

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 (I) AUTHORIZING THE
DEBTORS TO (A) PAY THEIR OBLIGATIONS UNDER PREPETITION
INSURANCE POLICIES, (B) CONTINUE TO PAY CERTAIN BROKERAGE
FEES, (C) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE INSURANCE
COVERAGE IN THE ORDINARY COURSE, AND (D) HONOR THEIR
PREPETITION INSURANCE PREMIUM FINANCING AGREEMENTS; (II)
AUTHORIZING BANKS AND OTHER FINANCIAL INSTITUTIONS TO
HONOR CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED
THERE TO; AND (III) GRANTING RELATED RELIEF**

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 (the “Order”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9013-1(a) of 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.

Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), substantially in the form attached hereto as **Exhibit A**, (i) authorizing, but not directing, the Debtors to (a) pay their obligations under prepetition insurance policies, (b) continue to pay certain brokerage fees, (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course, and (d) honor their prepetition insurance premium Financing Agreements (as defined below) (collectively, the “Insurance Obligations”); (ii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief. In addition, the Debtors request that the Court (as defined below) schedule a hearing to consider approval of this Motion on a final basis. 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”), filed contemporaneously herewith.² 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.

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

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a) and 363(b) and Local Rule 9013-1(a).

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 DEBTORS’ INSURANCE POLICIES

8. In the ordinary course of business, the Debtors maintain and are covered by twelve (12) insurance policies (collectively, the “Insurance Policies”) that are provided and/or administered by multiple third-party insurance carriers (collectively, the “Insurance Carriers”). The Insurance Policies include, among other things, general liability insurance, directors’ and officers’ liability insurance, workers’ compensation liability insurance, cyber insurance, employment practices liability insurance, and New York State disability insurance.

9. A schedule of the current Insurance Policies, policy terms, and annual premium amounts is attached hereto as **Exhibit B**. In general terms, the Debtors’ coverage can be described as follows:

- a. **Financed Insurance Policies**. The Debtors finance the premiums for certain insurance policies with Associated Agencies pursuant to two premium financing agreements (the “Financing Agreements”). Under the first Financing

Agreement (the “First Financing Agreement”), the Debtors made a \$49,041.98 down payment and received a loan in the amount of \$277,904.52 at an annual percentage rate of 7.562% for the balance. The policies subject to the First Financing Agreement are (i) the General and Professional Liability Policy (as defined below), (ii) the Excess Liability Policy (as defined below), and (iii) the D&O Insurance Policy (as defined below) (the “Financed Policies”). The Debtors are obligated to make ten (10) monthly payments of \$28,762.72 under the First Financing Agreement. The Debtors are current on their obligations under the First Financing Agreement. As of the Petition Date, the Debtors estimate that \$143,813.60 remains outstanding under the First Financing Agreement.

Under the second Financing Agreement (the “Second Financing Agreement”), the Debtors made a \$18,659.19 down payment and received a loan in the amount of \$67,415.89 at an annual percentage rate of 7.562% for the balance. The policies subject to the Second Financing Agreement are Financed Excess D&O Policies (as defined below and, together with the General and Professional Liability Policy, Excess Liability Policy, and D&O Insurance Policy, the “Financed Policies”). The Debtors are obligated to make eight (8) monthly payments of \$8,667.71 under the Second Financing Agreement. The Debtors are current on their obligations under the Second Financing Agreement. As of the Petition Date, the Debtors estimate that \$43,338.55 remains outstanding under the Second Financing Agreement.

b. General and Professional Liability. The Debtors maintain a general and professional liability insurance policy with Lloyd’s of London (the “General and Professional Liability Policy”). The General and Professional Liability Policy has a term of April 29, 2019 through April 29, 2020, with an annual premium of \$259,900.00, including taxes and fees.

c. Excess Liability. The Debtors maintain an excess liability policy with Evanston Insurance Company (the “Excess Liability Policy”). The Excess Liability Policy has a term of April 29, 2019 through April 29, 2020, with an annual premium of \$20,749.50, including taxes and fees.

d. Cyber Insurance. The Debtors maintain a cyber insurance policy with Liberty Surplus Insurance Company (the “Cyber Insurance Policy”). The Cyber Insurance Policy has a term of January 10, 2019 through January 10, 2020, with an annual premium of \$28,829.82, including taxes and fees.

