

MCDERMOTT WILL & EMERY LLP

Timothy W. Walsh

Darren Azman

Ravi Vohra

340 Madison Avenue

New York, New York 10173

Telephone: (212) 547-5615

Facsimile: (212) 547-5444

*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-_____ (____)
)	
Debtors.)	(Joint Administration Requested)
_____)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING AND
DIRECTING ASSUMPTION OF THE RESTRUCTURING
SUPPORT AGREEMENT TERM SHEET**

Agera Energy LLC and the above-captioned debtors, as debtors and debtors in possession in these chapter 11 cases (these "Chapter 11 Cases"), hereby submit this motion (the "Motion") for entry of an order (the "Order") pursuant to sections 105(a), 363(b), 363(c) and 365(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), and Rules 2002, 6004 and 6006(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), substantially in the form attached hereto as **Exhibit A**, authorizing and directing the Debtors to assume the binding Restructuring Support Agreement term sheet, dated October 3, 2019 (the

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); Aequis 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.

“RSA Term Sheet”),² between (a) BP Energy Company (“BP”), (b) Agera Energy, LLC, (c) Aequitas Energy Inc., (d) energy.me midwest llc d/b/a energy.me (collectively, the “Agera Opco Entities”), (e) Agera Holdings, LLC (“Agera Holdco”), (f) Briarcliff Property Group, LLC (“Briarcliff”), (g) Utility Recovery LLC (“Utility Recovery”), and (h) Agera Solutions LLC (together with the Agera Opco Entities, Utility Recovery, and Agera Holdco, the “Agera Parties” and, together with BP and Briarcliff, the “RSA Parties”). A copy of the RSA Term Sheet is attached as **Exhibit 1** to the Proposed Order. In support of this Motion, the Debtors rely upon 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* (the “First Day Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the 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 105(a), 363(b), 363(c) and 365(a), and Bankruptcy Rules 2002, 6004 and 6006(d).

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the RSA Term Sheet or the First Day Declaration, as applicable.

BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions 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. No trustee, examiner, creditors’ committee, 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 First Day Declaration, which is incorporated herein by reference.

THE RESTRUCTURING SUPPORT AGREEMENT

8. Prior to the Petition Date, the RSA Parties negotiated the RSA Term Sheet, which provides for, among other things, (i) the sale, pursuant to Bankruptcy Code section 363 (the “Sale”) of certain of the Debtors’ assets (the “Assets”), pursuant to a Stalking Horse APA, followed by a chapter 11 plan of liquidation (the “Plan”); (ii) the distribution of the net proceeds realized from the Sale as provided by the RSA; (iii) the liquidation and distribution of proceeds from the claims, causes of action, and avoidance actions through a litigation trust (the “Litigation Trust”); and (iv) the funding of such wind-down efforts ((i) through (iv), collectively, the “Restructuring”).

9. Under the RSA Term Sheet, BP and the Agera Parties agreed to support and take all reasonable actions necessary to facilitate the implementation and consummation of the Restructuring in accordance with the terms of the RSA Term Sheet in a timely manner. Through

this Motion, the Debtors seek authorization and direction to assume the RSA Term Sheet, but not approval of the underlying transactions contemplated by the Restructuring.

10. The Debtors believe that the Restructuring represents the best and most value-maximizing path for the Debtors, their estates, and all stakeholders. The RSA Term Sheet ensures key stakeholder support for the Restructuring, which permits the Debtors to sell their Assets while the Debtors' businesses continue uninterrupted.

11. The Debtors believe that assumption of the RSA Term Sheet will provide important structure and stability to these Chapter 11 Cases and a framework for the confirmation and consummation of the Liquidating Plan. Pursuing the Restructuring contemplated in the RSA Term Sheet allows the Debtors to avoid any negative consequences that would result from a "free fall" into bankruptcy and allows the Debtors to accomplish the Sale in an expeditious manner in order to preserve value for all of the Debtors' stakeholders.

12. The RSA Term Sheet is the product of good faith and arm's-length negotiations between the RSA Parties. Further, notwithstanding assumption of the RSA Term Sheet, confirmation and consummation of the Liquidating Plan and approval of the Sale, will remain subject to all requirements of law, including satisfaction of all the requirements set forth in Bankruptcy Code sections 363 and 1129, as applicable.

13. The Debtors believe that the Restructuring contemplated by the RSA Term Sheet provides the Debtors with the best opportunity to maximize value in these Chapter 11 Cases. Further, the obligations of the Debtors in the RSA Term Sheet are subject to a fiduciary out (described in more detail below), thus preserving the Debtors' flexibility to pursue an alternative value-maximizing transaction, should one arise.

Obligations of BP

14. The RSA Term Sheet contains an agreement by BP to take various actions, subject to the terms of the RSA Term Sheet and the limitations set forth therein, including the following principal obligations:

- a. allow the Agera Parties to use Cash Collateral, subject to the Approved Budget and the Permitted Variance during the Support Period;
- b. supply the Agera Parties with natural gas and electricity on credit pursuant to the DIP Financing;
- c. subject to the Approved Budget and the Permitted Variance, and so long as such payments are approved by the Court upon notice and hearing (if required), BP shall authorize the Agera Opco Entities to disburse (i) \$700,000.00 to fund the Key Employee Incentive Plan (the “KEIP”) and (ii) \$1,149,902.00 to fund a Key Employee Retention Plan (“KERP”). The KEIP shall be subject to the terms negotiated between BP and the Agera Parties.;
- d. support and not object to entry of the orders proposed in the Agera Parties’ first-day motions (which orders shall be acceptable to BP);
- e. support and not object to entry of the orders proposed for the approval of the retentions of the Agera Parties’ professionals (which orders shall be acceptable to BP);
- f. in good faith, negotiate the Definitive Documents, which shall be in form and substance consistent in all respects with this Term Sheet;
- g. consent to those actions contemplated by this Term Sheet or otherwise required to be taken to effectuate the Restructuring, including entering into all documents and agreements necessary to consummate the Restructuring; and
- h. support entry of orders approving the disclosure statement and confirming the Plan.

Obligations of the Agera Parties

15. In exchange for the DIP Financing and the use of Cash Collateral, the Agera Parties to take (or refrain from taking) various actions, subject to the terms of the RSA Term Sheet and the limitations set forth therein, including the following principal obligations:

- a. ratify and reaffirm the aggregate all amount owed to BP and ratify and acknowledge BP's first priority security interest the Collateral;
- b. grant BP (a) replacement liens on the Collateral, (b) perfected superpriority liens on all other unencumbered assets, and (c) junior liens on all encumbered assets subject to senior, valid, perfected and non-avoidable liens;
- c. grant BP a superpriority administrative claim, which shall be senior in priority and payment to all other obligations with respect to any diminution in value of the Collateral;
- d. upon execution hereof and consistent with the Negative Covenants, transfer all funds currently held in the bank account ending in 8804 at FNBCT (as defined below) to an existing Deposit Account or Collateral Account;
- e. subject to the Approved Budget and the Permitted Variance, make the following payments in cash in the following amounts:
 - i. payment of invoices relating to postpetition supply or hedges of natural gas and power (whether physically- or financially-settled) under the DIP Financing (including all interest relating thereto), in the amounts set forth in the invoices and otherwise in accordance with the terms of the Amended ISDA; and
 - ii. payment of adequate protection on all prepetition obligations of the Agera Opco Entities under the PSA and ISDA, whether in respect of power, gas or otherwise, on a bi-weekly basis, beginning on October 18, 2019, in an amount equal to the amount of funds remaining in the Collateral Accounts and Deposit Accounts after giving effect to payments required to be made under clause (a) above that exceeds \$10,000,000 until December 1, 2019, \$8,000,000 until January 1, 2020, \$6,000,000 until February 1, 2020, and \$3,000,000 throughout the remainder of the Support Period (collectively, the "Excess Amount Thresholds") (which payments shall be applied first to payment of the invoices relating to postpetition power supply under the DIP Facility, second to the payment of accrued interest on (A) the prepetition obligations of the Agera Opco Entity under the PSA and ISDA and (B) any other Transaction Document, at the applicable rate under the applicable Transaction Document, and third to the payment of the remaining prepetition obligations of the Agera Opco Entities under the PSA, ISDA and any other Transaction Document). The Excess Amount Thresholds may be revised from time to time, subject to agreement by BP and the Agera Parties, each in their sole discretion in accordance herewith. For the avoidance of doubt, the Excess Amount Thresholds shall not be less than the projected Carve-Out (as defined in the RSA Term Sheet) levels at any time.

- f. make payments in cash of all reasonable, documented professional fees and expenses of BP (the “BP Professional Fees”);
- g. provide a customary and full release and waiver of any and all claims or causes of action that could be provided under law or in equity against BP or its affiliates;
- h. (i) on or before the Petition Date, provide to the applicable ISO executed copies of all documentation and take all other actions (including the posting of required credit support) required to transfer BP’s obligations as the FRP in each of ERCOT, NYISO, ISO-NE, and MISO in respect of the Agera Parties’ load to the Agera Parties, (ii) use commercial best efforts to provide to PJM as soon as practicable after request from PJM or BP executed copies of all documentation and take all other actions that PJM requires to transfer BP’s obligations as an FRP in respect of the Agera Parties’ load to the Agera Parties, and (iii) on or before the Petition Date, provide to BP or the applicable ISO executed copies of all documentation requested by BP in connection with the maintenance by BP of any scheduling or other functions (including payment of ISO invoices on the applicable Agera Parties’ behalf in BP’s capacity as agent of the applicable Agera Parties) in respect of any of the Agera Parties’ load in any of ERCOT, NYISO, ISO-NE, PJM, MISO or CAISO;
- i. use commercially reasonable efforts to sell all remaining renewable energy credit inventory held by any Agera Party
- j. as promptly as practicable, initiate the sale of the Mortgaged Property (as defined below) and all other assets of the Agera Parties not contemplated to be sold pursuant to the In-Court Sale, including natural gas inventory and natural gas storage capacity; and
- k. provide copies to BP of all notices of non-compliance and other notices received by any Agera Party relating to the failure of any Agera Party to comply with any State renewable portfolio standards requirements.
- l. within thirty days after the Effective Date, Briarcliff shall grant BP a mortgage on the real property located at 555 Pleasantville Road, Briarcliff Manor, NY 10510 (such property, the “Mortgaged Property”), subordinate only to the existing mortgages in favor of the First National Bank of Central Texas (“FNBCT”), subject to FNBCT’s consent.

BP’s Termination Events

16. Upon three (3) business days’ written notice to the RSA Parties, during which time the Agera Parties may cure any BP Termination Event (as defined below), BP may

terminate this Term Sheet after the occurrence, and during the continuation of, any of the following events (each, a “BP Termination Event”):

- a. the Agera Parties fail to comply with an Approved Budget (including an Approved Budget as may be approved by the Bankruptcy Court after a hearing), subject to the Permitted Variance;
- b. the Agera Parties fail to comply with, satisfy, or achieve any of the Milestones (as defined below);
- c. the Agera Parties fail to provide BP with reasonable access to the Agera Parties’ books, records, and management through the Plan Effective Date;
- d. the Agera Parties file any pleading seeking authority to use cash collateral or to secure postpetition financing from any party other than BP, including financing that provides for super-priority claims or priming liens on any collateral of BP, in each case without BP’s consent in writing in its sole and absolute discretion;
- e. the Bankruptcy Court’s confirmation of a competing plan or approval of any transaction for the sale or disposition of any of the Agera Parties’ material assets that is inconsistent with the terms of the Restructuring;
- f. the Agera Parties’ material breach of any of their respective obligations in this Term Sheet, including covenants, representations, or warranties in this Term Sheet (it being acknowledged and agreed, without limiting any of the foregoing, that a breach by any Agera Party of any negative covenant set forth in this Term Sheet or a breach by any Agera Party of any of its obligations set forth in clauses (i) through (v) of the Affirmative Covenants section of this Term Sheet shall constitute a material breach for purposes of this BP Termination Event);
- g. the Agera Parties’ failure to comply with any material provision of any order entered by the Bankruptcy Court or an event of default exists under any order entered by the Bankruptcy Court;
- h. the occurrence and continuance of an Event of Default or Termination Event under the Amended ISDA (each as defined in the Amended ISDA);
- i. any of the Definitive Documents filed in the Chapter 11 Cases contains terms and conditions materially inconsistent with this Term Sheet;
- j. conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, appointment of a chapter 11 trustee, a responsible officer or an examiner with enlarged powers (beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of any of the Agera Parties, or dismissal of the Chapter 11 Cases;

- k. the Bankruptcy Court grants relief that is materially inconsistent with this Term Sheet or would reasonably be expected to materially frustrate the purpose of this Term Sheet;
- l. the Agera Parties file for approval of or otherwise support any plan, sale, or other transaction that is inconsistent with the Plan or the Restructuring;
- m. the Chapter 11 Cases or any other case by or against any Agera Party, whether voluntary or involuntary, under chapter 11 or chapter 7 of the Bankruptcy Code, are commenced prior to execution of the Stalking Horse APA;
- n. the allowance of administrative expense claims and priority claims against the Agera Parties that, in the aggregate, exceed all accruals and disbursements contemplated under the Approved Budget by \$1,000,000 or more;
- o. the Stalking Horse APA has been terminated prior to the closing thereunder and neither the Stalking Horse APA nor any other asset purchase agreement constituting a higher and better offer than the Stalking Horse APA for the purchase of any of the Agera Parties' assets is in full force and effect;
- p. the Court enters a final, non-appealable order denying confirmation of the Plan or declining to approve the disclosure statement;
- q. any Agera Party requests electricity or natural gas supply from BP after the Supply Termination Date;
- r. the Agera Opco Entities fail to comply with the Wind-Down Plan;
- s. as of any Weekly Reporting Date (i) the Net AP Value (as defined in the RSA Term Sheet) is higher than the Maximum Amount (as defined in the RSA Term Sheet), and (ii) within three (3) Business Days after such Reporting Date (as defined in the RSA Term Sheet), BP and the Agera Parties have not agreed, each in its sole discretion, on acceptable changes in the Approved Budget and the Maximum Amount to cure such shortfall; and
- t. the Agera Parties have failed to comply with their obligation to provide an AR Report and appropriate supporting information as of any Reporting Date.

The Agera Parties' Termination Events

17. Upon three (3) business days' written notice to the RSA Parties, during which time BP may cure any Agera Termination Event (as defined below), the Agera Parties may terminate this Term Sheet upon the occurrence, and during the continuation of, any of the following events (each, an "Agera Termination Event"):

- a. BP's material breach of any of its Post-Petition Sales obligations or its obligations set forth in clauses (i) through (v) of the Affirmative Covenants section of this Term Sheet; and
- b. the Agera Parties determine in good faith that continued performance under this Term Sheet would be inconsistent with the exercise of their fiduciary duties under applicable law; provided, however, that (i) the Agera Parties and their advisors may not, directly or indirectly, solicit, initiate, or knowingly encourage, or take any other action designed to facilitate, any inquiries or the making of any proposal that constitutes an alternative transaction that is materially inconsistent with this Term Sheet; (ii) prior to the Agera Parties terminating this Term Sheet to move forward with an alternative proposal, the Agera Parties shall provide BP with at least five (5) business days' written notice of the material terms and conditions of the proposed alternative proposal, during which time BP shall have a right of first refusal to match such alternative proposal; and (iii) the termination of this Term Sheet by any Agera Party to move forward with the alternative proposal shall constitute an event of default with respect to such applicable Agera Party under the Cash Collateral Orders that, following the expiration of a five (5) business day notice period, would terminate the right of the such applicable Agera Party to use or seek to use Cash Collateral and permit BP to exercise its rights and remedies in respect of the Cash Collateral.

