

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : **Chapter 11**
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ExGen Texas Power, LLC, et al.,¹ : **Case No. 17-12377 (BLS)**
:
Debtors. : **Joint Administration Requested**
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**MOTION OF DEBTORS FOR ENTRY OF ORDERS
(I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR HANDLEY POWER, LLC,
(B) APPROVING STALKING HORSE BID PROTECTIONS, (C) SCHEDULING
AUCTION FOR, AND HEARING TO APPROVE, SALE OF SUBSTANTIALLY ALL OF
THE ASSETS OF DEBTOR HANDLEY POWER, LLC, (D) APPROVING FORM AND
MANNER OF NOTICES OF SALE, AUCTION AND SALE HEARING,
(E) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND
(F) GRANTING RELATED RELIEF AND (II)(A) APPROVING SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR HANDLEY POWER, LLC
FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES,
(B) APPROVING ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) approving the proposed bidding procedures (the “Bidding Procedures”) pursuant to which the Debtors will solicit and, in consultation with the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: ExGen Texas Power, LLC (4129), ExGen Texas Power Holdings, LLC (2209), Wolf Hollow I Power, LLC (6945), Colorado Bend I Power, LLC (9083), Handley Power, LLC (4091), Mountain Creek Power, LLC (6288), and LaPorte Power, LLC (5101). The mailing address of each of the Debtors, solely for purposes of notices and communications, is: 1310 Point Street, Baltimore, MD 21231.

Consultation Parties (as defined below), select the highest or otherwise best offer for the sale (the “Sale Transaction”) of substantially all of the assets of Debtor Handley Power, LLC (the “Purchased Assets”); (ii) approving the Stalking Horse Protections provided by the Debtors to the Stalking Horse Bidder (each as defined below); (iii) scheduling an auction (the “Auction”), if necessary; (iv) establishing the Assumption and Assignment Procedures (as defined below) for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction, including notice of proposed cure amounts; (v) scheduling a hearing (the “Sale Hearing”) to approve the Sale Transaction; and (vi) granting related relief. The Debtors further request that, at the Sale Hearing, this Court enter an order (the “Sale Order”), which will be filed with the Court prior to the Sale Hearing, (i) authorizing the sale of the Purchased Assets to the ultimate purchaser of such assets as determined in accordance with the Bidding Procedures (the “Successful Bidder”), free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and the Successful Bidder; (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

4. On November 7, 2017 (the “Petition Date”), each Debtor filed with this Court a voluntary petition 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 sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors’ chapter 11 cases.

6. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of these chapter 11 cases, is set forth in the *Declaration of David Rush in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”).²

Relief Requested

7. By this Motion, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1, the Debtors request entry of the following:

- a. the Bidding Procedures Order,
 - i. authorizing and approving the Bidding Procedures in connection with the Sale Transaction;

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration, the Bidding Procedures, or the Bidding Procedures Order, as applicable.

- ii. approving the Stalking Horse Protections for the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures;
 - iii. if necessary, scheduling an auction for the Purchased Assets (the “Auction”);
 - iv. scheduling a hearing (the “Sale Hearing”) to consider approval of the proposed Sale Transaction on or before December 28, 2017;
 - v. authorizing and approving the (A) notice of the Sale Transaction, the Bid Deadline (as defined below), and the Auction and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** thereto (the “Sale Notice”), and (B) notice to each relevant non-Debtor counterparty (each, a “Counterparty”) to an executory contract or unexpired lease related to the Purchased Assets of the potential assumption and assignment of their executory contract or unexpired lease (the “Contracts and Leases”) and the calculation of the amount necessary to cure any monetary defaults thereunder (the “Cure Costs”), substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** thereto (the “Potential Assumption and Assignment Notice”);
 - vi. authorizing and approving procedures for the assumption and assignment of the Contracts and Leases and the determination of Cure Costs with respect thereto (collectively, the “Assumption and Assignment Procedures”); and
 - vii. granting related relief.
- b. the Sale Order, authorizing and approving the following:
- i. the sale of the Purchased Assets to the Successful Bidder free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and the Successful Bidder;
 - ii. the assumption and assignment of certain Contracts and Leases in connection with the proposed Sale Transaction; and
 - iii. granting related relief.

Pre-Petition Marketing and Sale Process

8. As is set forth in greater detail in the First Day Declaration, beginning in January 2017, the Debtors and ExGen began discussions with certain of the Secured Lenders

regarding a potential short-term liquidity solution as well as potential long term solutions, including a refinancing, sale or other disposition of the Projects. Recognizing that the critical summer months were approaching and the Debtors were running out of available liquidity, the parties engaged in extensive negotiations regarding strategic actions to allow the Debtors to continue operating through the summer.

9. To this end, on May 2, 2017, the Debtors, the Secured Agent, and various Secured Lenders entered into the Waiver Agreement. The Waiver Agreement provided additional liquidity to the Debtors by, among other things, waiving the solvency representation required under the Credit Agreement in order to allow EGTP to draw and access the Revolving Loans, and providing the Secured Lenders' consent for ExGen's provision of credit support to EGTP by continuing month to month deferrals of fuel payments payable by EGTP to ExGen. These concessions afforded necessary additional liquidity to the Debtors, allowing them to operate through the critical summer months.

10. In addition to providing the Debtors with the liquidity required to continue operations, the Waiver Agreement also set forth various milestones relating to a comprehensive process to market and sell the Projects. Among other things, the Waiver Agreement required the Debtors to (i) retain an investment banker to assist with the marketing and sale process and (ii) enter into one or more binding agreements for the sale of the Projects by September 5, 2017 (which date was subsequently extended through November 6, 2017).

11. Around this time, to aid in the potential restructuring process, ExGen, as the sole member of EGTP Holdings, caused the Independent Director to be appointed to the Board effective as of April 21, 2017. To aid in the sale process, and because ExGen was considered to be a potential bidder for one or more of the Projects, on May 8, 2017, the Board unanimously

resolved to create the Sale Process Committee consisting of the Independent Director. The Board delegated to the Sale Process Committee the full power and authority to, among other things, (i) engage an investment banking firm on behalf of EGTP, (ii) review and analyze any bids to acquire the Projects and (iii) subject to the approval of the necessary Secured Parties (as defined in the Credit Agreement), approve and authorize the Debtors to enter into one or more purchase agreements with potential acquirers to acquire the Projects.³

12. On or around May 22, 2017, the Sale Process Committee retained Scotia Capital (USA) Inc. (“Scotiabank”) to serve as the Debtors’ investment banker and to conduct the sale process. Immediately upon being engaged, Scotiabank began facilitating a marketing process for the potential purchase of all, or certain of, the Projects (each, a “Potential Transaction”). Scotiabank identified potential acquirers (collectively, the “Interested Parties”) to garner interest in pursuing a Potential Transaction. Commencing on May 23, 2017, Scotiabank contacted 145 Interested Parties to alert them of the Debtors’ interest in pursuing a Potential Transaction and sent teasers and non-disclosure agreements to 129 of them. Twenty-eight (28) Interested Parties executed non-disclosure agreements and twenty-nine (29) Interested Parties were invited to submit initial, non-binding letters of intent (“Initial LOIs”)⁴ by June 28, 2017 (which was extended for certain Interested Parties).

³ In addition, on or around November 6, 2017, the Board unanimously resolved to create a restructuring committee (the “Restructuring Committee”) consisting of the Independent Director. The Board delegated to the Restructuring Committee the full power and authority to, among other things, (i) authorize the Debtors to commence the Chapter 11 Cases and (ii) approve and authorize the filing of the Proposed Plan.

⁴ One (1) Interested Party submitted an Initial LOI without executing a non-disclosure agreement. That party subsequently entered into a non-disclosure agreement after submitting an Initial LOI but did not submit a Final Bid (as defined below). Another Interested Party executed a non-disclosure agreement after the deadline to submit Initial LOIs and engaged in some limited diligence regarding one of the Projects but, ultimately, did not submit an Initial LOI or a Final Bid.

13. During this time, Exelon Generation Company, LLC (“ExGen”), the sole member of Debtor ExGen Texas Power Holdings, LLC and a wholly owned subsidiary of Exelon Corporation, expressed an initial indication of interest as a potential purchaser of certain of the Debtors’ assets. Due to the role played by ExGen in the ownership of the Debtors and the operation of the Debtors’ assets, ExGen and the Debtors prepared and implemented a sales process protocol (the “Sales Process Protocol”), which was intended to help facilitate a sale process designed to maximize value while, at the same time, ensuring that ExGen—as the owner of the Debtors and the operator of the Debtors’ assets—did not have an advantage over other third party bidders during the sale process. The Sales Process Protocol provided a comprehensive protocol and procedure that included, among other things, an appropriate email protocol to ensure confidentiality and additional requirements that information, communications or diligence items that ExGen prepared in its role as operator of the Debtors’ assets, would always be sent to Scotiabank or the Debtors’ other advisors for proper dissemination to the bidders. Similarly, all identifying bidder information was code-named or otherwise “scrubbed” by the Debtors’ advisors to ensure that ExGen did not gain material information not otherwise available to other bidders. In addition, the Sales Process Protocol set forth appropriate guidelines for site visits and management presentations. In sum, the Sales Process Protocol, coupled with the creation of the Sale Process Committee, allowed the Debtors to run a comprehensive and fair sales process to maximize the value of the Debtors’ assets for the benefit of their estates.

14. The Interested Parties which had executed non-disclosure agreements were given the opportunity to access certain documents in an electronic data room. Nine (9) Interested Parties submitted Initial LOIs and, of those nine (9), seven (7) were invited to submit binding, final offers (each, a “Final Bid”) by September 15, 2017, attend management presentations,

submit lists of questions regarding the Projects and gain access to a more comprehensive data room (the “Final Bid Data Room”). Of those seven (7), four (4) actively participated in the Final Bid process. Of those four (4), three (3) conducted site visits at the Projects, accessed the Final Bid Data Room and submitted question lists and two (2) participated in management presentations. Ultimately, only three (3) Interested Parties indicated a continued interest in acquiring some or all of the Projects by the Final Bid deadline. Of those three (3), only one (1) submitted a Final Bid. The sole Final Bid was submitted by ExGen (the “Stalking Horse Bidder”), which sought to acquire the Purchased Assets for \$60.0 million in cash (subject to certain adjustments) and the assumption of certain liabilities (the “ExGen Bid”).

15. Thereafter, the Debtors (through the Sale Process Committee), in consultation with their advisors and the Ad Hoc Committee and its advisors, determined to pursue the ExGen Bid as a stalking horse bid for the Purchased Assets, subject to definitive documentation. In addition, in light of the fact that no Final Bids were submitted for the Projects (other than the Purchased Assets) by the Final Bid deadline, certain of the Secured Lenders, including the Ad Hoc Committee, informed the Debtors that they intended to take ownership of the Projects (other than the Purchased Assets) pursuant to a chapter 11 plan of reorganization pursuant to which the outstanding Loans will be converted into new equity in the reorganized Debtors (the “Proposed Plan”).

16. To this end, on or around November 7, 2017, after good faith, arms’ length negotiations between the parties and in consultation with their advisors and key stakeholders, (i) certain of the Debtors and ExGen entered into a stalking horse purchase agreement (the “Stalking

Horse Agreement”)⁵ pursuant to which ExGen will acquire the Handley Project, subject to higher and better offers, and (ii) the Debtors approved the Proposed Plan. Importantly, as part of a compromise (the “Sponsor Compromise”) among the Secured Lenders, ExGen and the Debtors, the Proposed Plan and the proposed sale transaction to ExGen pursuant to the Stalking Horse Agreement are linked such that ExGen’s obligation to close the proposed sale transaction is conditioned on the Court confirming the Proposed Plan.

17. Pursuant to the Sponsor Compromise, ExGen, subject to confirmation of the Proposed Plan, has agreed to, among other things: (i) provide substantial cash and non-cash consideration to fund distributions under the Proposed Plan; (ii) purchase the Handley Project for \$60.0 million in cash (subject to certain adjustments) and the assumption of certain liabilities; (iii) enter into key agreements concerning the contribution, operation and maintenance of certain shared assets used by both the Debtors and certain non-Debtor affiliates of ExGen; (iv) maintain certain credit support relating to the Debtors’ fuel transportation agreements; (v) waive certain of ExGen’s secured and unsecured claims under the Intercompany Agreements with a true-up mechanism; (vi) provide certain management and related services under the GMSA at no cost to the Debtors during the Chapter 11 Cases; and (vii) agree to provide certain transition services to the reorganized Debtors at no cost following confirmation of the Proposed Plan.

18. As is described in greater detail in the First Day Declaration, the Debtors believe that effectuating the sale of the Handley Project to ExGen pursuant to the Stalking Horse Agreement, coupled with the implementation of the Proposed Plan, including the Sponsor Compromise, allows the Debtors to avoid a drawn-out and potentially expensive bankruptcy

⁵ A copy of the Stalking Horse Agreement is attached hereto as **Exhibit B**. The Debtors are not filing the schedules to the Stalking Horse Agreement with this Motion. However, such schedules may be obtained by contacting counsel to the Debtors.

which would detract from other value-maximizing initiatives, and overall represents the best option for the Debtors to maximize the value of the enterprise.

Need for a Timely Sale Process

19. The Debtors believe that the auction process and time periods set forth in the Bidding Procedures are reasonable and will provide parties with sufficient time and information necessary to formulate a bid to purchase the Purchased Assets. Given the Debtor's extensive and fulsome prepetition marketing efforts, the proposed timeline is more than sufficient to complete a fair and open sale process that will maximize the value received for the Purchased Assets. The most likely competing bidders are among those who previously executed non-disclosure agreements or had access to the data rooms during the prepetition process. Thus, these parties likely need minimal time to submit competing bids. Moreover, if new bidders emerge, the proposed timeline will provide them with sufficient time to perform due diligence given that the process is well understood at this juncture.

20. Further, under the milestones set forth in detail in the Cash Collateral Motion, the Debtors must obtain entry of an order of the Court approving the Sale Transaction by no later than fifty-five (55) days after the Petition Date or they risk losing access to all of their cash, which constitutes the Secured Parties' cash collateral. In such a circumstance, the Debtors may be left with no choice but to cease operations and liquidate their assets to the detriment of all parties in interest. Thus, it is important that the sale process proceed under the timeline detailed herein to ensure that the Debtors can achieve that milestone (among others) and not lose access to their ability to use the Secured Parties' cash collateral on a consensual basis. In sum, and particularly when considered in light of the extensive prepetition marketing process, the schedule is designed to maximize value for the Purchased Assets while, at the same time, respecting the

necessity to consummate the Sale Transaction within the milestones dictated by the Consenting Secured Parties.

The Stalking Horse Agreement

21. By this Motion, the Debtors request authority to, among other things, provide the Stalking Horse Bidder with standard stalking horse protections, in particular (a) the payment of a break-up fee in an amount equal to one and one quarter percent (1.25%) of the Initial Cash Consideration (*i.e.*, \$750,000) (the “Break-Up Fee”) and (b) reimbursement of up to \$300,000 for duly documented and reasonable out-of-pocket fees and expenses incurred in connection with preparation, negotiation and documentation of the Stalking Horse Agreement and related agreements (the “Expense Reimbursement Amount” and together with the Break-Up Fee, the “Stalking Horse Protections”). In addition, the Bidding Procedures and the Stalking Horse Agreement provide for an initial overbid amount of \$2,000,000 over and above the aggregate of the Purchase Price and the Stalking Horse Protections (the “Minimum Initial Overbid Amount”), and minimum bid increments thereafter of \$250,000 (the “Continuing Minimum Overbid Amount”).

22. The Stalking Horse Agreement includes various customary representations, warranties and covenants in the context of a section 363 sale by and from the Debtors and the Stalking Horse Bidder. In addition, the Stalking Horse Agreement includes certain conditions to closing the contemplated Sale Transaction and customary termination rights. As noted below, one such condition to closing is confirmation of the Proposed Plan that approves and implements the Sponsor Compromise.