e. D&O Insurance. The Debtors maintain a directors’ and officers’ liability insurance policy with Beazley Insurance Company (the “D&O Insurance Policy”). The D&O Insurance Policy has a term of April 24, 2019 through April 24, 2020, with an annual premium of \$46,696.50, including taxes and fees.

f. Excess D&O Insurance. The Debtors maintain four excess directors’ and officers’ liability insurance policies with Lloyd’s of London, Starstone, Markel (the “Financed Excess D&O Policies”), and Berkley Professional Liability (the

“Berkley D&O Policy”). The Financed Excess D&O Policies have terms ending April 24, 2020, respectively. The Berkley D&O Policy has a term ending August 16, 2020. The annual premiums for the Financed Excess D&O Policies are \$29,750.00, \$19,388.00, \$48,000.00, respectively. The annual premium for the Berkley D&O Policy is \$160,000.00. There are no amounts due and owing under the Berkley D&O Policy as of the Petition Date.

g. Workers’ Compensation. The Debtors maintain a workers’ compensation insurance policy with AON Risk Services of Florida (the “Workers’ Compensation Policy”). The Workers’ Compensation Policy has a term of July 1, 2019 through June 30, 2020.

h. EPL Insurance. The Debtors maintain an employment practices liability insurance policy with Zurich (the “EPL Policy”). The EPL Policy has a term of August 1, 2019 through August 1, 2020.

i. NYSD Insurance. The Debtors maintain a New York State disability insurance policy with MetLife (the “NYDSI Policy”). The NYDSI Policy has a term of January 1, 2019 through January 1, 2020.

j. PFL Insurance. The Debtors maintain a paid family leave insurance policy with MetLife (the “PFLI Policy”). The PFLI Policy has a term of January 1, 2019 to January 1, 2020.

10. The Debtors request the ability to continue honoring their obligations under the Financing Agreements. The Debtors’ obligations under the Financing Agreements are secured by a security interest in the Financed Policies, including (a) all money that is or may be due to insured because of a loss under any such policy that reduces the unearned premiums, (b) any unearned premium under each such policy, (c) dividends which may become due to insured in connection with any such policy, and (d) interest arising under a state guarantee fund. Even if the Financed Policies are not terminated, any interruption in the Debtors’ payments could adversely affect the Debtors’ ability to finance premiums for future policies. Considering the importance of maintaining insurance coverage with respect to their business activities and the preservation of the Debtors’ cash flow by financing the premiums under the Financed Policies, the Debtors believe it is in the best interests of their estates to honor their obligations under the

Financing Agreement. Accordingly, the Debtors seek authority to continue honoring their obligations under the Financing Agreement.

11. The Insurance Policies are essential to the preservation of the value of the Debtors' business, properties, and other assets. Certain of the Insurance Policies are required by the various regulations, laws, and contracts that govern the Debtors' commercial activities. Bankruptcy Code section 1112(b)(4)(C) provides, for example, that "failure to maintain appropriate insurance that poses a risk to the estate or to the public," is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Additionally, the Guidelines of the Office of the United States Trustee for Region 2 (the "UST Guidelines") require debtors to maintain insurance coverage throughout these Chapter 11 Cases.

THE DEBTORS' INSURANCE BROKER

12. The Debtors procure their Insurance Policies through Associated Agencies, Inc. (the "Insurance Broker"). The Insurance Broker assists the Debtors in obtaining comprehensive insurance coverage at competitive rates by evaluating available offerings. The Insurance Broker collects commissions annually. The Debtors do not believe any amounts are owed to the Insurance Broker as of the Petition Date. Out of an abundance of caution, however, the Debtors seek authority to honor any amounts owed to the Insurance Broker to ensure uninterrupted coverage under the Insurance Policies.

RELIEF REQUESTED

13. By this Motion, the Debtors request entry of the Order, substantially in the form attached hereto as **Exhibit A**: (a) authorizing, but not directing, the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto, including fees associated with its Insurance Broker, (ii) renew, supplement, or purchase

insurance policies in the ordinary course of business, (iii) honor their obligations under the Financing Agreement, and (iv) renew insurance premium financing agreements in the ordinary course of business; and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing.