Mutual Termination

18. The RSA Term Sheet may be terminated by mutual written agreement among the RSA Parties.

Milestones

19. The RSA Term Sheet contemplates the Restructuring will occur in accordance with the following Milestones (each of which may be waived in accordance with the terms of the RSA Term Sheet):

- a. No later than 3 calendar days following the Petition Date, the Court shall have entered an interim order approving the DIP Financing and use of Cash Collateral;
- b. No later than 14 calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving bidding procedures and stalking horse protections in connection with the In-Court Sale;
- c. No later than 17 calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving the RSA Term Sheet;

- d. No later than 28 calendar days following the Petition Date, the Bankruptcy Court shall have entered a final order approving the DIP Financing and use of Cash Collateral;
- e. No later than 31 calendar days following the Petition Date, the Agera Parties shall hold an auction in connection with the In-Court Sale, if applicable;
- f. No later than 32 calendar days following the Petition Date, the Bankruptcy Court shall hold the In-Court Sale hearing and enter an order by the Bankruptcy Court approving the In-Court Sale;
- g. No later than 60 calendar days following the Petition Date, the closing of the In-Court Sale shall occur;
- h. No later than December 31, 2019, the closing of the sale of the Mortgaged Property shall occur;
- i. No later than 135 calendar days following the Petition Date, the Agera Parties shall file a motion seeking the combined approval of the disclosure statement to the Plan and confirmation of the Plan; and
- j. No later than 180 calendar days following the Petition Date, the Bankruptcy Court shall enter an order approving the disclosure statement to the Plan and an order confirming the Plan.

Post-Confirmation Litigation Trust

The RSA Term Sheet also contemplates a trust known as the “Agera Litigation Trust” will be established pursuant to the Court’s order confirming the Plan. The Agera Litigation Trust shall be managed by a trustee (the “Litigation Trustee”) to be selected by BP.

RELIEF REQUESTED

20. By this Motion, the Debtors request that the Court enter an order, in substantially the form of the Proposed Order, authorizing the Debtors to assume the RSA Term Sheet and perform all obligations thereunder.

BASIS FOR REQUESTED RELIEF

A. Assumption of the RSA Term Sheet Constitutes a Sound Exercise of the Debtors' Business Judgment and Should be Approved

21. Bankruptcy Code section 365(a) provides that a debtor in possession, “subject to the court’s approval, may assume or reject an executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts reviewing a debtor’s decision to assume or reject an executory contract or unexpired lease apply a business judgment standard. *See In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2d Cir. 1993); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009) (“The business judgment standard is employed by courts in determining whether to permit a debtor to assume or reject a contract.”); *see also NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”) (citation omitted), *aff’d*, 465 U.S. 513 (1984).

22. Once “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Accordingly, so long as a debtor exercises “reasonable” business judgment, a court should approve the proposed assumption or rejection. *See, e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Group of Inst. Investors v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943); *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (“This Court has broad discretion to approve a settlement or compromise, and it should do so unless the proposed settlement falls below the lowest point in the range of reasonableness.”).

23. The Debtors' decision to assume the RSA Term Sheet is an exercise of their sound and reasonable business judgment after consultation with their legal and financial advisors. Assumption of the RSA Term Sheet will enable, not prohibit, the Debtors' fulfillment of their fiduciary obligations to maximize the value of their estates. The agreement set forth in the RSA Term Sheet positions the Debtors to maximize the value of the Debtors' estates for the benefit of the Debtors' stakeholders. By assuming the RSA Term Sheet, the Debtors will ensure that it is enforceable against BP, thus securing the benefit of the bargain the Debtors negotiated before the commencement of these Chapter 11 Cases. The RSA Term Sheet is the product of extensive, arm's-length and hard-fought negotiations among the RSA Parties, each of whom had separate, sophisticated legal counsel and financial advisors.

24. Importantly, the Debtors also negotiated and obtained the "fiduciary out," and the ability to respond to unsolicited proposals of any better alternative transaction, thereby preserving third parties' rights to propose alternative restructurings, to the ultimate benefit of the Debtors' creditors and estates.

25. Without the support of BP, the Debtors would likely have been forced to file these Chapter 11 Cases as a "free fall" bankruptcy, resulting in additional costs, complications, and potentially significant delays, each of which would have reduced stakeholder recoveries under any restructuring plan. By securing BP's support for the Restructuring contemplated by the RSA Term Sheet, the Debtors likely will avoid these potential complications because the RSA Term Sheet contemplates consummation of the Plan during an expedited chapter 11 process.

26. Based on the foregoing, the Debtors respectfully submit that they have exercised sound business judgment in deciding to assume the RSA Term Sheet. Accordingly, the Debtors request that the Court authorize the Debtors to assume the RSA Term Sheet.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

27. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

28. Nothing contained herein is intended nor should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' or any other party's rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. If this Court grants the relief sought herein, any payment made pursuant to this Court's order is not intended and should not be construed as an admission of the validity of any claim or a waiver of the Debtors' or any other party's rights to dispute such claim subsequently.

MOTION PRACTICE

29. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

NOTICE

30. The Debtors will provide notice of this Motion to: (a) the United States Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to BP; (d) counsel to Exelon Generation Company, LLC; (e) the Internal Revenue Service; (f) the United States Attorney 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

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

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing and directing the Debtors to assume the RSA Term Sheet and granting such other and further relief as the Court deems appropriate.

Dated: October 4, 2019
New York, NY

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

/s/ Darren Azman

Timothy W. Walsh

Darren Azman

Ravi Vohra

340 Madison Avenue

New York, NY 10173

Telephone: (212) 547-5615

Facsimile: (212) 547-5444

Email: dazman@mwe.com

rvohra@mwe.com

*Proposed Counsel to the Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

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

In re:

AGERA ENERGY LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 19-____ (____)
)

) (Jointly Administered)
)

) **Re: Docket No. __**
)

**ORDER AUTHORIZING AND DIRECTING THE DEBTORS
TO ASSUME THE RESTRUCTURING SUPPORT AGREEMENT TERM SHEET**

Upon the *Debtors' Motion for Entry of an Order Authorizing and Directing Assumption of the Restructuring Support Agreement Term Sheet* (the "Motion")², filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") for entry of an order (this "Order"), authorizing and directing the Debtors to assume the RSA Term Sheet; and upon the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 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; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has

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); Aequis 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 used but not defined herein have the meanings ascribed to such terms in the Motion, the RSA, or the First Day Declaration, as applicable.

been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, IT IS HEREBY FOUND AND DETERMINED THAT:

A. The terms and conditions of the RSA Term Sheet are incorporated as if fully set forth herein; provided, that nothing in this Order shall be, or shall be deemed or construed to be, findings or determinations with respect to (i) the Plan as contemplated in the RSA Term Sheet, (ii) the Stalking Horse APA; (iii) the Definitive Documents (except for the Motion and this Order), or (iv) any other chapter 11 plan of reorganization proposed in the Debtors’ Chapter 11 Cases.

B. The terms and conditions of the RSA Term Sheet are fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, are based on good, sufficient, and sound business purposes and justifications, and are supported by reasonably equivalent value and consideration. The RSA Term Sheet was negotiated in good faith and at arm’s length among the RSA Parties and their respective professional advisors.

C. The assumption of the RSA Term Sheet, and the performance and fulfillment of the respective obligations thereunder complies with the Bankruptcy Code and all other applicable statutes, laws, regulations, or orders and does not constitute the solicitation of a vote on a chapter 11 plan.

D. All parties in interest have been afforded a reasonable opportunity to object and be heard with respect to the Motion and the RSA Term Sheet and all of the relief granted herein.

In light of the foregoing, IT IS ORDERED that:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized and directed to assume the RSA Term Sheet, a copy of which is attached hereto as **Exhibit 1**, effective upon entry of this Order.
3. The RSA Term Sheet shall be binding and enforceable against the RSA Parties in accordance with its terms.
4. The failure to describe specifically or include any particular provision of the RSA Term Sheet in the Motion or this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the RSA Term Sheet be entered into by the Debtors in its entirety.
5. The Debtors are authorized to execute, deliver, and perform one or more amendments, waivers, consents, or other modifications to and under the RSA Term Sheet as the Debtors may deem reasonable and appropriate, in each case in accordance with the terms of the RSA Term Sheet, and no further approval of the Court shall be required for any amendment, waiver, consent, or other modification to and under the RSA Term Sheet that does not have a material adverse effect on the Debtors' estates.
6. Notwithstanding anything to the contrary herein, the Debtors' obligations under the RSA Term Sheet (including, without limitation, the obligations of the Debtors' officers and managers) are subject at all times to the fulfillment of their respective fiduciary duties as provided for in the RSA Term Sheet; provided, that the foregoing shall not modify or be deemed to modify any administrative expense or other claims or rights arising under the RSA Term

Sheet, including such administrative expenses, claims or rights arising from breach or termination of the RSA Term Sheet.

7. The RSA Term Sheet shall be solely for the benefit of the RSA Parties except as set forth therein, and no other person or entity shall be a third-party beneficiary thereof except as set forth therein. No entity shall have any right to seek or enforce specific performance of the RSA Term Sheet, other than the RSA Parties.

8. The Debtors are hereby authorized and empowered to take all actions and execute all documents that may be necessary to perform under the RSA Term Sheet and implement the relief granted in this Order, and such actions shall not constitute a solicitation of acceptances or rejections of a plan pursuant to Bankruptcy Code section 1125.

9. Notwithstanding anything to the contrary herein, nothing in this Order makes, or shall be deemed or construed to make, any findings or determinations with respect to the Plan contemplated by the RSA Term Sheet, any other chapter 11 plan that is proposed in the Debtors' chapter 11 cases, the Stalking Horse APA, or the Definitive Documents (except for the Motion and this Order).

10. Notwithstanding anything to the contrary herein, nothing in this Order shall require the Debtors or any managers or officers of the Debtors, in such person's capacity as a manager or officer of a Debtor, to take any action inconsistent with or to refrain from taking any action consistent with, its or their fiduciary obligations under applicable law.

11. In the event of any conflict or inconsistency between the terms and provisions of this Order or the Motion, and the terms and provisions of any interim and/or final orders regarding the use of cash collateral or the approval of postpetition financing, or any agreements

or other documents approved or authorized thereunder (any such order, a “Financing Order”), the terms and provisions of the Financing Order shall govern.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. Any stay of this Order otherwise required pursuant to Bankruptcy Rule 6004(h) is hereby waived and the terms and conditions of this Order shall be immediately effective and enforceable upon its entry by the Court.

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

Dated: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

RSA Term Sheet

BINDING RSA TERM SHEET

This Term Sheet (the “**Term Sheet**”), dated October 3, 2019, sets forth the material terms of a restructuring support agreement between (a) BP Energy Company (“**BP**”), (b) Agera Energy, LLC, (c) Aequitas Energy Inc., (d) energy.me midwest llc d/b/a energy.me (collectively, the “**Agera Opco Entities**”), (e) Agera Holdings, LLC (“**Agera Holdco**”), (f) Briarcliff Property Group, LLC (“**Briarcliff**”), (g) Utility Recovery LLC (“**Utility Recovery**”), and (h) Agera Solutions LLC (together with the Agera Opco Entities, Utility Recovery and Agera Holdco, the “**Agera Parties**” and, together with BP and Briarcliff, the “**RSA Parties**”). Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Preferred Supplier Agreement, dated October 2, 2015, between BP and the Agera Opco Entities (as amended on May 15, 2017 and February 9, 2018, and as further set forth herein and amended or otherwise modified from time to time) (the “**PSA**”).

The RSA Parties hereby agree that the terms set forth in this Term Sheet shall be binding and enforceable effective as of the date hereof (the “**Effective Date**”). During the Support Period (as defined below), the RSA Parties shall take all necessary or appropriate actions reasonably required to more fully memorialize the transactions and arrangements effectuated hereby, including entering into the Definitive Documents (as defined below).

THIS TERM SHEET DOES NOT CONSTITUTE AN OFFER OF SECURITIES OR A SOLICITATION OF THE ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN FOR PURPOSES OF SECTIONS 1125 AND 1126 OF TITLE 11 OF THE UNITED STATES CODE (THE “BANKRUPTCY CODE”). ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE.

THIS TERM SHEET CONTAINS A SERIES OF ASSUMPTIONS, COMPROMISES AND SETTLEMENTS OF ISSUES AND DISPUTES THAT WILL BE RESOLVED IN CONNECTION WITH A SALE PURSUANT TO THE BANKRUPTCY CODE AND CONFIRMATION OF A CHAPTER 11 PLAN. IN THE EVENT THE CHAPTER 11 PLAN CONTEMPLATED UNDER THIS TERM SHEET IS NOT CONFIRMED OR DOES NOT BECOME EFFECTIVE, NOTHING HEREIN SHALL BE CONSTRUED AS AN ADMISSION OF OR THE POSITIONS OF THE RSA PARTIES WITH RESPECT TO THESE ISSUES OR DISPUTES. ACCORDINGLY, THIS TERM SHEET IS PROTECTED BY RULE 408 OF THE FEDERAL RULES OF EVIDENCE, THE ABSOLUTE MEDIATION PRIVILEGE, AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROHIBITING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS. THIS TERM SHEET IS SUBJECT TO ALL EXISTING CONFIDENTIALITY AGREEMENTS.

