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

_____	)	
In re:	)	Chapter 11
	)	
AGERA ENERGY LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-_____ (____)
	)	
Debtors.	)	(Joint Administration Requested)
_____	)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING (I) THE  
DEBTORS TO REDACT CERTAIN PERSONALLY IDENTIFIABLE AND  
COMMERCIALY SENSITIVE INFORMATION FROM COURT FILINGS AND  
(II) THE DEBTORS' CLAIMS AND NOTICING AGENT TO WITHHOLD  
PUBLICATION OF CLAIMS FILED BY CERTAIN INDIVIDUALS**

Agera Energy LLC and the above-captioned debtors, as debtors and debtors in possession (collectively, the "Debtors") in these chapter 11 cases (these "Chapter 11 Cases"), hereby submit this motion (the "Motion") for entry of an order pursuant to section 107(c) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9018-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), substantially in the form attached hereto as

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

**Exhibit A** (the “Proposed Order”), authorizing (i) the Debtors to redact from the consolidated list of creditors and potential parties in interest (the “Creditor List”), Schedules,<sup>2</sup> or any paper filed or to be filed with the Court, certain personally identifiable information, including the home addresses of current employees, the last known addresses of any former employees, and certain commercially sensitive information, including the identity and addresses of the Debtors’ customers and sales representatives and (ii) Stretto, the proposed claims and noticing agent (the “Claims and Noticing Agent”) to withhold publication of claims filed by the Debtors’ sales representatives and customers.

### **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.

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

3. The bases for the relief requested herein are Bankruptcy Code section 107(c), Bankruptcy Rule 9018, and Local Rule 9018-1.

### **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.

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<sup>2</sup> As defined in the *Debtors’ Motion for Entry of an Order (I) Extending Time to File Schedules and Statements and (II) Authorizing Debtors to File Consolidated Monthly Operating Reports*, filed contemporaneously herewith.

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.

### **RELIEF REQUESTED**

8. By this Motion, the Debtors seek entry of an order authorizing (i) the Debtors to redact from the Creditor List, Schedules, or any paper filed or to be filed with the Court, certain personally identifiable information, including the home addresses of current employees, the last known addresses of any former employees, and certain commercially sensitive information, including the identity and addresses of the Debtors' customers and sales representatives and (ii) the Claims and Noticing Agent to withhold publication of claims filed by the Debtors' sales representatives and customers.

### **BASIS FOR REQUESTED RELIEF**

#### **A. Cause Exists to Redact Certain Personally Identifiable and Commercially Sensitive Information.**

9. Under Bankruptcy Code section 107(b), bankruptcy courts have the authority to order that certain kinds of papers be filed under seal. This section provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may . . .  
(1) protect an entity with respect to a trade secret or confidential research, development or commercial information.

10. Bankruptcy Code section 107(b) does not require a party seeking protection thereunder to demonstrate "good cause." *See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v.*

*Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Instead, the movant need only demonstrate that the material sought to be protected satisfies one of the categories identified in Bankruptcy Code section 107(b). Moreover, courts have determined that confidential commercial information need not rise to the level of a trade secret to be protected under Bankruptcy Code Section 107(b). *See, e.g., In re Orion Pictures*, 21 F.3d at 28.

11. Bankruptcy Code section 107(c)(1)(A) further provides that

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

12. Bankruptcy Rule 9018 establishes procedures for applying Bankruptcy Code section 107. Under Rule 9018, the court, in response to a motion or upon its own initiative,

[M]ay make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code . . . .

13. The Debtors respectfully submit that it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases, including the Creditor List and Schedules, the home addresses of the Debtors' current and former employees and the identity and addresses of the Debtors' customers because such information could be

used, among other things, to perpetrate identity theft or locate survivors of domestic violence or stalking who have otherwise taken steps to conceal their whereabouts.

14. Furthermore, disclosure of the identities and addresses of the Debtors' customers and sales representatives would allow competitors to easily target the customers, thereby putting the Debtors at an unfair competitive advantage at their most sensitive moment and jeopardizing the sale process contemplated by the Debtors.

15. The Debtors propose to redact the home addresses of current employees, the last known address of any former employees and omit the Debtors' customers and sales representatives entirely. However, the Debtors, with the assistance of the Claims and Noticing Agent, will serve all requisite notices on such employees, customers, and sales representatives, and will also provide unredacted versions of the Creditor List, Schedules, and any other applicable filings upon request to the Court, the United States Trustee, counsel to an official committee of unsecured creditors appointed in these Chapter 11 Cases (if any), and other parties in interest designated by further order of the Court, as appropriate.

16. Courts in this jurisdiction and others have granted the relief requested herein in comparable chapter 11 cases. *See, e.g., (In re Barneys New York, Inc., Case No. 19-36300 (CGM) (Bankr. S.D.N.Y. Aug. 6, 2019) (authorizing the debtors to redact personal information of their employees on the creditor matrix); In re Charming Charlie Holdings Inc., Case No. 19-11534 (CSS) (Bankr. D. Del. Jul. 12, 2019) (same); In re Hollander Sleep Products, LLC, Case No. 19-11608 (MEW) (Bankr. S.D.N.Y. June 4, 2019) (authorizing the debtors to redact address information of individual creditors listed on the creditor matrix); In re 1515-GEEnergy Holding Co. LLC, Case No. 19-10303 (LSS) (Bankr. D. Del. May 19, 2019) (same); In re Sungard Availability Services Capital, Inc., Case No. 19-22915 (RDD) (Bankr. S.D.N.Y. May 2, 2019)*

(same); *In re Jones Energy Inc.*, Case No. 19-32112 (DRJ) (Bankr. S.D. Tex. Apr. 15, 2019) (same); *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y. March 5, 2019) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. Apr. 9, 2018) (same); *In re Soundview Elite LTD.*, Case No. 13-13098 (REG) (Bankr. S.D.N.Y. Sept. 17, 2014) (authorizing the chapter 11 trustee to identify each investor by a descriptive identifier only and redact the investor addresses from their schedules and statements to comply with Cayman Islands Privacy Laws).