23. In accordance with Local Rule 6004-1, the chart below summarizes the significant terms of the Stalking Horse Agreement.⁶

MATERIAL TERMS OF THE STALKING HORSE AGREEMENT⁷	
Purchase Price	The Purchase Price is \$60,000,000.00 in cash (the “ <u>Initial Cash Consideration</u> ”) (subject to certain adjustments) and the assumption of the Assumed Liabilities. <i>See</i> Stalking Horse Agreement § 3.1.
Purchased Assets	<p>The Purchased Assets are:</p> <ul style="list-style-type: none"> (a) all Accounts Receivable arising from operation of the Business on or after the Closing Date; (b) the assets (of a type and character not otherwise described in clauses (c) through (q) of Section 2.1) comprising the Handley Plant and the Transmission and Interconnection Facilities, in each case to the extent Primarily Related to the Handley Plant and the Transmission and Interconnection Facilities; (c) the Real Property and all Improvements (including leasehold Improvements to the extent owned by the Sellers) thereon; (d) (i) all inventory and assets of the Sellers located at the Handley Plant that are either (A) owned by the Sellers or (B) to which the Sellers have title, including all rights of the Sellers to the heavy fuel oil stored at the Handley Plant and other consumable inventory and spare parts stored at the Handley Plant, and (ii) those assets that are not located at the Handley Plant but are Primarily Related to the Handley Plant and held for repair or refurbishment or storage, which assets are listed on Schedule 2.1(d)(ii); (e) all rights relating to deposits (including customer deposits and security deposits for rent, utilities, telephone or otherwise and environmental-related deposits related to the Handley Plant), prepaid or deferred charges and expenses, in each case Primarily Related to the Purchased Contracts; <u>provided, however</u>, that all rights related to deposits and prepaid charges and expenses paid in connection with or to the extent related to any Excluded Contract shall be an Excluded Asset; (f) the Furniture and Equipment; (g) all Intellectual Property exclusively related to the Business (the “<u>Purchased Intellectual Property</u>”); (h) the Purchased Contracts, including those listed on Schedule 2.1(h); (i) all of the Real Property Documents that are Purchased Contracts, together with all rights in respect thereof to the extent such rights are related to the Business; (j) to the extent the Sellers own or have title to Documents under the Material Project Documents (as defined in the Credit Agreement), (i) sole ownership of all copies and originals of all such Documents that are exclusively used

⁶ To the extent that there is any inconsistency between the terms of the Stalking Horse Agreement and the summary of such terms in this Motion, the terms of the Stalking Horse Agreement shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Stalking Horse Agreement.

⁷ All references to sections or schedules in this summary refer to the Stalking Horse Agreement, unless otherwise specified.

	<p>in, exclusively held for use in or exclusively intended to be used in, or that arise exclusively out of, the Business, including any such Documents exclusively relating to products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, all files, customer files and documents, supplier lists, records, literature and correspondence, physically located on the Real Property, provided, that, with respect to any such Documents, the Sellers shall be permitted to keep (A) one (1) copy such Documents solely to the extent required to demonstrate compliance with applicable law or pursuant to internal compliance procedures and (B) copies of such Documents to the extent used in, held for use in or intended to be used in, or that arise out of, the Excluded Business; and (ii) a non-exclusive right to use, and a copy in a mutually agreed format of, all other such Documents the Sellers have a right of ownership to under the Material Project Documents (as defined in the Credit Agreement) to the extent used in, held for use in or intended to be used in, or that arise out of, the Business, in each case in the possession of the Sellers;</p> <ul style="list-style-type: none"> (k) all Permits Primarily Related to the Business and held in any Seller's name, including (i) all Environmental Permits Primarily Related to the Business, to the extent assignable under Law, and (ii) all Permits listed on Schedule 2.1(k); (l) all Air Emissions Credits and Allowances and all rights and obligations relating thereto, to the extent Primarily Related to the Business and assignable under Law, to the extent (i) listed on Schedule 5.11(d) or (ii) listed in the Air Emissions Credits and Allowances allocated to Handley pursuant to that certain Emissions Allowance Agreement dated April 25, 2002 between TXU Generation Company LP and Handley and Mountain Creek Power, LLC (as successors in interest to ExTex LaPorte Limited Partnership); (m) all rights under or pursuant to all representations, warranties and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided to, the Sellers under any Purchased Contract, to the extent assignable, other than any representations, warranties and guarantees pertaining to any Excluded Assets or rights and defenses pertaining to any Excluded Liabilities if the reliance by the Stalking Horse Bidder on any such representation, warranty or guarantee, or rights and defenses would be detrimental to any owner or purchaser of the Excluded Assets or any Excluded Liability, respectively; (n) goodwill and other intangible assets Primarily Related to the Business; (o) all insurance policies and binder and claims (solely to the extent transferable), whether asserted or unasserted, or rights to proceeds or refunds thereof, in each case held by the Sellers (including those listed on Schedule 2.1(o)) solely to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities; (p) any rights, claims, or causes of action of the Sellers against Third Parties to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities, whether arising before or after the Closing Date, including Avoidance Actions against Third Party suppliers and vendors of the Business solely to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities; provided, however, that it is understood and agreed by the Parties that (i) the Stalking Horse Bidder shall not pursue or cause to be pursued any such Avoidance Actions other than as a defense (to the extent permitted under applicable law) against any claim or cause of action raised against the Stalking Horse Bidder by any such Third Party supplier or vendor and (ii) notwithstanding the purchase of such Avoidance Actions by the Stalking Horse Bidder, the Sellers shall retain the right to use any such Avoidance Actions as a defense (to the extent permitted under applicable
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	<p>law) against any claim or cause of action raised against any Seller by any Person in connection with the reconciliation of bankruptcy claims against the Sellers; and</p> <p>(q) any deposits, holdbacks or other amounts held by ERCOT to the extent Primarily Related to the Business, which were withheld or otherwise paid by or charges to the Sellers.</p> <p><i>See Stalking Horse Agreement § 2.1.</i></p>
Assumed Liabilities	<p>The Stalking Horse Bidder shall assume the following liabilities:</p> <ul style="list-style-type: none"> (a) all Liabilities for Taxes imposed with respect to, or to the extent arising out of or related to, the Purchased Assets, the Assumed Liabilities or the Business other than Excluded Taxes; (b) all Liabilities Primarily Related to accounts payable incurred on or after the Closing Date in the Ordinary Course of Business to the extent Primarily Related to the Business; (c) all Liabilities (i) pursuant to Environmental Law to the extent Primarily Related to the Business, the Purchased Assets, the Real Property, the Improvements or the Handley Plant, including for Remedial Actions or otherwise maintaining environmental regulatory compliance at the Handley Plant, irrespective of whether such Liabilities arose on, before or after the Closing, or (ii) Primarily Related to Releases of Hazardous Materials from or in connection with the operation of the Handley Plant or on or under the Real Property, irrespective of whether such Liabilities arose on, before or after the Closing; (d) all Liabilities related to amounts required to be paid by the Stalking Horse Bidder under the Transaction Documents; (e) all Liabilities incurred on or after the Closing Date to the extent Primarily Related to the Business or the Purchased Assets, other than the Excluded Liabilities; (f) all of the Cure Costs and reimbursement obligations under the Stalking Horse Agreement in respect of the Critical Vendor Payments; and (g) those Liabilities listed on Schedule 2.3(g). <p><i>See Stalking Horse Agreement § 2.3.</i></p>
Agreements with Management or Key Employees Local Rule 6004-1(b)(iv)(B)	<p>The Debtors do not have management or other key employees as such persons are employed by ExGen, who provides the services of such persons to the Debtors pursuant to the Intercompany Agreements. As such, while ExGen may have agreements with such persons to remain employed after the Closing of the Sale Transaction, such persons are not and were never employed by the Debtors.</p>
Releases Local Rule 6004-1(b)(iv)(C)	<p>If the Closing occurs, the Stalking Horse Bidder shall be deemed to have waived, and waives, in full any breach of, and claims arising therefrom, the Sellers' representations or warranties, covenants, agreements or obligations that are to be performed at or before the Closing, whether or not the Stalking Horse Bidder is aware of, or becomes aware of, such breach before, at or after the Closing. <i>See Stalking Horse Agreement § 11.3(a)(i).</i></p> <p>If the Closing occurs, the Sellers shall be deemed to have waived, and waives, in full any breach of the Stalking Horse Bidder's representations or warranties that are to be performed at or before the Closing, whether or not the Sellers are aware of, or become aware of, such breach before, at or after the Closing. <i>See Stalking Horse Agreement § 11.3(a)(ii).</i></p>
Private Sale/No Competitive Bidding	<p>This Motion contemplates an auction, and there is no provision in the Stalking Horse Agreement pursuant to which the Sellers have agreed not to solicit</p>

Local Rule 6004-1(b)(iv)(D)	competing offers for the Purchased Assets or to otherwise limit shopping of the Purchased Assets. <i>See</i> Stalking Horse Agreement § 7.1
Closing and Other Deadlines Local Rule 6004-1(b)(iv)(E)	<p>Subject to the terms of the Sale Order and any other applicable order entered by the Court, the Closing shall occur no later than two Business Days following the satisfaction (or waiver by the Party entitled to waive that condition) of the conditions set forth in sections 10.1, 10.2, and 10.3 of the Stalking Horse Agreement, other than conditions that by their nature are to be satisfied at the Closing, unless another time or date, or both, are agreed to in writing by the Parties. <i>See</i> Stalking Horse Agreement § 4.1.</p> <p>Of note, the Closing conditions include, among other things, execution of a Purchaser Fuel Transportation Agreement with each counterparty to a Pre-Closing Fuel Transportation Agreement (or an Equivalent Agreement), and the effective date of the Proposed Plan (or an alternate transaction). <i>See</i> Stalking Horse Agreement § 10.1(c)-(d).</p>
Good Faith Deposit Local Rule 6004-1(b)(iv)(F)	<p>Simultaneously with the execution of the Stalking Horse Agreement, the Stalking Horse Bidder shall make a deposit in the amount of \$5,000,000 (the “<u>Good Faith Deposit</u>”). The Good Faith Deposit and any interest credited thereon through the Closing Date shall be credited against the Purchase Price. If the Closing does not occur and the Stalking Horse Agreement is terminated pursuant to Sections 4.4(a) through (e) (except as set forth in Section 3.2(c)(iii)), (g) through (i), of such agreement, then the Good Faith Deposit, together with all accrued investment income or interest thereon, shall be promptly returned to the Stalking Horse Bidder, and in any event no later than three Business Days after such termination. <i>See</i> Stalking Horse Agreement § 3.1(b)-(c).</p>
Interim Arrangements with Stalking Horse Bidder Local Rule 6004-1(b)(iv)(G)	<p>As part of the Sale Transaction, the Sellers and the Stalking Horse Bidder are not entering into any interim agreements or arrangements in connection with the Stalking Horse Bid or pursuant to the Stalking Horse Agreement. However, pursuant to the Sponsor Compromise and as contemplated by the Proposed Plan, ExGen has agreed to provide certain transition services and other interim arrangements to the reorganized Debtors after the effective date of the Proposed Plan.</p>
Use of Proceeds Local Rule 6004-1(b)(iv)(H)	None.
Tax Exemption Local Rule 6004-1(b)(iv)(I)	<p>The Sellers and the Stalking Horse Bidder do not seek to have the sale of the Purchased Assets in the Stalking Horse Bid declared exempt from taxes under section 1146(a) of the Bankruptcy Code. <i>See</i> Stalking Horse Agreement § 12.1.</p>
Record Retention Local Rule 6004-1(b)(iv)(J)	<p>The Sellers and the Stalking Horse Bidder agree to preserve and keep the records, or in the case of the Sellers, arrange for preservation and keeping of the records, held by them relating to the Business for a period of six (6) months from the Closing Date and shall make such records and personnel available to the other Parties as may be reasonably required by such Party in connection with, among other things, any insurance claims, Proceedings or Tax Claims against or governmental investigations of the Sellers or the Stalking Horse Bidder or any of the Stalking Horse Bidder's Affiliates, administering the Bankruptcy Case, including in connection with any motion or claim objection filed or to be filed by or against the Sellers or their Affiliates in the Bankruptcy Case, winding up the Sellers, or in order to enable the Sellers or the Stalking Horse Bidder to comply with their obligations under the Stalking Horse Agreement and the other Transaction Documents.</p>

	<p>Notwithstanding the above, in the event the Sellers or the Stalking Horse Bidder wish to destroy records, such Party is entitled to destroy such records by (i) giving ninety (90) days prior written notice to the other Parties and each of the other Parties shall have the right at its option and expense, upon prior written notice given within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of the original notice, or (ii) seeking and obtaining an Order of the Bankruptcy Court approving the destruction of such records and complying with such Order of the Bankruptcy Court.</p> <p><i>See Stalking Horse Agreement § 8.6(a), (b).</i></p>
<p>Sale of Avoidance Actions Local Rule 6004-1(b)(iv)(K)</p>	<p>Included in the Purchased Assets are Avoidance Actions under chapter 5 of the Bankruptcy Code against Third Party suppliers and vendors of the Business solely to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities: provided however, that it is understood and agreed by the Parties that (i) the Stalking Horse Bidder shall not pursue or cause to be pursued any such Avoidance Actions other than as a defense (to the extent permitted under applicable law) against any claim or cause of action raised against the Stalking Horse Bidder by any such Third Party supplier or vendor and (ii) notwithstanding the purchase of such Avoidance Actions by the Stalking Horse Bidder, the Sellers shall retain the right to use any such Avoidance Actions as a defense (to the extent permitted under applicable law) against any claim or cause of action raised against any Seller by any Person in connection with the reconciliation of bankruptcy claims against the Sellers. <i>See Stalking Horse Agreement § 2.1(p).</i></p> <p>All other Avoidance Actions (<i>i.e.</i>, other than those that are against Third Party suppliers and vendors of the Business and are Primarily Related to the Purchased Assets or Assumed Liabilities) are excluded from the Sale Transaction. <i>See Stalking Horse Agreement § 2.2(s).</i></p>
<p>Requested Findings as to Successor Liability Local Rule 6004-1(b)(iv)(L)</p>	<p>The Sellers seek to sell the Purchased Assets to the Stalking Horse Bidder free and clear of all Encumbrances (other than any Permitted Encumbrances or Assumed Liabilities). The Stalking Horse Bidder will not have any derivative, successor, transferee or vicarious liability for liabilities of the Sellers as a result of the transactions contemplated by the Stalking Horse Agreement. <i>See Stalking Horse Agreement § 5.5.</i></p>
<p>Sale Free and Clear of Unexpired Leases Local Rule 6004-1(b)(iv)(M)</p>	<p>None.</p>
<p>Credit Bid Local Rule 6004-1</p>	<p>The Stalking Horse Agreement does not seek to allow, disallow or affect in any manner credit bidding pursuant to section 363(k) of the Bankruptcy Code.</p>
<p>Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)</p>	<p>It is anticipated that the proposed Sale Order will seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).</p>
<p>Provisions Providing Bid Protections to “Stalking Horse” or Initial Bidder Local Rule 6004-1(c)(i)(C)</p>	<p>Subject to entry of the Bidding Procedures Order and those conditions specified in the Stalking Horse Agreement, including those conditions contained in Section 7.4 thereof, the Stalking Horse Bidder shall be entitled to payment of (i) a break-up fee in the amount of 1.25% of the Initial Cash Consideration; and (ii) expense reimbursement of up to \$300,000 for reasonable and documented out-of-pocket fees and expenses incurred in connection with preparation, negotiation and documentation of the Stalking Horse Agreement and related agreements. In addition, the Bidding Procedures Order provides for an initial overbid protection of \$2,000,000 over and above the aggregate of the Purchase Price and the Stalking Horse Protections, and minimum bid increments thereafter of \$250,000. <i>See</i></p>

Stalking Horse Agreement § 7.4

Bidding Procedures**A. Overview**

24. The Bidding Procedures are designed to promote a competitive, fair, and expedient sale process that seeks to maximize the value of the Debtors' estates. If approved, the Bidding Procedures will allow the Debtors to solicit and, in consultation with the Consultation Parties, identify bids from potential buyers that constitute the highest or otherwise best offer for the Purchased Assets on a schedule consistent with the milestones detailed in the Cash Collateral Motion, the Stalking Horse Agreement, the Bidding Procedures and the Debtors' chapter 11 objectives, including obtaining confirmation of the Proposed Plan.

25. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated in their entirety herein. Pursuant to Local Rule 6004-1, certain of the key terms of the Bidding Procedures are highlighted in the chart below.⁸

MATERIAL TERMS OF THE BIDDING PROCEDURES AND ORDER	
Qualification of Bidders Local Rule 6004-1(c)(i)(A)	<p>Prior to the Bid Deadline, each party, other than the Stalking Horse Bidder and the Secured Agent, who wishes to participate in the bidding process (a "<u>Potential Bidder</u>") must deliver the following to the Notice Parties:</p> <ul style="list-style-type: none"> i. a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid; and ii. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors, in consultation with the Consultation Parties; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions; and iii. a Potential Bidder that delivers the documents and information described above or that the Debtors determine, in consultation with the Secured Agent, the Ad Hoc Committee and the official committee of unsecured creditors, if any, appointed in these chapter 11 cases (collectively the "<u>Consultation Parties</u>"), is likely (based on availability of financing, experience, and other considerations) to be able to consummate the Sale Transaction, and whose Qualified Bid is

⁸ To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures.

	<p>received by the Debtors no later than the Bid Deadline is deemed qualified (a “Qualified Bidder”).</p> <p><i>See Bidding Procedures at 1-2.</i></p> <p>The Stalking Horse Bidder and the Secured Agent shall both be deemed Qualified Bidders. <i>See Bidding Procedures Order ¶ 4.</i></p>
<p>Qualified Bids Local Rule 6004-1(c)(i)(B)</p>	<p>Bid Deadline: December 13, 2017 at 5:00 p.m. (prevailing Eastern Time)</p> <p>A bid will be considered a “Qualified Bid” only if the bid is submitted by a Qualified Bidder and the Debtors determine, after consultation with the Consultation Parties, that the bid complies with all of the following:</p> <ol style="list-style-type: none"> i. it is received by the Notice Parties prior to the Bid Deadline; ii. it states that the applicable Qualified Bidder offers to purchase, in cash or, if applicable, through a credit bid, all of the Purchased Assets upon the terms and conditions that the Debtors, in consultation with the Consultation Parties, reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement; iii. it offers to purchase all or substantially all of the Purchased Assets; iv. it includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder its offer shall remain irrevocable until the later of (a) the closing of the Sale Transaction to the Successful Bidder or the Back-Up Bidder, and (b) the date that is twenty days after the Sale Hearing; v. it includes confirmation that there are no conditions precedent to the Qualified Bidder’s ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the bid; vi. it contains no due diligence or financing contingencies of any kind; vii. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (an “Asset Purchase Agreement”) and a proposed order for approval of the Sale Transaction by the Bankruptcy Court; viii. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale Transaction and pay the Purchase Price in cash, such as will allow the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the Sale Transaction contemplated by the Asset Purchase Agreement; ix. it has a value to the Debtors, determined in the Debtors’ reasonable business judgment after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (a) the aggregate amount of the Break-Up Fee and Expense Reimbursement Amount, plus (b) \$2,000,000; x. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes for the Debtors to assume and assign and provides details of the Qualified Bidder’s proposal for the treatment of related cure costs and the provision of adequate assurance of future performance to the counterparties to such Contracts and Leases; xi. it includes an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (b) has relied solely upon its own

	<p>independent review, investigation, and/or inspection of any documents and/or the Purchased Assets in making its bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (d) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its Bid;</p> <p>xii. it includes evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Consultation Parties, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Asset Purchase Agreement;</p> <p>xiii. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors, in consultation with the Consultation Parties), certified check or such other form acceptable to the Debtors, in consultation with the Consultation Parties, payable to the order of the Debtors (or such other party as the Debtors, in consultation with the Consultation Parties, may determine) in an amount equal to \$5,000,000;</p> <p>a. All good faith deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder no later than five (5) Business Days following the conclusion of the Auction.</p> <p>xiv. it states that the bidder consents to the jurisdiction of the Bankruptcy Court; and</p> <p>xv. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties.</p> <p><i>See Bidding Procedures at 2-4, 7.</i></p> <p>The Stalking Horse Agreement will be deemed a Qualified Bid. <i>Id.</i> at 4.</p>
Credit Bidding Local Rule 6004-1(b)(iv)(N)	<p>The Bidding Procedures Order and the Bidding Procedures place conditions on when the Secured Agent can credit bid, to the extent it is entitled to do so. The Secured Agent shall only be entitled to credit bid for the Purchased Assets if the Debtors, in consultation with the Consultation Parties, determine at the Auction that a Qualified Bid other than the Stalking Horse Bid is the highest or otherwise best offer for the Purchased Assets. Thereafter, the Secured Agent, acting at the direction of the Required Lenders (as defined in the First Day Declaration) will be permitted to credit bid up to the full allowed amount of the secured claims that it is entitled to credit bid pursuant to the Intercreditor Agreement, as modified by the Cash Collateral Order (as defined in the First Day Declaration), for all purposes in connection with the bidding process, the Auction, and the Sale Transaction, without compliance with the requirements for Qualified Bids. <i>See Bidding Procedures Order ¶ 18; Bidding Procedures at 4.</i></p>
Relief from Bankruptcy Rule 6004(h) Local Rule 6004-1(b)(iv)(O)	<p>This Motion seeks, and the proposed Bidding Procedures Order approves, relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h). <i>See Bidding Procedures Order ¶ 34; infra, ¶¶ 62-63.</i></p>
No-Shop or No-Solicitation Provisions Local Rule 6004-1(c)(i)(C)(1)	<p>The Bidding Procedures Order and Bidding Procedures do not limit the Debtors' ability or right to solicit higher or otherwise better bids. The Sale Transaction contemplated by this Motion, the Bidding Procedures, and the Bidding Procedures Order calls for a fair and open bidding and auction process.</p>
Break-Up Fee and Expense Reimbursement	<p>The Bidding Procedures Order approves and authorizes the Break-Up Fee and Expense Reimbursement Amount for the Stalking Horse Bidder pursuant to the amounts and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures. <i>See</i></p>

Local Rule 6004-1(c)(i)(C)(2)	Bidding Procedures Order ¶ 17.
Initial Overbid and Bidding Increments Local Rule 6004-1(c)(i)(C)(3)	The Bidding Procedures, as approved and incorporated by the Bidding Procedures Order, provide for an initial overbid protection of \$2,000,000 over and above the aggregate of the Purchase Price, the Break-Up Fee, and the Expense Reimbursement Amount. The minimum bid increments thereafter shall be \$250,000. <i>See</i> Bidding Procedures at 3, 6.
Treatment of Break-Up Fee and Expense Reimbursement at Auction Local Rule 6004-1(c)(i)(C)(4)	For purposes of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors shall give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors. <i>See</i> Bidding Procedures at 6.
Modification of Bidding and Auction Procedures Local Rule 6004-1(c)(i)(D)	The Debtors may, in consultation with the Consultation Parties, extend the Bid Deadline. <i>See</i> Bidding Procedures Order ¶ 6. The Debtors, after consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, <u>provided</u> that such rules (i) are not materially inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; (ii) do not purport to abrogate or modify the Stalking Horse Protections or reduce the Minimum Initial Overbid Amount or the Continuing Minimum Overbid Amount; and (iii) are disclosed to each Qualified Bidder attending the Auction. <i>See</i> Bidding Procedures at 6.
Closing with Alternative Back-Up Bidders Local Rule 6004-1(c)(i)(E)	The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties, will be required to serve as the Back-Up Bidder and keep its bid open and irrevocable until the later to occur of twenty (20) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale Transaction, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale Transaction with the Back-Up Bidder without further order of the Court. <i>See</i> Bidding Procedures at 6.

B. Key Dates and Deadlines

26. The Debtors propose the following key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:⁹

⁹ The Debtors, in consultation with the Consultation Parties, reserve the right to change the proposed sale-related deadlines at any time prior to the hearing to consider approval of the Bidding Procedures.

On or before November 28, 2017	Hearing to consider approval of the Bidding Procedures and entry of the Bidding Procedures Order
December 13, 2017, at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
December 14, 2017, at 5:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to notify Potential Bidders of their status as Qualified Bidders
December 14, 2017, at 4:00 p.m. (prevailing Eastern Time)	Deadline to object to the Stalking Horse Bidder and the Sale Transaction to the Stalking Horse Bidder
December 18, 2017, at 10:00 a.m. (prevailing Eastern Time)	Auction to be held at offices of Richards, Layton & Finger, P.A. (if necessary)
December 19, 2017	Target date for the Debtors to file with the Court the Notice of Auction Results
December 21, 2017, at 4:00 p.m. (prevailing Eastern Time)	Deadline to object to conduct of the Auction and the Sale Transaction to the Successful Bidder (other than the Stalking Horse Bidder)
December 27, 2017	Target date to file proposed Sale Order
December 28, 2017	Proposed date of the Sale Hearing to consider approval of Sale Transaction and entry of Sale Order

C. Noticing Procedures

27. The Bidding Procedures provide the following “Noticing Procedures”:

- a. **Sale Notice and Publication.** Within two (2) Business Days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon: (i) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (ii) counsel for the official committee of unsecured creditors (the “Committee”), if any; (iii) all known creditors of the Debtors; (iv) counsel to the Stalking Horse Bidder, DLA Piper LLP (US); (v) Counterparties to the Contracts, Leases, Excluded Contracts and Excluded Real Property Leases; (vi) counsel to the Secured Agent, Norton Rose Fulbright US LLP; (vii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz; (viii) the Internal Revenue Service; (ix) all applicable state and local taxing authorities; (x) the Federal Trade Commission; (xi) the Securities & Exchange Commission; (xii) the U.S. Environmental Protection Agency; (xiii) the Federal Energy Regulatory Commission; (xiv) the Electric Reliability Council of Texas; (xv) the Public Utility Commission of Texas; (xvi) the Office of the United States Attorney for the District of Delaware; (xvii) the United States Attorney General/Antitrust Division of the Department of Justice; (xviii) the offices of the attorneys general for the states in which the Debtors operate; (xix) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors’ Assets; (xx) other potentially interested parties identified by the Debtors, any of the Consultation Parties or any of their respective advisors; (xxi) all such other entities as may be required by applicable

Bankruptcy Rules or applicable Local Rules or as may be reasonably requested by the Stalking Horse Bidder; and (xxii) all other known parties with any interest in the Purchased Assets (collectively, the “Sale Notice Parties”). On or as soon as practicable after such date, the Debtors will publish the Sale Notice, with such modifications as may be appropriate for purposes of publication, once in the National Edition of the Wall Street Journal or the USA Today and, to the extent the Debtors, in consultation with the Consultation Parties, deem appropriate, in any other local or regional publications.

- b. **Notice of Determination of Qualified Bids.** The Debtors, in consultation with the Consultation Parties, will make a determination regarding which bids qualify as a Qualified Bid and will notify Potential Bidders whether they have been selected as Qualified Bidders by no later than **December 14, 2017, at 5:00 p.m. (prevailing Eastern Time).**
 - i. At least one (1) business day prior to the Auction, the Debtors will provide all Qualified Bidders with one (1) copy of the Qualified Bid that the Debtors, in consultation with the Consultation Parties, believe is the highest or otherwise best offer for the Purchased Assets.
- c. **Notice of Hearing if Auction Not Held.** With respect to the Purchased Assets, if no Qualified Bid other than the Stalking Horse Bid is received by the Bid Deadline, the Debtors will not conduct the Auction for the Purchased Assets and will file with the Court, serve on the Sale Notice Parties and cause to be published on the Debtors’ case information website (located at <http://www.kccllc.net/EGTP>) (the “Case Information Website”) a notice (i) indicating that the Auction for the Purchased Assets has been canceled, (ii) indicating that the Stalking Horse Bidder is the Successful Bidder with respect to the Purchased Assets and (iii) setting forth the date and time of the Sale Hearing.
- d. **Notice of Auction Results.** If an Auction is held, promptly following the selection of the Successful Bid(s) and Back-up Bid(s), if any, the Debtors shall file a notice of the Successful Bid(s) and Back-up Bid(s), if any (the “Notice of Auction Results”), with the Court and cause the Notice of Auction Results to be published on the Case Information Website.

28. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, the dates and deadlines identified in paragraph 26 above. Accordingly, the Debtors request that the Court find that the Noticing

Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and Local Rule 2002-1.

Assumption and Assignment Procedures

29. In connection with the Sale Transaction, the Debtors anticipate that they will assume and assign to the Successful Bidder (or its designated assignee(s)) certain of the Contracts and Leases, as they may be modified or supplemented, pursuant to section 365(b) of the Bankruptcy Code. Accordingly, the Debtors hereby seek approval of the proposed Assumption and Assignment Procedures set forth below, which are designed to, among other things, (a) outline the process by which the Debtors will serve notice to all Counterparties regarding the proposed assumption and assignment, related Cure Costs, if any, and information regarding the Stalking Horse Bidder's or such other Successful Bidder's adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Contracts and Leases. Specifically, the Assumption and Assignment Procedures are as follows:

- a. **Assumed Contracts Schedule.** Within three (3) Business Days following entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice that specifies (i) each of the Contracts and Leases that may be assumed and assigned in connection with the Sale Transaction, including the name of each Counterparty and (ii) the proposed Cure Cost with respect to each Contract and Lease (the "Contracts Schedule"). Within such time period, the Potential Assumption and Assignment Notice shall also be served on each Counterparty listed on the Contracts Schedule via first class mail.
- b. **Assumption and Assignment Objections.**
 - i. **Objection Deadlines.** Any Counterparty may object to the proposed assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Costs, if any, or the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (an "Assumption and Assignment Objection"). Except in the event

that the Stalking Horse Bidder is not the Successful Bidder, all Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes are required to cure defaults under the relevant Contract or Lease, (D) be filed by no later than **December 14, 2017, at 4:00 p.m. (prevailing Eastern Time)** and (E) be served on (1) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com, (2) counsel to the Stalking Horse Bidder, DLA Piper LLP (US), 444 West Lake Street, Chicago, Illinois 60606, Attn: Richard Chesley and Daniel Simon, Richard.Chesley@dlapiper.com and Daniel.Simon@dlapiper.com, (3) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com, (4) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr. and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com, (5) counsel to the Committee, if any, (6) counsel to the Successful Bidder, and (7) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Benjamin.A.Hackman@usdoj.gov (collectively, the “Assumption and Assignment Objection Notice Parties”).

- ii. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors, in consultation with the Successful Bidder and the Consultation Parties, shall determine in their discretion (subject to the Court’s calendar).
- iii. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Contract or Lease, and notwithstanding anything to the contrary in the Contract or Lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice (as defined below) shall be

controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under section 365(b) of the Bankruptcy Code arising out of or related to the Contract or Lease following the assumption and assignment thereof, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder or the property of any of them.

c. **Modification of Assumed Contracts Schedule.**

- i. Unless otherwise provided in the Successful Bidder's Asset Purchase Agreement, at any time prior to three (3) Business Days prior to Closing, the Successful Bidder may elect to exclude any Contract or Lease from the Contracts Schedule by providing to the Debtors written notice of its election to exclude such Contract or Lease. Any Contract or Lease that remains on the Contracts Schedule as of such date, shall be assumed by the Debtors and assigned to the Successful Bidder as part of the Sale Transaction (the "Assumed Contracts and Assumed Leases"), subject to the resolution of any Assumption and Assignment Objection with respect to such contract or lease.
- ii. In the event that any Contract or Lease is added to the Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the Stalking Horse Agreement, the Successful Bidder's Asset Purchase Agreement or the procedures set forth in the Bidding Procedures Order, the Debtors will promptly serve a supplemental assumption and assignment notice, by overnight mail and, if known, e-mail, on the applicable Counterparty (each, a "Supplemental Assumption and Assignment Notice"). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Contract or Lease as is required to be included in the Potential Assumption and Assignment Notice.
- iii. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose Contract or Lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Costs, if any, or the ability of the Successful Bidder to provide adequate assurance of future performance (a "Supplemental Assumption and Assignment Objection"). All Supplemental Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (C) state, with specificity, the legal and factual bases

thereof, including, if applicable, the Cure Cost the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (D) be filed by no later than **7 calendar days from the date of service of such Supplemental Assumption and Assignment Notice** and (E) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

- d. **Post-Auction Objection.** If, following the Auction, the Stalking Horse Bidder is not the Successful Bidder, then the Debtors shall serve the Notice of Auction Results on each Counterparty that received a Potential Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice at the same time as such Notice of Auction Results is filed with the Court and published on the Case Management Website. Objections of any Counterparty related solely to the identity of and adequate assurance of future performance provided by the Successful Bidder must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (C) state, with specificity, the legal and factual bases thereof, (D) be filed by no later than **December 21, 2017, at 4:00 p.m. (prevailing Eastern Time)** and (E) be served on the Assumption and Assignment Objection Notice Parties.
- e. **Reservation of Rights.** The inclusion of a Contract or Lease, or Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, the Contracts Schedule or a Supplemental Assumption and Assignment Notice shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidder(s) or any other party in interest that such Contract or Lease is an executory contract or unexpired lease of the Debtors within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract and Lease listed on the Potential Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice and Contracts Schedule. The Debtors' inclusion of any Contract or Lease on the Potential Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice and Contracts Schedule shall not be a guarantee that such Contract or Lease ultimately will be assumed or assumed and assigned.

