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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 GRANTING LEAVE TO  
FILE THE UNREDACTED STALKING HORSE APA UNDER SEAL**

Agera Energy LLC and its debtor affiliates, 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(b) 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 **Exhibit A** (the “Proposed Order”), authorizing the Debtors to redact commercially sensitive

<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); 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.

nonpublic information in the Stalking Horse APA (as defined below) and granting leave to file an unredacted version of the Stalking Horse APA under seal.

### **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(b), 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.

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.

8. On the date hereof, the Debtors filed the *Debtors’ Motion for Entry of Orders (I)(A) Approving Bidding Procedures Relating to the Sale of the Debtors’ Assets, (B) Approving Stalking Horse Asset Purchase Agreement and Bid Protections, (C) Approving Form and*

*Manner of Notices of Sale, Auction and Sale Hearing, (D) Approving Procedures Relating to the Assumption and Assignment of Certain Executory Contracts, (E) Scheduling Auction for, and Hearing to Approve, Sale of the Agera Opco Entities' Assets; (II)(A) Approving the Sale of the Agera Opco Entities' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (III) Granting Related Relief (the "Sale Motion").*

9. In the Sale Motion, the Debtors seek, among other things, authority to sell certain of the Debtors' assets (the "Assets") to Exelon Generation Company, LLC (the "Stalking Horse Bidder") under the terms of the negotiated stalking horse asset purchase agreement (the "Stalking Horse APA"),<sup>2</sup> subject to higher or otherwise better bids received at an auction pursuant to the bidding procedures, as set forth more fully in the Sale Motion.

10. Certain sections of the Stalking Horse APA contain commercially sensitive information that the Debtors and Stalking Horse Bidder believe require protection from disclosure. Specifically: (i) Section 2.06(b) of the Stalking Horse APA details certain payments that the Stalking Horse Bidder may make to the Debtors' third-party sales representatives; and (ii) Sections 2.07(b)(iv) and (vi) of the Stalking Horse APA contain a purchase price adjustment mechanism that adjusts the purchase price based on certain circumstances, as set forth in the Stalking Horse APA and Annex 2.07(b) (Purchase Price Adjustment Methodology) thereto.

11. The Stalking Horse APA also includes certain schedules and annexes thereto that contain commercially sensitive information. Specifically, there are schedules and annexes: (i) detailing the purchase price adjustment methodology (Annex 2.07(b) (Purchase Price Adjustment Methodology)); (ii) containing a list of the names of the Debtors' third-party sales

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

representatives (Schedule 2.06 (Brokers)); (iii) allocating and assigning value by individual customer accounts (Schedules 2.01(a), 2.01(h), and 2.01(j)); (iii) assigning value to the Sellers' natural gas storage (Annex 2.07(b)(vii) (Storage Values)); (iv) containing certain non-public tax disclosures (Schedule 3.07 (Taxes)); (v) containing certain confidential customer data (Annex 5.01 (Customer Data)); (vi) setting forth the method for determining the portions of hedges to be novated to the Stalking Horse Bidder (Annex 7.20 (Hedge Novations)); and (vii) allocating and assigning value to extensions or renewals of customer contracts (Annex 1.01 (Renewed Contracts – Margin) and 1.02 (Renewed Contracts – Calculation of Margin) (collectively, the “Sensitive Information”). All of the Sensitive Information constitutes sensitive commercial information that the Debtors and the Stalking Horse Bidder believe require protection from general public disclosure under Bankruptcy Code section 107(b).

### **BASIS FOR REQUESTED RELIEF**

12. 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.

11 U.S.C. § 107(b).

13. 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.

14. 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 . . . .

Fed. R. Bankr. P. 9018.

15. The Debtors believe that public disclosure of the Sensitive Information could have a material, negative impact on the purchase price. Such negative impact would hinder the Debtors' ability to realize the maximum value for the Assets.

16. The Debtors will provide an unredacted copy of the Stalking Horse APA to the Court, the United States Trustee, counsel to the Official Committee of Unsecured Creditors, interested bidders that execute non-disclosure agreements, and other parties only upon further order of the Court.

17. The Debtors request that the seal remain in place until after the closing of the sale of the Debtors' Assets occurs.

18. The Debtors respectfully submit that good cause exists to authorize the Debtors to file the unredacted version of the Stalking Horse APA under seal and in redacted form.

Accordingly, the Debtors request that the Court authorize them to file the unredacted Stalking Horse APA under seal pursuant to Bankruptcy Code section 107(b) and Bankruptcy Rule 9018.

### **MOTION PRACTICE**

19. 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**

20. 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**

21. 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**



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

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In re:

AGERA ENERGY LLC, *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11

)  
) Case No. 19-\_\_\_\_ (\_\_\_\_)

)  
) (Jointly Administered)

)  
) **Re: Docket No. \_\_\_\_**

**ORDER GRANTING LEAVE TO FILE THE UNREDACTED  
STALKING HORSE APA UNDER SEAL**

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”) granting leave to file portions of the Stalking Horse APA under seal; 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 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 that proper and adequate notice of the Motion has been given and that 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

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

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 file the unredacted Stalking Horse APA under seal as an exhibit to *Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures Relating to the Sale of the Debtors' Assets, (B) Approving Stalking Horse Asset Purchase Agreement and Bid Protections, (C) Approving Form and Manner of Notices of Sale, Auction and Sale Hearing, (D) Approving Procedures Relating to the Assumption and Assignment of Certain Executory Contracts, (E) Scheduling Auction for, and Hearing to Approve, Sale of the Agera Opco Entities' Assets; (II)(A) Approving the Sale of the Agera Opco Entities' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances and (B) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (III) Granting Related Relief.*
3. Movants shall be required to deliver the unredacted Stalking Horse APA upon request only to the Court, the United States Trustee, counsel for the Official Committee of Unsecured Creditors (if any), interested bidders that execute non-disclosure agreements, and other parties only upon further order of 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 Stalking Horse APA or any part thereof.
4. 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

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THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