BASIS FOR REQUESTED RELIEF

A. The Court Should Authorize, But Not Direct, the Debtors, in Their Discretion, to Make Necessary Payments Related to the Insurance Policies

14. Bankruptcy Code section 363(c) authorizes a debtor in possession operating its business pursuant to Bankruptcy Code section 1108 to use property of the estate in the ordinary course of business without notice or hearing. The Debtors submit that maintaining and renewing the Insurance Policies and obtaining replacement or additional coverage, as needed, would be in the ordinary course of business pursuant to Bankruptcy Code sections 363(c), 1107(a), and 1108 and would be allowed without further application to the Court. Nonetheless, out of an abundance of caution, the Debtors seek the Court's authorization to continue to maintain and perform their obligations under the Insurance Policies in the ordinary course of business and obtain additional coverage as needed.

15. Bankruptcy Code section 363(b) permits a court to authorize debtors to pay certain prepetition claims. Section 363(b)(1) provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate" 11 U.S.C. § 363(b)(1). *See Official Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992); *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014). To permit payment of prepetition claims, a court must conclude that the debtor has "articulate[d] some business

justification, other than the mere appeasement of major creditors” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

16. Likewise, the Court is empowered to approve payment of certain prepetition claims, including those under the Insurance Policies, under Bankruptcy Code section 105 and the “doctrine of necessity.” Bankruptcy Code section 105(a) authorizes the Court to “issue any order . . . necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). For the reasons set forth herein, and in light of the Debtors’ critical need to preserve the value of their estates, authorizing the Debtors to pay the aforementioned obligations as requested herein and to honor their prepetition and ongoing obligations under the Insurance Policies is proper in accordance with Bankruptcy Code section 105. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Bankruptcy Court may use its power under Bankruptcy Code section 105(a) to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *In re Ionosphere Clubs*, 98 B.R. at 176.

17. Several courts apply the doctrine of necessity where payment of a prepetition claim (a) is “necessary for the successful reorganization of the debtor,” (b) falls within “the sound business judgment of the debtor,” and (c) will not “prejudice other unsecured creditors.” *In re United Am., Inc.*, 327 B.R. 776, 782 (Bankr. E.D. Va. 2005). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *See, e.g., In re Ionosphere*

Clubs, 98 B.R. at 175. That is because the rehabilitation of a debtor in reorganization cases remains “the paramount policy and goal of Chapter 11.” *Id.* at 175–76; *see also In re Just For Feet*, 242 B.R. 821, 826 (D. Del 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”).

18. The Debtors submit that it is also in the best interests of their estates to have the ability to revise, extend, supplement, or change insurance coverage, as necessary, on a postpetition basis. Indeed, the Debtors’ Insurance Policies are essential to the preservation of the value of the Debtors’ businesses, properties, and assets and their ability to successfully administer these Chapter 11 Cases. Accordingly, if any of the Insurance Policies lapse or new coverage is required, it is imperative that the Debtors are able to renew, supplement, or purchase insurance coverage on a postpetition basis in the ordinary course of business. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other unforeseen events.

19. The Insurance Policies are critical to the preservation of the Debtors’ property and nonpayment of any premiums, deductibles, or similar obligations under any of the Insurance Policies could result in one or more of the Insurance Carriers (a) terminating the existing Insurance Policies, (b) declining to renew the Insurance Policies, or (c) refusing to enter into new insurance agreements with the Debtors in the future. Although the Debtors are current with their obligations under the Insurance Policies, additional insurance premiums will become due and owing. Any interruption in insurance coverage could expose the Debtors to serious risks, such as (a) incurring direct liability for claims, material costs, and other losses that would have been payable by the Insurance Carriers under the Insurance Policies and (b) higher costs to re-establish lapsed policies or obtain new insurance coverage.

20. Moreover, maintaining the Insurance Policies is required by the Bankruptcy Code and the UST Guidelines. Bankruptcy Code section 1112(b)(4)(C) provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). The Debtors believe it is essential to their estates, and consistent with the Bankruptcy Code and the UST Guidelines, that they maintain and continue to make all payments required under the Insurance Policies and have the authority to supplement, amend, extend, renew, or replace the Insurance Policies as needed, in their judgment, without further order of the Court.

21. Courts in this district have routinely granted relief similar to that requested herein. *See, e.g., In re Aegean Marine Petrol. Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 8, 2018) (granting relief to continue insurance policies); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (same); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (same); *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (same).