I. Term Sheet

Overview of the Restructuring	<p>This Term Sheet contemplates the Restructuring (as defined below) of the Agera Parties. The Restructuring will be consummated through the commencement of cases of the Agera Parties (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (White Plains) (the “Bankruptcy Court”) and a sale (the “In-Court Sale”) of certain of the Agera Parties’ assets pursuant to Bankruptcy Code sections 105(a), 363(b), (f), (k) and (m), and 365, followed by a chapter 11 plan of liquidation (the “Plan”) to be confirmed by the Bankruptcy Court. The Plan will provide for (i) distribution of the net proceeds realized from the In-Court Sale as provided herein, and (ii)(x) through the Agera Litigation Trust (as defined below), the liquidation and distribution of proceeds from the claims, causes of action and avoidance actions (other than those expressly released as set forth herein and in the Definitive Documents) and other assets included therein, net of any costs of liquidation or distribution (the “Remaining Assets”), and (y) the funding of such wind-down efforts (collectively, the “Restructuring”).</p>
Use of Cash Collateral	<p>During the Support Period (as defined below), the Agera Parties may use cash collateral (the “Cash Collateral”) that is currently in or that in the future will be deposited into the Deposit Accounts and Collateral Accounts (as applicable), subject to the budget attached hereto as Exhibit A (the “Approved Budget”) and the Permitted Variance (as defined below).</p> <p>The Agera Opco Entities shall deliver variance reports to BP on a weekly basis (to be reported by Thursday at 12:00 p.m. (EST)) beginning on the first Thursday after the date hereof in a form satisfactory to BP, comparing: (x) total receipts for all prior weeks to total receipts for such periods as set forth in the Approved Budget, on a cumulative and on a line-by-line basis; and (y) total disbursements for all prior weeks to total disbursements for such periods as set forth in the Approved Budget, on a cumulative basis and on a line-by-line basis, together with a summary of the Permitted Variance for such periods and explaining in reasonable detail all material variances (each such report, a “Budget Variance Report”).</p> <p>Every five weeks (beginning with the fifth full week after the Effective Date, on the fourth business day of such week, the Agera Parties shall deliver to BP and its advisors a new 13-week cash flow forecast setting forth all projected cash receipts and cash disbursements on a weekly basis, which such new 13-week cash flow must be acceptable to BP and, upon such written approval (which may be obtained via electronic mail), such new 13-week cash flow shall become the new “Approved Budget.”</p> <p>Failure of BP and the Agera Parties to agree to an updated Approved Budget within three (3) business days after the Agera Parties’ delivery of the updated Budget shall constitute an event of default with respect to the Agera Parties under the interim and final orders authorizing the use of Cash Collateral (the “Cash Collateral Orders”) that shall terminate the right of the Agera Parties to use Cash Collateral and, following the expiration of a five (5) business day</p>

	<p>notice period, shall permit BP to exercise its rights and remedies in respect of the Cash Collateral, subject to the Carve-Out.</p> <p>Actual cash disbursements made by the Agera Parties may not exceed the amounts set forth in the Approved Budget by more than (x) ten percent (10%) on an aggregate cumulative basis or (y)(1) fifteen percent (15%) for any single line item in any week that is a Non-SG&A Line Item (as defined below) or (2) ten percent (10%) for any single line item in any week that is an SG&A Line Item (collectively, the “Permitted Variance”).</p> <p>The “Non-SG&A Line Items” means the following line items in the Approved Budget: “BP Energy/BP Gas/ISOs/3rd Party Gas/Ancillaries,” “Sales Tax/SBOs/TDSP” and “RECs/Customer Refunds.” The “SG&A Line Items” means the following line items in the Approved Budget: “Wages and Benefits,” “Broker Commissions,” “Retention Payments (KEIP and KERP)” (each as defined below), “Professional and US Trustee Fees” (excluding BP Professional Fees (as defined below)) and “Other SG&A.”</p> <p>Unused amounts set forth in the Approved Budget for any disbursement line item may be carried forward and used to fund such line item in any subsequent week.</p>
The Agera Parties’ and Briarcliff’s Obligations	<p>In exchange for the use of Cash Collateral and the DIP Financing (as defined below), the Agera Parties shall, or shall cause any Agera Opco Entity or Briarcliff to, provide the following to BP in any Cash Collateral Order or order approving the DIP Financing, except as otherwise noted below:</p> <ol style="list-style-type: none"> i. ratify and reaffirm the aggregate amount outstanding under the Transaction Documents and ratify and acknowledge BP’s first priority security interest in substantially all of the assets of the Agera Opco Entities and the Pledged Membership Interests (as defined in those certain Pledge and Security Agreements, dated October 2, 2015, between BP, Agera Holdings, and the Agera Opco Entities) (the “Collateral”); ii. grant BP (a) replacement liens on the Collateral, (b) perfected superpriority liens on all other unencumbered assets, and (c) junior liens on all encumbered assets subject to senior, valid, perfected and non-avoidable liens; iii. grant BP a superpriority administrative claim, which shall be senior in priority and payment to all other obligations with respect to any diminution in value of the Collateral; iv. upon execution hereof and consistent with the Negative Covenants below, transfer all funds currently held in the bank account ending in 8804 at FNBCT to an existing Deposit Account or Collateral Account; v. subject to the Approved Budget and the Permitted Variance, make the following payments in cash in the following amounts: <ol style="list-style-type: none"> a. payment of invoices relating to postpetition supply or hedges of natural gas and power (whether physically- or financially-settled) under the DIP Financing (including all interest relating

	<p>thereto), in the amounts set forth in the invoices and otherwise in accordance with the terms of the Amended ISDA; and</p> <p>b. payment of adequate protection on all prepetition obligations of the Agera Opco Entities under the PSA and ISDA, whether in respect of power, gas or otherwise, on a bi-weekly basis, beginning on October 18, 2019, in an amount equal to the amount of funds remaining in the Collateral Accounts and Deposit Accounts after giving effect to payments required to be made under clause (a) above that exceeds \$10,000,000 until December 1, 2019, \$8,000,000 until January 1, 2020, \$6,000,000 until February 1, 2020, and \$3,000,000 throughout the remainder of the Support Period (collectively, the “Excess Amount Thresholds”) (which payments shall be applied first to payment of the invoices relating to postpetition power supply under the DIP Facility, second to the payment of accrued interest on (A) the prepetition obligations of the Agera Opco Entity under the PSA and ISDA and (B) any other Transaction Document, at the applicable rate under the applicable Transaction Document, and third to the payment of the remaining prepetition obligations of the Agera Opco Entities under the PSA, ISDA and any other Transaction Document). The Excess Amount Thresholds may be revised from time to time, subject to agreement by BP and the Agera Parties, each in their sole discretion in accordance herewith. For the avoidance of doubt, the Excess Amount Thresholds shall not be less than the projected Carve-Out levels at any time.</p> <p>vi. make payments in cash of all reasonable, documented professional fees and expenses of BP (the “BP Professional Fees”);</p> <p>vii. provide a customary and full release and waiver of any and all claims or causes of action that could be provided under law or in equity against BP or its affiliates;</p> <p>viii. (i) on or before the Petition Date, provide to the applicable ISO executed copies of all documentation and take all other actions (including the posting of required credit support) required to transfer BP’s obligations as the FRP in each of ERCOT, NYISO, ISO-NE, and MISO in respect of the Agera Parties’ load to the Agera Parties, (ii) use commercial best efforts to provide to PJM as soon as practicable after request from PJM or BP executed copies of all documentation and take all other actions that PJM requires to transfer BP’s obligations as an FRP in respect of the Agera Parties’ load to the Agera Parties, and (iii) on or before the Petition Date, provide to BP or the applicable ISO executed copies of all documentation requested by BP in connection with the maintenance by BP of any scheduling or other functions (including payment of ISO invoices on the applicable Agera Parties’ behalf in BP’s capacity as agent of the applicable Agera Parties) in</p>
--	---

	<p>respect of any of the Agera Parties' load in any of ERCOT, NYISO, ISO-NE, PJM, MISO or CAISO;</p> <ul style="list-style-type: none"> ix. use commercially reasonable efforts to sell all remaining renewable energy credit inventory held by any Agera Party; x. as promptly as practicable, initiate the sale of the Mortgaged Property (as defined below) and all other assets of the Agera Parties not contemplated to be sold pursuant to the In-Court Sale, including natural gas inventory and natural gas storage capacity; and xi. provide copies to BP of all notices of non-compliance and other notices received by any Agera Party relating to the failure of any Agera Party to comply with any State renewable portfolio standards requirements. <p>Within thirty days after the Effective Date, Briarcliff shall grant BP a mortgage on the real property located at 555 Pleasantville Road, Briarcliff Manor, NY 10510 (such property, the "Mortgaged Property"), subordinate only to the existing mortgages in favor of the First National Bank of Central Texas ("FNBCT"), subject to FNBCT's consent.</p>
Support Period	<p>"Support Period" means the period commencing on the Effective Date and ending on the earlier of (i) the date on which the confirmed Plan becomes effective (the "Plan Effective Date") and (ii) the date on which this Term Sheet is terminated according to its terms.</p>
KEIP/KERP	<p>Subject to the Approved Budget and the Permitted Variance, and so long as such payments are approved by the Court upon notice and hearing (if required), BP shall authorize the Agera Opco Entities to disburse (i) \$700,000.00 to fund the Key Employee Incentive Plan (the "KEIP") and (ii) \$1,149,902.00 to fund a Key Employee Retention Plan ("KERP"). The KEIP shall be subject to the terms negotiated between BP and the Agera Parties.</p>
DIP Financing	<p>The RSA Parties acknowledge and agree that effective on or prior to the Petition Date, BP will (x) declare all Obligations then outstanding under the PSA to be immediately due and payable in whole and amend the PSA as set forth below, (y) terminate each of the transactions under that certain ISDA Master Agreement (2002) between the Agera Opco Entities and BP, dated May 5, 2015, as amended on October 2, 2015, and as may be further amended or supplemented from time to time, and all related confirmations, schedules, annexes, exhibits and addenda thereto (the "ISDA") and (z) calculate an Early Termination Amount (as defined in the ISDA) in accordance with the terms of the ISDA (which calculation may be an estimated calculation initially and finalized after the Petition Date in accordance with the ISDA).</p> <p>BP and the Agera Opco Entities will agree to modifications to the ISDA (which modifications shall provide BP with certain protections consistent with those provided to a debtor-in-possession lender) (the ISDA, as so modified, the "Amended ISDA") to apply to, among other things, the sale of physical gas and power on and after the Petition Date (the "Post-Petition Sales") until the earliest of (i) the transfer of all accounts associated with the Agera Opco</p>

	<p>Entities’ customer contracts to the successful bidder or other third party supplier or the return of such accounts to the applicable utility or local distribution company, (ii) the termination of the Support Period or the Agera Parties’ authorization to use Cash Collateral in accordance with the Cash Collateral Orders, and (iii) the Final Assignment Date (as defined in the Stalking Horse APA (as defined below)) (such date in clause (i), (ii), or (iii), the “Supply Termination Date”), provided that BP’s total aggregate exposure for Net AP Value (as defined below) shall not exceed the Maximum Amount (as defined below) at any time without BP’s written consent. The Amended ISDA or the Amended PSA (as defined below) will address the extent to which BP will remain as the financially responsible party (“FRP”) in each of ERCOT, ISO-NE, NYISO, MISO, PJM and CAISO, and BP’s retention of certain scheduling functions and any other functions with respect to the load of the various Agera Parties that BP agrees to perform on behalf of the Agera Parties in its sole discretion, including payment of ISO invoices on the applicable Agera Parties’ behalf in BP’s capacity as agent of the applicable Agera Parties. The Amended ISDA will also require the Agera Parties to conduct and finalize a CAISO audit acceptable to BP by October 31, 2019.</p> <p>BP and the Agera Opco Entities will also agree to certain modifications to the PSA (which modifications shall provide BP with certain protections consistent with those provided to a debtor-in-possession lender) (the PSA, as so modified, the “Amended PSA” and, together with the Amended ISDA, the “DIP Financing”) to be effective upon effectiveness of the Amended ISDA to (i) address matters relating to credit support provided by BP on behalf of the Agera Opco Entities, (ii) provide that BP has no remaining obligations under the PSA except for scheduling and related obligations expressly set forth in Article 5 of the PSA, as modified by the amendment and that such scheduling and related obligations shall terminate as of the Supply Termination Date; (iii) delete Sections 3.1 through 3.5 and disapply Article 15, (iv) provide for a cross-default to the Amended ISDA, (v) modify application of Article 10 to transactions under the Amended ISDA and provide that the provisions of the PSA authorizing payment deferrals no longer apply, (vi) provide that no Agera Party has any right to terminate, suspend or assign the PSA, and (vii) provide that the Obligations under the PSA and the obligations under the ISDA have been accelerated and specify an interest rate that applies to such amount.</p>
Affirmative Covenants	<p>During the Support Period, each RSA Party shall:</p> <ul style="list-style-type: none"> i. support and not object to entry of the orders proposed in the Agera Parties’ first-day motions (which orders shall be acceptable to BP); ii. support and not object to entry of the orders proposed for the approval of the retentions of the Agera Parties’ professionals (which orders shall be acceptable to BP); iii. in good faith, negotiate the Definitive Documents, which shall be in form and substance consistent in all respects with this Term Sheet; iv. consent to those actions contemplated by this Term Sheet or otherwise required to be taken to effectuate the Restructuring, including entering

	<p>into all documents and agreements necessary to consummate the Restructuring; and</p> <p>v. support entry of orders approving the disclosure statement and confirming the Plan.</p> <p>“Definitive Documents” includes, without limitation, (a) a motion to assume this Term Sheet, (b) an order approving the assumption of this Term Sheet, (c) a motion for interim and final orders authorizing the DIP Financing and the use of Cash Collateral, (d) the Cash Collateral Orders, (e) the Plan (and all exhibits thereto), (f) disclosure statement for the Plan, (g) an order approving the disclosure statement, (h) an order confirming the Plan, (i) the KEIP, (j) an order approving the KEIP, (k) the KERP, (l) an order approving the KERP, (m) the Amended ISDA and the amended PSA, (n) an order approving the Amended ISDA and the amendment to the PSA (which may be included in the Cash Collateral Orders), and (o) any other documents or exhibits related to or contemplated in the foregoing clauses (a) through (n), in each case in form and substance acceptable to BP.</p> <p>The RSA Parties have agreed to a plan for the winding down of the Agera Opco Entities’ retail supply businesses associated with the customer contracts that are not sold as part of the In-Court Sale, which plan is attached to this Term Sheet as Exhibit C (the “Wind-Down Plan”). The Agera Opco Entities agree to comply with the Wind-Down Plan tasks and timelines and cooperate with BP to implement the Wind-Down Plan in accordance with its terms.</p> <p>On Monday, Wednesday and Friday of each week (each, a “Reporting Day”), the Agera Parties will deliver to BP a report of the AR Amount (the “AR Report”) in such form as is reasonably acceptable to BP and with such supporting information as is reasonably requested by BP. The Agera Parties agree to cooperate fully with BP in providing prompt access to any information system that BP determines is reasonably necessary to verify any information contained in any AR Report.</p>
Negative Covenants	<p>During the Support Period, no RSA Party shall take any action materially inconsistent with the Restructuring that is expressly contemplated by this Term Sheet and the Definitive Documents.</p> <p>During the Support Period, no Agera Party shall take any action, or fail to take any action, that would result in (or that with the giving of notice or the passage of time, or both would result in) a BP Termination Event.</p> <p>The Agera Parties shall not at any time permit the Net AP Value to be higher than the Maximum Amount.</p> <p>The “Maximum Amount” means \$17,500,000 unless otherwise agreed to by BP and the Agera Parties, each in their sole discretion in accordance herewith. The Maximum Amount shall be tested on a weekly basis on Thursdays for prior day ending balances.</p> <p>The “Net AP Value” means the amount, if any, by which (i) the AP Amount exceeds (ii) the AR Amount.</p>

The “**AR Amount**” means, as of any date of determination, the aggregate value of all accounts receivable owed to the Agera Opco Entities by customers as of such date, plus all amounts that have accrued but have not yet become due as of such date (*i.e.* unbilled amounts) in respect of energy or gas delivered by the Agera Opco Entities to or procured by the Agera Opco Entities on behalf of a customer, in each case to the extent such receivable meets the following requirements: (i) such receivable is subject to no Liens other than Permitted Liens, (ii) such receivable excludes any portion related to gross receipts or sales taxes or any other amount that may be deducted by a utility before payment to an Agera Party, (iii) no more than 25% of such receivable is more than 60 days past due (for the avoidance of doubt, the preceding requirement shall not apply to any such receivables under a purchase of receivables or consolidated billing program of the applicable utility or local distribution company in which the Agera Opco Entities participate, solely to the extent that such Agera Opco Entity is not in breach of any of its obligations under such purchase of receivables or consolidated billing program (or any other agreement between any Agera Party and the applicable utility or local distribution company or tariff of the applicable utility or local distribution company) except for *ipso facto* breaches directly caused by the filing of the Chapter 11 Cases), (iv) such receivable does not have a payment date that is more than sixty 60 days after the date of invoice , (v) at the time of the sale giving rise to the receivable, the payor of such receivable was not in payment default for more than 60 days to any Agera Party, (vi) the payor of such receivable is not an Affiliate of any Agera Party, and (vii) such receivable accrued in the ordinary course of business by delivery of energy or gas by or on behalf of an Agera Party. The AR Amount also includes any cash in the Collateral Accounts or Deposit Accounts and cash posted to the ISOs, BP-approved cash posted to the ISOs, utilities, pipelines, sureties, and regulatory bodies after September 1, 2019.