17. The Debtors request that the seal remain in place until 120 days after the closing of a sale of the Debtors' assets.

18. In view of the foregoing, and given that there is minimal, if any, benefit to the public of publishing the home addresses of the Debtors' employees and the identities of the Debtors' customers in these Chapter 11 Cases, the Debtors submit that the relief requested is appropriate. Absent such relief, the Debtors would unnecessarily render individuals more susceptible to identity theft and could jeopardize the safety of employees who, unbeknownst to the Debtors, are survivors of domestic violence or stalking by publishing their home addresses without any advance notice or opportunity to opt out or take protective measures. Disclosure of the customers' and sales representatives' identities would also jeopardize the sale process the Debtors currently have in place.

**B. Cause Exists to Authorize the Claims and Noticing Agent to Withhold Publication of Claims Filed by Certain Individuals.**

19. There is a high likelihood that claimants such as the Debtors' customers and sales representatives will file claims that may contain some of the very information (*i.e.*, the identity of the Debtors' customers) the Debtors seek to protect in this Motion. As discussed above, Bankruptcy Code section 107(b)(1) provides that the bankruptcy court shall protect an entity

with respect to commercial information. Further, absent a Court order to the contrary, the Claims and Noticing Agent is required to “provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge.” Local Rule 5075-1.

20. The Debtors request that the Claims and Noticing Agent be authorized to withhold publication of claims filed by the Debtors’ customers and sales representatives. The Debtors’ customers are their most valuable asset and any public disclosure of all or part of the customer list would allow competitors to contact the Debtors’ customers and convince them to switch energy providers. This would erode the Debtors’ book of customer contracts and decrease the ultimate proceeds from the sale the Debtors have sought approval of in these Chapter 11 Cases.

21. The Debtors further request to suppress names and addresses of customers on the claims registers for each Debtor (the “Claims Registers”) and file affidavits of service without disclosing the names and addresses of customers and the addresses of employees; *provided that* such proofs of claims, unredacted Claims Registers and/or unredacted affidavits of service may be provided upon request to the Court, the U.S. Trustee, counsel to an official committee of unsecured creditors appointed in these Chapter 11 Cases (if any), and other parties in interest designated by further order of the Court, as appropriate.

22. This Court has granted relief similar to the relief requested herein in at least one other case. *See, e.g., In re Purdue Pharma L.P.*, Case No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 15, 2019).

### **MOTION PRACTICE**

23. 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**

24. 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 Energy Company; (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**

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



WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, and grant the relief requested in this Motion and such other and further relief as the Court deems appropriate.

Dated: October 4, 2019  
New York, New York

Respectfully submitted,

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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Order**

	)	
In re:	)	Chapter 11
	)	
AGERA ENERGY LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 19-_____ (____)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: Docket No. __</b>

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing (i) the Debtors to redact from the Creditor List, Schedules, or any paper filed or to be filed with the Court, certain personally identifiable information, including the home addresses of current employees, the last known address of any former employees, and certain commercially sensitive information, including the identity and addresses of the Debtors’ customers and sales representatives and (ii) the Claims and Noticing Agent to withhold publication of claims filed by the Debtors’ sales representatives and customers; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that the Motion is a core

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 no other or further notice is necessary; and this Court having reviewed the Motion and having determined that the legal and factual bases set forth in the Motion 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 ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized to redact from the Creditor List, Schedules, or any paper filed or to be filed with the Court the home addresses of current employees, the last known address of any former employees and the identity and addresses of the Debtors' customers and sales representatives.
3. The Debtors shall be required to provide unredacted versions of the Creditor List, Schedules, and any other applicable filings (the "Sealed Documents") upon request only to the Court, the United States Trustee, counsel for the Official Committee of Unsecured Creditors (if any), and other parties only upon further order of the Court the Court; *provided* that this Order is without prejudice to the rights of any party in interest or the United States Trustee to seek to unseal the Sealed Documents, or any part thereof.
4. Notwithstanding anything to the contrary in any order authorizing the engagement of Stretto as the Debtor's Claims and Noticing Agent or any Local Rules, the Claims and Noticing Agent is authorized to withhold publication of proofs of claim filed by the Debtors' customers and sales representatives. Such proofs of claims may be provided upon request to the Court, the United States Trustee, counsel for the Official Committee of Unsecured Creditors (if

any), and any other party designated by further order of the Court, and each party receiving such proofs of claim shall keep such information confidential.

5. Notwithstanding anything to the contrary in the order relating to the retention of the Claims and Noticing Agent or any Local Rules, the Claims and Noticing Agent is authorized to file affidavits of service without disclosing the names and addresses of the Debtors' customers and addresses of the Debtors' current and former employees.

6. Notwithstanding anything to the contrary in the order relating to the retention of the Claims and Noticing Agent or any Local Rules, the Claims and Noticing Agent is authorized to suppress customer names and addresses in the Claims Registers.

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

Dated: \_\_\_\_\_, 2019  
White Plains, New York

\_\_\_\_\_  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE