

Presentment Date and Time: November 4, 2019 at 10:00 a.m. (Eastern Time)
Objection Deadline: November 1, 2019 at 4:00 p.m. (Eastern Time)
Hearing Date and Time (Only if Objection Filed): November 5, 2019 at 10:00 a.m. (Eastern Time)

MCDERMOTT WILL & EMERY LLP

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*Proposed Counsel to the Debtors
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Chapter 11
AGERA ENERGY LLC, <i>et al.</i> , ¹)	Case No. 19-23802 (RDD)
Debtors.)	(Jointly Administered)
_____)	

**NOTICE OF PRESENTMENT OF DEBTORS' APPLICATION FOR ENTRY OF AN
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF MCDERMOTT
WILL & EMERY LLP AS COUNSEL TO THE DEBTORS AND DEBTORS IN
POSSESSION EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

PLEASE TAKE NOTICE that on **November 4, 2019 at 10:00 a.m. (Eastern Time)**,
the annexed *Debtors' Application for Entry of an Order Authorizing the Retention and
Employment Of McDermott Will & Emery LLP as Counsel to the Debtors and Debtors in
Possession Effective Nunc Pro Tunc to the Petition Date* (the "Application") will be presented to
the Honorable Robert D. Drain, United States Bankruptcy Judge, in the United States

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors' corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

Bankruptcy Court for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York 10601 (the “Bankruptcy Court”) for approval and signature.

PLEASE TAKE FURTHER NOTICE that any responses or objections (“Objections”) to the Application must be in writing, conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and be filed with the Bankruptcy Court (a) by attorneys practicing in the bankruptcy court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov), and (b) by all other parties in interest, on a CD-ROM, in text searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with the *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* (the “Case Management Procedures Order”), so as to be filed and received no later than **November 1, 2019 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”).

PLEASE TAKE FURTHER NOTICE that, if a written objection is timely filed and served, a hearing (the “Hearing”) will be held on **November 5, 2019 at 10:00 a.m. (Eastern Time)** to consider the Application before the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that if no objections are timely filed and served with respect to the Application, the Debtors shall, on or after the Objection Deadline, submit to the Court an order substantially in the form as **Exhibit A** to the Application, which order the Court may enter with no further notice or opportunity to be heard.

PLEASE TAKE FURTHER NOTICE that copies of the Application may be obtained free of charge by visiting the website of Stretto at <http://cases.stretto.com/agera>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: October 16, 2019
New York, NY

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

/s/ Darren Azman

Timothy W. Walsh

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*Proposed Counsel to the Debtors
and Debtors in Possession*

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*Proposed Counsel to the Debtors
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
AGERA ENERGY LLC, <i>et al.</i> , ¹)	Case No. 19-23802 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF MCDERMOTT WILL & EMERY LLP AS
COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION
EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Agera Energy LLC and the above-captioned debtors, as debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”), hereby file this application (the “Application”), pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

(the “Local Rules”), authorizing the Debtors’ employment and retention of McDermott Will & Emery LLP (“McDermott” or the “Firm”) as the Debtors’ counsel effective *nunc pro tunc* to the Petition Date (as defined below) in accordance with the terms and conditions of that certain engagement letter between the Debtors and McDermott, dated May 3, 2019 (the “Engagement Letter”), a copy of which is attached hereto as **Exhibit 1** to the Azman Declaration (as defined below). A proposed form order is attached hereto as **Exhibit A** (the “Proposed Order”). In support of this Application, the Debtors submit the *Declaration of Darren Azman in Support of Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of McDermott Will & Emery LLP as Counsel to the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition Date* (the “Azman Declaration”), which is attached hereto as **Exhibit B**, and respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the Southern District of New York, dated January 31, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 327(a) and 330, Bankruptcy Rules 2014(a) and 2016, and Local Rules 2014-1 and 2016-1.

BACKGROUND

4. On October 4, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On October 11, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 61]. No trustee, examiner, or other official committee has been appointed in these Chapter 11 Cases.

7. The factual background regarding the Debtors, including a description of the Debtors’ business, capital structure, and the circumstances leading to these Chapter 11 Cases, is set forth in the *Declaration of Todd Sandford Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Docket No. 3] (the “First Day Declaration”).²

RELIEF REQUESTED

8. By this Application, the Debtors seek the entry of an Order authorizing the retention and employment of McDermott as the Debtors’ counsel in accordance with the terms and conditions set forth in the Engagement Letter.

BASIS FOR REQUESTED RELIEF

9. McDermott’s representation of the Debtors dates back to May 2019, when McDermott began representing the Debtors in connection with restructuring matters and consideration of strategic alternatives. At the Debtors’ request, McDermott also assisted the Debtors in preparing for the possibility of commencing these Chapter 11 Cases to preserve and maximize value.

10. The Debtors selected McDermott as their restructuring counsel because of McDermott’s extensive knowledge of the Debtors’ business and financial affairs and its expertise with debtors’ and creditors’ rights and business reorganizations under chapter 11 of the

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the First Day Declaration.

Bankruptcy Code. The Debtors believe that McDermott has assembled a highly-qualified team of professionals and paraprofessionals to provide services to the Debtors during these Chapter 11 Cases. The Debtors believe further that McDermott has the knowledge and experience necessary to deal effectively with the issues that will arise in these Chapter 11 Cases, and that McDermott's continued representation of the Debtors is critical to the success of the Debtors' reorganization.

SERVICES TO BE PROVIDED

11. Subject to further order of the Court, and consistent with the Engagement Letter, the Debtors request the retention and employment of McDermott to render the following legal services:

- a. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their business and properties;
- b. advising and consulting on the conduct of these Chapter 11 Cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attending meetings and negotiating with representatives of the Debtors' creditors and other parties in interest;
- d. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors, and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- e. preparing pleadings in connection with these Chapter 11 Cases, including motions, applications, answers, orders, reports, and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. advising the Debtors in connection with any potential sale of assets;
- g. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;

- h. advising the Debtors regarding tax matters;
- i. advising the Debtors regarding insurance and regulatory matters;
- j. taking any necessary action on behalf of the Debtors to negotiate, prepare, and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto;
- k. performing all other necessary legal services for the Debtors in connection with the prosecution of these Chapter 11 Cases, including: (i) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (ii) analyzing the validity of liens against the Debtors; and (iii) advising the Debtors on corporate and litigation matters;
- l. Investigating, commencing, and defending causes of action by or against the Debtors; and
- m. Any other duty or task that falls within the normal responsibilities of restructuring counsel at the direction of management and/or the independent manager/director.

PROFESSIONAL COMPENSATION

12. McDermott intends to file monthly applications for compensation for professional services rendered on an hourly basis and reimbursement of expenses incurred in connection with these Chapter 11 Cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court. The hourly rates and corresponding rate structure McDermott will use in these Chapter 11 Cases are the same as the hourly rates and corresponding rate structure that McDermott uses in other restructuring matters, as well as similar corporate and litigation matters, whether in court or otherwise, regardless of whether a fee application is required.

13. McDermott operates in a national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the Firm’s expertise, performance, and reputation, the nature of the work involved, and other factors.

14. As discussed in more detail below, McDermott’s rates are subject to periodic change in the ordinary course of business. McDermott’s current hourly rates for matters related to these Chapter 11 Cases range as follows:

Billing Category	U.S. Range
Partners	\$500-\$1,190
Associates	\$250-\$720
Paraprofessionals	\$115-\$325

15. McDermott’s hourly rates are set at a level designed to compensate McDermott fairly for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions.³

16. Prior to the Petition Date, McDermott represented the Debtors using the hourly rates set forth above. Moreover, these hourly rates are consistent with the rates that McDermott charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case.

17. The rate structure provided by McDermott is appropriate and not significantly different from (a) the rates that McDermott charges for other similar types of representations or (b) the rates that other comparable counsel would charge to do work substantially similar to the work McDermott will perform in these Chapter 11 Cases.

³ For example, like many of its peer law firms, McDermott increases the hourly billing rate of attorneys and paraprofessionals in the form of: (i) step increases historically awarded in the ordinary course on the basis of advancing seniority and promotion and (ii) periodic increases within each attorney’s and paraprofessional’s current level of seniority. The step increases do not constitute “rate increases” (as the term is used in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective November 1, 2013). As set forth in the Order, McDermott will provide ten business days’ notice to the Debtors, the U.S. Trustee, and any official committee before implementing any periodic increases, and shall file such notice with the Court.

18. In addition, McDermott intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013* (the "Revised UST Guidelines"), both in connection with this Application and the interim and final fee applications to be filed by McDermott in these Chapter 11 Cases.

19. It is McDermott's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also McDermott's policy to charge its clients only the amount actually incurred by McDermott in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, computer-assisted legal research, photocopying, airfare, meals, and lodging. In addition, McDermott professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

20. McDermott currently charges the Debtors \$0.20 per page for standard duplication in its offices in the United States. Notwithstanding the foregoing and consistent with the Local Rules, McDermott will charge no more than \$0.10 per page for standard duplication services in these Chapter 11 Cases. McDermott does not charge its clients for incoming facsimile transmissions. McDermott has negotiated a discounted rate for Westlaw and Lexis Nexis computer-assisted legal research.