The “**AP Amount**” means, as of any date of determination, all amounts owing to BP by any Agera Party as of such date (other than (x) the portion of the Close-out Amount under the ISDA relating to the marked-to-market value of the transactions that have been terminated under the ISDA, but including all amounts under the ISDA relating to power or gas delivered by BP to or procured by BP on behalf of any Agera Opco Entities that have not been paid by the Agera Opco Entities (whether the applicable transactions were physically- or financially-settled) and other amounts that were deferred under the ISDA or the PSA and that have not yet been paid, and (y) any credit support or reimbursement obligations in respect of credit support provided or caused to be provided by BP on any Agera Party’s behalf) and all amounts that have accrued but have not yet become due as of such date in respect of energy or gas delivered by BP to or procured by BP on behalf of the Agera Opco Entities (whether the applicable transactions were physically- or financially-settled). BP will determine the AP Amount in accordance with its internal practices and policies.

No Agera Party will create a reserve account or accumulate or hold any cash outside of the Deposit Accounts or Collateral Accounts, other than deposit

	<p>accounts established for the sole purpose of making payments in respect of payroll, taxes or other ongoing expenses of the Agera Opco Entities’ retail business (such accounts, the “Operating Accounts”). All revenues and other amounts received by any Agera Opco Entity must be deposited into the Collateral Accounts or Deposit Accounts within one (1) business day of receipt. No Agera Opco Entity shall transfer any funds from a Collateral Account or a Deposit Account to any Operating Account, or otherwise permit funds to be on deposit in any Operating Account, at any time in an amount that exceeds the amount required to fund liabilities of the Agera Opco Entities that are scheduled to become due and payable within the immediately following seven days in accordance with the Approved Budget, subject to the Permitted Variance, plus any un-cleared postpetition checks, plus \$200,000.</p>
Termination	<p>Upon three (3) business days’ written notice to the RSA Parties, during which time the Agera Parties may cure any BP Termination Event (as defined below) that is susceptible to cure within such 3-business day period, BP may terminate this Term Sheet after the occurrence, and during the continuation of, any of the following events (each, a “BP Termination Event”):</p> <ul style="list-style-type: none"> i. the Agera Parties fail to comply with an Approved Budget (including an Approved Budget as may be approved by the Bankruptcy Court after a hearing), subject to the Permitted Variance; ii. the Agera Parties fail to comply with, satisfy, or achieve any of the Milestones (as defined below); iii. the Agera Parties fail to provide BP with reasonable access to the Agera Parties’ books, records, and management through the Plan Effective Date; iv. the Agera Parties file any pleading seeking authority to use cash collateral or to secure postpetition financing from any party other than BP, including financing that provides for super-priority claims or priming liens on any collateral of BP, in each case without BP’s consent in writing in its sole and absolute discretion; v. the Bankruptcy Court’s confirmation of a competing plan or approval of any transaction for the sale or disposition of any of the Agera Parties’ material assets that is inconsistent with the terms of the Restructuring; vi. the Agera Parties’ material breach of any of their respective obligations in this Term Sheet, including covenants, representations, or warranties in this Term Sheet (it being acknowledged and agreed, without limiting any of the foregoing, that a breach by any Agera Party of any negative covenant set forth in this Term Sheet or a breach by any Agera Party of any of its obligations set forth in clauses (i) through (v) of the Affirmative Covenants section of this Term Sheet shall constitute a material breach for purposes of this BP Termination Event); vii. the Agera Parties’ failure to comply with any material provision of any order entered by the Bankruptcy Court or an event of default exists under any order entered by the Bankruptcy Court;

	<ul style="list-style-type: none"> viii. the occurrence and continuance of an Event of Default or Termination Event under the Amended ISDA (each as defined in the Amended ISDA); ix. any of the Definitive Documents filed in the Chapter 11 Cases contains terms and conditions materially inconsistent with this Term Sheet; x. conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, appointment of a chapter 11 trustee, a responsible officer or an examiner with enlarged powers (beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of any of the Agera Parties, or dismissal of the Chapter 11 Cases; xi. the Bankruptcy Court grants relief that is materially inconsistent with this Term Sheet or would reasonably be expected to materially frustrate the purpose of this Term Sheet; xii. the Agera Parties file for approval of or otherwise support any plan, sale, or other transaction that is inconsistent with the Plan or the Restructuring; xiii. the Chapter 11 Cases or any other case by or against any Agera Party, whether voluntary or involuntary, under chapter 11 or chapter 7 of the Bankruptcy Code, are commenced prior to execution of the Stalking Horse APA; xiv. Briarcliff files a petition for relief under the Bankruptcy Code without BP's prior written consent; xv. the allowance of administrative expense claims and priority claims against the Agera Parties that, in the aggregate, exceed all accruals and disbursements contemplated under the Approved Budget by \$1,000,000 or more; xvi. the Stalking Horse APA has been terminated prior to the closing thereunder and neither the Stalking Horse APA nor any other asset purchase agreement constituting a higher and better offer than the Stalking Horse APA for the purchase of any of the Agera Parties' assets is in full force and effect; xvii. the Bankruptcy Court enters a final, non-appealable order denying confirmation of the Plan or declining to approve the disclosure statement; xviii. any Agera Party requests electricity or natural gas supply from BP after the Supply Termination Date; xix. the Agera Opco Entities fail to comply with the Wind-Down Plan; xx. as of any Weekly Reporting Date (i) the Net AP Value is higher than the Maximum Amount, and (ii) within three (3) business days after such Reporting Date, BP and the Agera Parties have not agreed, each
--	--

	<p>in its sole discretion, on acceptable changes in the Approved Budget and the Maximum Amount to cure such shortfall; and</p> <p>xxi. the Agera Parties have failed to comply with their obligation to provide an AR Report and appropriate supporting information as of any Reporting Date.</p> <p>Upon three (3) business days' written notice to the RSA Parties, during which time BP may cure any Agera Termination Event (as defined below) that is susceptible to cure within such 3-business day period, the Agera Parties may terminate this Term Sheet upon the occurrence, and during the continuation of, any of the following events (each, an "Agera Termination Event"): </p> <ul style="list-style-type: none"> i. BP's material breach of any of its Post-Petition Sales obligations or its obligations set forth in clauses (i) through (v) of the Affirmative Covenants section of this Term Sheet; and ii. the Agera Parties determine in good faith that continued performance under this Term Sheet would be inconsistent with the exercise of their fiduciary duties under applicable law; provided, however, that (i) the Agera Parties and their advisors may not, directly or indirectly, solicit, initiate, or knowingly encourage, or take any other action designed to facilitate, any inquiries or the making of any proposal that constitutes an alternative transaction that is materially inconsistent with this Term Sheet; (ii) prior to the Agera Parties terminating this Term Sheet to move forward with an alternative proposal, the Agera Parties shall provide BP with at least five (5) business days' written notice of the material terms and conditions of the proposed alternative proposal, during which time BP shall have a right of first refusal to match such alternative proposal; and (iii) the termination of this Term Sheet by any Agera Party to move forward with the alternative proposal shall constitute an event of default with respect to such applicable Agera Party under the Cash Collateral Orders that, following the expiration of a five (5) business day notice period, would terminate the right of the such applicable Agera Party to use or seek to use Cash Collateral and permit BP to exercise its rights and remedies in respect of the Cash Collateral. <p>This Term Sheet may be terminated by mutual written agreement among the RSA Parties.</p>
Carve-Out	<p>Upon a BP Termination Event or an Agera Termination Event (such date, the "Carve-Out Trigger Date"), the Agera Parties shall, and BP hereby authorizes the Agera Parties to without further order of the Bankruptcy Court, fund a Carve-Out (the "Carve-Out") from the Cash Collateral, the In-Court Sale proceeds, if applicable, and any other property held by the Agera Parties at the applicable time of such Carve-Out Trigger Date (and, to the extent necessary to fund the Carve-Out, any property received by the Agera Parties after such Carve-Out Trigger Date), in an amount equal to:</p> <p>(a) all professional fees and disbursements incurred on or prior to the Carve-Out Trigger Date by:</p>

	<p>(i) the professionals retained, pursuant to Bankruptcy Code sections 327 or 1103(a), including the noticing agent, by the Agera Parties, subject to the Approved Budget and the Permitted Variance; and</p> <p>(ii) the professionals retained, pursuant to Bankruptcy Code sections 327 or 1103(a), by the unsecured creditors' committee (the "Committee"), if any, subject to the Approved Budget and the Permitted Variance;</p> <p>(b) all professional fees and disbursements incurred after the Carve-Out Trigger Date by the professionals retained, pursuant to Bankruptcy Code sections 327 or 1103(a), by the Agera Parties and the Committee, in an amount not to exceed the aggregate amount of \$100,000;</p> <p>(c) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6), including without limitation any interest payable thereon under 31 U.S.C. § 3717, and any fees payable to the Clerk of the Bankruptcy Court;</p> <p>(d) all reasonable fees and expenses incurred by a chapter 7 trustee appointed by the Court, not to exceed \$10,000;</p> <p>(e) all fees and expenses incurred by Stephen S. Gray or Gray & Company LLC on or prior to the Carve-Out Trigger Date, not to exceed \$50,000 per month, plus expenses, and up to \$50,000 of fees and expenses incurred by Stephen S. Gray or Gray & Company LLC after the Carve-Out Trigger Date;</p> <p>(f) all claims arising from any tax liability incurred in connection with any In-Court Sale;</p> <p>(g) all gross receipt taxes, sales taxes, and uses taxes that relate to the Agera Opco Entities' delivery of electricity or natural gas, excluding any such taxes that relate to prior period filed tax returns;</p> <p>(h) all payroll obligations and benefits incurred on or prior to the Carve-Out Trigger Date, subject to the Approved Budget;</p> <p>(i) only to the extent such payments are approved by the Bankruptcy Court upon notice and hearing, all retention and incentive payments contemplated by the KERP and the KEIP for employees of the Agera Parties, subject to the Approved Budget, regardless of whether such employees at the time of the Carve-Out Trigger Date have satisfied the applicable requirements to receive such payments; and</p> <p>(j) only to the extent such payments are approved by the Bankruptcy Court upon notice and hearing, the amount of any Buyer Expense Reimbursement and any Termination Fee payable to the Buyer under the Stalking Horse APA and the Bidding Procedures Order.</p> <p>The Carve Out amount for any retained professional shall be net of any prepetition retainer amount held by such professional at the time of calculating the Carve Out amount.</p>
Carve-Out Escrow Accounts	<p>Following the occurrence of the Carve-Out Trigger Date, the Agera Parties shall transfer the Carve-Out amounts to one or more escrow accounts (the "Carve-Out Escrows") in accordance with the terms of this Term Sheet, the Definitive Documents, and the Approved Budget; provided, however, that any amounts in the Carve-Out Escrows in excess of amounts payable under the Carve-Out shall continue to be Cash Collateral of BP, and any funds remaining in the Carve-Out Escrows after payment of all amounts due under the Carve Out shall be returned to the Collateral Account. The Agera Parties may not</p>

	use funds held in the Carve-Out Escrows for any purpose <i>other than</i> payment of obligations under the Carve-Out provisions of this Term Sheet in accordance with the Approved Budget, subject to the Permitted Variance.
Governing Law	This Term Sheet shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to any conflict of law provisions that would require the application of the law of any other jurisdiction.
Venue	Prior to the Petition Date, any disputes between the RSA Parties arising out of, or in connection with, this Term Sheet shall be adjudicated before a court located in New York County, New York, and the RSA Parties hereby submit to the exclusive jurisdiction of the federal and state courts of the State of New York located in New York County with respect to any action or legal proceeding commenced by any RSA Party arising out of, or in connection with, this Term Sheet, and irrevocably waive any objection the RSA Parties now or hereafter may have respecting the venue of any such action or proceeding brought in such a court or respecting the fact that such court is an inconvenient forum. On or after the Petition Date, any such action or proceeding shall be brought in the Bankruptcy Court.

II. Plan Treatment of Allowed Claims and Interests

Class of Claim or Interest	Treatment of Claims and Interests Under the Plan
DIP Financing Claims	On the Plan Effective Date, all accrued and outstanding amounts under the DIP Financing (the “ DIP Financing Claims ”) shall be paid in full in cash.
Administrative Expense Claims	Payment of all allowed Administrative Expense Claims, including all professional fees of the Agera Parties, subject to the Approved Budget and the Permitted Variance, and all professional fees of BP, in full in cash on the Plan Effective Date or as otherwise provided in the Bankruptcy Code or approved by the Bankruptcy Court, except to the extent that a holder of such claim agrees to different treatment.
Priority Claims	<p>Holders of tax claims entitled to priority treatment (“Priority Tax Claims”) shall receive either payment in full (a) in cash on the Plan Effective Date or (b) over a period through the fifth anniversary after the Petition Date, plus interest. All allowed Priority Tax Claims that are not due and payable on or before the Plan Effective Date shall be paid in the ordinary course of business in accordance with the terms thereof.</p> <p>“Other Priority Claims” means any claim, other than an Administrative Expense Claim or Priority Tax Claim, entitled to priority in right of payment under Bankruptcy Code section 507(a). Each allowed Other Priority Claim will be paid in full in cash on the Plan Effective Date.</p>
Other Secured Claims	<p>The holders of allowed Other Secured Claims shall each receive on the Plan Effective Date, except to the extent that a holder of an allowed Other Secured Claim agrees to less favorable treatment: (i) cash in an amount equal to such Other Secured Claim from proceeds of the In-Court Sale allocated to the specific collateral of the holder of the Other Secured Claim; (ii) such other treatment that will render such Other Secured Claim unimpaired under Bankruptcy Code section 1124; or (iii) such other treatment as the Agera Parties and the applicable holder of an allowed Other Secured Claim may agree.</p> <p>“Other Secured Claim” means any secured claim (other than the Prepetition BP Secured Claims) as provided for under Section 506 of the Bankruptcy Code, subject to any applicable intercreditor agreement. For the avoidance of doubt, the claims of the Subordinate Lienholders (as defined in that certain Second Amended and Restated Intercreditor Agreement dated as of February 9, 2018, by and among Agera Holdings, the Agera Opco Entities, BP and the Subordinate Lienholders (as defined therein), shall not be paid until the DIP Financing Claims and Prepetition BP Secured Claims have been paid in full and discharged.</p>

Class of Claim or Interest	Treatment of Claims and Interests Under the Plan
Prepetition BP Secured Claims	<p>The holders of allowed Prepetition BP Secured Claims shall each receive on the Plan Effective Date all of the following <i>minus</i> any amounts necessary to fund allowed Administrative Expense Claims, allowed Priority Claims, allowed Other Priority Claims, allowed Other Secured Claims, and the Initial Trust Funding under the Plan (and with respect to professional fees, only with respect to amounts provided for in the Approved Budget, subject to the Permitted Variance): (i) all remaining cash held by the Agera Parties, including cash collateral held by the Agera Parties or returned to the Agera Parties by any ISO or other beneficiary of such cash collateral, (ii) all proceeds from the In-Court Sale, (iii) all proceeds from the sale of any other collateral securing any DIP Financing Claims or Prepetition BP Secured Claims, subject to Other Secured Claims, (iv) 90% of the beneficial interests in the Agera Litigation Trust (as defined below) relating to the prosecution, litigation, settlement, liquidation, or recovery of the Litigation Trust Causes of Action (as defined below) (the “Litigation Trust Beneficial Interests”), and (v) 100% of the proceeds of the liquidation of the Other Litigation Trust Assets (as defined below).</p> <p>“Prepetition BP Secured Claim” means all claims held by BP under the PSA, the ISDA or any other Transaction Document other than DIP Financing Claims.</p>
General Unsecured Claims	Holders of allowed General Unsecured Claims shall receive their pro rata share of 10% of the Litigation Trust Beneficial Interests.
Existing Equity Interests	Any and all prepetition equity interests in the Agera Parties arising from any form of equity securities, as defined in Bankruptcy Code section 101(16), including, without limitation, any prepetition common and preferred stock or member interests issued and outstanding, and all options, warrants, and other rights relating thereto, shall be retired, cancelled, extinguished, and/or discharged on the Plan Effective Date in accordance with the terms of the Plan.