Approval of the Relief Requested Is Warranted and in the Best Interests of the Debtors and Their Economic Stakeholders

A. The Proposed Bidding Procedures Are Fair, Appropriate and Should Be Approved

30. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate:

maximizing the value of sale proceeds received by the estate. *See Burtch v. Ganz (In re Mushroom Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor had a fiduciary duty to maximize and protect the value of the estate's assets); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

31. The Bidding Procedures provide for an orderly, uniform and appropriately competitive process through which interested parties may submit offers to purchase the Purchased Assets. Given the time constraints, and in light of the extensive pre-petition marketing process, the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to confirm the highest or otherwise best offer reasonably available for the Purchased Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction. Accordingly, the Bidding Procedures should be approved because, under the circumstances, they are reasonable, appropriate and in the best interests of the Debtors, their estates and all parties in interest.

B. The Break-Up Fee and Expense Reimbursement Amount Have Sound Business Purposes and Should Be Approved

32. As noted above, the Stalking Horse Agreement provides for a Break-Up Fee in an amount equal to 1.25% of the Initial Cash Consideration (*i.e.*, \$750,000) and an Expense Reimbursement Amount of up to \$300,000. Such amounts are only payable if the conditions set forth in the Stalking Horse Agreement, including section 7.4 thereof, are satisfied. The Debtors believe that the Stalking Horse Protections are necessary for the Stalking Horse Bidder to enter into the Stalking Horse Agreement. In addition, the Debtors believe that the presence of the Stalking Horse Bidder will set a floor for the value of the Purchased Assets and attract other potential buyers to bid for such assets, thereby maximizing the realizable value of the Purchased Assets for the benefit of the Debtors' estates, their creditors and all other parties in interest.

33. Approval of the Stalking Horse Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a break-up fee or expense reimbursement may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 533. Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. *See id.*; *see also In re Reliant Energy Channel View LP*, 594 F.3d 200, 206-08 (3d Cir. 2010) (reasoning that a break-up fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain

committed to a purchase).

34. In *O'Brien*, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a break-up fee:

- a. the presence of self-dealing or manipulation in negotiating the break-up fee;
- b. whether the fee harms, rather than encourages, bidding;
- c. the reasonableness of the break-up fee relative to the purchase price;
- d. whether the unsuccessful bidder placed the estate property in a “sale configuration mode” to attract other bidders to the auction;
- e. the ability of the request for a break-up fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;
- f. the correlation of the fee to a maximum value of the debtor’s estate;
- g. the support of the principal secured creditors and creditors’ committees of the break-up fee;
- h. the benefits of the safeguards to the debtor’s estate; and
- i. the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See In re O’Brien Envtl. Energy, Inc., 181 F.3d at 536.

35. While none of the factors are dispositive, an application of the facts to several of such factors supports the approval of the Stalking Horse Protections. In particular, and as is set forth in greater detail *supra*, the Stalking Horse Protections are necessary to preserve the value of the Debtors’ estates because they will enable the Debtors to secure an adequate floor for the Purchased Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Agreement—a clear benefit to the Debtors’ estates. Moreover, there has been no showing of any self-dealing or manipulation of any kind in the negotiation of the Stalking Horse Protections. In fact, the opposite is true. The Stalking Horse Protections

were approved by the Sale Process Committee, consisting of the Independent Director, and were the result of good faith, arms' length negotiations between the Debtors, the Stalking Horse Bidder and the Ad Hoc Committee. Further, the creation, use, and implementation of the Sales Process Protocol has ensured that the Debtors' sale process was fair and reasonable. In fact, as part of the negotiations that resulted in the Sponsor Compromise, the Stalking Horse Protections were significantly reduced. Also, the Stalking Horse Bidder would not agree to act as a stalking horse without the Stalking Horse Protections given the substantial time and expense that would be incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Stalking Horse Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Purchased Assets and would certainly lose the downside protection that will be afforded by the existence of the Stalking Horse Bidder. The bid of the Stalking Horse Bidder sends a message to all potential bidders that the Purchased Assets are at least worth the Purchase Price. Therefore, without the benefit of the bid of the Stalking Horse Bidder (*i.e.*, a bid providing the floor), the bids received at auction for the Purchased Assets could be substantially lower than the bid offered by the Stalking Horse Bidder.

36. "The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable." *In re Integrated Res., Inc.*, 147 B.R. at 660. The Debtors do not believe that the Stalking Horse Protections will stifle bidding. To the contrary, the Debtors believe that, should the Auction be held, such bid protections will encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid; (2) to establish a bid standard or minimum for other bidders to follow; or (3) to attract additional bidders." *Id.* at 662.

37. Here, the bid of the Stalking Horse Bidder serves all three functions. First, the Stalking Horse Bidder would not enter into the Stalking Horse Agreement without the Stalking Horse Protections. Second, pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the bid of the Stalking Horse Bidder. Third, the bid of the Stalking Horse Bidder attracts additional bidders because, among other things, additional bidders will be able to save considerable time and expense because they can use many of the documents that the Stalking Horse Bidder heavily negotiated, including, among other things, the Stalking Horse Agreement and the schedules thereto, in making their bid. In sum, if the Purchased Assets are sold to a Successful Bidder other than the Stalking Horse Bidder, the Sale Transaction likely will be the result of the Stalking Horse Bidder's crucial role as an initial bidder generating interest in the Purchased Assets and establishing a minimum acceptable price and offer against which other parties can bid.

38. In addition, "[a] break-up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break-up fees are generally permissible." *Id.* Nor is there a prohibition on break-up fees and expense reimbursement in the context of insider sale transactions. Courts have approved bid protections where the purchaser was an insider. *See, e.g., In re DirectBuy Holdings, Inc.*, Case No. 16-12435 (CSS) (Bankr. D. Del. Dec. 1, 2016) (D.I. 126) (approving expense reimbursement of 3% of purchase price for 100% equity owner of debtor parent); *In re BPS US Holdings Inc.*, Case No. 16-12373 (KJC) (Bankr. D. Del. Nov. 30, 2016) (D.I. 233) (approving break-up fee of 3% of purchase price plus expense reimbursement of

0.6% of the purchase price for stalking horse bidder comprising the largest shareholder of the debtor).

39. Here, the Break-Up Fee is an amount equal to one and one quarter percent (1.25%) of the Initial Cash Consideration (\$60,000,000, the maximum cash portion of the Purchase Price paid by the Stalking Horse Bidder at Closing), which amount is \$750,000. When considered together with the Expense Reimbursement Amount of up to \$300,000 (*i.e.*, one half percent (0.5%) of the Initial Cash Consideration), the approximately one and three quarters percent (1.75%) combined total is consistent with, if not below, the range of bid protections typically paid in sale transactions that have been approved by this Court. Given the size of the Purchase Price, the Debtors believe that the amount of the Stalking Horse Protections is appropriate.

C. The Proposed Sale Transaction Satisfies the Requirements of Section 363 of the Bankruptcy Code

40. Ample authority exists for approval of the Sale Transaction contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, 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). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983).

41. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. at 656.

1. *The Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale Transaction*

42. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *In re Food Barn Stores, Inc.*, 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

43. As set forth above, a strong business justification exists for the sale of the Purchased Assets as described herein. An orderly and expeditious sale of the Purchased Assets is critical to maximizing the value of the Debtors’ estates and recoveries for the Debtors’ economic stakeholders.

2. *The Noticing Procedures Are Reasonable and Appropriate*

44. The Noticing Procedures described above are reasonably calculated to provide all

of the Debtors' known creditors and all other parties in interest with adequate and timely notice of, among other things, the proposed Sale Transaction, the Bidding Procedures, the Auction and the Sale Hearing.

3. *The Proposed Sale Transaction Will Produce a Fair and Reasonable Purchase Price for the Purchased Assets*

45. As set forth above, the Debtors believe that the proposed sale process will produce a fair and reasonable purchase price for the Purchased Assets. The Stalking Horse Bid is an offer to purchase the Purchased Assets for a price that the Debtors (through the Sale Process Committee), with the advice of the Debtors' advisors, already have determined to be fair and reasonable. Given the extensive prepetition marketing process and that the Stalking Horse Bid will serve as a floor for Qualified Bids for the Purchased Assets, the Debtors are confident that the post-petition sale process will culminate in the Debtors obtaining the highest or otherwise best offer for such assets.

4. *The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code*

46. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states the following:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the "policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to

those orders and judgments upon which third parties rely.” *In re Abbotts Dairies*, 788 F.2d at 147; *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

47. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” *In re Abbotts Diaries*, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); *see also In re Bedford Springs Hotel, Inc.*, 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.*, 186 B.R. 833, 839 (D.N.J. 1995).

48. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession, the trustee or other bidders to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

49. The Debtors submit that the Stalking Horse Bidder is a “good faith purchaser”

within the meaning of section 363(m) of the Bankruptcy Code. The Debtors and the Stalking Horse Bidder have entered into the Stalking Horse Agreement without collusion, in good faith and through extensive arm's length negotiations. Indeed, the Stalking Horse Bidder and the Debtors have engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and in the sale process generally. Further, the creation, use, and implementation of the Sales Process Protocol has ensured a fair and competitive process in light of the Stalking Horse Bidder's role as owner and operator of the Purchased Assets. Although the Stalking Horse Bidder is an "insider," approval and negotiation of the Stalking Horse Bid and the Stalking Horse Agreement was conducted by the Debtors' independent professionals and advisors and the independent and disinterested Sale Process Committee. At all times, the Debtors and the Stalking Horse Bidder had separate legal counsel to negotiate the Sale Transaction, and Scotiabank was an independent investment bank retained by the independent Sale Process Committee for the purpose of exploring strategic alternatives, marketing the Debtors' businesses and soliciting bids. To the best of the Debtors' knowledge, information and belief, no party has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be set aside under section 363(m) of the Bankruptcy Code.

50. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Purchased Assets. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arm's length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder (including the Stalking Horse Bidder) is a good faith

purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

51. Based on the foregoing, the Debtors submit that they have demonstrated that the proposed Sale Transaction is a sound exercise of the Debtors' business judgment and should be approved as a good faith transaction.

D. The Purchased Assets Should Be Sold Free and Clear of Liens, Claims, Interests and Encumbrances Under Section 363(f) of the Bankruptcy Code

52. In the interest of attracting the best offers, the Purchased Assets should be sold free and clear of any and all liens, claims, interests and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

53. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

54. The Debtors submit, and to the extent necessary will demonstrate at the Sale Hearing, that the sale of the Purchased Assets free and clear of all liens, claims, interests and encumbrances will satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. For example, the Purchased Assets are subject to the liens of the Secured Parties and, to the extent required by the Intercreditor Agreement, such parties have consented to the Sale Transaction.

55. Moreover, the Debtors will send the Sale Notice to any other purported pre-petition lienholders. If such lienholders do not object to the proposed Sale Transaction, then their consent should reasonably be presumed. Accordingly, the Debtors request that, unless a party asserting a pre-petition lien, claim or encumbrance on any of the Purchased Assets timely objects to this Motion, such party shall be deemed to have consented to any Sale Transaction approved at the Sale Hearing. *See Hargave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein). Accordingly, the Debtors request that the Court authorize the sale of the Purchased Assets free and clear of any liens, claims, interests and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests and

encumbrances attaching to the proceed thereof in the same order of relative priority, with the same validity, force and effect as prior to such.

E. Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

56. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

57. Any assumption of the Contracts or Leases is an exercise of the Debtors’ sound business judgment because the transfer of such Contracts and Leases is necessary to the Debtors’ ability to obtain the best value for the Purchased Assets. The assumption and assignment of Contracts and Leases is a critical component of the Stalking Horse Agreement. Given that consummation of the Sale Transaction is critical to the Debtors’ efforts to maximize value for their estates and stakeholders, the Debtors’ assumption of Contracts and Leases is an exercise of sound business judgment and, therefore, should be approved.

58. The consummation of any Sale Transaction involving the assignment of a Contract or Lease will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Contracts and Leases to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured. The Debtors' assumption and assignment of the Contracts and Leases will be contingent upon payment of the Cure Costs and effective only upon the closing of an applicable Sale Transaction or any later applicable date of assumption and assignment of such Contract or Lease. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Potential Assumption and Assignment Notice, which will set forth the Debtors' good faith calculations of Cure Costs with respect to each Contract and Lease listed on such Potential Assumption and Assignment Notice. Counterparties will have a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts and Leases in advance of the Sale Hearing.

59. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, "[a]lthough no single

solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

60. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under the Contracts and Leases that it wishes for the Debtors to assume and assign. Each affected Counterparty will have an opportunity to object to the ability of the Successful Bidder to provide adequate assurance as provided in the Bidding Procedures Order. To the extent necessary, the Debtors will present facts at the Sale Hearing to show the financial wherewithal, willingness and ability of the Successful Bidder to perform under the Contracts and Leases that it wishes for the Debtors to assume and assign. Here, because the Stalking Horse Bidder is the current equity holder and operator of the Debtors, the Debtors submit that no further showing of adequate assurance of future performance is necessary. That notwithstanding, such adequate assurance of future performance information can be obtained from counsel to the Debtors upon request.

61. In addition, to facilitate the assumption and assignment of the Assumed Contracts and Assumed Leases, the Debtors further request that the Court find that all anti-assignment provisions contained therein, whether such provisions expressly prohibit or have the effect of

restricting or limiting assignment of such Contract or Lease, to be unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.¹⁰

Waiver of Bankruptcy Rules 6004(a), 6004(h) and 6006(d)

62. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

63. The Debtors believe that any Sale Transaction should be consummated as soon as practicable to preserve and maximize value. Accordingly, the Debtors request that any Sale Order approving the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts and Assumed Leases be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

64. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware, (b) the parties listed on the Debtors’ consolidated list of the top thirty (30) largest unsecured creditors, (c) counsel to the Ad Hoc Committee, (d) counsel to the Secured Agent, (e) counsel to the Stalking Horse Bidder, (f) the Internal Revenue Service,

¹⁰ Section 365(f)(1) of the Bankruptcy Code provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease” 11 U.S.C. § 365(f)(1). Section 365(f)(3) of the Bankruptcy Code further provides that “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

(g) all applicable state and local taxing authorities, (h) the United States Environmental Protection Agency, (i) the United States Attorney's Office for the District of Delaware, (j) the offices of the attorneys general for the states in which the Debtors operate, (k) the Federal Trade Commission, (l) the Securities & Exchange Commission, (m) the U.S. Environmental Protection Agency, (n) the Federal Energy Regulatory Commission, (o) the Electric Reliability Council of Texas, (p) the Public Utility Commission of Texas, (q) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors' assets, (r) all other known parties with any interest in the Purchased Assets, and (s) and those parties entitled to receive notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice of this Motion is required.

No Previous Request

65. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request that the Court enter the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, and, after the Sale Hearing, the Sale Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: November 7, 2017
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Daniel J. DeFranceschi

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ExGen Texas Power, LLC, <i>et al.</i>,¹	:	Case No. 17-12377 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	Re: Docket No. ____

**ORDER (A) APPROVING BIDDING PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR HANDLEY POWER, LLC,
(B) APPROVING STALKING HORSE BID PROTECTIONS, (C) SCHEDULING
AUCTION FOR, AND HEARING TO APPROVE, SALE OF SUBSTANTIALLY ALL OF
THE ASSETS OF DEBTOR HANDLEY POWER, LLC,
(D) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION AND
SALE HEARING, (E) APPROVING ASSUMPTION AND ASSIGNMENT
PROCEDURES, AND (F) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors (collectively, the “Debtors”), for entry of an order (this “Order”), pursuant to sections 105, 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006, and Local Rule 6004-1, (i) approving the proposed bidding procedures (the “Bidding Procedures”), attached hereto as **Exhibit 1**, pursuant to which the Debtors will solicit and, in consultation with the Consultation Parties, select the highest or otherwise best offer for the sale (the “Sale Transaction”) of substantially all of the assets of Debtor Handley Power, LLC (the “Purchased Assets”); (ii) approving the Stalking Horse Protections provided by the Debtors to the Stalking Horse

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: ExGen Texas Power, LLC (4129), ExGen Texas Power Holdings, LLC (2209), Wolf Hollow I Power, LLC (6945), Colorado Bend I Power, LLC (9083), Handley Power, LLC (4091), Mountain Creek Power, LLC (6288), and LaPorte Power, LLC (5101). The mailing address of each of the Debtors, solely for purposes of notices and communications, is: 1310 Point Street, Baltimore, MD 21231.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Stalking Horse Agreement, as applicable.