COMPENSATION RECEIVED BY MCDERMOTT FROM THE DEBTORS

21. During the one-year period preceding the Petition Date, the aggregate amount of fees earned and expenses incurred by McDermott on behalf of the Debtors was approximately \$2,019,914.54. During the same period, the Debtors paid McDermott approximately

\$2,272,184.20 on account of such fees earned and expenses incurred, including the funding of the Retainer (as defined below) and subsequent retainer replenishments. Of that amount, McDermott received payments totaling \$1,683,892.99 during the ninety (90) days prior to the Petition Date. In the 90 days prior to the Petition Date, McDermott did not receive any payments from the Debtors other than those described herein.

22. On May 6, 2019, the Debtors provided McDermott with an advance payment of \$35,000 to establish a retainer (the “Retainer”) for professional services to be rendered and expenses to be incurred by McDermott. Thereafter, the Retainer was reduced to pay invoices and thereafter replenished on an as-needed basis. As of the Petition Date, the balance of the Retainer was \$268,540.66. Since the commencement of McDermott’s retention by the Debtors, the Debtors have paid McDermott’s invoices in the ordinary course of business. Such payments in the ordinary course have included payments for non-bankruptcy advice and services and restructuring related advice and services provided to the Debtors.

23. As of the Petition Date, the Debtors did not owe McDermott any amounts for legal services rendered before the Petition Date. Although certain expenses and fees may have been incurred but not yet applied to McDermott’s advance payment retainer, the amount of McDermott’s advance payment retainer always exceeded any amounts listed or to be listed on statements describing services rendered and expenses incurred (on a “rates times hours” and “dates of expenses incurred” basis) prior to the Petition Date.

24. McDermott requests that it be permitted to hold the full amount of the Retainer as a postpetition retainer. Upon the conclusion of McDermott’s representation of the Debtors (or as otherwise directed by the Court), McDermott will apply the remaining portion of the Retainer

against any unpaid fees or unreimbursed disbursements, with any unapplied portion of the Retainer to be promptly returned to the Debtors.

25. Pursuant to Bankruptcy Rule 2016(b), McDermott has neither shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates, and contract attorneys associated with McDermott or (b) any compensation another person or party has received or may receive.

MCDERMOTT'S DISINTERESTEDNESS

26. To the best of the Debtors' knowledge, and except as otherwise set forth in this Application and in the Azman Declaration, the partners, counsel, and associates of McDermott (a) do not have any connection with the Debtors, their affiliates, their creditors, or any other parties in interest, the United States Trustee for Region 2, or any person employed in the office of the same, or any judge of the United States Bankruptcy Court for the Southern District of New York, or any person employed in the offices of the same; (b) are "disinterested persons," as such term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b); and (c) do not hold or represent any interest adverse to the Debtors' estates.

27. As set forth in the Azman Declaration, McDermott has in the past represented, currently represents and likely in the future will represent certain parties in interest in these Chapter 11 Cases in matters unrelated to the Debtors, these Chapter 11 Cases or such entities' claims against or interests in the Debtors.

28. The Debtors understand that, except as otherwise set forth in the Azman Declaration:

- (a) neither McDermott nor any attorney at the Firm holds or represents an interest adverse to the Debtors' estates;
- (b) neither McDermott nor any attorney at the Firm is or was a creditor or an insider of the Debtors, except that McDermott previously

rendered legal services to the Debtors for which it has been compensated as discussed above;

- (c) neither McDermott nor any attorney at the Firm is or was, within two years before the Petition Date, a director, officer or employee of the Debtors; and
- (d) McDermott does not have an interest materially adverse to the interest of the estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason.

29. In view of the foregoing, the Debtors believe that McDermott is a “disinterested person” within the meaning of Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b).

30. McDermott has informed the Debtors that, throughout these Chapter 11 Cases, it will review its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, McDermott will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a). If necessary, McDermott will arrange for an “ethical wall” with respect to any McDermott attorney who worked on a matter giving rise to a conflict or arrange for representation of the Debtors by conflicts counsel.

BASIS FOR REQUESTED RELIEF

31. The Debtors seek to retain McDermott as their attorneys pursuant to Bankruptcy Code section 327(a), which provides that a debtor, subject to Court approval:

[M]ay employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor] in carrying out the [debtor]’s duties under this title.

11 U.S.C. § 327(a).

32. Further, McDermott should not be “disqualified for employment under [section 327] solely because of such person’s employment by or representation of a creditor” unless such representation “is an actual conflict of interest.” 11 U.S.C. § 327(c). *See also In re Vebeliunas*, 231 B.R. 181, 189 (Bankr. S.D.N.Y. 1999) (finding that representation is appropriate where only potential conflicts exist and no actual conflict has arisen).

33. Objections to retention or motions to disqualify counsel “are often interposed for [the] tactical purpose[]” of separating a party from the attorneys best able to advocate on its behalf, and are thus properly viewed with skepticism. *Sumitomo Corp. v. J. P. Morgan & Co., Inc.*, 2000 WL 145747, at *3 (S.D.N.Y. Feb. 8, 2000); *see also Bd. of Educ. of N.Y. v. Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979) (“Motions to disqualify counsel are generally viewed with disfavor because disqualification has an immediate adverse effect on the client by separating him from counsel of his choice, and because disqualification motions are often interposed for tactical reasons.”).

34. The law is clear that a debtor’s choice of counsel should be disturbed only in the “*rarest*” cases, and not based on allegations of potential conflicts. *See In re Persaud*, 496 B.R. 667, 670-71 (E.D.N.Y. 2013) (emphasis added); *see also In re Enron Corp.*, 2002 WL 32034346, at *5 (Bankr. S.D.N.Y. May 23, 2002) (“The debtor’s right to choose qualified counsel should be disturbed only in the rarest cases.”); *Vergos v. Timber Creek, Inc.*, 200 B.R. 624, 628 (W.D. Tenn. 1996) (same). Courts give “great deference” to a debtor’s choice of counsel. *In re Enron Corp.*, 2002 WL 32034346, at *5. The Court is also permitted to take a “wait-and-see” approach to determine whether conflicts ripen rather than prophylactically disqualifying a party’s counsel of choice. *See, e.g., In re Universal Enters., LLC*, 2010 WL 2403354 at *4 (Bankr. N.D. W. Va. June 9, 2010); *In re Adelpia Commc’ns Corp.*, 336 B.R. at

673; *In re Gilbertson's Rests. LLC*, 2004 WL 1724878 at *5 (Bankr. N.D. Iowa May 3, 2004); *In re White Glove, Inc.*, 1998 WL 226781, at *4 (Bankr. N.D. Iowa Apr. 9, 1998).

35. Bankruptcy Rule 2014(a) requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014.

36. The Debtors submit that for all the reasons stated above and in the Azman Declaration, the retention and employment of McDermott as counsel to the Debtors is warranted. Further, as stated in the Azman Declaration, McDermott is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), as required by Bankruptcy Code section 327(a), and does not hold or represent an interest adverse to the Debtors' estates and has no connection to the Debtors, their creditors, or other parties in interest, except as otherwise disclosed in the Azman Declaration.

NOTICE

37. The Debtors have provided notice of this Application to: (a) the U.S. Trustee; (b) counsel to the Committee; (c) counsel to BP; (d) counsel to Exelon Generation Company, LLC; (e) the Internal Revenue Service; (f) the United States Attorney's Office for the Southern District of New York; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

38. No prior request for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to employ and retain McDermott Will & Emery LLP as their counsel effective *nunc pro tunc* to the Petition Date, and grant such other relief as the Court deems appropriate.