III. Miscellaneous Plan Terms and Conditions

Means for Plan Implementation	On the Plan Effective Date, the Plan shall be funded by the proceeds of the In-Court Sale and the Cash Collateral to satisfy the claims against the Agera Parties in the manner set forth in the Plan, and subject to the Approved Budget and the Permitted Variance.
Releases	Except as expressly set forth in this Term Sheet or the Definitive Documents, the Definitive Documents shall include full customary debtor and “third party” releases from liability in favor of the Agera Parties, BP, and each of their respective current directors, current officers, funds, affiliates, members, employees, partners, managers, investment advisors, agents, representatives, principals, consultants, attorneys, professional advisors, heirs, executors, successors and assigns (each in their capacity as such) (the “ Released Parties ”); provided, however, that the “Released Parties” shall not include Eli Global, Greg Lindberg or Global Health

	<p>Technology Group, LLC. The releases will cover any claims and causes of action related to or in connection with the Agera Parties, the Agera Parties' out-of-court restructuring efforts, this Term Sheet, the Restructuring, and the Transaction Documents or any matters arising under any Transaction Document or in connection with any Transaction Document. The releases described in this section shall contain a carve-out for actual fraud or fraud grounded in deliberate recklessness. For the avoidance of doubt, the releases will not include any releases from liability in respect of that certain Personal Guaranty Agreement, dated January 25, 2019, made by Greg Lindberg in favor of BP or that certain Guaranty Agreement, dated January 25, 2019, made by Global Health Technology Group, LLC ("GHTG") in favor of BP or any other guarantees, liabilities or other obligations of Eli Global, GHTG or Greg Lindberg to BP. For the avoidance of doubt, any claims in respect of avoidance actions against the Released Parties shall be released. Nothing in the foregoing shall result in any current directors and officers of the Agera Parties waiving any indemnification claims against the Agera Parties or any of its insurance carriers or any rights as beneficiaries of any insurance policies.</p>
Conditions to Plan Confirmation	<ol style="list-style-type: none"> i. This Term Sheet shall not have been terminated. ii. The order confirming the Plan shall be in form and substance acceptable to the Agera Parties and BP. iii. The final version of all schedules, documents, and Plan exhibits, including a Plan supplement, shall have been filed in form and substance acceptable to BP in its reasonable discretion.
Conditions to Plan Effective Date	<ol style="list-style-type: none"> i. This Term Sheet shall not have been terminated. ii. The conditions to confirmation delineated in the Plan have either been satisfied or waived in accordance with the Plan. iii. The order confirming the Plan shall have been entered by the Bankruptcy Court and there shall not be a stay or injunction (or similar prohibition) in effect with respect thereto. iv. The aggregate amount of allowed Administrative Expense Claims, allowed Priority Claims, allowed Other Priority Claims, and allowed Other Secured Claims against the Agera Parties, in the aggregate, shall not exceed budgeted disbursements under the Approved Budget by \$1,000,000 or more; provided, however, that this condition may be waived with the prior written agreement of BP.
Milestones	<p>The Restructuring shall be implemented in accordance with the below milestones (the "Milestones") (unless waived by the Agera Parties and BP, each in its sole discretion), and the Agera Parties and BP shall cooperate and use commercially reasonable efforts to confirm and effectuate the Plan as soon as practicable.</p> <ul style="list-style-type: none"> • No later than October 3, 2019, the Agera Opco Entities shall execute a stalking horse APA for sale of all or substantially all of the Agera Opco Entities' forward book of positive margin customer contracts for a minimum

	<p>purchase price of \$24,750,000.00, in form and substance acceptable to BP (the “Stalking Horse APA”).</p> <ul style="list-style-type: none"> • No later than October 4, 2019 (any such date through and including October 2, 2019, the “Petition Date”), the Agera Parties shall commence the Chapter 11 Cases. • No later than the Petition Date, the Agera Opco Entities shall have provided executed copies of all documentation and taken all other actions necessary or requested by ISO-NE, NYISO, MISO, and ERCOT, including the posting of all required credit support and the submission of any required certifications, for such ISO to be in a position to transfer BP’s FRP obligations with respect to the Agera Opco Entities’ load in such ISO to the applicable Agera Opco Entity without any further action or documentation from any Agera Opco Entity. • No later than 3 calendar days following the Petition Date, the Bankruptcy Court shall have entered an interim order approving the DIP Financing and use of Cash Collateral. • No later than 14 calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving bidding procedures and stalking horse protections in connection with the In-Court Sale. • No later than 17 calendar days following the Petition Date, the Bankruptcy Court shall have entered an order approving this Term Sheet. • No later than 28 calendar days following the Petition Date, the Bankruptcy Court shall have entered a final order approving the DIP Financing and use of Cash Collateral. • No later than 31 calendar days following the Petition Date, the Agera Parties shall hold an auction in connection with the In-Court Sale, if applicable. • No later than 32 calendar days following the Petition Date, the Bankruptcy Court shall hold the In-Court Sale hearing and enter an order by the Bankruptcy Court approving the In-Court Sale. • No later than 60 calendar days following the Petition Date, the closing of the In-Court Sale shall occur. • No later than December 31, 2019, the closing of the sale of the Mortgaged Property shall occur. • No later than 135 calendar days following the Petition Date, the Agera Parties shall file a motion seeking the combined approval of the disclosure statement to the Plan and confirmation of the Plan. • No later than 180 calendar days following the Petition Date, the Bankruptcy Court shall enter an order approving the disclosure statement to the Plan and an order confirming the Plan.
--	---

IV. Post-Confirmation Litigation Trust

Establishment of Litigation Trust	Pursuant to the Bankruptcy Court’s order confirming the Plan, a trust known as the “ Agera Litigation Trust ” will be established. The Agera Litigation Trust shall be managed by a trustee (the “ Litigation Trustee ”) to be selected by BP.
Transfer of Assets	<p>On the Plan Effective Date:</p> <p>(i) the Agera Parties, pursuant to terms of the Plan and the order confirming the Plan, shall transfer, assign, and deliver to the Agera Litigation Trust, without recourse, all of their respective rights, title, and interests, free and clear of any and all liens, claims (other than claims in the nature of setoff or recoupment), encumbrances or interests of any kind in such property of any other person or entity, in and to: (a) all causes of action of the Agera Parties as of the Plan Effective Date, including all avoidance actions to the extent such causes of action are not released or settled pursuant to the Plan or an order of the Bankruptcy Court (collectively, the “Litigation Trust Causes of Action”), and (b) all remaining assets of the Debtors, including without limitation all rights for the return of credit support, including cash collateral, posted by any Agera Party to any ISO or other beneficiary thereof that has been returned to such Agera Party (collectively, the “Other Litigation Trust Assets”); and</p> <p>(ii) \$25,000 in cash shall be distributed by the Agera Parties to the Agera Litigation Trust (the “Initial Trust Funding”).</p>

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

BP Energy Company

By: _____

Name: _____

Title: _____

Date: _____



Rob Gorski
BPEC VP

Agera Energy LLC

By: _____

Name: _____

Title: _____

Date: _____

energy.me midwest llc

By: _____

Name: _____

Title: _____

Date: _____

Aequitas Energy Inc.

By: _____

Name: _____

Title: _____

Date: _____

Agera Holdings, LLC

By: _____

Name: _____

Title: _____

Date: _____

Briarcliff Property Group, LLC

By: _____

Name: _____

Title: _____

Date: _____

Utility Recovery LLC

By: _____

Name: _____

Title: _____

Date: _____

Agera Solutions LLC

By: _____

Name: _____

Title: _____

Date: _____

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

BP Energy Company

By: _____

Name: _____

Title: _____

Date: _____

Agera Energy LLC

By:  _____

Name: Mark Linzenbold

Title: Chief Financial Officer

Date: _____

energy.me midwest llc

By:  _____

Name: Mark Linzenbold

Title: Chief Financial Officer

Date: _____

Aequitas Energy Inc.

By:  _____

Name: Mark Linzenbold

Title: Chief Financial Officer

Date: _____

Agera Holdings, LLC

By:  _____

Name: Mark Linzenbold

Title: Chief Financial Officer

Date: _____

Briarcliff Property Group, LLC

By: _____

Name: _____

Title: _____

Date: _____

Utility Recovery LLC

By: _____

Name: _____

Title: _____

Date: _____

Agera Solutions LLC

By: _____

Name: _____

Title: _____

Date: _____

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

BP Energy Company

By:

Name: Mark Linzenbold
Title: Chief Financial Officer
Date:

Agera Energy LLC

By:

Name: Mark Linzenbold
Title: Chief Financial Officer
Date:

energy.me midwest llc

By:

Name: Mark Linzenbold
Title: Chief Financial Officer
Date:

Aequitas Energy Inc.

By:

Name: Mark Linzenbold
Title: Chief Financial Officer
Date:

Agera Holdings, LLC


By:

Name: Mark Linzenbold
Title: Chief Financial Officer
Date:

Briarcliff Property Group, LLC

By:

Agera Energy, its Sole Member

By: 

Name: Stephen S. Gray
Title: Manager of Agera Energy LLC
Date: 10/03/2019

Utility Recovery LLC

By: 

Name: Stephen S. Gray
Title: Manager
Date: 10/03/2019

Agera Solutions LLC

By: 