Bidder; (iii) scheduling an auction (the “Auction”), if necessary; (iv) establishing procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale Transaction, including notice of proposed cure amounts (the “Assumption and Assignment Procedures”); (v) scheduling a hearing (the “Sale Hearing”) to approve the Sale Transaction; and (vi) granting related relief, all as more fully described in the Motion; and the Court having reviewed and considered the Motion; and the Court having held a hearing on the Motion, if necessary (the “Bidding Procedures Hearing”); and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the chapter 11 cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The Debtors’ proposed notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing and the proposed entry of this Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules

and (iii) adequate and sufficient under the circumstances of these chapter 11 cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and Stalking Horse Protections) has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

D. The Bidding Procedures in the form attached hereto as **Exhibit 1** are fair, reasonable and appropriate and are designed to maximize creditor recoveries from a sale of the Purchased Assets.

E. The Bidding Procedures and the Stalking Horse Agreement were each negotiated in good faith and at arm's length among the Debtors, the Stalking Horse Bidder and the Ad Hoc Committee. The Stalking Horse Agreement represents the highest or otherwise best offer that the Debtors have received to date for the Purchased Assets. The process for selecting the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates.

F. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and, thereby: (i) approve the Bidding Procedures as contemplated by the Stalking Horse Agreement and the Motion; (ii) authorize the Stalking Horse Protections, under the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures; (iii) set the dates of the Bid Deadline, Auction (if needed), Sale Hearing and other deadlines set forth in the Motion and the Bidding Procedures; (iv) approve the Noticing Procedures and the forms of notice; and (v) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such compelling and sound business justification, which was set forth in the Motion and on the record at the Bidding Procedures Hearing, if any, are

incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

G. The Stalking Horse Protections, as approved by this Order, are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

H. If triggered in accordance with the terms of the Stalking Horse Agreement, the payment of the Stalking Horse Protections, under this Order and upon the conditions set forth in the Stalking Horse Agreement and the Bidding Procedures, is (i) an actual and necessary cost of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code, (ii) reasonably tailored to encourage, rather than hamper, bidding for the Purchased Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Purchased Assets, (iii) of substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (iv) reasonable and appropriate, (v) a material inducement for, and conditions necessary to, ensure that the Stalking Horse Bidder will continue to pursue its proposed agreement to purchase the Purchased Assets and (vi) reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the Sale Transaction and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction.

I. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders and all other parties in interest.

J. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached

hereto as **Exhibit 2** and the Potential Assumption and Assignment Notice attached hereto as **Exhibit 3**) are reasonably calculated to provide each Counterparty to the Contracts and Leases with proper notice of the potential assumption and assignment of such Contracts and Leases by the Successful Bidder(s) or any of their known proposed assignees (if different from the Successful Bidder) and the requirement that each such Counterparty assert any objection to the proposed Cure Costs or otherwise be barred from asserting claims arising out of or related to the Contract or Lease following the assumption and assignment thereof.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Any objections to the Motion or the relief requested therein that have not been adjourned, withdrawn or resolved are overruled in all respects on the merits.
3. The Bidding Procedures, in substantially the form attached hereto as **Exhibit 1**, are approved and fully incorporated into this Order and the Debtors are authorized, but not directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision.
4. The Stalking Horse Bidder is deemed a Qualified Bidder for all purposes, and the Stalking Horse Bid as set forth in the Stalking Horse Agreement is deemed a Qualified Bid. The Secured Agent is also deemed a Qualified Bidder for all purposes, subject to paragraph 18 hereof and the terms of the Bidding Procedures.
5. Subject to final Court approval at the Sale Hearing, the Debtors are authorized to enter into the Stalking Horse Agreement with the Stalking Horse Bidder.

6. Bid Deadline. As further described in the Bidding Procedures, the Bid Deadline shall be at **5:00 p.m. (prevailing Eastern Time) on _____, 2017.** The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties. The Debtors shall notify Potential Bidders of their status as Qualified Bidders no later than **5:00 p.m. (prevailing Eastern Time) on _____, 2017.** If the Debtors, in consultation with the Consultation Parties, extend the Bid Deadline, then the Debtors shall notify Potential Bidders of their status as Qualified Bidders as soon as practicable after the expiration of such extended deadline.

7. Auction. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Stalking Horse Bid, an Auction shall be conducted at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 at **____:00 a.m. (prevailing Eastern Time) on _____, 2017,** or such other date, time or location as the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder). The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures.

8. If no Qualified Bids with respect to the Purchased Assets other than the Stalking Horse Bid are received on or before the Bid Deadline, the Debtors shall not conduct the Auction with respect to the Purchased Assets, and instead shall seek approval of the sale of the Purchased Assets pursuant to the Stalking Horse Agreement at the Sale Hearing.

9. The form of Sale Notice attached hereto as **Exhibit 2** is hereby approved.

10. Within two (2) Business Days after entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon the following: (i) the U.S. Trustee; (ii) counsel for the official committee of unsecured creditors (the "Committee"), if any; (iii) all known creditors of the Debtors; (iv) counsel to the Stalking Horse

Bidder, DLA Piper LLP (US); (v) the Counterparties to the Contracts, Leases, Excluded Contracts and Excluded Real Property Leases; (vi) counsel to the Secured Agent, Norton Rose Fulbright US LLP; (vii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz; (viii) the Internal Revenue Service; (ix) all applicable state and local taxing authorities; (x) the Federal Trade Commission; (xi) the Securities & Exchange Commission; (xii) the U.S. Environmental Protection Agency; (xiii) the Federal Energy Regulatory Commission; (xiv) the Electric Reliability Council of Texas; (xv) the Public Utility Commission of Texas; (xvi) the Office of the United States Attorney for the District of Delaware; (xvii) the United States Attorney General/Antitrust Division of the Department of Justice; (xviii) the offices of the attorneys general for the states in which the Debtors operate; (xix) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Purchased Assets; (xx) other potentially interested parties identified by the Debtors, any of the Consultation Parties or any of their respective advisors; (xxi) all such other entities as may be required by applicable Bankruptcy Rules or Local Rules or as may be reasonably requested by the Stalking Horse Bidder; and (xxii) all other known parties with any interest in the Purchased Assets (collectively, the “Sale Notice Parties”). On or about the same date, but in any event no later than _____, 2017, the Debtors shall publish the Sale Notice, with such modifications as may be appropriate for purposes of publication, once in the National Edition of the Wall Street Journal or the USA Today and, to the extent the Debtors, in consultation with the Consultation Parties, deem appropriate, in any other local or regional publications.

11. Service of the Sale Notice on the Sale Notice Parties in the manner described in this Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

12. Promptly after the conclusion of the Auction, if any, and the selection of the Successful Bid(s) and Back-Up Bid(s), but in any event no later than _____, 2017, the Debtors shall file and post on the Case Information Website a notice identifying such Successful Bid(s) and Back-Up Bid(s) with the Court.

13. Sale Objections. Objections to the Sale Order, the Stalking Horse Bidder, or the Sale Transaction with the Stalking Horse Bidder must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **4:00 p.m. (prevailing Eastern Time) on _____, 2017**, and (d) be served on (i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com; (ii) counsel to the Stalking Horse Bidder, DLA Piper LLP (US), 444 West Lake Street, Suite 900, Chicago, Illinois 60606, Attn: Richard A. Chesley and Daniel Simon, Richard.Chesley@dlapiper.com and Daniel.Simon@dlapiper.com; (iii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com; (iv) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr., and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com; (v) counsel to the Committee, if any; and (vi) the U.S.

Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Benjamin.A.Hackman@usdoj.gov (the “Objection Notice Parties”).

14. Auction Objections. Objections to the conduct of the Auction, the Successful Bidder, or the Sale Transaction with the Successful Bidder (other than the Stalking Horse Bidder) must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **4:00 p.m. (prevailing Eastern Time) on _____, 2017**, and (d) be served on (i) the Objection Notice Parties and (ii) counsel for the Successful Bidder.

15. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, ____ Floor, Courtroom ____, Wilmington, Delaware 19801, on _____, **2017 at ____:__0 __.m. (prevailing Eastern Time)** or such other date and time that the Court may later direct; *provided, however*, that the Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open Court or on the Court’s docket.

16. As soon as practicable after the conclusion of the Auction, if any, but no later than one (1) Business Day prior to the Sale Hearing, the Debtors shall file a form of order approving the Sale Transaction as agreed upon between the Debtors and the Successful Bidder.

17. Stalking Horse Protections. Pursuant to sections 105, 363, 364, 503 and 507 of the Bankruptcy Code, the Debtors are hereby authorized and directed, subject to the satisfaction of the Stalking Horse Protections’ Conditions (as defined below), to pay the Break-Up Fee and Expense Reimbursement Amount (each as defined in the Motion) to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse Agreement without further order of this Court.

The Break-Up Fee and Expense Reimbursement Amount shall only be payable if the conditions to payment of such amounts set forth in the Stalking Horse Agreement, including section 7.4 thereof, have been satisfied (collectively, the “Stalking Horse Protections’ Conditions”). In the event that the Expense Reimbursement Amount is payable to the Stalking Horse Bidder, the Stalking Horse Bidder shall provide documentation of the expenses for which it seeks reimbursement to (a) counsel for the Debtors and (b) counsel to the Consultation Parties. The obligations of Debtors to pay the Stalking Horse Protections (i) shall be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against the Debtors, other than as provided in any adequate protection order in existence at the time of entry of this Order, and (iii) shall survive the termination of the Stalking Horse Agreement in accordance with Section 4.5 of the Stalking Horse Agreement.

18. Credit Bid Rights. The Secured Agent shall be deemed a Qualified Bidder for all purposes in connection with the bidding process, the Auction, and the Sale Transaction without compliance with the enumerated requirements for Qualified Bids, as provided in the Bidding Procedures; *provided, however*, that the Secured Agent shall not be entitled to Credit Bid for the Purchased Assets until such time as the Debtors, in consultation with the Consultation Parties, determine at the Auction that a Qualified Bid other than the Stalking Horse Bid is the highest or otherwise best offer for the Purchased Assets. Thereafter, the Secured Agent, acting at the direction of the Required Lenders (as defined in the First Day Declaration), shall be permitted to credit bid up to the full allowed amount of the secured claims that it is entitled to credit bid pursuant to the terms of the Intercreditor Agreement, as modified by the interim or final order approving the Debtors’ use of cash collateral.

19. Assumption and Assignment Procedures. The Assumption and Assignment Procedures set forth in the Motion and herein are hereby approved.

20. Within three (3) Business Days following entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and Contracts Schedule that specifies (a) each of the Contracts and Leases that may be assumed and assigned in connection with the Stalking Horse Bid, including the name of each Counterparty and (b) the proposed Cure Cost with respect to each Proposed Assumed Contract. Within such time period, the potential Assumption and Assignment Notice and Contracts Schedules shall also be served on each Counterparty listed on the Contracts Schedule via first class mail.

21. Objection Deadlines. Any Counterparty may object to the proposed assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Costs, if any, or the ability of the Stalking Horse Bidder to provide adequate assurance of future performance (an "Assumption and Assignment Objection"). Except in the event that the Stalking Horse Bidder is not the Successful Bidder, all Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be filed by no later than _____, **2017, at 4:00 p.m. (prevailing Eastern Time)** and (e) be served on (i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com; (ii) counsel to the Stalking Horse Bidder, DLA Piper LLP (US), 444 West Lake Street, Suite 900, Chicago, Illinois 60606, Attn: Richard A. Chesley

and Daniel Simon, Richard.Chesley@dlapiper.com and Daniel.Simon@dlapiper.com; (iii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com; (iv) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr., and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com; (v) counsel to the Committee, if any; (vi) counsel to the Successful Bidder; and (vii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Benjamin.A.Hackman@usdoj.gov (collectively, the “Assumption and Assignment Objection Notice Parties”).

22. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, the Court will hear and determine such objection at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder and the Consultation Parties, shall determine in their discretion (subject to the Court’s calendar).

23. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Contract or Lease, and notwithstanding anything to the contrary in the Contract or Lease, or any other document, the Cure Costs set forth in the Potential Assumption and Assignment Notice or the Supplemental Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under

section 365(b) of the Bankruptcy Code arising out of or related to the Contract or Lease following the assumption and assignment thereof, whether known or unknown, due or to become due, accrued, absolute, contingent or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder or the property of any of them.

24. Unless otherwise provided in the Successful Bidder's Asset Purchase Agreement (as defined in the Bidding Procedures), at any time prior to three (3) Business Days prior to Closing, the Successful Bidder may elect to exclude any Contract or Lease from the Contracts Schedule by providing to the Debtors written notice of its election to exclude such Contract or Lease. Any Contract or Lease that remains on the Contracts Schedule as of such date shall be assumed by the Debtors and assigned to the Successful Bidder as part of the Sale Transaction, subject to the resolution of any Assumption and Assignment Objection with respect to such contract or lease.

25. In the event that any Contract or Lease is added to the Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the Stalking Horse Agreement, the Successful Bidder's Asset Purchase Agreement or the Assumption and Assignment Procedures, the Debtors will promptly serve a supplemental assumption and assignment notice, by overnight mail and, if known, e-mail, on the applicable Counterparty (each, a "Supplemental Assumption and Assignment Notice"). Each Supplemental Assumption and Assignment Notice will include the same information with respect to the applicable Contract or Lease as is required to be included in the Potential Assumption and Assignment Notice.

26. Any Counterparty listed on a Supplemental Assumption and Assignment Notice whose Contract or Lease is proposed to assumed and assigned may object to the proposed

assumption or assignment of its Contract or Lease, the Debtors' proposed Cure Costs, if any, or the ability of the Successful Bidder to provide adequate assurance of future performance (a "Supplemental Assumption and Assignment Objection"). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be filed by no later than **7 calendar days from the date of service of such Supplemental Assumption and Assignment Notice** and (e) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

27. If following the Auction, the Stalking Horse Bidder is not selected by the Debtors as the Successful Bidder, then the Debtors shall serve the Notice of Auction Results on each Counterparty that received a Potential Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice at the same time as such Notice of Auction Results is filed with the Court and published on the Case Management Website. Objections of any Counterparty related solely to the identity of and adequate assurance of future performance provided by the Successful Bidder must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed by no later than _____, **2017, at 4:00 p.m. (prevailing Eastern Time)** and (e) be served on the Assumption and Assignment Objection Notice Parties.

28. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

29. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

30. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control. To the extent any provisions of this Order are inconsistent with the Bidding Procedures, the terms of this Order shall control.

31. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014) or Local Rule that might otherwise delay the effectiveness of this Order, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

32. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

33. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2017
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Proposed Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed in connection with the proposed sale of certain tangible and intangible assets relating to the natural gas fired electricity generating power plant located in Texas in the ERCOT power market North zone that is located at 6604 East Rosedale Street, Fort Worth, Texas, known as the “Handley Plant”, owned by ExGen Texas Power, LLC and Handley Power, LLC (in such capacity, the “Sellers”), in connection with the Debtors’ jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), lead case number 17-12377 (BLS).

The Sellers agreed to that certain asset purchase agreement, dated November 7, 2017, with Exelon Generation Company, LLC (or its designee) (the “Stalking Horse Bidder”), pursuant to which the Stalking Horse Bidder will acquire the Purchased Assets on the terms and conditions specified therein (together with the schedules and related documents thereto, the “Stalking Horse Agreement,” a copy of which is attached to the Sale Motion as Exhibit B). The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein.