B. Cause Exists to Authorize the Debtors’ Banks and Financial Institutions to Honor Checks and Electronic Transfer Requests

22. To facilitate the implementation of the above-requested relief, the Debtors further request that the Court authorize all Banks to receive, process, honor, and pay any and all checks drawn on, or electronic transfer requests from, the Debtors’ accounts, whether such checks or requests are presented or submitted prior to or after the Petition Date, to the extent such checks or requests are expressly identified by the Debtors as related directly to the

payments required under the Insurance Policies, payments to the Insurance Broker, or to the continuance of the Insurance Policies in the ordinary course of business on a postpetition basis. The Debtors also seek authority to issue new postpetition checks, or effect new electronic funds transfers, on account of such obligations to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected.

C. The Debtors Should be Authorized to Honor Obligations Under and Renew the Premium Financing Agreement

23. Payment of amounts owed under the Financing Agreements is also necessary and appropriate and may be authorized under Bankruptcy Code sections 105(a) and 363(b). Moreover, pursuant to Bankruptcy Code section 364(c), a debtor may, in the exercise of its business judgment, incur secured postpetition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the estate's best interests. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (recognizing that courts "permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties" in incurring postpetition credit). As described above, the Debtors believe that continuing to perform under the Financing Agreements on a postpetition basis is in the best interests of their estates. Moreover, given the Debtors' current financial circumstances, the Debtors may have difficulty securing alternative premium financing on terms as favorable as under the Financing Agreements. In any event, the Debtors are highly unlikely to obtain such financing on an unsecured basis. Thus, the Debtors' ability to continue performing under and renew the Financing Agreements is necessary to preserve estate value.

24. Courts in this jurisdiction and in others have recognized the importance of a debtor entering into premium financing agreements and have granted relief similar to the relief requested in this motion. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr.

S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s business judgment indicated financing was necessary and reasonable for benefit of estate); *In re Cenveo Inc.*, Case No. 18-22178 (RDD) (Bankr. S.D.N.Y. Mar. 8, 2018) (authorizing debtors to renew and honor obligations under their premium financing agreements); *In re 21st Century Oncology Holdings, Inc.*, Case No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same); *In re BCBG Max Azria Glob. Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (same); *In re DACCO Transmission Parts (NY), Inc.*, Case No. 16-13245 (MKV) (Bankr. S.D.N.Y. Dec. 22, 2016) (same); *In re MPM Silicones, LLC*, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 16, 2014) (same).

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

25. 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

26. 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

27. 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

28. 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 Banks; (f) the Insurance Carriers; (g) the Insurance Broker; (h) the Internal Revenue Service; (i) the United States Attorney for the Southern District of New York; and (j) 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

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

WHEREFORE, the Debtors seek entry of the Order, substantially in the form attached hereto as **Exhibit A**: (i) authorizing, but not directing, the Debtors to (a) pay their obligations under prepetition insurance policies, (b) continue to pay certain brokerage fees, (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course, and (d) honor their prepetition insurance premium Financing Agreement; (ii) authorizing Banks to honor and process check and electronic transfer requests related to the foregoing; and (iii) 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

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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), (i) authorizing, but not directing, the Debtors to (a) pay their obligations under prepetition insurance policies, (b) continue to pay certain brokerage fees, (c) renew, supplement, modify, or purchase insurance coverage in the ordinary course, and (d) honor their prepetition insurance premium Financing Agreements (collectively, the “Insurance Obligations”); (ii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief; and upon the

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

First Day Declaration; 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) and that the Debtors consent to entry of a final order under Article III of the United States Constitution; 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 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 ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to maintain the Insurance Policies without interruption and to pay, honor, or otherwise satisfy the Insurance Obligations, and any other obligations on account of the Insurance Policies, regardless of whether such obligations accrue or relate to the period before or after the Petition Date.
3. In the event any of the Insurance Policies lapse or new coverage is required or necessary, subject to further Court order, the Debtors are authorized, but not directed, to revise, renew, extend, supplement, or change insurance coverage (including obtaining “tail”

coverage) on a postpetition basis; *provided*, that the Debtors shall only enter into new insurance agreements to the extent consistent with the ordinary course of their business.