Name: Stephen S. Gray
Title: Manager
Date: 10/03/2019

Exhibit A

Approved Budget

		Actual	Actual	Actual	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	
		7-Sep	14-Sep	21-Sep	28-Sep	5-Oct	12-Oct	19-Oct	26-Oct	2-Nov	7-Nov	14-Nov	23-Nov	30-Nov	7-Dec	14-Dec	21-Dec	Total
Agera Consolidated Liquidity Projection																		
Cash Inflows																		
		9,737,777	10,749,891	13,830,789	9,879,134	8,004,440	8,349,099	8,413,230	9,324,879	9,950,289	8,729,137	8,481,786	9,737,012	11,538,780	7,684,240	8,867,860	9,127,796	118,087,683
		(5,217)	(3,390)	(3,768)	-	-	-	-	-	-	-	-	-	-	-	-	-	211,350
		9,732,560	10,377,970	14,315,044	10,090,484	8,004,440	8,349,099	8,413,230	9,324,879	9,950,289	8,729,137	8,481,786	9,737,012	11,538,780	7,684,240	8,867,860	9,127,796	118,299,033
Total Intercompany Transfers In	AEOH	11,398,644	15,425,792	16,515,872	3,200,000	200,000	200,000	3,200,000	700,000	200,000	3,200,000	200,000	200,000	3,200,000	200,000	200,000	600,000	15,500,000
Transfer from Briarcliff		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transfer from Eli	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Transfers In		11,398,644	15,425,792	16,515,872	3,200,000	200,000	200,000	3,200,000	700,000	200,000	3,200,000	200,000	200,000	3,200,000	200,000	200,000	600,000	15,500,000
Total Inflows		21,131,204	26,403,762	30,831,543	13,290,484	8,204,440	8,549,099	11,613,230	10,024,879	10,150,289	11,929,137	8,681,786	9,937,012	14,738,780	7,884,240	9,067,860	9,727,796	133,799,033
Cash Disbursements																		
BP Energy	AEO	(21,000,000)	-	-	(15,953,427)	(4,500,000)	-	-	-	-	-	-	(12,000,000)	-	-	(14,000,000)	-	(46,453,427)
BP Gas	A	-	-	-	(681,171)	-	-	-	-	(50,000)	-	-	(1,000,000)	(50,000)	-	-	-	(2,481,171)
ISOs		-	-	-	-	-	(6,700,000)	-	-	-	-	(8,888,000)	-	-	(4,200,000)	-	-	(19,840,000)
Gas/Energy/Capacity/Ancillaries		(1,300)	(66,028)	(650,812)	(250,625)	(100,000)	(250,625)	(250,000)	(200,000)	(250,125)	(200,125)	(250,625)	(300,625)	(400,625)	(200,000)	(500,625)	(350,000)	(3,554,000)
Payroll/Benefits/Employee Commissions	AE	(10,822)	(540,869)	(29,157)	(409,678)	-	-	(467,682)	-	(294,784)	-	(406,212)	-	(311,284)	-	(323,935)	-	(2,215,757)
KEIP/KERP		-	-	-	-	-	-	(370,000)	-	-	-	-	-	(110,000)	-	-	-	(480,000)
Broker Commissions		(2,040)	(1,720,241)	(96,264)	-	-	-	-	-	-	-	-	-	-	-	-	-	(96,254)
Sales Tax, GRT and Other Taxes	AEO	(182,172)	(96)	(892,030)	(753,071)	(2,016,487)	(1,000)	(1,119,394)	(544,102)	(185,681)	(1,000)	(72,020)	(1,113,479)	(997,896)	(1,000)	(1,000)	(925,255)	(7,731,395)
TDSP	A	(195,856)	(271,327)	(230,506)	(180,020)	(180,020)	(168,858)	(168,858)	(168,858)	(168,858)	(141,080)	(141,080)	(141,080)	(168,858)	(64,109)	(64,109)	(64,109)	(1,792,116)
SBO	E	(283,037)	(227,127)	(108,470)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(115,676)	(1,503,791)
RECS	AE	(11,837)	(6,358)	-	-	-	(709,866)	-	(354,843)	-	(354,843)	-	-	-	-	-	-	(1,419,372)
Customer Refunds	AEO	(13,391)	(18,246)	(1,009)	-	(200,000)	(36,217)	-	(100,000)	-	-	-	-	(100,000)	-	-	-	(436,217)
Total Operating Disbursements		(21,686,580)	(1,127,570)	(3,638,582)	(18,439,932)	(7,821,869)	(7,272,376)	(2,491,617)	(1,728,636)	(1,519,967)	(9,337,881)	(985,613)	(14,670,860)	(2,126,561)	(5,095,628)	(15,005,346)	(1,455,041)	(87,951,319)
SGA Expenses																		
SGA - AMEX Payment	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Bank Fee	AEO	-	(411)	(4,377)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Briarcliff Manor	AEO	-	(13,781)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Credit Card Fees	A	(35,504)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Consulting	AH	(36,533)	-	(17,467)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Dues, Memberships & Subscriptions	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - EDI Services	AE	(4,361)	(8,191)	(5,456)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Employee	AEOH	-	-	(260)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Financing	AE	-	-	(3,250)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Insurance	AE	-	(2,339)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - IT Services	A	(6,616)	-	(7,512)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - IT Supplies	AH	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Legal	A	(4,217)	(133)	(11,720)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - LIC & FEES	AEO	(43,004)	-	(389)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Office	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Office Utilities	A	(146)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Other Rent	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Postage	A	(2,566)	(295)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Telephone	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA - Tax Preparation Services	A	(13,542)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SGA-Other		-	-	-	-	-	-	-	-	(544,790)	-	-	-	-	(478,925)	-	-	(2,510,699)
Total SGA		(146,489)	(64,136)	(50,430)	(870,586)	(616,398)	(616,398)	(616,398)	(544,790)	(544,790)	-	-	-	-	(478,925)	-	-	(2,510,699)
Other: Interest, Refunds, Returns, Bank Error and Other	AE	2,136	(1,736)	(2,413)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Senior Lender Professional Restructuring Professionals and Fees																		
	AH	-	(330,631)	-	(449,891)	(850,506)	(224,500)	(162,500)	(201,377)	(117,500)	(856,546)	(62,500)	(62,500)	(1,062,500)	(1,040,500)	(44,500)	(44,500)	(5,179,820)
Total Intercompany Transfers		(11,398,644)	(15,425,792)	(16,515,872)	(3,200,000)	(200,000)	(200,000)	(3,200,000)	(700,000)	(200,000)	(3,200,000)	(200,000)	(200,000)	(3,200,000)	(200,000)	(200,000)	(600,000)	(15,500,000)
Transfer to Briarcliff		-	(209,587)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transfer to BP for Forbearance Agreement	Agera	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transfer to Return	Agera	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transfer to Surety Bond Account (s0791)	Agera	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Collateral Posting		-	-	-	(18,500,000)	(8,500,000)	(1,600,000)	-	(17,500,000)	-	-	-	-	-	-	-	-	(46,100,000)
Total Transfers Out		(11,398,644)	(15,635,379)	(16,515,872)	(21,700,000)	(8,700,000)	(1,800,000)	(3,200,000)	(18,200,000)	(200,000)	(3,200,000)	(200,000)	(200,000)	(3,200,000)	(200,000)	(200,000)	(600,000)	(61,600,000)
Total Disbursements		(33,229,576)	(17,159,452)	(20,207,297)	(41,460,411)	(17,988,773)	(9,296,876)	(5,854,110)	(26,130,012)	(2,382,256)	(13,394,426)	(1,248,113)	(14,933,340)	(6,389,061)	(6,815,054)	(15,249,846)	(2,099,541)	(157,241,837)
Net Cash Flow		(12,098,372)	9,244,310	10,624,246	(28,169,926)	(9,784,332)	(747,777)	5,759,120	(10,105,133)	7,768,033	(1,465,289)	7,433,673	(4,996,347)	8,349,720	1,069,187	(6,181,986)	7,628,255	(23,442,804)
Beginning Cash		38,847,460	26,749,088	35,993,398	46,617,645	18,447,718	8,663,386	7,915,609	13,674,729	3,569,596	11,337,629	9,872,339	17,306,012	12,309,665	20,659,384	21,728,571	15,546,585	46,617,645
Net Cash Flow		(12,098,372)	9,244,310	10,624,246	(28,169,926)	(9,784,332)	(747,777)	5,759,120	(10,105,133)	7,768,033	(1,465,289)	7,433,673	(4,996,347)	8,349,720	1,069,187	(6,181,986)	7,628,255	(23,442,804)
Ending Cash Balance (Bank)		26,749,088	35,993,398	46,617,645	18,447,718	8,663,386	7,915,609	13,674,729	3,569,596	11,337,629	9,872,339	17,306,012	12,309,665	20,659,384	21,728,571	15,546,585	23,174,840	
Account Balances																		
Agera Energy Cash Collateral Acc (FNBC1)	1550	27,442	27,442	27,442	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Energy Lockbox Acc (FNBC1)	2144	5,000	5,000	5,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Operating Acc (FNBC1)	0295	48,009	1,050,074	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Revenue Acc (FNBC1)	8762	20,709	189,459	331,716	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Tax Acc (FNBC1)	9952	54,832	105,649	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Collateral (JPM)	5135	22,424,885	27,863,407	38,560,796	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Mile Creditline (FNBC1)	9852	5,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Mile Midwest LLC (FNBC1)	2087	64,519	411,396	78,522	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Mile Midwest Lockbox (JPM)	1500	2,640,705	3,429,710	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Mile Midwest Deposit (JPM)	1520	0	0	0	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Energy Mile Midwest Operating Acc (FNBC1)	1980	38,428	442,927	47,728	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Avalanche Energy Operating Acc (FNBC1)	4710	9,294	10,449	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Avalanche Energy Revenue Acc (FNBC1)	8639	5,000	5,000	5,000	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Avalanche Payroll Acc (FNBC1)	8945	14,607	43	43	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Avalanche PPS	0038	805,807	805,807	899,203	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Agera Midwest Payroll Acc (FNBC1)	8904	616,502	2,714,523	795,508	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Account Bank Balances		26,749,088	35,993,398	46,617,645	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Accrued Liabilities (Estimate, excludes BP Liabilities)																		
LCD & Postages, Capacity, and Ancillary (Transmission and Imbalance)		1,968,765	1,318,089	1,502,082	1,051,250	1,050,760	1,150,876	1,150,876	1,201,500	1,402,125	1,362,200	1,662,200	1,791,875					

- Adherence to current timeline, including (i) bankruptcy filing on October 4th, (ii) and a plan confirmation by April 1st
- BP will transfer ISO FRP to extent possible while continuing to provide administrative related services related thereto
- BP shall provide supply of primary gas and power supply through bilateral trade (Agera will pay ISOs for imbalance and capacity related charges)

-Assumes no adversary proceedings investigated or pursued by Agera or commenced against Agera

- Uncontested first-day motions
- APA negotiations with only one stalking horse bidder
- No significant discovery requests or major road blocks from Committee
- No litigation with regulatory authorities
- Projection does not reflect ACP payments
- Budget assumes no commissions paid during projection period
- Estimate of Accrued Liabilities excludes BP secured claims
- Assumes customer transition during month of December '19
- Does not reflect risks related to additional collateral demands other than

Agera Professional Fee Rollforward

Week

			25-May	1-Jun	8-Jun	15-Jun	22-Jun	29-Jun	6-Jul	13-Jul	20-Jul	27-Jul	3-Aug	10-Aug	17-Aug	24-Aug	31-Aug	7-Sep	14-Sep	21-Sep	28-Sep	5-Oct	12-Oct	19-Oct	26-Oct	2-Nov	9-Nov	16-Nov	23-Nov	30-Nov
Incurred Fees																														
MWE	Debtor	Debtor Counsel		288,291				168,387				384,833					461,236				500,000	130,000	130,000	130,000	100,000	100,000	65,000	65,000	65,000	65,000
Womble Bond Dickson	Debtor	Other Counsel															5,000	5,000			5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
GlassRatner	Debtor	Financial Advisor	118,709	50,202	53,018	31,596	37,213	25,571	19,349	28,695	26,138	31,765	37,228	45,089	37,643	40,038	39,680	13,331	21,779	46,056	60,000	52,557	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
MillerBuckfire	Debtor	Investment Banker	50,000		51,609				50,925					51,559								55,000				55,000				1,000,000
Stretto	Debtor	Claims Agent														14,400					8,725	170,000	110,000	5,000	5,000	75,000	5,000	5,000	5,000	75,000
TBD	Debtor	Independent Director																				12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500
TBD	Debtor	Industry Specials																												
US Trustee	Debtor	US Trustee																												
TBD	Committee	Committee Counsel																				6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250
TBD	Committee	Committee Financial Advisor																				6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250
TBD	Lender	Lender Counsel												40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	
TBD	Lender	Lender Counsel																												20,000
Utility Deposit	Debtor																													
Total Incurred Fees			168,709	338,493	104,627	31,596	37,213	193,958	70,274	28,695	26,138	416,598	37,228	136,647	77,643	94,438	545,916	58,331	117,692	91,056	613,725	477,557	360,000	255,000	225,000	350,000	190,000	190,000	190,000	1,240,000
Paid Fees																														
MWE	Debtor	Debtor Counsel			288,291	-	-	-			168,387	100,000	100,000	200,000		200,000			200,000		300,000	415,506					472,000			
Womble Bond Dickson	Debtor	Other Counsel				-	-	-						-	-	-									40,000	5,000	5,000	5,000	5,000	5,000
GlassRatner	Debtor	Financial Advisor			221,929						113,729	54,834	-	-	68,993	82,732			79,719		141,166					5,000	202,046			
MillerBuckfire	Debtor	Investment Banker	50,000								102,534	-	-	51,559	-	-			50,913	-		55,000					-	-	1,000,000	
Stretto	Debtor	Claims Agent			5,000	-	-	-	-	-	-	-	-	10,000	15,000		14,400				8,725		172,000	110,000	5,000	5,000	75,000	5,000	5,000	5,000
TBD	Debtor	Independent Director				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		100,000	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500
TBD	Debtor	Industry Specials				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-										
US Trustee	Debtor	US Trustee				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-										
TBD	Committee	Committee Counsel				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-								25,000		
TBD	Committee	Committee Financial Advisor				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-								25,000		
TBD	Lender	Lender Counsel				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-		280,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000
TBD	Lender	Lender Counsel				-	-	-	-	-	-	-	-	-	-	-	-	-	-	-										
Utility Deposit	Debtor					-	-	-	-	-	-	-	-	-	-	-	-	-	-	-										
Total Paid Fees			50,000	-	-	515,220	-	-	-	-	384,651	154,834	100,000	261,559	83,993	282,732	14,400	-	330,631	-	449,891	850,506	224,500	162,500	97,500	117,500	856,546	62,500	62,500	1,062,500
Quarterly True-Up																														
MWE	Debtor	Debtor Counsel																												
Womble Bond Dickson	Debtor	Other Counsel																												
GlassRatner	Debtor	Financial Advisor																												
MillerBuckfire	Debtor	Investment Banker																												
Stretto	Debtor	Claims Agent																												
TBD	Debtor	Independent Director																												
TBD	Debtor	Industry Specials																												
US Trustee	Debtor	US Trustee																												
TBD	Committee	Committee Counsel																												
TBD	Committee	Committee Financial Advisor																												
TBD	Lender	Lender Counsel																												
TBD	Lender	Lender Counsel																												
Utility Deposit	Debtor																													
Total Quarterly True-Up Fees			-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	103,877	-	-	-	-	-
Incurring Unpaid																														
MWE	Debtor	Debtor Counsel	-	288,291	288,291	-	-	168,387	168,387	168,387	-	284,833	184,833	(15,167)	(15,167)	(215,167)	246,069	246,069	46,069	46,069	246,069	(39,437)	90,563	220,563	216,687	316,687	(90,313)	(25,313)	39,687	104,687
Womble Bond Dickson	Debtor	Other Counsel	-			-	-				-						5,000	10,000	15,000	20,000	25,000	30,000	35,000	40,000	5,000	5,000	5,000	5,000	5,000	5,000
GlassRatner	Debtor	Financial Advisor	118,709	168,911	221,929	31,596	68,809	94,381	113,729	142,425	54,834	31,765	68,993	114,081	82,732	40,038	79,719	93,050	35,111	81,166	(0)	52,557	102,557	152,557	202,557	252,557	100,511	150,511	200,511	250,511
MillerBuckfire	Debtor	Investment Banker	-	-	51,609	51,609	51,609	51,609	102,534	102,534	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Stretto	Debtor	Claims Agent	-	-	-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(15,000)	(30,000)	(15,600)	(30,000)	(30,000)	(30,000)	(30,000)	(30,000)	140,000	78,000	(27,000)	(27,000)	43,000	(27,000)	(27,000)	(27,000)	43,000
TBD	Debtor	Independent Director	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)
TBD	Debtor	Industry Specials	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	Debtor	US Trustee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TBD	Committee	Committee Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TBD	Committee	Committee Financial Advisor	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,250	12,500	18,750	25,000	31,250	12,500	18,750	25,000	31,250
TBD	Lender	Lender Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,250	12,500	18,750	25,000	31,250	12,500	18,750	25,000	31,250
TBD	Lender	Lender Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	80,000	80,000	80,000	80,000	80,000				

Notes/Assumptions:
-Adherence to current timeline, including (i) bankruptcy filing on October 4th, (ii) and a plan confirmation by April 1st
-BP will transfer ISO FRP to extent possible while continuing to provide administrative related services related thereto
-BP shall provide supply of primary gas and power supply through bilateral trade (Agera will pay ISOs for imbalance and capacity related charges)
-Assumes no adversary proceedings investigated or pusued by Agera or commenced against Agera
-Uncontested first-day motions
-APA negotiations with only one stalking horse bidder
-No significant discovery requests or major road blocks from Committee
-No litigation with regulatory authorities
-Projection does not reflect ACP payments
-Budget assumes no commissions paid during projection period
-Estimate of Accrued Liabilities excludes BP secured claims
-Assumes customer transition during month of December '19
-Does not reflect risks related to additional collateral demands other than FRP transition collateral.