By the motion (the “Motion”), dated November 7, 2017, the Debtors sought, among other things, approval of the Bidding Procedures for soliciting bids for, conducting an auction (the “Auction”) of, and consummating a sale of all or substantially all of the Purchased Assets (the “Sale”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement or the Motion, as applicable.

ASSETS TO BE SOLD

The Debtors seek to consummate the Sale, which includes the assets described in Section 2.1 of the Stalking Horse Agreement. The sale of the Purchased Assets is on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Sellers, their agents or estates, except to the extent set forth in the Stalking Horse Agreement or the purchase agreement of such other Successful Bidder (as defined herein) and as approved by the Bankruptcy Court. Except as otherwise provided in such approved purchase agreement, all of the Sellers’ right, title and interest in and to each Purchased Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (collectively, the “Encumbrances”), such Encumbrances to attach solely to the net proceeds of the Sale.

THE BID PROCEDURES

In order to ensure that the Debtors receive the maximum value for the Purchased Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the “stalking-horse” bid for the Purchased Assets.

Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Bankruptcy Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person other than the Stalking Horse Bidder and the Secured Agent who wishes to participate in the bidding process (a “Potential Bidder”) must deliver the following to the Notice Parties (as defined below):

- (i) a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid;

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to a Potential Bidder) in form and substance satisfactory to the Debtors, in consultation with the Consultation Parties (as defined below); without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions; and

(iii) A Potential Bidder that delivers the documents and information described above or that the Debtors determine, in consultation with the Secured Agent, the Ad Hoc Committee and the official committee of unsecured creditors, if any (the "Committee"), appointed in these chapter 11 cases (collectively, the "Consultation Parties"), is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, and whose Qualified Bid is received by Seller no later than the Bid Deadline (as defined below) is deemed qualified (a "Qualified Bidder").

Due Diligence

The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with the Consultation Parties, deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information. The Debtors must promptly advise the Stalking Horse Bidder in the event any other Potential Bidder receives diligence the Stalking Horse Bidder has not previously received and the Stalking Horse Bidder will promptly be provided with access to such diligence materials. The due diligence period will extend through and including the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Consultation Parties.

Provisions Governing Qualified Bids

A bid will be considered a "Qualified Bid" only if the bid is submitted by a Qualified Bidder and the Debtors determine, after consultation with the Consultation Parties, complies with all of the following:

- a. it is received by the Notice Parties prior to the Bid Deadline;
- b. it states that the applicable Qualified Bidder offers to purchase, in cash or, if applicable, through a credit bid, all of the Purchased Assets upon the terms and conditions that the Debtors, in consultation with the Consultation Parties, reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement;
- c. it offers to purchase all or substantially all of the Purchased Assets;
- d. it includes a signed writing stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder (each, as defined below), its offer shall remain irrevocable until the later of (i) the closing of the Sale to the Successful Bidder or the Backup Bidder, and (ii) the date that is twenty (20) days after the Sale Hearing;
- e. it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;

- f. it contains no due diligence or financing contingencies of any kind;
- g. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (an “Asset Purchase Agreement”), and a proposed order for approval of the Sale by the Bankruptcy Court;
- h. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the Purchase Price in cash, such as will allow the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;
- i. it has a value to the Debtors, determined in the Debtors’ reasonable business judgment after consultation with the Consultation Parties, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (i) the aggregate amount of the Stalking Horse Protections, plus (ii) \$2,000,000 (the “Minimum Initial Overbid Amount”);
- j. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes to assume and provides details of the Qualified Bidder’s proposal for the treatment of related cure costs and the provision of adequate assurance of future performance (the “Adequate Assurance Information”) to the counterparties to such Contracts and Leases;
- k. it includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its Bid;
- l. it includes evidence, in form and substance reasonably satisfactory to the Debtors, in consultation with the Consultation Parties, of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;
- m. it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors, in consultation with the Consultation Parties), certified check or such other form acceptable to the Debtors, in consultation with the Consultation Parties, payable to the order of the Debtors (or such other party as the Debtors, in consultation with the Consultation Parties, may determine) in an amount equal to \$5,000,000;

- n. it states that the bidder consents to the jurisdiction of the Bankruptcy Court; and
- o. it contains such other information as may be reasonably requested by the Debtors, in consultation with the Consultation Parties.

Notwithstanding the foregoing, the Stalking Horse Bidder and the Secured Agent shall each be deemed a Qualified Bidder, and the Stalking Horse Agreement will be deemed a Qualified Bid, provided, however, that the Secured Agent shall not be entitled to credit bid for the Purchased Assets until such time as the Debtors, in consultation with the Consultation Parties, determine at the Auction that a Qualified Bid other than the Bid of the Stalking Horse Bidder is the highest or otherwise best offer for the Purchased Assets. Thereafter, the Secured Agent, acting at the direction of the Required Lenders (as defined in the First Day Declaration) will be permitted to credit bid up to the full allowed amount of the secured claims that it is entitled to credit bid pursuant to the terms of the Intercreditor Agreement (as defined in the First Day Declaration), as modified by the interim or final order approving the Debtors' use of cash collateral, for all purposes in connection with the bidding process, the Auction, and the Sale without compliance with the above enumerated requirements. For the avoidance of doubt, in the event the Secured Agent elects to submit a Qualified Bid, from and after the date of submission of any such bid, the term "Consultation Parties" for all purposes in connection with the Bid Procedures shall only include the Committee, to the exclusion of the Secured Agent and the Ad Hoc Committee.

The Debtors shall notify the Consultation Parties and all Qualified Bidders in writing as to whether or not any bids (other than the Stalking Horse Agreement) constitute Qualified Bids, and will notify each Qualified Bidder that has submitted a bid (other than the Stalking Horse Bidder), whether such Qualified Bidder's bid constitutes a Qualified Bid promptly after such determination has been made; provided such notification shall not be given later than forty-eight (48) hours following the expiration of the Bid Deadline.

Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com; (ii) Scotia Capital (USA) Inc., 250 Vesey Street, 23rd floor, New York, New York 10281, Attn: John Burke, john.burke@scotiabank.com; (iii) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr. and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com; and (iv) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com; so as to be received by the foregoing parties no later than 5:00 p.m. prevailing Eastern time on December [], 2017 (the "Bid Deadline"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

Evaluation of Competing Bids

A Qualified Bid will be valued by the Debtors, in consultation with the Consultation Parties, based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the nature of the consideration provided by such bid, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse Agreement and/or the proposed sale order, (5) the ability of the Qualified Bidder to obtain appropriate regulatory approvals, (6) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors' estates are not

rendered administratively insolvent, and (7) any other factors deemed relevant by the Debtors, in consultation with the Consultation Parties.

No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtors will not hold an auction and the Stalking Horse Bidder will be named the Successful Bidder upon the expiration of the Bid Deadline.

Auction Process

If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct the Auction, which shall take place at [10:00] a.m. prevailing Eastern time on December [], 2017, at the offices of [Richards, Layton & Finger, P.A.] or such other date, time and location as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded and transcribed, shall run in accordance with the following procedures:

- a. only the Debtors, the Stalking Horse Bidder, any other Qualified Bidder that has timely submitted a Qualified Bid, the Consultation Parties, and the advisors to each of the foregoing shall attend the Auction in person; *provided, however*, that any party in interest may attend (but not participate in) the Auction if any such party in interest provides the Debtors with written notice of its intention to attend the Auction on or before one (1) Business Day prior to the Auction, which written notice shall be sent to counsel for the Debtors via electronic mail, to Joseph C. Barsalona, at barsalona@rlf.com;
- b. only the Stalking Horse Bidder and such other Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;
- c. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any Bids submitted or not submitted in connection with the Sale;
- d. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid, which the Debtors believe, after consultation with the Consultation Parties, is the highest or otherwise best offer for the Purchased Assets (the "Starting Bid") to the Stalking Horse Bidder and all other Qualified Bidders who have timely submitted Qualified Bids;
- e. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;

- f. the Debtors, after consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules (i) are not materially inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; (ii) do not purport to abrogate or modify the Stalking Horse Protections or reduce the Minimum Initial Overbid Amount or the Continuing Minimum Overbid Amount (as defined below); and (iii) are disclosed to each Qualified Bidder attending the Auction;
- g. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a “Subsequent Bid”) providing a net value to the Debtors’ estates of at least \$250,000 above the prior bid (the “Continuing Minimum Overbid Amount”). After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Consultation Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best Bid (each, the “Leading Bid”);
- h. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid; and
- i. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors, in consultation with the Consultation Parties, may give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors.

Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Bidder) in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer (one or more such bids, collectively the “Successful Bid” and the bidder(s) making such bid(s), collectively, the “Successful Bidder”), and communicate to the Stalking Horse Bidder and the other Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors, in consultation with the Consultation Parties, at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties, will be required to serve as a back-up bidder (the “Back-Up Bidder”) and keep its bid open and irrevocable until the later to occur of twenty (20) days after the Sale Hearing and closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized and directed to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Within one (1) Business Day after conclusion of the Auction, the Successful Bidder shall, as determined by the Debtors in consultation with the Consultation Parties, complete and execute all agreements, contracts, instruments and other documents necessary to consummate the Successful Bid. Within one (1) Business Day after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder.

The Debtors will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

Return of Deposits

All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

THE STALKING HORSE PROTECTIONS

In recognition of its expenditure of time, energy, and resources, the Debtors and the Secured Agent, acting at the direction of the Required Lenders (including, without limitation, the Ad Hoc Committee), have agreed that if the Stalking Horse Bidder is not the Successful Bidder, the Debtors will pay, subject to the Bidding Procedures Order and the Stalking Horse Agreement, including, without limitation, the full and complete satisfaction and occurrence of all of the Stalking Horse Protections' Conditions (as defined in the Bidding Procedures Order), pursuant to paragraph 6 of the Bidding Procedures Order, the Stalking Horse Bidder (i) a break-up fee equal to 1.25% of the of the Initial Cash Consideration (the "Break-Up Fee"), and (ii) the Expense Reimbursement Amount (as defined in the Bidding Procedures Order) in an amount not to exceed \$300,000 in the aggregate (the Expense Reimbursement Amount, together with the Break-Up Fee, the "Stalking Horse Protections"). The Stalking Horse Bidder shall provide documentation of the expenses for which it seeks reimbursement to counsel to the Debtors and the Consultation Parties. The Stalking Horse Protections shall be payable as provided for pursuant to the terms of the Bidding Procedures Order and the Stalking Horse Agreement.

The Debtors have agreed that their obligation to pay the Stalking Horse Protections pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement but is subject to the Bidding Procedures Order.

SALE HEARING

The Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the "Sale Hearing") to begin on or before December [___], 2017 at [____] a/p.m. (prevailing Eastern Time), subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder. The Debtors, in consultation with the Consultation Parties, reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) in order to achieve the maximum value for the Purchased Assets.

Exhibit 2

Form of Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ExGen Texas Power, LLC, <i>et al.</i>,¹	:	Case No. 17-12377 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that the above-captioned debtors (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”) on November 7, 2017 (the “Petition Date”).

PLEASE TAKE FURTHER NOTICE that, on the Petition Date, the Debtors filed a motion (the “Bidding Procedures Motion”)² with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the proposed sale of debtor Handley Power, LLC’s assets to Exelon Generation Company, LLC (the “Stalking Horse Bidder”) for \$60,000,000 in cash (subject to adjustments) plus the assumption of certain liabilities (the “Sale Transaction”), subject to the submission of higher or otherwise better offers in an auction process (the “Auction”), (b) the form and manner of notice related to the Sale Transaction and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction.

PLEASE TAKE FURTHER NOTICE that, on _____, 2017, the Court entered an order (the “Bidding Procedures Order”) approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.³

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: ExGen Texas Power, LLC (4129), ExGen Texas Power Holdings, LLC (2209), Wolf Hollow I Power, LLC (6945), Colorado Bend I Power, LLC (9083), Handley Power, LLC (4091), Mountain Creek Power, LLC (6288), and LaPorte Power, LLC (5101). The mailing address of each of the Debtors, solely for purposes of notices and communications, is: 1310 Point Street, Baltimore, MD 21231.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

³ To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

Contact Person for Parties Interested in Submitting a Bid

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase the Purchased Assets must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any interested bidder should contact, as soon as possible:

SCOTIA CAPITAL (USA) INC.
250 Vesey Street, 23rd Floor
New York, NY 10281
Attn: John Burke
john.burke@scotiabank.com
(212) 225-6871

Obtaining Additional Information

Copies of the Bidding Procedures Motion, the Bidding Procedures and the Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <http://www.kccllc.net/EGTP> or can be requested by e-mail at EGTPInfo@kccllc.com.

Important Dates and Deadlines⁴

1. **Bid Deadline.** The deadline to submit a Qualified Bid is _____, **2017 at 5:00 p.m. (prevailing Eastern Time).**
2. **Auction.** In the event that the Debtors timely receive a Qualified Bid in addition to the Qualified Bid of the Stalking Horse Bidder and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Purchased Assets. The Auction, if one is held, will commence on _____, **2017 at ____:00 a.m. (prevailing Eastern Time)** at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, or such other date, time, and location as shall be timely communicated to all parties entitled to attend the Auction.
3. **Auction Objection and Sale Objection Deadlines.** The deadline to file an objection with the Court to the Sale Order, the Stalking Horse Bidder, or the Sale Transaction with the Stalking Horse Bidder (collectively, the "Sale Objections") is _____, **2017 at 4:00 pm. (prevailing Eastern Time)** (the "Sale Objection Deadline"). If the Auction is held, the deadline to file an objection with the Court to the conduct of the Auction, the

⁴ The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

Successful Bidder, or the Sale Transaction with the Successful Bidder (collectively, the “Auction Objections”) is _____, **2017 at 4:00 pm. (prevailing Eastern Time)** (the “Auction Objection Deadline”).

4. **Sale Hearing.** A hearing (the “**Sale Hearing**”) to consider the proposed Sale Transaction will be held before the Court on _____, **2017 at __:__ .m. (prevailing Eastern Time)** or such other date as determined by the Court.

Filing Objections

Sale Objections and Auction Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court by no later than **the Sale Objection Deadline or Auction Objection Deadline**, as applicable, and (d) be served on (i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com; (ii) counsel to the Stalking Horse Bidder, DLA Piper LLP (US), 444 West Lake Street, Suite 900, Chicago, Illinois 60606, Attn: Richard A. Chesley and Daniel Simon, Richard.Chesley@dlapiper.com and Daniel.Simon@dlapiper.com; (iii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com; (iv) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr., and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com; (v) counsel to the Successful Bidder; (vi) counsel to the Committee, if any; and (vii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Benjamin.A.Hackman@usdoj.gov.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any party who fails to make a timely Sale Objection on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Sale Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.

Any party who fails to make a timely Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.

NO SUCCESSOR LIABILITY

The Sale Transaction will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale Transaction, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale Transaction. Accordingly, as a result of the Sale Transaction, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in the Successful Bidder’s

Asset Purchase Agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

Dated: _____, 2017
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/_____
Daniel J. DeFranceschi (No. 2732)
Paul N. Heath (No. 3704)
Zachary I. Shapiro (No. 5103)
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: defranceschi@rlf.com
heath@rlf.com
shapiro@rlf.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit 3

Form of Potential Assumption and Assignment Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X
:
In re: : **Chapter 11**
:
ExGen Texas Power, LLC, et al.,¹ : **Case No. 17-12377 (BLS)**
:
Debtors. : **(Jointly Administered)**
:
-----X

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS**

PLEASE TAKE NOTICE THAT:

1. The above-captioned debtors (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”) on November 7, 2017 (the “Petition Date”).

2. On the Petition Date, the Debtors filed a motion (the “Bidding Procedures Motion”)² with the Court seeking entry of the Bidding Procedures Order and the Sale Order. On _____, 2017, the Court entered the Bidding Procedures Order that, among other things, (a) approved procedures for the solicitation of bids in connection with the proposed sale of substantially all of the assets of Debtor Handley Power, LLC to Exelon Generation Company, LLC (the “Stalking Horse Bidder”) for \$60,000,000 in cash (subject to certain adjustments) plus the assumption of certain liabilities (the “Sale Transaction”), subject to the submission of higher or otherwise better offers in an auction process (the “Auction”), (b) approved the form and manner of notice related to the Sale Transaction, (c) approved procedures for the assumption and assignment of Contracts and Leases in connection with the Sale Transaction (the “Assumption and Assignment Procedures”) and (d) scheduled the hearing on entry of the Sale Order, including approval of the Sale Transaction (the “Sale Hearing”) to the Stalking Horse Bidder or such other Successful Bidder for _____, 2017 at __:__ .m. (prevailing Eastern Time).

3. Upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder certain Contracts and Leases. A schedule listing the Contracts and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: ExGen Texas Power, LLC (4129), ExGen Texas Power Holdings, LLC (2209), Wolf Hollow I Power, LLC (6945), Colorado Bend I Power, LLC (9083), Handley Power, LLC (4091), Mountain Creek Power, LLC (6288), and LaPorte Power, LLC (5101). The mailing address of each of the Debtors, solely for purposes of notices and communications, is: 1310 Point Street, Baltimore, MD 21231.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Motion.

Leases that may potentially be assumed and assigned as part of the Sale Transaction is attached hereto as **Exhibit 1** (the “Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <http://www.kccllc.net/EGTP> (the “Case Management Website”), or can be requested by e-mail at EGTPInfo@kccllc.com. In addition, the Cure Costs, if any, necessary for the assumption and assignment of such Contracts and Leases are also set forth on the Contracts Schedule. *Each Cure Cost listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a Contract or Lease prior to the closing of the Sale Transaction or other applicable effective date of the assumption and assignment of such Contract or Lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable effective date of the assumption and assignment of such Contract or Lease.*

4. **YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE TRANSACTION.** Under the terms of the Assumption and Assignment Procedures, unless otherwise provided in the Successful Bidder’s Asset Purchase Agreement (as defined in the Bidding Procedures), at any time prior to three (3) Business Days prior to the date of closing of the Sale Transaction, the Debtors may (a) remove a Contract or Lease from the Contracts Schedule or (b) modify the previously-stated Cure Costs associated with any Contract or Lease. *The presence of a Contract or Lease listed on Exhibit 1 attached hereto does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that such Contract or Lease will be assumed and assigned as part of the Sale Transaction. The Debtors reserve all of their rights, claims and causes of action with respect to the Contracts and Leases listed on Exhibit 1 attached hereto.*

5. Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a Contract or Lease (an “Assumption and Assignment Objection”), including any objection relating to the Cure Cost or adequate assurance of the Stalking Horse Bidder’s future ability to perform, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes is required to cure defaults under the relevant Contract or Lease, (d) be served on (i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Daniel J. DeFranceschi and Paul N. Heath, defranceschi@rlf.com and heath@rlf.com; (ii) counsel to the Stalking Horse Bidder, DLA Piper LLP (US), 444 West Lake Street, Suite 900, Chicago, Illinois 60606, Attn: Richard A. Chesley and Daniel Simon, Richard.Chesley@dlapiper.com and Daniel.Simon@dlapiper.com; (iii) counsel to the Ad Hoc Committee, Wachtell, Lipton, Rosen & Katz, 51 W 52nd Street, New York, NY 10019, Attn: Scott K. Charles and Neil M. Snyder, SKCharles@wlrk.com and NMSnyder@wlrk.com; (iv) counsel to the Secured Agent, Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, New York 10019-6022, Attn: Louis R. Strubeck, Jr., and Gregory M. Wilkes, louis.strubeck@nortonrosefulbright.com and greg.wilkes@nortonrosefulbright.com; (v) counsel to the Committee, if any; (vi) counsel to the Successful Bidder; and (vii) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Benjamin A. Hackman, Benjamin.A.Hackman@usdoj.gov

(the “Assumption and Assignment Objection Notice Parties”), and (e) be filed and served by no later _____, **2017, at 4:00 p.m. (prevailing Eastern Time)**. In the event that any previously-stated Cure Costs are modified, the Debtors will promptly serve a supplemental assumption and assignment notice, by overnight mail and, if known, e-mail, on the applicable Counterparty.

6. Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to the Stalking Horse Bidder using the contact information set forth in paragraph 5 above.

7. If, following the Auction, the Stalking Horse Bidder is not the Successful Bidder, then the Debtors will (a) file the Notice of Auction Results, which will, among other things, include the identity of the Successful Bidder, (b) post such notice on the Case Management Website, and (c) serve such notice on each Counterparty then identified on the Contracts Schedule. Each such Counterparty will then have an opportunity to object to the ability of such Successful Bidder to provide adequate assurance of future performance with respect to such Counterparty’s Contract or Lease (a “Post-Auction Objection”). Any Post-Auction Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (c) state, with specificity, the legal and factual bases thereof, (d) be filed by no later than _____, **2017, at 4:00 p.m. (prevailing Eastern Time)** and (e) be served on the Assumption and Assignment Objection Notice Parties.

8. The Court will hear and determine any Assumption and Assignment Objections and Post-Auction Objections at the Sale Hearing or such other date that the Debtors, in consultation with the Successful Bidder, shall determine in their discretion (subject to the Court’s calendar).

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER OR SUCH OTHER SUCCESSFUL BIDDER THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE.

OBTAINING ADDITIONAL INFORMATION

Copies of the Bidding Procedures Motion, the Bidding Procedures and the Bidding Procedures Order, as well as all related exhibits, including the Stalking Horse Agreement and all other documents filed with the Court, are available free of charge on the Case Management Website or can be requested by e-mail at EGTPInfo@kccllc.com.

Dated: _____, 2017
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ _____
Daniel J. DeFranceschi (No. 2732)
Paul N. Heath (No. 3704)
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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit B

Stalking Horse Agreement

ASSET PURCHASE AGREEMENT
BY AND AMONG
EXGEN TEXAS POWER, LLC,
HANDLEY POWER, LLC
AND
EXELON GENERATION COMPANY, LLC

Dated as of November 7, 2017

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of November 7, 2017 (this "Agreement"), by and between HANDLEY POWER, LLC, a Delaware limited liability company ("Handley" or a "Seller"), EXGEN TEXAS POWER, LLC, a Delaware limited liability company (the "Company" or a "Seller" and, together with Handley, the "Sellers") and Exelon Generation Company, LLC a Pennsylvania limited liability company ("Purchaser" or "ExGen"). Sellers and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, Sellers will file a voluntary petition for relief (the "Bankruptcy Case") on or about November 7, 2017, under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Sellers currently operate the Business, which includes operating a natural gas fired electricity generating power plant located in Texas in the ERCOT power market North zone that is located at 6604 East Rosedale Street, Fort Worth, Texas (the "Handley Plant");

WHEREAS, Sellers desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Sellers, all of the Purchased Assets and Assumed Liabilities (each as defined below), all as more specifically provided herein;

WHEREAS, the Purchased Assets will be sold pursuant to the Sale Order approving the sale of the Purchased Assets under Section 363 of the Bankruptcy Code, which shall include the concurrent assignment to Purchaser of the Purchased Contracts under Section 365 of the Bankruptcy Code, and the terms and conditions of this Agreement; and

WHEREAS, Sellers desire to sell the Purchased Assets and to assign the Purchased Contracts to further their restructuring efforts in the Bankruptcy Case.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 Certain Definitions. Initially capitalized terms used in this Agreement shall have the meanings specified in Annex A.

1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to "\$" means U.S. dollars.

(iii) Annexes, Exhibits and Schedules. All Annexes, Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Any capitalized terms used in any Annex, Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of the Table of Contents of this Agreement, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement unless otherwise specified.

(vi) Herein. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of Sellers' rights, title and interest in and to the following assets (but excluding the Excluded Assets) (the "Purchased Assets"):

(a) all Accounts Receivable arising from operation of the Business on or after the Closing Date;

(b) the assets (of a type and character not otherwise described in clauses (c) through (q) of this Section 2.1) comprising the Handley Plant and the Transmission and Interconnection Facilities, in each case to the extent Primarily Related to the Handley Plant and the Transmission and Interconnection Facilities;

(c) the Real Property and all Improvements (including leasehold Improvements to the extent owned by Sellers) thereon;

(d) (i) all inventory and assets of Sellers located at the Handley Plant that are either (A) owned by Sellers or (B) to which Sellers have title, including all rights of the Sellers to the fuel oil stored at the Handley Plant and other consumable inventory and spare parts stored at the Handley Plant, and (ii) those assets that are not located at the Handley Plant but are Primarily Related to the Handley Plant and held for repair or refurbishment or storage, which assets are listed on Schedule 2.1(d)(ii);

(e) all rights relating to deposits (including customer deposits and security deposits for rent, utilities, telephone or otherwise and environmental-related deposits related to the Handley Plant), prepaid or deferred charges and expenses, in each case Primarily Related to the Purchased Contracts; provided, however, that all rights relating to deposits and prepaid charges and expenses paid in connection with or to the extent relating to any Excluded Contract shall be an Excluded Asset;

(f) the Furniture and Equipment;

(g) all Intellectual Property exclusively related to the Business (the "Purchased Intellectual Property");

(h) the Purchased Contracts, including those listed on Schedule 2.1(h);

(i) all of the Real Property Documents that are Purchased Contracts, together with all rights in respect thereof to the extent such rights are related to the Business;

(j) to the extent the Sellers own or have title to Documents under the Material Project Documents (as defined in the Credit Agreement), (i) sole ownership of all copies and originals of all such Documents that are exclusively used in, exclusively held for use in or exclusively intended to be used in, or that arise exclusively out of, the Business, including any such Documents exclusively relating to products, services, marketing, advertising, promotional materials, Purchased Intellectual Property, all files, customer files and documents, supplier lists, records, literature and correspondence, physically located on the Real Property, provided, that, with respect to any such Documents, the Sellers shall be permitted to keep (A) one (1) copy of such Documents solely to the extent required to demonstrate compliance with applicable Law or pursuant to internal compliance procedures and (B) copies of such Documents to the extent used in, held for use in or intended to be used in, or that arise out of, the Excluded Business; and (ii) a non-exclusive right to use, and a copy in a mutually agreed format of, all other such Documents the Sellers have a right of ownership to under the Material Project Documents (as defined in the Credit Agreement) to the extent used in, held for use in or intended to be used in, or that arise out of, the Business, in each case in the possession of Sellers;

(k) all Permits Primarily Related to the Business and held in any Seller's name, including (i) all Environmental Permits Primarily Related to the Business, to the extent assignable under Law, and (ii) all Permits listed in Schedule 2.1(k);

(l) all Air Emissions Credits and Allowances and all rights and obligations relating thereto, to the extent Primarily Related to the Business and assignable under Law to the extent (i) listed in Schedule 5.11 or (ii) listed in the Air Emissions Credits and Allowances allocated to Handley pursuant to that certain Emissions Allowance Agreement dated April 25, 2002, between TXU Generation Company LP and Handley and Mountain Creek Power, LLC (as successors in interest to ExTex LaPorte Limited Partnership);

(m) all rights under or pursuant to all representations, warranties and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided to, Sellers under any Purchased Contract, to the extent assignable, other than any representations, warranties and guarantees pertaining to any Excluded Assets or rights and defenses pertaining to any Excluded Liabilities if the reliance by the Purchaser on any such representation, warranty or guarantee, or rights and defenses would be detrimental to any owner or purchaser of the Excluded Assets or any Excluded Liability, respectively;

(n) goodwill and other intangible assets Primarily Related to the Business;

(o) all insurance policies and binders and claims (solely to the extent transferable), whether asserted or unasserted, or rights to proceeds or refunds thereof, in each case held by Sellers (including those listed on Schedule 2.1(o)) solely to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities;

(p) any rights, claims or causes of action of Sellers against Third Parties to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities, whether arising before or after the Closing Date, including Avoidance Actions against Third Party suppliers and vendors of the Business solely to the extent Primarily Related to the Purchased Assets or the Assumed Liabilities; provided, however, that it is understood and agreed by the Parties that (A) Purchaser shall not pursue or cause to be pursued any such Avoidance Actions other than as a defense (to the extent permitted under applicable law) against any claim or cause of action raised against Purchaser by any such Third Party supplier or vendor and (B) notwithstanding the purchase of such Avoidance Actions by Purchaser, Sellers shall retain the right to use any such Avoidance Actions as a defense (to the extent permitted under applicable law) against any claim or cause of action raised against any Seller by any Person in connection with the reconciliation of bankruptcy claims against Sellers; and

(q) any deposits, holdbacks or other amounts held by ERCOT to the extent Primarily Related to the Business, which were withheld or otherwise paid by or charged to Sellers.

2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey to Purchaser (i) any of Sellers' assets other than the Purchased Assets or (ii) any of the Excluded Assets, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" means all assets other than the Purchased Assets, including the following assets, properties, interests and rights of Sellers:

(a) all deposit accounts and other bank or securities accounts (the "Retained Accounts"), all Cash and Cash Equivalents, bank deposits or similar cash items, or securities in the Retained Accounts;

(b) the Excluded Contracts and any trade and accounts receivable to the extent related thereto;

(c) all rights relating to deposits (including customer deposits and security deposits for rent, utilities, telephone or otherwise and environmental-related deposits related to the Excluded Business), retainers, prepaid or deferred charges and expenses, in each case paid in connection with or to the extent relating to any Excluded Assets, including retainers or prepaid charges and expenses for Sellers' professional advisors;

(d) (i) any Documents related to the sale of the Business and proposals to acquire the Business by Persons other than the Purchaser (including non-disclosure or confidentiality agreements entered into by Sellers in connection with the proposed sale of all or a portion of its assets whether contemplated by the Bidding Procedures Order or otherwise), (ii) Organizational Documents, qualifications to do business, taxpayer and other identification numbers, minute books, limited liability company interests, ledgers or certificates of any Seller, or any other documentation related to governance, organization, maintenance or existence of any Seller, and (iii) Tax Returns and other books and records relating to Taxes paid or payable by Sellers or their Affiliates, provided that with respect to Documents listed in (ii) and (iii), Purchaser's Affiliate acting as operator shall be permitted to retain copies of both sets of

Documents pursuant to such Affiliate's bona fide document retention policies (it being agreed that (i) Purchaser shall (and shall cause its controlled Affiliates to) maintain in confidence any information relating to all such Documents (other than if information in such Documents have become generally available to the public other than as a result of a disclosure by Purchaser in breach of this Section 2.2(d)) and shall not reveal the same other than to its Affiliates and its and their respective directors, managers, officers, trustees, employees, auditors, agents and advisors with a need to know or to any such Person that approves or administers the Purchased Assets on behalf of the Purchaser, except (A) to the extent necessary to comply with law or any legal process or the requirements of any Governmental Body, (B) to the extent required by tax authorities, (C) as part of normal reporting or review procedures by a Governmental Body that is not targeted at the Business or the Purchased Assets, (D) in order to enforce its rights under this Agreement in a legal proceeding and Purchaser's counsel is of the opinion that without disclosure Purchaser's ability to enforce its rights will be adversely affected or (E) any prospective assignee of, or prospective purchaser of the Purchased Assets (so long as such Person shall have agreed to keep the same confidential in accordance with this Section 2.2(d) or pursuant to a confidentiality agreement with Purchaser containing terms no less restrictive than this sentence) and (ii) Purchaser's confidentiality obligations under this Section 2.2(d) shall apply to any retained Documents until the earlier of fifteen (15) years after the date of this Agreement or the date that Purchaser returns or destroys such Documents);

(e) any Permit (i) used in the Business and held in any Seller's name to the extent it is not assignable or is not permitted to be transferred to Purchaser, in each case under applicable Law, (ii) used in the Excluded Business or (iii) that is an Excluded Permit;

(f) any claim, right to or interest in a refund of, or credit or prepayment of or against, Excluded Taxes, together with any interest due thereon or penalty rebate arising therefrom;

(g) all insurance policies and binders, and claims, whether asserted or unasserted, or rights to proceeds or refunds thereof held by Sellers and to the extent relating to the Excluded Assets or the Excluded Liabilities;

(h) all adequate assurance deposits authorized by the Bankruptcy Court in the Bankruptcy Case and funded pursuant to the Section 366 of the Bankruptcy Code that are held by or for the benefit of utilities in connection with the Business;

(i) any documents and agreements relating to the Bankruptcy Case or to the sale or other disposition of the Business, the Purchased Assets or any other asset of Sellers or any of their Affiliates other than those expressly required to be delivered to Purchaser in accordance with this Agreement;

(j) any rights, claims or causes of action of Sellers against Third Parties to the extent relating to Excluded Assets or Excluded Liabilities;

(k) all rights and/or claims of Sellers relating to or arising under the Transaction Documents (including the right to receive the Purchase Price);

- (l) all Privileged Communications;
- (m) all Equity Interests of the Project Companies;
- (n) any rights, claims or causes of action, of any kind or any nature whatsoever, of Sellers against any of their Affiliates or any of Sellers or their Affiliates' former or current officers, directors, managers, members or unitholders, including claims for indemnification or contribution;
- (o) all rights relating to Air Emissions Credits and Allowances, to the extent related to the Excluded Business;
- (p) any deposits, holdbacks or other amounts held by ERCOT to the extent related to the Excluded Business, which were withheld or otherwise paid by or charged to Sellers;
- (q) except as set forth in Section 2.1(m), all rights under or pursuant to all representations, warranties and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided to, Sellers;
- (r) any and all assets and properties owned by any Project Company other than Handley;
- (s) Avoidance Actions (other than those that are against Third Party suppliers and vendors of the Business and are Primarily Related to the Purchased Assets or Assumed Liabilities); and
- (t) those assets listed on Schedule 2.2(t).

