as defined in the Plan) and Plan Supplement Notice on or before **November 1, 2022 at 4:00 PM EST**, and will serve notice on all Holders of Claims and Interests entitled to vote on the Plan, which will: (a) inform parties that the Debtor filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

ADDITIONAL INFORMATION

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

THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE SOLICITATION AGENT.

RELEASES, DISCHARGES, INJUNCTIONS, AND EXCULPATIONS

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

ARTICLE II DEFINITIONS AND CONSTRUCTION OF TERMS

Defined Terms

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

"Released Parties" means, collectively and individually, and in each case solely in its capacity as such: (a) the Debtor's Related Persons; and (b) the Prepetition Secured Parties and each of their respective Related Persons.

ARTICLE X INJUNCTION, EXCULPATION, AND RELEASE

A. Injunction.

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

obligations based on or arising out of gross negligence, fraud, or willful misconduct, or expressly set forth in and preserved by this Plan or any defenses thereto.

B. Exculpation.

On the Effective Date, except as otherwise specifically provided in this Plan or the Confirmation Order, for good and valuable consideration, to the maximum extent permissible under applicable law, the Exculpated Parties and any of such parties' successors and assigns, solely in their capacities as such, shall not have or incur any liability to any Holder of a Claim or Equity Interest or any other Person for any act or omission in connection with, related to, or arising out of, the Asset Sale and the Debtor's liquidation, including the negotiation, implementation and execution of this Plan, the Plan Supplement, the Chapter 11 Case, the Prepetition Credit Agreement, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be liquidated and/or distributed under the Plan, including all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of this Plan, except for their willful misconduct or gross negligence as determined by a Final Order of the Bankruptcy Court. For purposes of the foregoing, it is expressly understood that any act or omission effected with the approval of the Bankruptcy Court will be deemed conclusively not to constitute gross negligence or willful misconduct unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation, and in all respects, the applicable Persons shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under or in connection with the Chapter 11 Case, the Plan and the administration thereof.

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

C. Release by Debtor and Estate.

PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN AND/OR THE CONFIRMATION ORDER, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE SERVICE OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS FORMULATION AND IMPLEMENTATION OF THE PLAN AND THE CONSUMMATION OF THE TRANSACTIONS AND COMPROMISES CONTEMPLATED BY THE PLAN, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE DEBTOR, ON ITS OWN BEHALF AND AS REPRESENTATIVE OF ITS ESTATE, AND ITS RESPECTIVE RELATED PERSONS, SHALL, AND SHALL BE DEEMED TO, COMPLETELY AND FOREVER RELEASE, WAIVE, VOID, AND EXTINGUISH UNCONDITIONALLY, EACH AND ALL OF THE RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, ANY