Agera Professional Fee Rollforward

Week			7-Dec	14-Dec	21-Dec	28-Dec	4-Jan	11-Jan	18-Jan	25-Jan	1-Feb	8-Feb	15-Feb	22-Feb	29-Feb	7-Mar	14-Mar	21-Mar	28-Mar	Oct19-Mar20	Total
Incurred Fees																					
MWE	Debtor	Debtor Counsel	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	45,000	1,615,000	3,417,748
Womble Bond Dickson	Debtor	Other Counsel	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	130,000	155,000
GlassRatner	Debtor	Financial Advisor	35,000	35,000	35,000	35,000	35,000	35,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	937,557	1,700,658
MillerBuckfire	Debtor	Investment Banker																		1,110,000	1,365,006
Stretto	Debtor	Claims Agent	7,000	7,000	7,000	75,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	642,000	665,125
TBD	Debtor	Independent Director	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	325,000	325,000
TBD	Debtor	Industry Specials																		-	-
US Trustee	Debtor	US Trustee	550,000								550,000									1,100,000	1,100,000
TBD	Committee	Committee Counsel	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	162,500	162,500
TBD	Committee	Committee Financial Advisor	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	6,250	162,500	162,500
TBD	Lender	Lender Counsel	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	680,000	1,000,000
TBD	Lender	Lender Counsel																		-	-
Utility Deposit	Debtor																			-	-
Total Incurred Fees			687,000	137,000	137,000	205,000	137,000	137,000	127,000	127,000	677,000	127,000	127,000	127,000	127,000	127,000	127,000	127,000	127,000	6,864,557	10,053,536
Paid Fees																					
MWE	Debtor	Debtor Counsel	158,000					94,000				105,000					69,000			1,313,506	2,870,184
Womble Bond Dickson	Debtor	Other Counsel	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	150,000	150,000
GlassRatner	Debtor	Financial Advisor	160,000				112,000					116,000					80,000			670,046	1,433,147
MillerBuckfire	Debtor	Investment Banker	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1,110,000	1,365,006
Stretto	Debtor	Claims Agent	75,000	7,000	7,000	7,000	75,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	637,000	690,125
TBD	Debtor	Independent Director	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500	12,500								325,000	325,000
TBD	Debtor	Industry Specials	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	Debtor	US Trustee	550,000	-	-	-	-	-	-	-	550,000	-	-	-	-	-	-	-	-	1,100,000	1,100,000
TBD	Committee	Committee Counsel	20,000				20,000					25,000					20,000			110,000	110,000
TBD	Committee	Committee Financial Advisor	20,000				20,000					25,000					20,000			110,000	110,000
TBD	Lender	Lender Counsel	40,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	960,000	960,000
TBD	Lender	Lender Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utility Deposit	Debtor																			-	-
Total Paid Fees			#####	44,500	44,500	44,500	358,500	44,500	44,500	44,500	594,500	315,500	32,000	32,000	32,000	32,000	221,000	32,000	32,000	6,485,552	9,113,462
Quarterly True-Up																					
MWE	Debtor	Debtor Counsel								181,000									262,687	547,563	547,563
Womble Bond Dickson	Debtor	Other Counsel																	5,000	5,000	5,000
GlassRatner	Debtor	Financial Advisor								118,511									149,000	267,511	267,511
MillerBuckfire	Debtor	Investment Banker																	-	-	-
Stretto	Debtor	Claims Agent																	(25,000)	(25,000)	(25,000)
TBD	Debtor	Independent Director																	-	-	-
TBD	Debtor	Industry Specials																	-	-	-
US Trustee	Debtor	US Trustee																	-	-	-
TBD	Committee	Committee Counsel								16,250									36,250	52,500	52,500
TBD	Committee	Committee Financial Advisor								16,250									36,250	52,500	52,500
TBD	Lender	Lender Counsel																	40,000	40,000	40,000
TBD	Lender	Lender Counsel																	-	-	-
Utility Deposit	Debtor																		-	-	-
Total Quarterly True-Up Fees			-	-	-	-	-	-	-	332,011	-	-	-	-	-	-	-	-	504,187	940,075	940,075
Incurred Unpaid																					
MWE	Debtor	Debtor Counsel	(8,313)	36,687	81,687	126,687	77,687	122,687	167,687	31,687	76,687	16,687	61,687	106,687	151,687	196,687	172,687	217,687	-	-	-
Womble Bond Dickson	Debtor	Other Counsel	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	-	-	-
GlassRatner	Debtor	Financial Advisor	125,511	160,511	195,511	230,511	153,511	188,511	213,511	120,000	145,000	54,000	79,000	104,000	129,000	154,000	99,000	124,000	-	-	-
MillerBuckfire	Debtor	Investment Banker	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Stretto	Debtor	Claims Agent	(25,000)	(25,000)	(25,000)	43,000	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	(25,000)	-	-	-
TBD	Debtor	Independent Director	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(87,500)	(75,000)	(62,500)	(50,000)	(37,500)	(25,000)	(12,500)	-	-	-
TBD	Debtor	Industry Specials	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee	Debtor	US Trustee	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TBD	Committee	Committee Counsel	17,500	23,750	30,000	36,250	22,500	28,750	35,000	25,000	31,250	12,500	18,750	25,000	31,250	37,500	23,750	30,000	-	-	-
TBD	Committee	Committee Financial Advisor	17,500	23,750	30,000	36,250	22,500	28,750	35,000	25,000	31,250	12,500	18,750	25,000	31,250	37,500	23,750	30,000	-	-	-
TBD	Lender	Lender Counsel	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	40,000	-	-	-
TBD	Lender	Lender Counsel	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utility Deposit	Debtor		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Incurred Unpaid Fees			84,698	177,198	269,698	430,198	208,698	301,198	383,698	134,187	216,687	28,187	123,187	218,187	313,187	408,187	314,187	409,187	-	-	-

Notes/Assumptions:
-Adherence to current timeline, including (i) bankruptcy filing on October 4th, (ii) and a plan confirmation by April 1st
-BP will transfer ISO FRP to extent possible while continuing to provide administrative related services related thereto
-BP shall provide supply of primary gas and power supply through bilateral trade (Agera will pay ISOs for imbalance and capacity related charges)
-Assumes no adversary proceedings investigated or pusued by Agera or commenced against Agera
-Uncontested first-day motions
-APA negotiations with only one stalking horse bidder
-No significant discovery requests or major road blocks from Committee
-No litigation with regulatory authorities
-Projection does not reflect ACP payments
-Budget assumes no commissions paid during projection period
-Estimate of Accrued Liabilities excludes BP secured claims
-Assumes customer transition during month of December '19
-Does not reflect risks related to additional collateral demands other than FRP transition collateral.

Exhibit C

Wind-Down Plan

All timelines for Tasks set forth below that require preparation and submission of EDI drops and notices will be adjusted to the extent necessary so that EDI drops commence and notices to utilities, customers and PUCs are sent beginning Week 4 after the Oct. 21, 2019 hearing on rejection motions with as little delay as possible from the timelines stated below. The Parties agree to determine modifications described above in good faith taking into consideration applicable requirements, provided that in no event will the timelines stated below be adjusted by more than one week unless otherwise mutually agreed by the Parties.

AGERA WIND DOWN PLAN

This plan set forth below is designed to accomplish transfer of all customer accounts assigned under the APA and return of all other accounts to utilities on the timelines set forth below and no later than the Supply Termination Date (as defined in the RSA Term Sheet, to be no later than 120 days after APA Closing).¹ This plan may be modified from time to time as required on mutual agreement of Agera and BP.

The applicable responsible parties will complete the following tasks on the timeline set forth below (1) to return to default utility service all accounts that are not purchased by the Buyer (Initial Return Accounts) under the Asset Purchase Agreement (APA), which returns may occur prior to filing of a Chapter 11 Bankruptcy Petition, and (2) to transfer all accounts corresponding to Assigned Contracts purchased by the Buyer under the APA (Transfer Accounts) following filing of a Chapter 11 Bankruptcy Petition. The timelines below prioritize EDI transaction timeframes and are designed to provide reasonable notice to the extent practicable, while complying with certain state and contractual notice requirements. The timelines below may not necessarily comply with all requirements that could apply. Returns of the Initial Return Accounts to default utility service may occur prior to filing of a Chapter 11 Bankruptcy Petition, in which event, all tasks will be completed as set forth below except that timing of the highlighted tasks and milestones will be adjusted to a later date relative to the Bankruptcy Filing Date. Capitalized terms not defined herein have the meaning given to such term in the RSA Term Sheet.

If Closing does not occur under the APA or any Transfer Accounts have not been transferred by termination or the Final Assignment Date under the APA, the Parties will establish further timelines and tasks to return to default service all remaining Transfer Accounts that have not been transferred to the Buyer (Failed Transfer Accounts), which will be similar to the tasks and timelines for returns of the Initial Return Accounts.

¹ Latest Supply Termination Date to be confirmed upon Closing under the APA.

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
1.	<u>End of Week 1² (Oct. 4, 2019)</u>	Bankruptcy Filing Date	-	--	--
2.	<u>Week 1-2</u>	Determine Initial Return Accounts	Parties to discuss which accounts will be returned to default utility service immediately (Initial Return Accounts) and which accounts are Transfer Accounts and to finalize the list of Assigned Contracts to be filed with the Bidding Procedures. Parties to determine which non-Transfer Accounts will not be returned to default service immediately as Initial Return Accounts and will be returned in the first meter read date in the month of December (Secondary Return Accounts). [Note: To the extent there are Secondary Return Accounts in NH, NH notice and EDI Drop timelines for Initial Return Accounts may be shortened subject to discussion between the parties and counsel.]	BP, Agera, MWE, HB	
3.	<u>Week 2</u>	Motion to Reject Contracts	Agera ³ to file omnibus rejection motion to reject Initial Return Accounts and Secondary Return Accounts to request a hearing on morning of Oct. 15. Order would be effective for each customer contract upon the date that the customer's account is returned to default service at the utility.		
4.	<u>Week 2</u>	Filing of Assigned Contracts List	List of Assigned Contracts attached to the Stalking Horse APA filed with Bankruptcy Court within three days after Petition Date.		
5.	<u>Week 2</u>	Broker Contract Termination	Motions to reject broker contracts. Letters to brokers to be sent.		

² For purposes of this Wind Down Plan, a "Week" refers to a work week. Week 1 is the week of Oct. 1 ending on October 4, 2019.

³ Unless otherwise stated, references to Agera include all Agera Opco Entities.

Task Number	Date	Task	Description	Responsible Party	Status
6.	<u>Weeks 2-3</u>	Utility Confirmatory Calls	<p>Informal calls and/or emails to utilities on a best efforts basis to coordinate and provide an overview of the intended drop and transfer process and timelines for utilities and to confirm no other utility requirements beyond timely EDI transactions; <i>provided</i> that notwithstanding the above, Agera shall email or place a call during business hours (with at least two follow up calls if unable to reach) to an appropriate contact by the end of Week 2 at each Pennsylvania utility and by the end of Week 3 for each New Jersey utility, and <i>further provided</i> after communications to Pennsylvania utilities, Agera shall give appropriate consideration to comparatively larger load size and the timing of drops when allocating its best efforts resources. In calls with utilities, determine any manual drop requirements or volume limitations. <u>Calls should prioritize communications in the following order: (1) Pennsylvania utilities in Week 2 and NJ power utilities in Week 3 to confirm process of returning customers to default service to the extent they will not be transferred; (2) gas utilities in states identified in EDI Drop Round 1 (Task No. 12); (3) other utilities receiving EDI drops of Initial Return Accounts in Week 3 under Task Nos. 19 and 20; and (4) other utilities. [Note: Calls should not identify potential buyer of Transfer Accounts.]</u></p> <p>Following initial confirmatory calls in this task, Agera to continue to coordinate in the following weeks with utilities as reasonably necessary to complete the drops and transfers of accounts and other tasks related to utilities that are described herein.</p>	[Agera utilities liaison]	
7.	<u>Week 2</u>	Preparation of Form Utility, Customer, and PUC Notices	<p>MWE/Agera to draft or revise (as applicable) form utility and customer notices to be discussed by the parties, except that HB will draft form notices to PUCs in states where such notices are to be provided. By Day 1 of Week 2, finalize the sample form of customer drop notice to be provided to NY PSC and NJ BPU. By Day 3 of Week 2, finalize the sample form customer drop notices for any other PUCs that request courtesy copies of such notices in informal communications under Task No. 9. Finalize all forms of notices by the end of Week 2.</p>	BP, Agera, MWE, HB	

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
8.	<u>Week 2</u>	Determine Notices of Abandonment	Parties to discuss and determine when advance notice of abandonment and cessation of services (CT, ME, NH, OH ⁴) will be provided to applicable PUCs. In particular, confirm whether cessation and abandonment notices will be incorporated with initial PUC notices under Step 9 or if cessation or abandonment notices should be provided after transfer process).	BP, Agera, MWE, HB	
9.	<u>Week 2</u> <u>(by Day 1 of Week 2 for NY PSC; Day 3 of Week 2 for NJ BPU and PAPUC, and otherwise by the end of Week 2)</u>	PUC Informal Communications and Courtesy Copies of Customer Drop Notices	<p>Informal calls and/or emails to Agera's PUC contacts in all states explaining circumstances and expected timing in light of the inability to continue serving customers in the state and that Agera is working closely with utilities to ensure a smooth transition to utility service. [Note: Parties to discuss extent to which transfer will be discussed with PUCs.]</p> <p>By Day 1 of Week 2, provide sample customer notices of returns to utility service to NY PSC. By Day 3 of Week 2, provide sample customer notice to NJ BPU and PAPUC. By end of Week 2, provide sample notice to any PUCs that request courtesy copies of customer notices in the informal calls or emails as described above.</p> <p>MWE/Agera to confirm if any other PUCs have stated preferences to receive advance copies of customer notice for returns of utility service. If applicable, emails should notify PUC/BPU that the attached notice will be mailed to customers as soon as possible, and that Agera will be returning accounts to utility service in connection with its bankruptcy.</p>	Raima Jamal	
10.	<u>Week 2</u>	Preparation of EDI	Agera to begin preparing EDI so that returns of Initial Return Accounts scheduled in Week 3 may occur immediately after Bankruptcy Court ruling on contract rejection motions.	Tom Frederiksen Lakeisha John	
11.	<u>[Week 3]</u> <u>(requested to</u>	Hearing on Contract	Darren Azman/MWE to notify Lakeisha John and Tom Frederiksen upon Bankruptcy Court ruling on motion to reject customer contracts		

⁴ Ohio application process includes separate forms for abandoning electric and natural gas competitive service and takes 90 days (subject to automatic approval, unless that process is suspended). If there are no Ohio customers left, multiple notifications are avoided.

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
	<u>be held on morning of the 15th of the month)</u>	Rejection Motions	so that EDI Drops Round 1 in task no. 12 can be submitted on the 15 th (assuming hearing requested per Item 3 occurs on the morning of October 15 th) or as soon as possible if the hearing does not occur on the morning of October 15 th .		
12.	<u>Week 3 (after Item 11 on the 15th)⁵</u>	EDI Drops Round 1⁶	Submit EDI drops for IL (gas), OH (gas), PA (gas), RI (gas), and NY (both) Initial Return Accounts, to the extent there are any Initial Return Accounts for such states, except that EDI drops for Initial Return Accounts to the following utilities may be completed as soon as possible in Week 3 or Week 4 to the extent their EDI drop deadlines are prior to the 14 th of the month to be effective by the first of the following month: National Fuel Gas (NY and PA), National Grid (RI and PA).	Tom Frederiksen Lakeisha John	
13.	<u>Week 3 (after Item 11 on the 15th)</u>	PUC Notices (EDI Round 1 States)	For states with EDI Round 1 drops under Task No. 12, provide any written notices to PUCs (where required by regulation) that Agera will transfer certain accounts and return to default service other accounts.	Raima Jamal	
14.	<u>Week 3 (after Item 11 on the 15th)</u>	Customer Drop Notices and Utility Notices (EDI Round 1 States)	For states with EDI Round 1 drops under Task No. 12, provide written notices (1) to customers with Initial Return Accounts and Secondary Return Accounts of contract termination and return to default service and (2) to utilities (where required) that Agera intends to transfer some accounts to a third party supplier and return some accounts to default service, and that in the event Transfer Accounts are not transferred they may be returned to default service. Utility notices should use	Agera	

⁵ If the hearing requested in Task Number 11 does not occur on the 15th of Month 1, then (a) Task Number 12 shall be completed as soon as possible following the date such hearing occurs and in any event, not later than Week 4 for New York and Day 13 of Month 2 for such other states referenced in Task Number 12 and (b) Task Number 13 and Task Number 14 shall be completed 1 day after the actual date the hearing requested in Task Number 11 occurs.

⁶ With respect to all EDI drops referenced in this Wind Down Plan, for any utilities that do not use EDI for returns of customers to utility service, such returns will be completed by email or other means required by the utility, in each case to be submitted by the date that EDI drops are specified to be submitted for such state under this Wind Down Plan.

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
			addresses and methods (e.g. overnight and/or certified mail) identified in utility contracts.		
15.	<u>Week 3</u>	Notice of Assignment and Assumption / Customer Transfer Notices	<p>Notice provided to customers with Transfer Accounts of potential assumption and assignment pursuant to Bankruptcy court proceedings. Note must be given by the Assignment Notice Date under the APA.</p> <p>[Agera to provide generic notices to customers with Transfer Accounts of intent to transfer contracts to a third party supplier.]</p>	Agera	
16.	<u>Week 3</u> <u>[Day after Item 11]</u>	Notices to Remaining PUCs	For all states except EDI Round 1 states for which notice has already been provided, provide any written notices to PUCs (where required by regulation) that Agera will transfer certain accounts and return to default service other accounts.	Raima Jamal	
17.	<u>Week 3</u> <u>[Day after Item 11]</u>	Remaining Customer Drop Notices [(except NH)]	[Except New Hampshire] and except notices that have already been provided with EDI Round 1, Agera to provide notices to all customers with Initial Return Accounts or Secondary Return Accounts of contract termination and return to default service.	Agera	
18.	<u>Week 3</u> <u>[Day after Item 11]</u>	Notices to Remaining Utilities	For all states except any EDI Round 1 states for which notice has already been provided, Agera to provide written notices (where required) to utilities that Agera intends to transfer some accounts to a third party supplier and return some accounts to default service, and that in the event Transfer Accounts are not transferred they may be returned to default service. These notices should use addresses and methods (e.g. overnight and/or certified mail) identified in utility contracts. [Note: Prioritize written notice to NJ power utilities in compliance with Third Party Supplier Agreements.]	[Agera utilities liaison]	
19.	<u>Week 3</u> <u>(by the 18th)</u>	EDI Drops Round 2	Submit EDI drops of Initial Return Accounts for DC (gas), MA (gas), OH (power), PA (power), VA (gas) no later than the 18 th of Month 1 assuming a court ruling on rejection motions occurs by the 18 th and otherwise as soon as possible and no later than the 15 th of Month 2.	Tom Frederiksen Lakeisha John	

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
20.	<u>Week 3</u> <u>(anytime during week)</u>	EDI Drops Round 3	For Initial Return Accounts, submit all EDI drop transactions for CA, CT, DC (power only), DE, IL (power), MA (power), and RI (power)	Tom Frederiksen Lakeisha John	
21.	<u>Week 4</u>	NH Customer Drop Notices	For all New Hampshire Initial Return Accounts, notices sent to customers of contract termination and return to default service.	Agera	
22.	<u>Week 4</u>	Capacity Release Preparation	Determine whether any additional steps are required beyond returning accounts to the utility for Agera to return interstate gas pipeline capacity that Agera will no longer be using, or if such return of capacity is automatic upon dropping accounts. To the extent this process is not automatic, coordinate release process with overall effort to terminate/transfer gas customer accounts so that Agera can continue to schedule gas during the wind down process to the extent of remaining accounts that have not yet been returned or transferred.	[Agera utilities liaison]	
23.	<u>Week 4</u>	Capacity Transfer Preparation	Determine process to move inventory to Buyer concurrently with transfer of storage capacity. We anticipate for each utility that Buyer's allocated storage and transportation capacity will be increased as accounts are transferred to Buyer.	[Agera utilities liaison]	
24.	<u>Week 4</u>	Ohio Change in Operations Filing	Within 30 days of filing the bankruptcy, each Agera entity with an Ohio certificate to file notice of change in business operations in their respective certification dockets.	Agera/MWE/Ohio local counsel	
25.	<u>Week 5</u>	Bid Deadline			
26.	<u>Week 5</u>	Auction (if necessary)			
27.	<u>Week 1, Month 2</u>	Objection Deadline	Objection deadline for assumption and assignment of customer contracts		

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
28.	<u>Week 1, Month 2 (Ongoing)</u>	Confirm EDI Transactions	Confirm with utilities that EDI were successfully processed by utilities and that applicable accounts were actually dropped to utility service on expected timelines.	Tom Frederiksen Lakeisha John	
29.	<u>Week 1, Month 2</u>	EDI Drops Round 4 (MD)	Submit all EDI drops for all Initial Return Accounts in Maryland approximately on the 3 rd of Month 2 and no sooner than 18 days after notice was sent to customers. Note: Maryland (gas) EDI must be submitted no later than the 18 th of the month.	Tom Frederiksen Lakeisha John	
30.	<u>Week 1, Month 2</u>	EDI Drops Round 5 (NJ)	Submit all EDI drops for all Initial Return Accounts in NJ approximately on the 3 rd of Month 2 and no sooner than 17 days after notice was sent to customers. Note: NJ (gas) EDI must be submitted no later than the 10 th of the month.	Tom Frederiksen Lakeisha John	
31.	<u>Ongoing (beginning in Month 2)</u>	Secondary Return Accounts	Beginning in Month 2, Agera to begin submitting EDI drops for Secondary Return Accounts to be effective in the first meter read date in the month of December.	Tom Frederiksen Lakeisha John	
32.	<u>Week 2, Month 2</u>	EDI Drops Round 6 (ME)	Submit all EDI drops for Initial Return Accounts in Maine approximately on the 13 th of Month 2 and no sooner than 28 days after notice was sent to customers.	Tom Frederiksen Lakeisha John	
33.	<u>[Week 3, Month 2]</u>	Closing	Estimated Closing Date to be adjusted subject to final Closing Date under APA.		
34.	<u>[Week 3, Month 2]</u>	Enrollments	After Item 33, Buyer starts scheduling enrollments for Transfer Accounts.		

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
35.	<u>[Week 3, Month 2]</u>	Assignment List	After Item 33, final list of contracts to be assigned filed with Bankruptcy court Parties to confirm this list will be filed as an update to the list of Assigned Contracts filed with the Stalking Horse APA		
36.	<u>Week 3, Month 2 (ongoing)</u>	Discuss Failed Transfer (if applicable)	If APA has been terminated before transfer of all Transfer Accounts, Parties to determine new timelines and task list applicable to Failed Transfer Accounts.	BP, Agera, MWE, HB	
37.	<u>Week 4/5, Month 2</u>	Last EDI for Secondary Return Accounts	Except for TX [and NH], complete final EDI drop transactions for Secondary Return Accounts. Secondary Drop Accounts for TX to be completed in Task No. 40 with Initial Return Accounts in TX. [Unless NH EDI for Initial Return Accounts is processed sooner than Week 4 of Month 2, Secondary Return Accounts for NH to be dropped in Task No. 39 with Initial Return Accounts in NH; otherwise NH EDI drops for Secondary Return Accounts to be submitted so that such customers are returned to default service in Month 3.]		
38.	<u>Week 1, Month 3 (ongoing)</u>	Confirm Returns of Accounts (most states)	Confirm with utilities that EDI were successfully processed by utilities and that applicable accounts were actually dropped to utility service on expected timelines. Returns of Initial Return Accounts expected to be complete in most states (CA, CT, DC, DE, IL, MA, ME, NY, OH, PA).	Tom Frederiksen Lakeisha John	
39.	<u>[Week 2, Month 3]</u>	[EDI Drops Round 7 (NH)]	[Submit all NH EDI drops for Initial Return Accounts [and Secondary Return Accounts] approximately on the 13 th of Month 3 and no sooner than 58 days after notice given to utility and PUC.] [Note: Parties to discuss providing NH EDI sooner.]	Tom Frederiksen Lakeisha John	
40.	<u>Week 2, Month 3</u>	TX Transition to POLR	After completion of transfer of all TX accounts, Agera to coordinate with ERCOT, PUCT and POLR regarding transition of remaining accounts to POLR service and to initiate return by ERCOT of the transition to POLR service. Parties to discuss any further steps required in connection with return to POLR.	Agera, MWE, TX local counsel	

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
41.	<u>Rolling Basis</u> ⁷	PJM Collateral Return Process	<p>In the event that collateral is posted with PJM, Agera to begin PJM collateral return process promptly upon completion of returns of Initial Return Accounts and any Failed Transfer Accounts and completion of transfers of Transfer Accounts in all applicable states. Upon utility confirmation that all accounts have been transferred to Buyer or dropped to default service in PJM, Agera to contact PJM staff [if no other contact, use membership at (866) 400-8980 or (610) 666-8980] to determine if return of collateral should be requested in eCredit system prior to Agera transmitting its withdrawal notice. Agera may need to complete collateral return process on eCredit system prior to delivering withdrawal notice. Initiate withdrawal from PJM by sending letter electronically to PJM Membership and pursuant to PJM operating agreement indicating credit should be returned. See instructions: https://www.pjm.com/about-pjm/member-services.aspx</p> <p>See 18.18.1 of PJM Operating Agreement https://pjm.com/directory/merged-tariffs/oa.pdf</p>	[Agera credit team]	
42.	<u>Rolling Basis</u>	NYISO, CAISO, MISO and ERCOT Collateral Return Process	<p>To the extent cash or other collateral is posted with any ISOs, Agera to begin ISO/RTO collateral return process promptly upon completion of returns of Initial Return Accounts and any Failed Transfer Accounts and completion of transfers for Transfer Accounts in all applicable states. Upon utility confirmation that all accounts have been transferred to Buyer or dropped to default service in NYISO, CAISO, MISO or ERCOT, Agera to contact each ISO to obtain return of cash or credit support as applicable.</p>	[Agera credit team]	

⁷ All tasks identified as occurring on a rolling basis are to be completed reasonably promptly upon completion of all transfers of Transfer Accounts and returns to default service of Initial Return Accounts and Failed Transfer Accounts. The parties will coordinate with the applicable RTO/ISO or utility to meet any other identified conditions for return of collateral.

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
43.	<u>Week 2, Month 3</u>	Termination of REP Licenses	Parties to discuss any further steps expected to be necessary for ceasing operations and terminating licenses with states where all drops and transfers have completed.	BP, Agera, MWE, HB	
44.	<u>[Week 2, Month 4]</u>	<u>Expected End Date under APA</u>	APA is terminable if Closing has not occurred 100 days after the Petition Date. Task no. 36 applies upon any APA termination.		
45.	<u>Week 3, Month 4 (ongoing)</u>	Confirm Returns of Accounts (NJ/NH)	Substantially all EDI drops expected to be complete for Initial Return Accounts in NJ (by week 1) and NH (by week 3) of month 4. All Initial Return Accounts and Secondary Return Accounts are expected to have been returned to utility service by this date absent a utility delay in meter reading.	Tom Frederiksen Lakeisha John	
46.	<u>Week 3, Month 4</u>	Confirm Final Interstate Capacity Returns	Confirm completion of returns of interstate pipeline capacity to utilities	[Agera utilities liaison]	
47.	<u>Week 3, Month 4</u>	Termination of REP Licenses	Parties to discuss any further steps expected to be necessary for ceasing operations and terminating licenses with states where all drops and transfers have completed. In Ohio, parties to determine any trailing obligations that will remain in place after licenses are terminated to the extent impacting return of credit support returns.	BP, Agera, MWE, HB	
48.	<u>Rolling Basis</u>	ISO-NE LC Return Process	Upon completion of returns to default service for all Initial Return Accounts and any Failed Transfer Accounts and completed transfers to the Buyer for Transfer Accounts, Agera to contact ISO-NE to obtain return of cash and initiate collateral return process.	[Agera credit and legal team]	
49.	<u>Rolling Basis (Expected to begin</u>	Settle POR Account Balances	Contact all utilities for which returns and transfers are complete to obtain return of remaining balances in POR accounts.	[Agera utilities liaison]	

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
	<u>Week 3, Month 4</u> ⁸				
50.	<u>[Week 3, Month 4]</u>	Terminate Utility Agreements	Terminate utility agreements. Timing of termination is subject to adjustment to account for communications with utilities to ensure return of remaining balances in POR accounts	Agera counsel Outside counsel	
51.	<u>Week 3, Month 4</u> ⁹	Obtain Return of Credit Support	Contact utilities, interstate pipelines, and any remaining ISOs with which credit support has been posted to obtain return of LCs, cash, guarantees, and surety bonds.	[Agera credit and legal team]	
52.	<u>Rolling Basis</u>	Termination of Credit Support	BP to terminate guarantees posted and communicate with LC issuers on termination of LCs where applicable.	BP, HB	
53.	<u>[Month 4]</u>	Reject any Contracts not yet Rejected	Parties to discuss timing for Agera to file motion to reject remaining contracts not yet rejected.	BP, Agera, MWE, HB	
54.	<u>By no later than 120 days after APA Closing</u>	<u>Supply Termination Date/ Final Assignment Date</u>	All Transfer Accounts must be transferred to the Buyer under the APA and all other accounts returned to utility service no later than the Supply Termination Date (as defined in the RSA Term Sheet to be no later than 120 days after APA Closing). ¹⁰		

⁸ Timing for each utility to be adjusted to the extent that Transfer Accounts with such utility are enrolled on a later timeline due to Chapter 11 Bankruptcy filing occurring after return of Initial Return Accounts or to the extent there are any Failed Transfer Accounts with such utility.

⁹ Timing to be adjusted to the extent discussed in note 4 above.

¹⁰ Latest Supply Termination Date to be included upon Closing under the APA.

Task Number	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
55.	<u>Rolling Basis</u>	PJM Withdrawal Complete	Confirm withdrawal from PJM, which should be effective approximately 90 days after notice being sent to PJM. If Agera has not received notice from PJM that withdrawal is complete by 90 days after notice sent, follow up with PJM to ensure withdrawal is effective.	[Agera credit and legal team]	
56.	<u>Rolling Basis</u>	NYISO Return of LC	Confirm NYISO return of credit support, which is expected to be complete upon settlement of true-up invoices.	[Agera credit and legal team]	
57.	<u>Rolling Basis</u>	ISO-NE Return of LC	Confirm ISO-NE return of credit support, which is expected to be complete upon settlement of true-up invoices.	[Agera credit and legal team]	
58.	<u>Rolling Basis</u>	CAISO, MISO, and ERCOT Return of Cash/Credit Support	Confirm return by all ISOs of any remaining posted cash or credit support	[Agera credit and legal team]	
59.	<u>Rolling Basis</u>	Sell Gas in Storage	Sell any gas in storage that is not related to Transfer Accounts in a commercially reasonable time and manner	Agera	
60.	<u>Rolling Basis for all states and regions following completion of Task Numbers 52 and 55-58 and complete withdrawal from all</u>	Terminate Market-based Rate Authorizations		Agera legal team	

Task Num ber	Date	<u>Task</u>	<u>Description</u>	<u>Responsible Party</u>	<u>Status</u>
	<u>states and regions.</u>				