Dated: October 16, 2019
Briarcliff Manor, NY

/s/ Mark Linzenbold
Mark Linzenbold
Chief Financial Officer

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
AGERA ENERGY LLC, <i>et al.</i> , ¹)	Case No. 19-23802 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF MCDERMOTT
WILL & EMERY LLP AS COUNSEL TO THE DEBTORS AND DEBTORS IN
POSSESSION EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the Application (the “Application”)² of the Debtors for entry of an order authorizing the retention and employment of McDermott Will & Emery LLP (“McDermott”) as counsel to the Debtors *nunc pro tunc* to the Petition Date, as more fully described in the Application; and upon the declaration of Darren Azman, attached to the Application as **Exhibit B** (the “Azman Declaration”); and the Court being satisfied, based on the representations made in the Application and the Azman Declaration that McDermott is “disinterested” as such term is defined in Bankruptcy Code section 101(14), as modified by Bankruptcy Code section 1107(b), as required under Bankruptcy Code sections 327(a), and that McDermott represents no interest adverse to the Debtors’ estates; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Debtors consent to entry of a final order under Article III of the United States Constitution; and venue of the Chapter 11 Cases and the Application in this district

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Application has been given and that no other or further notice is necessary; and upon the record herein; after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application is GRANTED, as set forth herein.
2. The Debtors are authorized to retain and employ McDermott as counsel in the Chapter 11 Cases in accordance with the Engagement Letter *nunc pro tunc* to the Petition Date.
3. McDermott is authorized to render the professional services described in the Application and the Azman Declaration.
4. McDermott shall be compensated in accordance with the procedures set forth in Bankruptcy Code sections 328, 330, and 331, and applicable Bankruptcy Rules, and Local Rules, and such other procedures as may be fixed by order of the Court.
5. McDermott shall make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013*, both in connection with this Application and the interim and final fee applications to be filed by McDermott in these Chapter 11 Cases.
6. Notwithstanding anything to the contrary in the Application, McDermott may not seek reimbursement of expenses for office supplies, any secretarial charges, or other overtime charges.
7. McDermott shall not charge a markup to the Debtors with respect to fees billed by contract attorneys who are hired by McDermott to provide services to the Debtors and shall

ensure that any such contract attorneys are subject to conflicts checks and disclosures in accordance with the requirements of the Bankruptcy Code and Bankruptcy Rules. For the avoidance of doubt, McDermott shall neither share fees with existing or future contract attorneys who advise the Debtors nor enter into fee sharing arrangements with such contract attorneys.

8. The balance of the Retainer shall be treated as an evergreen retainer and shall be held by McDermott as security through the Chapter 11 Cases until McDermott's fee and expenses are awarded and payable to McDermott on a final basis.

9. Prior to any increases in McDermott's rates for any individual employed by McDermott and providing services in the Chapter 11 Cases, McDermott shall file a supplemental declaration with the Court and provide ten business days' notice to the Debtors, the United States Trustee, and any statutorily appointed committee. The supplemental declaration shall explain the basis for the requested rate increases in accordance with Bankruptcy Code section 330(a)(3)(F) and state whether the Debtors have consented to the rate increase.

10. McDermott shall use its best efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in the Chapter 11 Cases.

11. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

12. Notwithstanding any stay that might be imposed by Bankruptcy Rule 6004(h) or otherwise, this Order shall be effective and enforceable immediately upon entry hereof.

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Azman Declaration

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
AGERA ENERGY LLC, <i>et al.</i> , ¹)	Case No. 19-23802 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF DARREN AZMAN IN SUPPORT OF
DEBTORS’ APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING
THE RETENTION AND EMPLOYMENT OF MCDERMOTT WILL & EMERY LLP
AS COUNSEL TO THE DEBTORS AND DEBTORS IN POSSESSION
EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

I, Darren Azman, being duly sworn, state the following under penalty of perjury:

1. I am a partner in the law firm of McDermott Will & Emery LLP (“McDermott” or the “Firm”), located at 340 Madison Avenue, New York, New York 10173. I am a member in good standing of the Bars of the State of New York and the Commonwealth of Massachusetts. I am admitted to practice in the United States District Courts for the District of Colorado, the District of Massachusetts, the Eastern and Southern Districts of New York, and the United States Bankruptcy Court for the Southern District of New York. There are no disciplinary proceedings pending against me.

2. I submit this declaration (the “Declaration”) in support of the *Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of McDermott Will & Emery LLP as Counsel to the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Petition*

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

Date (the “Application”).² Except as otherwise noted, I have personal knowledge of the matters set forth herein.

MCDERMOTT’S QUALIFICATIONS

3. McDermott’s representation of the Debtors dates back to May 2019, when McDermott began representing the Debtors in connection with restructuring matters and consideration of strategic alternatives. At the Debtors’ request, McDermott also assisted the Debtors in preparing for the possibility of commencing these Chapter 11 Cases to preserve and maximize value.

4. Due to the Firm’s working history with the Debtors, McDermott has developed extensive knowledge of the Debtors’ business and financial affairs. Moreover, McDermott has significant expertise with debtors’ and creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code. The Firm has assembled a highly-qualified team of professionals and paraprofessionals to provide services to the Debtors during these Chapter 11 Cases. McDermott has the knowledge and experience necessary to deal effectively with the issues that will arise in these Chapter 11 Cases, and McDermott’s continued representation of the Debtors is critical to the success of the Debtors’ reorganization.

5. I am a partner in McDermott’s restructuring and insolvency department and have been responsible for leading this engagement. Other professionals and paraprofessionals in the Firm’s restructuring & insolvency, corporate advisory, tax, litigation, and employee benefits departments, many of whom also have extensive experience in corporate restructurings, have participated and will continue to participate in the representation of the Debtors in these Chapter 11 Cases. McDermott believes that it is well qualified and uniquely able to act on the Debtors’

² Capitalized terms used but not otherwise defined herein have the meanings set forth in the Application.

behalf and guide them through these Chapter 11 Cases. Accordingly, subject to this Court's approval of the Application, McDermott is willing to perform the services requested by the Debtors, as set forth herein and in the Application.

SERVICES TO BE PROVIDED

6. Subject to further order of the Court and that certain engagement letter, dated May 3, 2019 (the "Engagement Letter"), a copy of which is attached hereto as **Exhibit 1**, the Debtors retained McDermott to render, without limitation, the following legal services:

- a. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their business and properties;
- b. advising and consulting on the conduct of these Chapter 11 Cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attending meetings and negotiating with representatives of the Debtors' creditors and other parties in interest;
- d. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors, and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- e. preparing pleadings in connection with these Chapter 11 Cases, including motions, applications, answers, orders, reports, and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. advising the Debtors in connection with any potential sale of assets;
- g. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;
- h. advising the Debtors regarding tax matters;
- i. advising the Debtors regarding insurance and regulatory matters;

- j. taking any necessary action on behalf of the Debtors to negotiate, prepare, and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto;
- k. performing all other necessary legal services for the Debtors in connection with the prosecution of these Chapter 11 Cases, including: (i) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (ii) analyzing the validity of liens against the Debtors; and (iii) advising the Debtors on corporate and litigation matters;
- l. Investigating, commencing, and defending causes of action by or against the Debtors; and
- m. Any other duty or task that falls within the normal responsibilities of restructuring counsel at the direction of management and/or the independent manager/director.

PROFESSIONAL COMPENSATION

7. McDermott intends to file monthly applications for compensation for professional services rendered on an hourly basis and reimbursement of expenses incurred in connection with these Chapter 11 Cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable procedures and orders of the Court. The hourly rates and corresponding rate structure McDermott will use in these Chapter 11 Cases are the same as the hourly rates and corresponding rate structure that McDermott uses in other restructuring matters, as well as similar corporate and litigation matters, whether in court or otherwise, regardless of whether a fee application is required.

8. McDermott operates in a national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm's expertise, performance, and reputation, the nature of the work involved, and other factors.

9. As discussed in more detail below, McDermott’s rates are subject to periodic change in the ordinary course of business. McDermott’s current hourly rates for matters related to these Chapter 11 Cases range as follows:

<u>Billing Category</u>	<u>U.S. Range</u>
Partners	\$500-\$1,190
Associates	\$250-\$720
Paraprofessionals	\$115-\$325

10. McDermott’s hourly rates are set at a level designed to compensate McDermott fairly for the work of its attorneys and paraprofessionals and to cover fixed and routine expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions.³

11. Prior to the Petition Date, McDermott represented the Debtors using the hourly rates set forth above. Moreover, these hourly rates are consistent with the rates that McDermott charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case.

12. The rate structure provided by McDermott is appropriate and not significantly different from (a) the rates that McDermott charges for other similar types of representations or (b) the rates that other comparable counsel would charge to do work substantially similar to the work McDermott will perform in these Chapter 11 Cases.

13. It is McDermott’s policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client’s case that would not

³ For example, like many of its peer law firms, McDermott increases the hourly billing rate of attorneys and paraprofessionals in the form of: (i) step increases historically awarded in the ordinary course on the basis of advancing seniority and promotion and (ii) periodic increases within each attorney’s and paraprofessional’s current level of seniority. The step increases do not constitute “rate increases” (as the term is used in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases*, effective November 1, 2013). As set forth in the Order, McDermott will provide ten business days’ notice to the Debtors, the U.S. Trustee, and any official committee before implementing any periodic increases, and shall file such notice with the Court.

have been incurred except for representation of that particular client. It is also McDermott's policy to charge its clients only the amount actually incurred by McDermott in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, computer-assisted legal research, photocopying, airfare, meals, and lodging. In addition, McDermott professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

14. McDermott currently charges the Debtors \$0.20 per page for standard duplication in its offices in the United States. Notwithstanding the foregoing and consistent with the Local Rules, McDermott will charge no more than \$0.10 per page for standard duplication services in these Chapter 11 Cases. McDermott does not charge its clients for incoming facsimile transmissions. McDermott has negotiated a discounted rate for Westlaw and Lexis Nexis computer-assisted legal research.

