

MCDERMOTT WILL & EMERY LLP

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Debtors in Possession*

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

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

**NOTICE OF (A) HEARING TO CONFIRM PLAN OF
LIQUIDATION AND (B) DATE BY WHICH TO SUBMIT OBJECTIONS**

BY ORDER OF THE UNITED STATES BANKRUPTCY COURT:

PLEASE TAKE NOTICE that a hearing to confirm the Second Amended Joint Chapter 11 Plan of Liquidation of Agera Energy LLC, *et al.*, dated May 9, 2020 (the “Plan”) has been scheduled by the Bankruptcy Court, and the following deadlines and procedures have been established with respect thereto:

HEARING TO CONFIRM PLAN OF LIQUIDATION

1. A hearing to confirm the Plan (the “Confirmation Hearing”) will commence on **June 12, 2020, at 2:00 p.m.** (Prevailing Eastern Time) before the Honorable Robert D. Drain in the United States Bankruptcy Court, Southern District of New York (the “Court”), 300 Quarropas Street, Courtroom No. 118, White Plains, NY 10601. The Confirmation Hearing may

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

be continued from time to time by announcing such continuance in open court or otherwise, all without further notice to parties in interest.

ESTABLISHMENT OF OBJECTION DEADLINE AND PROCEDURES

2. The Bankruptcy Court established **June 9, 2020, at 4:00 p.m.** (Prevailing Eastern Time) as the last date and time for filing and serving objections to confirmation of the Plan (the “Plan Objection Deadline”). Objections not filed and served by the Plan Objection Deadline in the manner set forth in paragraph 3 below will not be considered by the Bankruptcy Court.

3. In order to be considered by the Bankruptcy Court, objections, if any, to the Plan, **must** (a) be in writing, (b) state the name and address of the objecting party and the amount and nature of the Claim or Interest of such party, (c) state with particularity the basis and nature of any objection or proposed modification, and (d) be filed with the Clerk of the Bankruptcy Court and served so that they are **actually received** on or before the Plan Objection Deadline by:

(a) Counsel to the Debtors:

McDermott Will & Emery LLP
340 Madison Avenue
New York, NY 10173
Attn: Darren Azman
Ravi Vohra

(b) Counsel to the Official Committee of Unsecured Creditors:

Kilpatrick Townsend & Stockton LLP
The Grace Building
1114 Avenue of the Americas
New York, NY 10036-7703
Attn: Todd C. Meyers

Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309
Attn: Colin M. Bernardino

(c) The United States Trustee:

Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street
New York, New York 10004
Attention: Andrea Beth Schwartz
Shannon Scott

(d) Counsel to BP:

Haynes and Boone, LLP
1221 McKinney Street
Suite 2100
Houston, TX 77010
Attn: Kathryn Shurin
Kelli Stephenson Norfleet

4. The Bankruptcy Court will consider only written objections filed and served in accordance with paragraph 3 above by the Plan Objection Deadline. Objections not timely filed and served in accordance with the provisions of this Notice will not be heard and will be overruled.

RELEASE, INJUNCTION, AND EXCULPATION PROVISIONS

5. **ARTICLE 8 OF THE PLAN CONTAINS RELEASE, INJUNCTION, AND EXCULPATION PROVISIONS, AND SECTION 8.7 CONTAINS A THIRD PARTY RELEASE, WHICH PROVISIONS ARE ALSO SET FORTH ON ANNEX 1 HERETO. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THESE PROVISIONS CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED UNDER THE PLAN.**

ADDITIONAL INFORMATION

6. If you would like to obtain a copy of the Disclosure Statement, the Plan, or related documents, you should contact Stretto at 8269 E. 23rd Ave., Ste 275, Denver, CO 80238, or by telephone at (877) 273-7276. Copies of the Disclosure Statement are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, Southern District of New York, 300 Quarropas Street, Room 248, White Plains, NY 10601, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website. Copies of the same can also be obtained free of charge by visiting the website of Stretto at <http://cases.stretto.com/agera>.

Dated: May 12, 2020
New York, NY

Respectfully submitted,

MCDERMOTT WILL & EMERY LLP

/s/ Darren Azman

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Annex 1

Release, Exculpation, and Injunction Provisions

I. RELEASE PROVISIONS

Releases by the Debtors.

Effective as of the Effective Date, without in any manner limiting or altering any releases granted to the Postpetition Secured Party and Senior Lien Secured Party under the Final DIP Order, each Debtor on behalf of itself and its Estate, each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest, for good and valuable consideration provided by each of the Released Parties, shall be deemed to provide a full release to each of the Released Parties (and each such Released Party shall be deemed released by each Debtor and its Estate) and their respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, the Plan, Briarcliff, the Debtors' out-of-court restructuring efforts, the Bankruptcy Cases, the Postpetition Supply Facility, the Postpetition Transaction Documents, and the Senior Lien Transaction Documents (as defined in the Final DIP Order) or any matters arising under or in connection with the same, including those that the Debtors would have been legally entitled to assert or that any holder of a Claim against or Interest in the Debtors, or any other Entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates; *provided, however*, that the foregoing Debtor Release shall not operate to waive or release any Claims or Causes of Action of the Debtors or their Estates for actual fraud or fraud grounded in deliberate recklessness. 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 Debtors waiving any indemnification Claims against the Debtors or any of their insurance carriers or any rights as beneficiaries of any insurance policies.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors' Estates and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a

bar to any of the Debtors' Estates or the Liquidation Trustee asserting any Claim or Cause of Action released under the Debtor Release.