AND ALL OTHER OBLIGATIONS, RIGHTS, SUITS, JUDGMENTS, DAMAGES, DEBTS, RIGHTS, REMEDIES, CAUSES OF ACTION AND LIABILITIES OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THOSE ARISING UNDER THE BANKRUPTCY CODE), WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ASSERTED OR UNASSERTED, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF STATE OR FEDERAL SECURITIES LAWS, OR OTHERWISE, THAT MAY OR COULD HAVE BEEN ASSERTED BY OR ON BEHALF OF THE DEBTOR OR THE DEBTOR'S ESTATE, DIRECTLY OR INDIRECTLY, DERIVATIVELY OR OTHERWISE (INCLUDING THE CLAIMS AND CAUSES OF ACTION ASSERTED IN THE DERIVATIVE STANDING MOTION AND/OR DIRECT ENERGY DERIVATIVE COMPLAINT), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR FRAUDULENT TRANSFER, CONTRIBUTION, MARSHALING, BREACH OF FIDUCIARY DUTY, SUBROGATION, PREFERENCES, ALTER EGO, SUBSTANTIVE CONSOLIDATION, PIERCING THE CORPORATE VEIL, AND AVOIDANCE ACTIONS, THAT ARE OR MAY BE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT OR OTHER CIRCUMSTANCE TAKING PLACE OR EXISTING ON OR BEFORE THE EFFECTIVE DATE (INCLUDING BEFORE THE PETITION DATE) IN CONNECTION WITH OR RELATED TO THE DEBTOR (INCLUDING ANY OF THE DEBTOR'S CAPITAL STRUCTURE, MANAGEMENT, OWNERSHIP, OR OPERATION THEREOF), OR THE DEBTOR'S ASSETS, OPERATIONS, FINANCES, CONTRACTS, POTENTIAL CONTRACTS, BUSINESS RELATIONSHIPS, INTERCOMPANY TRANSACTIONS BETWEEN OR AMONG THE DEBTOR AND ITS PARENT OR AFFILIATES, SECURITIES, PROPERTY AND ESTATE, THE PREPETITION CREDIT AGREEMENT AND THE EXERCISE OF ANY REMEDIES THEREUNDER, THE CHAPTER 11 CASE, THE ASSET SALE, THE DEBTOR'S IN- OR OUT-OF-COURT RESTRUCTURING EFFORTS, THE DIRECT ENERGY DERIVATIVE COMPLAINT, OR THE NEGOTIATION, FORMULATION, PREPARATION, OR SOLICITATION OF VOTES OF THE PLAN, ANY PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, THE ASSET PURCHASE AGREEMENT, THE PLAN SUPPORT AGREEMENT, THE DISCLOSURE STATEMENT (INCLUDING ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT—INCLUDING ANY LEGAL OPINION REQUESTED BY ANY ENTITY REGARDING ANY TRANSACTION, CONTRACT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT CONTEMPLATED BY THE PLAN, OR THE PLAN OR THE CONFIRMATION ORDER RELIED ON BY ANY RELEASED PARTY IN LIEU OF SUCH LEGAL OPINION—CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN OR PLAN SUPPLEMENT), OR ANY PLEADINGS FILED DURING THE CHAPTER 11 CASE, AND ANY RELATED ACT OR OMISSION OTHER THAN THOSE BASED ON OR ARISING OUT OF GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE RELATED OR RELATING TO ANY OF THE FOREGOING TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE; PROVIDED, HOWEVER, THAT THIS RELEASE SHALL NOT LIMIT THE DEBTOR'S RIGHT TO ENFORCE THE PLAN (INCLUDING

THE INVENERGY THERMAL SETTLEMENT AND INVENERGY SERVICES SETTLEMENT).

E. Release of Liens.

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

BINDING NATURE OF THE PLAN:

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

[*signature page follows*]

Dated: [●], 2022
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT

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Counsel to the Debtor and
Debtor in Possession

Exhibit 5 to Order

(Form of Plan Supplement Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

NOTICE OF FILING OF PLAN SUPPLEMENT FOR
LIQUIDATING CHAPTER 11 PLAN OF ECTOR COUNTY ENERGY CENTER, LLC

PLEASE TAKE NOTICE that Ector County Energy Center LLC, as debtor and debtor in possession ("ECEC," or the "Debtor"), hereby files this plan supplement (as may be amended or modified, the "Plan Supplement") in connection to and accordance with the (a) *Liquidating Chapter 11 Plan*, dated August 9, 2022 [Docket No. 322] (as may be amended, modified, or supplemented, the "Plan")[2] and (b) *Order (a) Approving Form of Disclosure Statement; (b) Approving Plan Solicitation and Voting Procedures; (c) Approving the Manner and Forms of Notices and Ballots; (d) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Plan; (e) Scheduling a Confirmation Hearing; and (f) Granting Related Relief* [Docket No. __] (the "Disclosure Statement Order").

PLEASE TAKE FURTHER NOTICE that the Plan Supplement includes the following documents:

Exhibit	Plan Supplement Document
Exhibit A	List of Preserved Causes of Action

[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] All capitalized terms used herein but not otherwise defined shall have the meaning ascribed in the Plan.

Exhibit B	List of Assumed, or Assumed and Assigned, Executory Contracts and Unexpired Leases
Exhibit C	Form of Creditors' Trust Agreement
Exhibit D	Identity of Initial Creditors' Trustee

PLEASE TAKE FURTHER NOTICE that the documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is confirmed by the Bankruptcy Court, the documents contained in this Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order. Subject to the terms and conditions of the Plan, the Debtor reserves all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date or such other date as may be permitted by the Plan or by order of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that this Plan Supplement and all other documents filed in these chapter 11 cases are available free of charge by visiting https://www.donlinrecano.com/Clients/ecec/Index. You may also obtain copies of the pleadings by visiting the Court's website at https://ecf.deb.uscourts.gov/ in accordance with the procedures and fees set forth therein.

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Dated: ___________________, 2022
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT ___________________________
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