COMPENSATION RECEIVED BY MCDERMOTT FROM THE DEBTORS

15. On May 6, 2019, the Debtors provided McDermott with an advance payment of \$35,000 to establish a retainer (the "Retainer") for professional services to be rendered and expenses to be incurred by McDermott. Thereafter, the Retainer was reduced to pay invoices and thereafter replenished on an as-needed basis.

16. During the one-year period preceding the Petition Date, the aggregate amount of fees earned and expenses incurred by McDermott on behalf of the Debtors was approximately \$2,019,914.54. During the same period, the Debtors paid McDermott approximately \$2,272,184.20 on account of such fees earned and expenses incurred, including the funding of the Retainer and subsequent retainer replenishments. Of that amount, McDermott received payments totaling \$1,683,892.99 during the ninety (90) days prior to the Petition Date. In the 90

days prior to the Petition Date, McDermott did not receive any payments from the Debtors other than those described herein.

17. As of the Petition Date, the balance of the Retainer was \$268,540.66. Since the commencement of McDermott's retention by the Debtors, the Debtors have paid McDermott's invoices in the ordinary course of business. Such payments in the ordinary course have included payments for non-bankruptcy advice and services and restructuring related advice and services provided to the Debtors. The Debtors do not owe McDermott any amounts for legal services rendered or expenses incurred prior to the Petition Date.

18. Pursuant to Bankruptcy Rule 2016(b), McDermott has neither shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates, and contract attorneys associated with McDermott or (b) any compensation another person or party has received or may receive.

STATEMENT REGARDING U.S. TRUSTEE GUIDELINES

19. McDermott will apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' Chapter 11 Cases in compliance with Bankruptcy Code sections 330 and 331 and applicable provisions of the Bankruptcy Rules, Local Rules, and any other applicable procedures and orders of the Court. McDermott also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective As of November 1, 2013* (the "Revised UST Guidelines"), both in connection with the Application and the interim and final fee applications to be filed by McDermott in these Chapter 11 Cases.

ATTORNEY STATEMENT PURSUANT TO REVISED UST GUIDELINES

20. The following is provided in response to the request for additional information set forth in Paragraph D.1. of the Revised UST Guidelines:

- a. **Question:** Did McDermott agree to any variations from, or alternatives to, McDermott’s standard billing arrangements for this engagement?

Answer: No.

- b. **Question:** Do any of the McDermott professionals in this engagement vary their rate based on the geographic location of the Debtors’ Chapter 11 Cases?

Answer: No. The hourly rates used by McDermott in representing the Debtors are consistent with the rates that McDermott charges other comparable chapter 11 clients, regardless of the location of the chapter 11 case.

- c. **Question:** If McDermott has represented the Debtors in the 12 months prepetition, disclose McDermott’s billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If McDermott’s billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.

Answer: As of January 1, 2019, McDermott’s hourly rates for services rendered on behalf of the Debtors range as follows:

<u>Billing Category</u>	<u>U.S. Range</u>
Partners	\$500-\$1,190
Associates	\$250-\$720
Paraprofessionals	\$115-\$325

These billing rates have not changed postpetition.

- d. **Question:** Have the Debtors approved McDermott’s budget and staffing plan, and, if so, for what budget period?

Answer: The Debtors and McDermott have developed a budget and staffing plan to comply with the U.S. Trustee’s requests for information and additional disclosures.

MCDERMOTT'S DISINTERESTEDNESS

21. In connection with its proposed retention by the Debtors in these Chapter 11 Cases, McDermott undertook to determine whether it had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors. Specifically, McDermott obtained from the Debtors and their representatives the names of individuals and entities that may be parties in interest in these Chapter 11 Cases (the "Potential Parties in Interest"), which parties are listed on **Schedule 1** hereto. McDermott has searched its electronic database for its connections to the entities listed on **Schedule 1**. To the extent that I have been able to ascertain that McDermott has been retained within the last three years to represent any of the Potential Parties in Interest in matters unrelated to these Chapter 11 Cases, such facts are disclosed on **Schedule 2** attached hereto.⁴

22. McDermott and certain of its partners and associates may have in the past represented, may currently represent, and likely in the future will represent parties in interest in these Chapter 11 Cases in connection with matters unrelated (except as otherwise disclosed herein) to the Debtors and these Chapter 11 Cases. The information listed on **Schedule 1** may have changed without our knowledge and may change during the pendency of these Chapter 11 Cases. Accordingly, McDermott will update this Declaration as necessary and when McDermott becomes aware of additional material information.

⁴ As referenced in **Schedule 2**, the term "current client" means a client to whom time was posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2**, the term "former client" means a client to whom time was posted between 12 and 36 months preceding the Petition Date, but for whom no time has been posted in the 12 months preceding the Petition Date. As referenced in **Schedule 2**, the term "closed client" means a client to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed. As a general matter, McDermott discloses connections with former clients or closed clients for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Petition Date.

23. The following is a list of the categories that McDermott has searched:⁵

<u>Schedule</u>	<u>Category</u>
1(a)	Debtors
1(b)	Directors, Officers, and Managers
1(c)	Top Customers ⁶
1(d)	Equity Security Holders
1(e)	Bank, Lender, and UCC Lien Parties
1(f)	Insurance Companies
1(g)	Employee Benefits Providers
1(h)	Top 30 Creditors
1(i)	Counterparties to Contracts
1(j)	Utility Providers
1(k)	Pipelines (Utilities) and Distribution Companies
1(l)	Third Party Sales Agents
1(m)	Lessors of Real Property
1(n)	Parties to Significant Litigation
1(o)	Debtors' Professionals
1(p)	Non-Debtor Affiliates
1(q)	United States Trustee and Court Personnel for the Southern District of New York (and Key Staff Members)

24. To the best of my knowledge, McDermott (a) is a “disinterested person” within the meaning of Bankruptcy Code section 101(14), as required by Bankruptcy Code section 327(a), and does not hold or represent an interest adverse to the Debtors’ estates and (b) has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed in this Declaration.

25. For the avoidance of doubt, McDermott will not commence a cause of action in these Chapter 11 Cases against the parties listed on **Schedule 2** that are current or ongoing clients of McDermott (including parties listed below under the “Specific Disclosures” section of

⁵ McDermott’s inclusion of parties in the following Schedules is solely to illustrate McDermott’s conflict search process and is not an admission that any party has a valid claim against the Debtors or that any party properly belongs in the schedules or has a claim or legal relationship to the Debtors of the nature described in the schedules.

⁶ McDermott searched the Debtors’ top 143 electricity customers, representing approximately 40% of the Debtors’ aggregate electricity volume and the Debtors’ top 50 natural gas customers, representing approximately 20% of the Debtors’ aggregate natural gas volume. Due to the sensitive and proprietary nature of this information, the Schedule of Top Customers as well as connections to such Customers will be provided solely to the office of the United States Trustee and counsel to the Committee.

this Declaration) unless McDermott has an applicable waiver on file or first receives a waiver from such party allowing McDermott to commence such an action. To the extent that a waiver does not exist or is not obtained from such client and it is necessary for the Debtors to commence an action against that client, the Debtors will be represented in such particular matter by conflicts counsel.

26. None of the clients listed on **Schedule 2** represent more than one percent of McDermott's fee receipts for the twelve-month period ending on May 31, 2019.

27. McDermott's conflicts search of the parties in interest listed on **Schedules 1(a) – 1(q)** (that McDermott was able to locate using its reasonable efforts) reveals, to the best of McDermott's knowledge, that those McDermott attorneys and paraprofessionals who previously worked at other law firms that represented certain potential parties in interest in these Chapter 11 Cases have not worked on matters relating to the Debtors' restructuring efforts while at McDermott.

28. Based on the conflicts search conducted to date and described herein, to the best of my knowledge, neither McDermott, nor any partner or associate thereof, insofar as I have been able to ascertain, has any connection with the Debtors, their creditors, or any other parties in interest, their respective attorneys and accountants, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), any person employed by the U.S. Trustee, or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the Southern District of New York, except as disclosed or otherwise described herein.

29. McDermott will review its files periodically during the pendency of these Chapter 11 Cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, McDermott will use reasonable efforts

to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a). If necessary, McDermott will arrange for an “ethical wall” with respect to any McDermott attorney who worked on a matter giving rise to a conflict or arrange for representation of the Debtors by conflicts counsel.

30. Generally, it is McDermott’s policy to disclose clients in the capacity that they first appear in a conflicts search. For example, if a client already has been disclosed in this Declaration in one capacity (*e.g.*, a customer), and the client appears in a subsequent conflicts search in a different capacity (*e.g.*, a vendor), McDermott does not disclose the same client again in supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

31. Certain insurance companies pay the legal bills of McDermott clients. Some of these insurance companies may be involved in these Chapter 11 Cases. None of these insurance companies, however, are McDermott’s clients as a result of the fact that they pay legal fees on behalf of McDermott clients.