Releases by Releasing Parties.

Effective as of the Effective Date, the Releasing Parties shall be deemed to provide a full release to the Released Parties and their respective property from any and all Causes of Action and any other debts, obligations, rights, suits, damages, actions, derivative Claims, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date, in law, at equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstance existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtors, the Plan, Briarcliff, the Debtors' out-of-court restructuring efforts, the Bankruptcy Cases, the Postpetition Supply Facility, the Postpetition Transaction Documents, and the Senior Lien Transaction Documents (as defined in the Final DIP Order) or any matters arising under or in connection with the same, including those that the Debtors would have been legally entitled to assert or that any holder of a Claim against or Interest in the Debtors or any other Entity could have been legally entitled to assert derivatively or on behalf of the Debtors or their Estates.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of the Claims released by the Third Party Release; (3) in the best interests of the Debtors' Estates and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any Claim released under the Third Party Release.

Nothing in this Section 8.7 shall release any right or obligation of any party under any other provision of this Plan or the Confirmation Order.

"Released Parties" means collectively and in each case in their capacity as such: (a) the Debtors; (b) the Committee and its members; (c) BP; and (d) with respect to each of the foregoing entities in clauses (a) through (c), such entities' officers, directors, and managers, funds, affiliates, employees, partners, managers, investment advisors, agents, representatives, principals, consultants, attorneys, professional advisors, heirs, executors, successors and assigns (each in their capacity as such), including, without limitation, (i) Todd Sandford, Mark Linzenbold, Stephen Gray, and Raima Jamal, (ii) McDermott Will & Emery LLP, (iii) GlassRatner Capital & Advisory Group LLC, (iv) Miller Buckfire & Co., LLC and Stifel, Nicolaus & Co., Inc., (v) Kilpatrick Townsend & Stockton LLP, (vi) Dundon Advisers LLC, and (vii) Bankruptcy Management Solutions, Inc. (d/b/a Stretto); *provided, however for avoidance of doubt*, that the "Released Parties" do not include Eli Global LLC, Greg Lindberg, CBLIC, or Global Health

Technology Group, LLC, any of their affiliates except the Debtors, or any of the Debtors' former directors or officers not identified in this Section 1.96.

“Releasing Parties” means collectively and in each case in their capacity as such: (a) the Released Parties identified in subsection (a)–(c) and those Released Parties identified in subsection (d) of the definition of “Released Parties” on behalf of whom the parties identified in subsections (a)–(c) of the definition of “Released Parties” have the authority, including under any agreement or applicable non-bankruptcy law, to grant the Third Party Release set forth in Section 8.7; (b) the holders of all Claims and Interests who vote to accept the Plan; (c) the holders of all Claims or Interests who are deemed to accept the Plan and do not timely submit a duly-completed opt-out form in accordance with the Disclosure Statement Order; (d) the holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan; (e) the holders of all Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth herein; (f) all other holders of Claims and Interests (including holders of Claims and Interests who are deemed to reject the Plan) who do not timely submit a duly completed opt-out form in accordance with the Disclosure Statement Order; (g) Briarcliff Property Group, LLC, and (h) with respect to each of the foregoing entities, such entities' 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).

I. EXCULPATION PROVISIONS

Exculpation for Debtors, Committee, and Estate Professionals.

To the extent permitted by Bankruptcy Code section 1125(e), the Debtors, their equity holders, officers, directors, employees and Professionals (including the professional firms and individuals within such firms), and the Creditors' Committee and its members (acting in such capacity), their respective officers, directors, employees and Professionals (including professional firms and individuals within such firms) shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, funding, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any act taken or omitted to be taken during the Bankruptcy Cases, except for acts or omissions as a result of willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any Claim or liability released under the Plan.

Exculpation for Liquidation Trustee.

The Liquidation Trustee and its employees, attorneys, accountants, financial advisors, representatives, and agents, each solely in such capacity, shall not have or incur any liability to any Person or Entity for any act or omission in connection with, or arising

out of, the Plan or the property to be distributed under the Plan; except for acts or omissions as a result of willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction.

II. INJUNCTION PROVISIONS

General Injunctions.

(m) **Injunctions Against Interference with Consummation or Implementation of Plan.** All holders of Claims or Interests shall be enjoined from commencing or continuing any judicial or administrative proceeding or employing any process against any of the Debtors or the Estates with the intent or effect of interfering with the consummation or implementation of the Plan or the transfers, payments, or Distributions to be made hereunder.

(n) **Plan Injunction.** Except as otherwise specifically provided for by this Plan, on and after the Effective Date, all Persons shall be enjoined from (i) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order; (ii) the creation, perfection, or enforcement of any Encumbrance of any kind; (iii) the commencement or continuation of any action, employment of process or act to collect, offset, or recover any Claim or Cause of Action satisfied, released, or enjoined under this Plan; and/or (iv) the assertion of any right of setoff, counterclaim, exculpation, or subrogation of any kind, in each case against the Debtors or the Estates to the fullest extent authorized or provided by the Bankruptcy Code.

No Bar to Claims Against Third Parties. Holders of Claims or Interests against the Debtors are not barred or otherwise enjoined by the Plan from pursuing any recovery against Persons that are not the Debtors, except as set forth in this the Plan.