4. Notwithstanding anything to the contrary contained in this Order or in the Motion, any payment, obligation, or other relief authorized by this Order shall be subject to and limited by the requirements imposed on the Debtors under the terms of any interim and/or final orders regarding the use of cash collateral or the approval of postpetition financing (any such order, a “Financing Order”), or any budget in connection therewith, approved by this Court in these Chapter 11 Cases. In the event of any conflict between the terms of this Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

5. The Banks are authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks drawn on, or electronic transfer requests from, the Debtors’ accounts, whether such checks or requests are presented or submitted prior to or after the Petition Date, to the extent such checks or requests are expressly identified by the Debtors as related directly to Insurance Obligations; *provided*, that sufficient funds are available in the applicable bank accounts to make such payments.

6. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order and any such Bank shall not have any liability to any party for relying on such representations.

7. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (i) an admission as to the validity or priority of any claim against the Debtors; (ii) a waiver of the Debtors’ right to dispute any claim on any

grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion (including any exhibits attached thereto); (v) a request or authorization to assume any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (vi) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vii) to create any rights in favor of, or enhance the status of, any claim held by any person or entity.

8. Notice of the Motion as provided therein shall be deemed good and sufficient, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2019
White Plains, New York

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Summary of Insurance Policies

INSURANCE POLICIES					
Insured	Insurance Carrier	Policy Number	Coverage	Policy Term	Premium
Agera Holdings, LLC; Agera Energy LLC; energy.me midwest llc; Aequitas Energy, Inc.	Lloyd's of London	PSH071155735	General Liability	April 29, 2019 to April 29, 2020	\$48,460
Agera Holdings, LLC; Agera Energy LLC; energy.me midwest llc; Aequitas Energy, Inc.	Lloyd's of London	PSH071155735	Professional Liability	April 29, 2019 to April 29, 2020	\$211,440
Agera Holdings, LLC; Agera Energy LLC; energy.me midwest llc; Aequitas Energy, Inc.	Evanston Insurance Company	XOBW8109219	Excess Liability	April 29, 2019 to April 29, 2020	\$20,749.50
Agera Holdings, LLC; Agera Energy LLC; energy.me midwest llc; Aequitas Energy, Inc.	Liberty Surplus Insurance Company	EO5CABQOYO001	Cyber Insurance	January 10, 2019 to January 10, 2020	\$28,829.82
Agera Holdings, LLC; AGH Parent, LLC; AGH Supplemental, LLC; AGX Holdings, LLC; Agera Energy LLC	Beazley Insurance Company	B0621PAGER000319	D&O Liability Insurance	April 24, 2019 to April 24, 2020	\$46,696.50
Agera Holdings, LLC; AGH Parent, LLC; AGH Supplemental, LLC; AGX Holdings, LLC; Agera Energy LLC	Lloyd's of London	B0621PAGER00041	Excess D&O Liability Insurance	April 24, 2019 to April 24, 2020	\$29,750.00

Agera Holdings, LLC; AGH Parent, LLC; AGH Supplemental, LLC; AGX Holdings, LLC; Agera Energy, LLC	Starstone	Q70618190ASP	Excess D&O Liability Insurance	April 24, 2019 to April 24, 2020	\$19,338.00
Agera Holdings, LLC; AGH Parent, LLC; AGH Supplemental, LLC; AGX Holdings, LLC; Agera Energy, LLC	Markel	MKLV3MXM000013	Excess D&O Liability Insurance	April 24, 2019 to April 24, 2020	\$48,000.00
Agera Holdings, LLC	Berkley Professional Liability	BPRO8045117	Excess D&O Liability Insurance	August 16, 2019 to August 16, 2020	\$160,000
Agera Holdings, LLC	AON Risk Services of Florida	N/A	Workers' Compensation	July 1, 2019 to June 30, 2020	Included in ADP Billing
Agera Holdings, LLC	Zurich	EPL654132509	Employment Practices Liability	August 1, 2019 to August 1, 2020	Included in ADP Billing
Agera Holdings, LLC	MetLife	219266	NY State Disability Insurance	January 1, 2019 to January 1, 2020	Included in ADP Billing
Agera Holdings, LLC	MetLife	219268	Paid Family Leave Insurance	January 1, 2019 to January 1, 2020	Included in ADP Billing