SPECIFIC DISCLOSURES

32. As specifically set forth below and in the attached exhibits, McDermott represents certain of the Debtors’ creditors, equity security holders, or other parties in interest in ongoing matters unrelated to the Debtors and these Chapter 11 Cases. None of the representations described herein are materially adverse to the interests of the Debtors’ estates. Moreover, pursuant to Bankruptcy Code section 327(c), McDermott is not disqualified from acting as the Debtors’ counsel merely because it represents certain of the Debtors’ creditors, equity security holders, or other parties in interest in matters unrelated to these Chapter 11 Cases.

A. Specific Disclosures

33. McDermott currently represents Global Bankers Insurance Group (“GBIG”), which is an affiliate of Colorado Bankers Life Insurance Company (“CBLIC”). As discussed in more detail in the First Day Declaration, the Debtors owe approximately \$35mm to CBLIC under a second lien revolving credit facility. McDermott does not represent CBLIC, and McDermott’s representation of GBIG is unrelated to the Debtors and these Chapter 11 Cases.

34. As discussed in more detail in the First Day Declaration, Exelon Generation Company, LLC (“Exelon”) is the proposed stalking horse bidder in these Chapter 11 Cases. McDermott represents Exelon on a variety of internal tax matters. This advice is not adverse in any way to the Debtors, but may indirectly relate to the assets sought to be acquired by Exelon from the Debtors. At all relevant times, McGuireWoods LLP has represented Exelon as transaction and restructuring counsel in connection with its stalking horse bid and these Chapter 11 Cases. McDermott has not advised and will not advise Exelon on any matters that are adverse to the Debtors or otherwise related directly to these Chapter 11 Cases. The Debtors and Exelon have consented to McDermott’s representation. Out of an abundance of caution, McDermott has imposed an ethical wall such that McDermott professionals presently representing Exelon are unable to access documents or files relating to McDermott’s representation of the Debtors, and vice versa.

35. Raima Jamal currently serves as the Debtors’ General Counsel. From January 2017 through May 2017, Ms. Jamal was a legal intern at McDermott as part of the “Semester in Practice” program hosted by Ms. Jamal’s law school, the Elisabeth Haub School of Law at Pace University. Ms. Jamal did not receive any financial compensation from McDermott in connection with this internship.

36. In September 2019, Stacy Lutkus joined McDermott as counsel in the New York office. Ms. Lutkus was employed as a law clerk in the United States Bankruptcy Court for the Southern District of New York from April 2009 through January 2016. Ms. Lutkus was first employed in the chambers of the Honorable James M. Peck, from April 2009 through January 2014. When Judge Peck resigned from the bench in January 2014, Ms. Lutkus remained employed by the court working on Judge Peck's former caseload, which was split between the Honorable Shelley C. Chapman and the Honorable Robert Grossman (visiting). Upon the swearing in of the Honorable James L. Garrity, Jr. in February 2015, Ms. Lutkus began working in his chambers while continuing to work on the Lehman Brothers chapter 11 and SIPA liquidation cases with Judge Chapman. Ms. Lutkus resigned from employment with the Court on January 15, 2016.

37. McDermott currently represents Briarcliff Property Group LLC ("Briarcliff"), which is not a Debtor in these Chapter 11 Cases. Agera Energy LLC is the sole member of Briarcliff. Briarcliff owns and manages the real property used for the Debtors' headquarters in Briarcliff Manor, New York. Agera Energy LLC, energy.me midwest llc, and Aequitas Energy, Inc. incur monthly rent obligations to Briarcliff.

B. Other Disclosures

38. McDermott has a long-standing policy prohibiting attorneys and employees from using confidential information that may come to their attention in the course of their work. In this regard, all McDermott attorneys and employees are barred from trading in securities with respect to which they possess confidential information.

39. Finally, certain interrelationships exist among the Debtors. Nevertheless, the Debtors have advised McDermott that the Debtors' relationships to each other do not pose any conflict of interest because of the general unity of interest among the Debtors. Insofar as I have

been able to ascertain, I know of no conflict of interest that would preclude McDermott's joint representation of the Debtors in these Chapter 11 Cases.

AFFIRMATIVE STATEMENT OF DISINTERESTEDNESS

40. Based on the conflicts search conducted to date and described herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) McDermott is a "disinterested person" within the meaning of Bankruptcy Code section 101(14), as required by Bankruptcy Code section 327(a), and does not hold or represent an interest adverse to the Debtors' estates and (b) McDermott has no connection to the Debtors, their creditors, or other parties in interest, except as may be disclosed herein.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 16, 2019

Respectfully submitted,

/s/ Darren Azman
Darren Azman
Partner, McDermott Will & Emery LLP

Schedule 1

LIST OF SCHEDULES

<u>Schedule</u>	<u>Category</u>
1(a)	Debtors
1(b)	Directors, Officers, and Managers
1(c)	Top Customers ¹
1(d)	Equity Security Holders
1(e)	Bank, Lender, and UCC Lien Parties
1(f)	Insurance Companies
1(g)	Employee Benefits Providers
1(h)	Top 30 Creditors
1(i)	Counterparties to Contracts
1(j)	Utility Providers
1(k)	Pipelines (Utilities) and Distribution Companies
1(l)	Third Party Sales Agents
1(m)	Lessors of Real Property
1(n)	Parties to Significant Litigation
1(o)	Debtors' Professionals
1(p)	Non-Debtor Affiliates
1(q)	United States Trustee and Court Personnel for the Southern District of New York (and Key Staff Members)

¹ McDermott searched the Debtors' top 143 electricity customers, representing approximately 40% of the Debtors' aggregate electricity volume and the Debtors' top 50 natural gas customers, representing approximately 20% of the Debtors' aggregate natural gas volume. Due to the sensitive and proprietary nature of this information, the Schedule of Top Customers as well as connections to such Customers will be provided solely to the office of the United States Trustee and counsel to the Committee.

Schedule 1(a)

DEBTORS

Aequitas Energy Inc.
Agera Energy LLC
Agera Holdings LLC
energy.me midwest llc
Utility Recovery LLC
Utility Solutions LLC

Schedule 1(b)

DIRECTORS, OFFICERS, AND MANAGERS

AGX Holdings LLC

Border Credit Advisors, LLC

Christa Miller

Geoffrey Duda

Greg E. Lindberg

Jeremy Schupp

Kevin Cassidy

Lloyd Sams

Mark Linzenbold

Michael Nordlicht

Michael Olowin

Steve Laker

Todd Sandford

Schedule 1(c)

TOP CUSTOMERS²

² McDermott searched the Debtors' top 143 electricity customers, representing approximately 40% of the Debtors' aggregate electricity volume and the Debtors' top 50 natural gas customers, representing approximately 20% of the Debtors' aggregate natural gas volume. Due to the sensitive and proprietary nature of this information, the Schedule of Top Customers as well as connections to such Customers will be provided solely to the office of the United States Trustee and counsel to the Committee.

Schedule 1(d)

EQUITY SECURITY HOLDERS

AGH Parent, LLC
AGH Supplemental LLC
Effingham, LLC
Eli Global LLC

Schedule 1(e)

BANK, LENDER, AND UCC LIEN PARTIES

Bainbridge Energy Finance Fund LLC
BAM Administrative Services LLC
BP Energy Company
Brooklyn Union Gas Company d/b/a National Grid
Clear Choice Energy LLC
Colorado Bankers Life Insurance Company
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Dell Financial Services L.L.C.
Dominion East Ohio
First National Bank of Central Texas
Keyspan Gas East Corporation d/b/a National Grid
Marbridge Energy Finance Fund II LLC
Marbridge Energy Finance Fund LLC
Massachusetts Electric Company d/b/a National Grid
Montage Holdings Group, LLC
Nantucket Electric Company d/b/a National Grid
National Fuel Gas Distribution Corporation of NY
National Fuel Gas Distribution Corporation of PA
Niagara Mohawk Power Corporation d/b/a National Grid
Orange & Rockland Utilities, Inc.
Principal Growth Strategies LLC
VAR Resources LLC

Schedule 1(f)

INSURANCE COMPANIES

Aon Risk Services of Florida, Inc.
Beazley Insurance Company
Berkeley Insurance Company
Evanston Insurance Company
Liberty Surplus Insurance Company
Lloyd's of London
Markel Insurance Company
MetLife
StarStone Insurance
Zurich

Schedule 1(g)

EMPLOYEE BENEFITS PROVIDERS

Guardian Life Insurance Co.
Oxford Health Plans LLC
United Healthcare Inc.
Vision Service Plan
Voya Financial

Schedule 1(h)

TOP 30 CREDITORS

Affiliated Power Purchasers International LLC (APPI Energy)
Kinect Energy Inc
Bretton Daniel DeNomme
Citizens Enterprises Corporation
Connecticut Public Utilities Regulatory Authority
CVI CleanCapital Solar 2 LLC
Eric Wyman
Kandi Perry
Massachusetts Department of Public Utilities
New Hampshire Public Utilities Commission
New Jersey Board of Public Utilities
New York State Energy Research and Development Authority
California Public Utilities Commission
Pennsylvania Public Utilities Commission
Public Service Commission of Maryland
Rhode Island Public Utilities Commission
Teleios Commodities, LLC
Washington D.C. Office of Finance and Treasury

Schedule 1(i)

COUNTERPARTIES TO CONTRACTS

ADP TotalSource, Inc.
Algonquin Gas Transmission, LLC
ANR
Beacon Global Solutions
Cablevision Lightpath, Inc.
CCH Incorporated
Columbia Gas Transmission, LLC
Columbia Gulf Transmission
Connecticut Light and Power Company DBA Eversource
Delmarva Power
Dewey & LeBoeuf LLP
Dominion Transmission, INC.
Empire Pipeline
Energy Services Group
Everbank Commercial Finance, Inc.
Exelon Business Service Company Legal Services
Florida Gas Transmission
IPFS of New York
Iroquois Gas Transmission System
Millennium Pipeline Company, LLC
National Grid NY
New York State Electric & Gas Corp.
Nexus Gas Transmission, LLC
Panhandle Eastern Pipeline
Portland Natural Gas Transmission System
Rockies Express Pipeline LLC
South Jersey Gas
Status Labs
Tableau Software, Inc.
Teleios Commodities
Texas Eastern Transmission
TransCanada Pipelines Limited
Transcontinental Gas Pipeline
Trunkline Gas Company LLC
Union Gas Limited
VAR Technology Finance
Wolters Kluwer

Schedule 1(j)

UTILITY PROVIDERS

Answer Connect
Automated Control Logic, Inc
Burke Heat
Clear Water
Con Edison
JP McHale Pest Management
SMG Services, LLC
Sonitec Security Systems
Suburban Carting Co
Tarry Fuel Oil Co, Inc
Verizon
Village of Briarcliff Manor Water Fund

Schedule 1(k)

PIPELINES (UTILITIES) AND DISTRIBUTION COMPANIES

AEP - Columbus Southern Power
AEP - Ohio Power
AEP Texas Central Company d/b/a AEP Texas
Ameren Services Company
Atlantic City Electric
Baltimore Gas & Electric
CenterPoint Energy Houston Electric
Central Hudson Gas & Electric
Central Maine Power
Commonwealth (Nstar)
Commonwealth Edison
Con Edison Company New York
Delmarva Power & Light
Dominion East
Duke Energy Ohio
Duquesne Light Company
Elizabethtown Gas
Emera (fka Bangor Hydro Electric)
Exelon Business Service Company
FirstEnergy
Jersey Central Power & Light Company
Liberty Utilities (fka NationalGrid - Granite State Electric Company)
Liberty Utilities (fka NationalGrid - NH)
Metropolitan Edison Company
Nat Grid - Keyspan LI (Lilco) (Long Island Gas)
Nat Grid - Keyspan NY (BUG) (Metro NY Gas)
National Fuel Gas Distribution Corporation
NationalGrid - Massachusetts Electric
NationalGrid - Nantucket Electric
NationalGrid - Narragansett
NationalGrid - Rhode Island
NationalGrid - Boston
NationalGrid- Colonial Gas
NationalGrid- Essex
New Hampshire Electric Co-op
New York State Gas & Electric
New York State Gas & Electric (DTI and TCO Pools)
Nicor Gas
NIMO (Upstate New York)
NJ Natural Gas Company
Northeast Utilities - PSNH
NStar - Boston Edison

NStar - Cambridge Electric
NStar - Commonwealth Electric
NU - Connecticut Light & Power
NU - Western Massachusetts Electric
Ohio Edison Company
ONCOR Electric Delivery
Orange-Rockland Utilities - NY
Pacific Gas & Electric Company
PECO Energy Gas Company
Penelec
Pennsylvania Power and Light
Pennsylvania Power Company
Pike County Light and Power
Potomac Edison (Fka Allegheny Power)
Potomac Electric Power Company
Potomac Electric Power Company
PSEG Long Island
Public Service Electric & Gas Company
Rochester Gas & Electric
Rockland Electric Company
San Diego Gas & Electric
Sharyland Utilities, L.P.
South Jersey Gas
Southern California Edison
Supplier Relations Potomac Electric Power Company
Texas New Mexico Power Company
The Cleveland Electric Illuminating Company
The Dayton Power and Light Company
The Illuminating Company
The Potomac Edison Company
The Toledo Edison Company
The United Illuminating Company
UGI Utilities, Inc.
Unitil - Fitchburg Gas and Electric Light Company
Unitil - Unitil Energy Systems
Washington Gas (MD)
West Penn Power (Fka Allegheny Power)

Schedule 1(I)

THIRD PARTY SALES AGENTS³

³ Due to the sensitive and proprietary nature of this information, the Schedule of Third Party Sales Agents as well as connections to such Third Party Sales Agents will be provided solely to the office of the United States Trustee and counsel to the Committee.

Schedule 1(m)

LESSORS OF REAL PROPERTY

Continental/North Shore II, L.P.
Regus Management Group, LLC

Schedule 1(n)

PARTIES TO SIGNIFICANT LITIGATION

Federal Home Loan Mortgage Company
Frank DeMaio
Hill Management Services
James Donnelly
Lauren Carney

SCHEDULE 1(o)

DEBTORS' PROFESSIONALS

Bevan, Mosca & Giuditta, P.C.
Davis Wright Tremaine LLP
Ellison Schneider Harris & Donlan LLP
GlassRatner Advisory & Capital Group LLC
Goodman Law Group
GreeneHurlocker, PLC
Hawke McKeon & Sniscak LLP
Jay Winston PC
Law Offices of Gerard T. Fox
Levun, Goodman & Cohen LLP
Miller Buckfire & Co., LLC
Robinson & Cole LLP
Stifel Financial Corp.
Stretto

SCHEDULE 1(p)

NON-DEBTOR AFFILIATES

Briarcliff Property Group LLC

SCHEDULE 1(q)

**UNITED STATES TRUSTEE AND COURT PERSONNEL FOR THE
SOUTHERN DISTRICT OF NEW YORK (AND KEY STAFF MEMBERS)**

Judges - Southern District of New York

Hon. Cecelia G. Morris
Hon. Stuart M. Bernstein
Hon. Shelley C. Chapman
Hon. Robert D. Drain
Hon. James L. Garrity Jr.
Hon. Martin Glenn
Hon. Robert E. Grossman
Hon. Sean H. Lane
Hon. Mary Kay Vyskocil
Hon. Michael E. Wiles

Office of the United States Trustee – Manhattan Office

Linda A. Riffkin
Susan Arbeit
Benjamin J. Higgins
Brian S. Masumoto
Richard C. Morrissey
Serene Nakano
Andrea B. Schwartz
Paul K. Schwartzberg
Shannon Scott
Andy Velez-Rivera
Greg M. Zipes

Schedule 2

EXHIBIT 1 – CURRENT¹ CLIENTS²

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a McDermott Client
ADP TotalSource	ADP TotalSource Inc.
AEP – Columbus Southern Power; AEP – Ohio Power; AEP – Texas Central Company	American Electric Power Service AEP (American Electric Power)
Agera Energy LLC	Briarcliff Property Group LLC
Ameren Services Company	Ameren
Amneal Pharmaceuticals of New York, LLC	Amneal Pharmaceuticals Inc.
Central Maine Power	Avangrid Renewables, LLC
Clear Choice Energy LLC	BAE Systems Land & Armaments, L.P.Ba
Colorado Bank Life Insurance Company	Global Bankers Insurance Group
Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania	NiSource Inc.
Con Edison Company New York	Consolidated Edison, Inc.
Davis Wright Tremaine LLP	Davis Wright Tremaine LLP
Duke Energy Ohio	Duke Energy Corp.
Eli Global LLC	Global Bankers Insurance Group (GBI Group, LLC)
Emera (FKA Bangor Hydro Electric)	Emera Sas
Evanston Insurance Company	Markel Syndicate Management Ltd.
Exelon Business Service Company; PECO Energy Gas Company	Exelon Corporation
FirstEnergy	FirstEnergy Corporation
GlassRatner Advisory & Capital Group	B. Riley Financial, Inc.
Guardian Life Insurance Co.	The Guardian Life Insurance Company of America
Liberty Surplus Insurance Company	Liberty Mutual Insurance

¹ The term “current client” means a client to whom time was posted in the 12 months preceding the Petition Date.

² McDermott may currently represent or have previously represented certain affiliates of the entities disclosed herein, and the disclosure is accordingly broad in scope.

Liberty Utilities (fka NationalGrid - Granite State Electric Company)	Algonquin Public Utilities Company
MetLife	Metropolitan Life Insurance Company
Oxford Health Plans LLC; United Healthcare Inc.	Surgical Care Affiliates New York Proton Management, LLC
Pacific Gas & Electric Company	Pacific Gas & Electric (PG&E)
Pennsylvania Power and Light; Pennsylvania Power Company	Talen Energy Corporation
Southern California Edison	Edison Energy, LLC Southern California Edison
The Dayton Power and Light Company	The AES Corporation
Verizon	Verizon Wireless, Inc. Verizon UK Limited Frontier West Virginia, Inc.
Wolters Kluwer	Wolters Kluwer

EXHIBIT 2 – FORMER³ CLIENTS

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a McDermott Client
ADP TotalSource	ADP Human Resources Services (Shanghai) Co., Ltd.
Commonwealth (Nstar) Connecticut Light and Power Company DBA Eversource	Eversource Energy
Duke Energy Ohio	Duke Energy Trading and Marketing LLC
Liberty Surplus Insurance Company	Liberty Life Assurance Company
Northeast Utilities - PSNH	Eversource Energy
Pennsylvania Power and Light; Pennsylvania Power Company	PPL EnergyPlus, LLC
Verizon	Verizon Communications, Inc.

³ The term “former” client means a client to whom time was posted between 12 and 36 months preceding the Petition Date, but for whom no time has been posted in the 12 months preceding the Petition Date.

EXHIBIT 3 – CLOSED CLIENTS⁴

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a McDermott Client
Atlantic City Electric; Potomac Electric Power Company	Pepco Holdings, Inc.
BP Energy Company Inc.	British Petroleum
CCH, Incorporated	Wolters Kluwer
Clear Choice Energy LLC	BAE Urban Economics
ONCOR Electric Delivery	San Diego Gas & Electric
Oxford Health Plans LLC; United Healthcare Inc.	United Health Group, Inc.
San Diego Gas & Electric	San Diego Gas & Electric
Voya Financial	Voya Financial, Inc.
Zurich	Zurich North America Insurance

⁴ The term “closed client” means a client to whom time was posted in the 36 months preceding the Petition Date, but for which the client representation has been closed.

Exhibit 1

Engagement Letter



mwe.com

Darren Azman
Attorney at Law
dazman@mwe.com
+1 212 547 5615

May 3, 2019

Via E-Mail

Agera Energy
555 Pleasantville Road, S-107
Briarcliff Manor, New York 10510
New York, NY 10279
Attention: Raima Jamal, General Counsel
Email: rjamal@ageraenergy.com

Re: Engagement

Dear Raima:

Thank you for selecting McDermott Will & Emery LLP (“McDermott”) to represent Agera Energy (“Agera”) with issues in connection with a potential financial restructuring. McDermott is a limited liability partnership registered in the State of Illinois. The terms of our representation are set forth in this letter and in the Additional Terms of Engagement (“Additional Terms”) that accompany this letter. Our attorney-client relationship will commence when Agera and McDermott have agreed to the material terms of our engagement. I will be principally responsible for services provided to Agera. As circumstances warrant, other lawyers or non-lawyer professionals will be assigned to work on Agera’s matters.

It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Our fees reflect the value of our services and are based on hourly billing rates that take into account the complexity of the matter, the skill and experience required to perform the services, the time constraints imposed by the circumstances, the size of the matter, and the efficiencies we bring to bear on the matter, among other factors. As a result, a professional’s rate may vary from one assignment to another. My time for this matter will be billed at \$875.00 per hour. The rates of those who may work on your matters range from \$115.00 to \$325.00 for non-lawyer professionals, \$250.00 to \$720.00 for associates, and \$500.00 to \$1,190.00 for partners. Our time is ordinarily recorded in quarter-hour increments. Our rates are reviewed at least annually and may be increased during the course of our representation of Agera.

**McDermott
Will & Emery**

340 Madison Avenue New York NY 10173-1922 Tel +1 212 547 5400 Fax +1 212 547 5444
US practice conducted through McDermott Will & Emery LLP.

In order to avoid misunderstandings concerning potential conflicts of interest, it is our policy to clarify the identity of our clients and the circumstances under which we may represent other clients with interests which are or may be adverse to Agera. Our representation of Agera does not extend to Agera's parents, subsidiaries, employees, officers, directors, shareholders, partners, members, entities in which you own an interest (even a substantial interest), beneficiaries or other affiliates.

McDermott represents, and in the future will represent, many other clients. During the time we are working for Agera, one or more existing or future clients may ask McDermott to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to Agera's interests. By entering into this engagement, Agera agrees that McDermott can accept all such representations, even if the other client's interests are or may become directly adverse to Agera's interests, unless the matter is substantially related to a matter in which we are representing Agera, or will require disclosure of Agera's confidential information. (All such representations are referred to as "Permitted Representations".) Agera waives all actual and potential conflicts of interest that might exist because of any Permitted Representations undertaken by McDermott, and will not assert that any engagement of McDermott for Agera is a basis to challenge or to disqualify McDermott from undertaking or continuing any Permitted Representation.

Agera will provide a security retainer in the amount of \$35,000.00. This retainer, and any similar retainers advanced in the future, will be deposited in an interest-bearing client trust account (or, if in our judgment the retainer is nominal, interest earned may be for the benefit of a charitable organization designated by applicable state law), and will remain Agera's property until applied for services rendered or expenses incurred. We will bill monthly, and will apply the retainer to credit Agera's legal fees and expenses incurred in the last month for which we perform services on this matter. If the retainer proves insufficient to cover current fees and other charges on a regular basis, we may ask Agera to replenish or increase it, and Agera agrees to do so if asked. Please complete and return the enclosed Form W-9 with Agera's retainer check. Any portion of the retainer which is unused at the conclusion of the engagement will be returned to Agera.

Unless we are otherwise instructed by Agera in writing at or prior to the completion of the matter for which Agera has engaged us, we may, after a reasonable period of time has passed, at our discretion, destroy all documents and data (including hard copies, electronically stored information and any other data stored on other forms of media) and any other materials that we have stored or otherwise remain in our possession relating to a matter for which our services have been completed or terminated.

When we complete the services Agera has retained us to perform, our attorney-client relationship will be terminated. If Agera later retains us to perform further or additional services, our attorney-client relationship will be revived subject to these terms of engagement unless we change the terms in writing at that time.

In the event that a dispute arises between us relating to our fees, you may have the right to arbitration of the dispute pursuant to Part 137 of the Rules of the Chief Administrator of the Courts of New York State, a copy of which will be provided to you upon request.


Accompanying this letter are the Additional Terms, which are incorporated herein. If Agera has questions concerning any of the information presented here, or should Agera have a concern or question at any time during our representation, please call me.

Agera Energy
May 3, 2019
Page 3

Agera has the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, Agera is confirming that Agera understands and accepts all of the terms set forth in this letter and in the Additional Terms and that this letter has been signed by Agera voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. Agera intends for its consent to be effective and fully enforceable and to be relied upon by McDermott in accepting the representation of Agera. Agera agrees and acknowledges that in the case of inconsistency between Agera's outside counsel guidelines, proposed terms, or billing instructions and the terms of this engagement letter, this engagement letter takes precedence and controls the terms of our engagement. These terms may not be modified unilaterally and any amendment or modification of these terms will be effective only upon execution of a writing signed by a person within Agera and within McDermott authorized to approve such changes.

Please sign and return to us the enclosed copy of this letter. Note that Agera's request to McDermott to proceed, or acquiescence in McDermott proceeding, will constitute Agera's full acceptance of the terms set forth herein and in the attached.

Sincerely,


Darren Azman

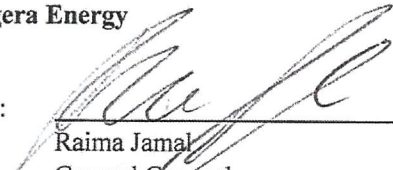
DA/mm
Attachment

Agera Energy
May 3, 2019
Page 4

Agreed to and accepted (including the Additional Terms):

Agera Energy

By:



Raima Jamal
General Counsel

Date:

5/3/19

ADDITIONAL TERMS

This document sets forth McDermott Will & Emery LLP's additional standard terms of engagement for providing legal services. These terms are an integral part of our agreement with you. You should review this document carefully and retain it for your files. If you have any questions, please contact us promptly.

OUR SERVICES TO YOU ~ In our engagement letter with you, we specify the matter in which we will be representing you. It is important that you have a clear understanding of the legal services we will provide. If at any time you have questions regarding the scope of our services, please communicate with your principal contact at the Firm.

We will represent you zealously and act on your behalf to the best of our ability. Whenever we provide you with an expression regarding the potential outcome of your matter, we will use our best professional judgment. However, we cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is limited by our knowledge of the facts and based on the law at the time. It is also subject to any unknown or uncertain factors or conditions beyond our control.

WHO IS OUR CLIENT? ~ It is our policy to represent only the person or entity identified in our engagement letter. Unless specifically stated to the contrary in that letter, our representation of you does not extend to any of your affiliates.

For example, if you are a corporation, our representation does not include any of your parents, subsidiaries, employees, officers, directors, shareholders, or any entities in which you own an interest (even a substantial interest). If you are a partnership, our representation does not extend to the individual partners of the partnership. If you are a trade association, our representation excludes members of the trade association. If you are an individual, our representation does not include your spouse, siblings, or other family members, successors in interest, or any entities in which you own an interest (even a substantial interest). If you are a trustee or other fiduciary, our representation does not include beneficiaries or other persons to whom you owe a duty.

When we deal with a representative or agent of an entity, we represent only the entity and not the representative or agent.

The advice and communications which we render on your behalf are not intended to be disseminated to or relied upon by any other parties without our written consent. We sometimes include a specific disclaimer in correspondence or other work product to this effect, but the absence of such a disclaimer does not create an exception or otherwise entitle others to rely on our work or advice.

FEE ESTIMATES ~ Clients frequently ask us to estimate the total fees and other charges they are likely to incur in connection with a particular matter. We are pleased to respond to such requests whenever possible with an estimate based on our professional judgment. This estimate always carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

OTHER CHARGES ~ As an adjunct to providing legal services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. When we incur such charges on your behalf or charge for such ancillary support services, we will include them in our billing statements. These charges may include, among other things, telephone, messenger, courier, express delivery services, facsimile communications

(which typically include a per page charge in addition to the cost of the telephone usage), document printing, reproduction, scanning and imaging, data storage and processing (which typically include per gigabyte charges based on the volume of data), filing fees, deposition and transcript fees, witness fees, travel expenses, computer research, and charges by outside experts and consultants. Certain of these services, particularly those that involve significant technology and/or support services such as imaging and storing electronic data and documents and the use of specialized software for legal research and data processing, may be provided by McDermott at a profit.

It is our general policy to arrange for outside providers of services (such as the fees of outside consultants, expert witnesses and court reporters) to bill you directly. You agree to pay those bills promptly and to provide us notice that such payment has been made.

BILLING ARRANGEMENTS, TERMS OF PAYMENT AND RETAINERS ~ We will bill you on a regular basis—normally, each month—for both fees and other charges. You agree to make payment upon receipt of our statement.

Sometimes we ask for an advance retainer which will be credited towards your legal fees and expenses on a monthly basis, unless we agree to a different arrangement. If the retainer proves insufficient to cover current fees and other charges on a regular basis, we may ask you to replenish or increase it, and you agree to do so if asked.

Should your account become delinquent and satisfactory payment terms are not arranged, we may withdraw, or seek to withdraw, from the representation consistent with the applicable rules and pursue collection of the amounts owed. You will remain responsible for payment of our legal fees rendered and charges incurred prior to such withdrawal.

We look to you, the client, for payment regardless of whether you are insured to cover the particular risk or have the right to be reimbursed from someone else. You are responsible to pay us in accordance with the terms agreed to in this engagement, even if you engage us to collect or seek reimbursement from an insurer or other third party pursuant to contracts, statutes or insurance policies.

TERMINATION ~ You may terminate our representation at any time, with or without cause, by notifying us, and subject to court approval when required for matters in litigation. We will return your papers and other property to you promptly upon receipt of your request for those materials unless they are subject to a lien under applicable law. We will retain our own files pertaining to the matter or case, including our drafts, notes, internal memos, and work product. Your termination of our services will not affect your responsibility for payment of legal services rendered and other charges incurred before termination and in connection with an orderly transition of the matter.

We have the right to withdraw from our representation of you if, among other things, you fail to honor the terms of our engagement letter and/or the Additional Terms, you fail to make payment of any of our statements in a timely manner, you fail to cooperate or to follow our advice on a material matter, or any fact or circumstance occurs that would, in our view, render our continuing representation unlawful or unethical, or we determine that we are otherwise permitted under applicable law and rules to withdraw from the representation. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further services, including the execution of any documents necessary to complete our withdrawal. Notwithstanding such termination, you will remain obligated to pay us for all services provided and to reimburse us for all costs and expenses paid or incurred on your behalf, including those required for the orderly transition of the engagement.

Our representation of you will be considered terminated at the earlier of (a) your termination of our representation and the completion of any work that may be required incidental to withdrawal from an ongoing matter, such as

work that is appropriate to accomplish an orderly transition to other counsel, work required to obtain permission to withdraw from a court or other tribunal, and work that is required to be performed prior to the time that such permission is granted, (b) our withdrawal from our representation of you or (c) the completion of our work for you. In addition, in the event there has been no work performed by us on your behalf for six consecutive months, and no more work is contemplated, our attorney-client relationship will have been terminated.

PRIVILEGE ~ Our communications to and from you, including billing statements, may include attorney client privileged information or attorney work product. You should take reasonable steps to protect them from disclosure to third parties so as to maintain those privileges and protections.

McDERMOTT'S PRIVILEGE ~ From time to time, issues may arise that raise questions as to our duties to you. We believe that it is in our clients' interest, as well as McDermott's interest, that in the event legal ethics or related issues arise during a representation, we receive experienced legal advice concerning our obligations. Accordingly, you agree that if we determine in our sole discretion during the course of the representation that it is necessary or appropriate to consult with McDermott lawyers designated to render legal advice to McDermott and its lawyers or to consult with outside lawyers, we have your consent to do so and any communications among lawyers working on the matter and McDermott lawyers or outside lawyers designated to render legal advice to McDermott and its lawyers will be privileged.

SECURE COMMUNICATIONS ~ Our email server is configured to encrypt emails if your email system supports it. We recommend that encryption be used to protect communications with us that include confidential information. You should discuss with your principal contact at the Firm any special measures that you require regarding email encryption. In addition, the Firm has available solutions to facilitate our collaboration and document sharing with you that we can discuss with you when appropriate. If you prefer to use a solution other than those provided by the Firm, we recommend that you carefully assess the data security offered by that solution. We discourage you from using text, instant messaging or similar programs to communicate with us. These forms of communication may not be encrypted and may be vulnerable to interception.

ANTI-BRIBERY AND ANTI-CORRUPTION ~ We do not engage in bribery or corruption of any kind, and do not tolerate bribery or corruption by others to further the goals and objectives of our representations. We reserve the right to terminate our engagement if we learn of such improper conduct.

EUROPEAN UNION DATA PROTECTION ~ In providing legal services in the United States, we may receive from you data which relates to an identified or identifiable individual in the European Union ("Personal Data"). To the extent applicable to us, we will comply with the provisions of the General Data Protection Regulation (EU) 2016/679 as well as any implementing, amending or supplemental regulation under Member State data protection laws ("Data Protection Laws") as an independent data controller (i.e. as between you and us, we will each separately be responsible for our own processing of any Personal Data). You shall ensure that any Personal Data that you or the individuals you provide or make available to us and/or to third party advisors we may engage on your behalf in connection with the services provided in connection with this engagement ("Personal Information") is provided in compliance with Data Protection Laws and any other data protection or privacy laws that apply to you.

To the extent that you seek to defend or settle any claim in relation to Personal Information which we are, or may in the future be, fully or partially responsible or liable for, under Data Protection Laws, you shall keep us fully informed on a timely basis of such claim and shall take reasonable steps to mitigate the liability to you and us in relation to such claim.

Our Privacy Policy, available at www.mwe.com, will apply to all Personal Information. For the sake of clarity, please do not hesitate to refer individuals whose Personal Information that you provide to us to our Privacy Policy.

As an international law firm, we may transfer data internationally. If your work is being handled by any McDermott Will & Emery entity outside the United States, any Personal Information will also be handled in accordance with the Privacy Policy and also the law which applies in the jurisdiction of that McDermott Will & Emery entity.

Under Data Protection Laws and subject to any contrary legal or regulatory provisions, any individual or other third party that is the subject of Personal Data, has the right to access, modify, limit, transfer or delete the Personal Information, if any, and to object to the processing of Personal Information for any legitimate and compelling reasons as described in the Privacy Policy. We will comply with such request in so far as we are able under the Data Protection Laws and other laws and binding regulatory guidance to which we are subject. All correspondence in relation to data protection, including any request to exercise rights under the Data Protection Laws, should be in writing to your principal contact at the firm.

We may use the Personal Information that you provide to contact you or appropriate persons within your organization about our legal services that may be of interest to you or your organization. This may include legal updates, seminars, and/or hospitality events. If at any time you or any member of your organization no longer wishes to receive this information directly from us, you or they should contact your principal contact at the firm and we will make sure you no longer receive the information.

(Last Revised 8/2018)

Tax Form Federal W-9
(Rev. December, 2011)

To connect to the latest PDF version of Form W-9 at IRS.gov, **click** on the following link while holding down the **Ctrl** key:

<http://www.irs.gov/pub/irs-pdf/fw9.pdf?portlet=3>

Click OK at the warning prompt confirming you would like to open the file.

Please DO NOT complete this form on-line with client information. You can print the blank form, and the form can be saved separately from the engagement letter (you may wish to associate it with the engagement letter in DeskSite).

*After you connect to the web site,
you may close this document if you are finished using it.*

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