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume and agrees to pay, perform and discharge when due in accordance with their respective terms, only the following Liabilities of Sellers (collectively, the "Assumed Liabilities") (which, for the avoidance of doubt, exclude the Excluded Liabilities):

- (a) all Liabilities for Taxes imposed with respect to, or to the extent arising out of or related to, the Purchased Assets, the Assumed Liabilities or the Business other than Excluded Taxes;
- (b) all Liabilities Primarily Related to accounts payable incurred on or after the Closing Date in the Ordinary Course of Business to the extent Primarily Related to the Business;
- (c) all Liabilities (i) pursuant to Environmental Law to the extent Primarily Related to the Business, the Purchased Assets, the Real Property, the Improvements or the Handley Plant, including for Remedial Actions or otherwise maintaining environmental regulatory compliance at the Handley Plant, irrespective of whether such Liabilities arose on,

before or after the Closing, or (ii) Primarily Related to Releases of Hazardous Materials from or in connection with the operation of the Handley Plant or on or under the Real Property, irrespective of whether such Liabilities arose on, before or after the Closing;

(d) all Liabilities related to amounts required to be paid by Purchaser under the Transaction Documents;

(e) all Liabilities incurred on or after the Closing Date to the extent Primarily Related to the Business or the Purchased Assets, other than the Excluded Liabilities;

(f) all of the Cure Costs and reimbursement obligations under this Agreement in respect of the Critical Vendor Payments; and

(g) those Liabilities listed on Schedule 2.3(g).

2.4 Excluded Liabilities. Purchaser shall not assume, and shall be deemed not to have assumed, and Sellers shall be solely and exclusively liable with respect to, any Liabilities of Sellers other than the Assumed Liabilities (collectively, the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include the following:

(a) all Liabilities to the extent relating to, arising from or in connection with the Excluded Assets, including the Excluded Contracts;

(b) all Liabilities for Excluded Taxes;

(c) all Liabilities relating to Accounts Payable incurred prior to the Closing Date (it being understood that nothing set forth herein shall modify or limit Purchaser's obligation to pay Cure Costs and reimburse Sellers for Critical Vendor Payments and Liabilities relating thereto);

(d) all Liabilities relating to any Indebtedness of Sellers;

(e) all Claims arising prior to the Closing Date (other than any such Claim of a type or character described in Section 2.3);

(f) all Liabilities relating to amounts required to be paid by Sellers under the Transaction Documents; and

(g) all Liabilities of Sellers relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services or other Third-Party costs or expenses performed in connection with the Transaction Documents, the Transactions or the Bankruptcy Case.

2.5 Assignment of Contracts; Cure Amounts and Deemed Consent.

(a) At Closing and pursuant to Section 365 of the Bankruptcy Code and the Sale Order, Sellers shall assume and assign to Purchaser, and Purchaser shall assume from

Sellers, all Contracts of Sellers exclusively related to the Purchased Assets (other than any Hedging Agreements) provided, however, that Purchaser may designate any Contract of Sellers as an Excluded Contract by listing such Contract on Schedule 2.5(a). Any Contracts related exclusively to the Purchased Assets of Sellers not designated as Excluded Contracts before the third (3rd) Business Day prior to the Closing Date shall be deemed to be Purchased Contracts. Sellers shall neither assume nor assign any Excluded Contracts to Purchaser. Notwithstanding anything to the contrary set forth in this Agreement, the Pre-Closing Fuel Transportation Agreements shall not constitute Purchased Contracts. To the extent any Contract set forth on Schedule 2.1(h) or Schedule 2.1(o) relates to both the Business and the Excluded Business, Purchaser shall be permitted to seek to have assumed and assigned to Purchaser only such portion of such Contract that exclusively relates to the Business and not any other portion of such Contract. The portion of any Contract which Purchaser is permitted to seek to have assumed and assigned to Purchaser shall be treated as a Nonassignable Asset pursuant to the terms of Section 2.6(c). The remaining portion of such Contract shall be treated as an Excluded Asset. For the avoidance of doubt, such treatment shall apply the Contracts set forth in Part A of Schedule 2.1(h) and the insurance policies set forth on Schedule 2.1(o). Purchaser shall not be permitted to seek to have assumed and assigned to Purchaser any Contract that does not exclusively relate to the Business other than the Contracts set forth on Schedule 2.1(h) and Schedule 2.1(o).

(b) All Cure Costs shall be paid by Purchaser, at Closing, and not by Sellers, and Sellers shall have no liability therefor. At Closing, Purchaser shall reimburse Sellers for all Critical Vendor Payments.

(c) For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Purchased Contract and to have cured all defaults thereunder if, and to the extent that, pursuant to the Sale Order, Sellers are authorized and directed to assume and assign the Purchased Contracts to Purchaser pursuant to Section 365 of the Bankruptcy Code (subject to payment of all Cure Costs and reimbursement of Sellers for Critical Vendor Payments, in each case by Purchaser at or before Closing).

(d) Sellers and Purchaser shall cooperate in good faith and use commercially reasonable efforts to negotiate, execute and enter into, (A) new fuel transportation Contracts related exclusively to the Business containing terms substantially similar to those set forth on Schedule 2.5(d) under the heading "Purchaser" (the "Purchaser Fuel Transportation Agreements") and (B) new fuel transportation Contracts related exclusively to the Excluded Business (the "Sellers Fuel Transportation Agreements", and collectively with the Purchaser Fuel Transportation Agreements, the "Fuel Transportation Agreements"), in each case in accordance with Section 8.12; it being understood that notwithstanding anything to the contrary in this Agreement, upon the execution and delivery by the Purchaser and the counterparty thereto of the Purchaser Fuel Transportation Agreement, Purchaser shall not have any rights or Liabilities of any kind pursuant to the Pre-Closing Fuel Transportation Agreement being replaced by such Purchaser Fuel Transportation Agreement (other than the obligations set forth in this Section 2.5(d) and Section 8.12).

2.6 Further Conveyances; Nonassignable Assets.

(a) From time to time following the Closing and at the sole cost and expense of Purchaser, Sellers and Purchaser shall execute, acknowledge and deliver all such further conveyances, notices, assumptions and such other instruments, and shall take such further actions as may be reasonably necessary or appropriate to assure fully to Purchaser and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Transaction Documents and to assure fully to Sellers and their Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement and the other Transaction Documents, and to otherwise make effective the Transactions; provided, that neither Sellers nor Purchaser shall be required to make or agree to any representations, warranties or indemnities in excess of, or which expand any of, the representations, warranties and indemnities that each expressly makes in this Agreement. Notwithstanding the foregoing, nothing in this Section 2.6(a) or this Agreement (including Section 8.6) shall require either of the Sellers to remain a validly existing entity beyond the Closing Date or to take any action, perform any obligations, or comply with any terms or covenants set forth in this Section 2.6(a) after the Closing Date if either Seller's entity existence has ceased or has been cancelled.

(b) Purchaser shall use commercially reasonable efforts to cooperate with Sellers and provide Sellers with information reasonably sufficient to enable Sellers to demonstrate adequate assurance of future performance (as required by Section 365 of the Bankruptcy Code) as to Purchaser with respect to any Purchased Contract.

(c) Nothing in this Agreement or the other Transaction Documents, nor the consummation of the Transactions shall be construed as an attempt or agreement to assign any Purchased Assets which by their terms or under applicable Law are nonassignable without the Consent of a Third Party or a Governmental Body or are cancellable by a Third Party in the event of an assignment without Consent (the "Nonassignable Assets") unless and until such Consent shall have been obtained or the Bankruptcy Court has authorized such assignment without such Consent. When and if any such Consents are obtained, to the extent permitted by applicable Law and the terms of the applicable Nonassignable Asset, the assignment of the Nonassignable Asset subject thereto shall become effective automatically as of the date hereof, without further action on the part of any Party. The Parties agree to use their commercially reasonable efforts to obtain on a timely basis the consents required to assign the Nonassignable Assets; provided, however, that such efforts shall not require Sellers or Purchaser or any of their respective Affiliates to incur any expenses or Liabilities or provide any financial accommodation or to remain secondarily or contingently liable for any Assumed Liability to obtain such Consent. In the event (i) Consents to the assignment of a Nonassignable Asset (other than the Pre-Closing Fuel Transportation Agreements) cannot be obtained or the Bankruptcy Court has not authorized such assignment without such Consent or (ii) the counterparties to the Pre-Closing Fuel Transportation Agreements have not provided any required Consents to the assignment of the portions of such Contracts exclusively related to the Business or have not executed and delivered counterparts of the Fuel Transportation Agreements, to the extent permitted by applicable Law and the terms of the applicable Nonassignable Asset, such Nonassignable Asset shall be held from and after the Closing Date until the earlier of (x) one (1) year after the Closing Date or (y) the requisite Consent or authorization has been obtained, by Sellers in trust for Purchaser and the

covenants and obligations (including, without limitation, all payment obligations) thereunder shall be performed by Purchaser in the name of Sellers and all benefits, obligations and liabilities (including Tax liabilities) existing thereunder shall be for Purchaser's account and shall be deemed an Assumed Liability under this Agreement.

(d) If the Consent of Purchaser is required for the assignment of any Purchased Asset or assumption of any Assumed Liability, Purchaser shall be deemed to have provided such Consent and shall, upon Sellers' request, promptly provide written evidence of such Consent. If the Consent of any Affiliate of Purchaser is required for the assignment of any Purchased Asset or assumption of any Assumed Liability, Purchaser shall cause such Affiliate to provide such Consent on or prior to the Closing Date.

2.7 Bulk Sales Laws. Purchaser hereby acknowledges that Sellers will not comply with any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser and waives compliance by Sellers with the requirements and provisions thereof.

ARTICLE III

CONSIDERATION

3.1 Consideration and Closing Payment Determination.

(a) The consideration for the Purchased Assets (the "Purchase Price") shall comprise (i) subject to modification in accordance with Section 8.3(b)(i)(3), \$60,000,000.00 (the "Initial Cash Consideration") and (ii) the assumption of the Assumed Liabilities. At the Closing, the Initial Cash Consideration *minus* the Deposit *plus* or *minus* the Fuel Oil Adjustment (if any) shall be paid and delivered by Purchaser to Sellers by wire transfer to an account designated by Sellers. At Closing, the Deposit shall be paid and disbursed to Sellers as provided for in Section 3.1(c)(i).

(b) Within three days of the Effective Date, Purchaser shall execute and deliver to Sellers an escrow agreement in the form of Exhibit A (the "Escrow Agreement") and shall deposit with the Escrow Agent \$5,000,000.00 (the "Deposit") pursuant to the terms thereof. The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of Sellers or Purchaser, except that Sellers' rights, title and interest in the Deposit under this Agreement and applicable Law shall be subject to a lien and security interest granted by Sellers to the Secured Parties or the Escrow Agent (to the extent required by the Escrow Agreement). Interest accrued on the Deposit shall become a part of the Deposit and shall be paid to the Party entitled to the Deposit. The Deposit shall be credited to the Purchase Price if the Closing occurs, and otherwise distributed pursuant to the Escrow Agreement.

(c) The Deposit shall be held and disbursed pursuant to the terms of the Escrow Agreement, the Bidding Procedures Order and this Agreement, including:

(i) If the Closing shall occur, then the Deposit, together with all accrued investment income or interest thereon, shall be delivered to Sellers and credited against the Initial Cash Consideration;

(ii) If this Agreement is terminated pursuant to and in accordance with Sections 4.4(a) through (e) (except as set forth in Section 3.2(c)(iii)), (g) through (i), then the Deposit, together with all accrued investment income or interest thereon, shall be promptly returned to Purchaser and, in any event, no later than three (3) Business Days after such termination; or

(iii) If this Agreement is terminated (A) by either of Sellers pursuant to and in accordance with Section 4.4(f) or (B) by either of Sellers or Purchaser pursuant to and in accordance with Section 4.4(a), (c) or (d), in each case of this clause (B) if the occurrence of the events described in such sections resulted from a breach by Purchaser (other than breaches by Purchaser proximately caused by an earlier breach of Sellers) that would have enabled Sellers to terminate this Agreement pursuant to Section 4.4(f) and is not curable or was not cured within the time period described in Section 4.4(f), then the Deposit, together with all accrued investment income or interest thereon, shall be promptly delivered to Sellers and, in any event, no later than three (3) Business Days after such termination.

ARTICLE IV

CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") shall take place at the offices of Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (or at such other place as Sellers and Purchaser may designate in writing) at 10:00 a.m. (Prevailing Eastern Time) on the date that no later than two (2) Business Days following the satisfaction (or waiver by the Party entitled to waive that condition) of the conditions set forth in Sections 10.1, 10.2 and 10.3 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction (or waiver by the Party entitled to waive that condition) of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers to be acquired by Purchaser hereunder including the Assumed Liabilities shall be considered to have passed to Purchaser as of 12:00 a.m. (Prevailing Central Time) on the Closing Date (the "Closing Date Effective Time").

4.2 Deliveries by Sellers. At the Closing, each Seller shall deliver, or cause to be delivered, to Purchaser:

(a) a duly executed counterpart of a bill of sale in the form of Exhibit B (the "Bill of Sale");

(b) a duly executed counterpart of an assignment and assumption agreement in the form of Exhibit C (the "Assignment and Assumption Agreement");

(c) the officer's certificate required to be delivered pursuant to Section 10.1(a) and Section 10.1(b);

(d) an executed Statement of Occasional Sale on Texas Form 01-917, as described in Section 12.1;

(e) any required Transfer Tax declarations or any other similar documentation required to evidence the payment by or on behalf of Seller of any Transfer Tax imposed on the Transactions;

(f) an invoice charging any sales and use Tax, if applicable; and

(g) such resolutions, certificates, title company affidavits or other documents as Purchaser may reasonably request to establish the authorization, execution, delivery, validity, binding effect or enforceability of any Transaction Document to be delivered at Closing by the applicable Seller; and

(h) a deed without warranty, representation or recourse, express or implied, except that Hadley is in possession of the Real Property and has not previously conveyed or transferred the fee title to the Real Property, from Handley to Purchaser in the form of Exhibit D.

4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers:

(a) the Initial Cash Consideration, in immediately available funds, in each of the amounts and to the accounts set forth in Section 3.1(a);

(b) an executed counterpart of the Bill of Sale;

(c) an executed counterpart of the Assignment and Assumption Agreement;

(d) the officer's certificate required to be delivered pursuant to Section 10.2(a) and Section 10.2(b);

(e) (i) any required Transfer Tax declarations or any other similar documentation required to evidence the payment by or on behalf of Purchaser of any Tax imposed on the Transactions and (ii) a certificate executed by a duly authorized officer of Purchaser certifying such matters that Sellers reasonably require to be certified to make the delivery set forth in Section 4.2(d);

(f) any exemption certificates for sales and use Tax in relation to any invoice provided by a Seller pursuant to Section 4.2(f); and

(g) such resolutions, certificates or other documents as Sellers may reasonably request to establish the authorization, execution, delivery, validity, binding effect or enforceability of any Transaction Document to be delivered at Closing by Purchaser.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by both Sellers or Purchaser, if the Closing shall not have occurred by the close of business on March 30, 2018 (the "Outside Date"); provided, however, that, if the Closing shall not have occurred due to the conditions to Closing set forth in Section 10.3 remaining unsatisfied or having not been waived and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Outside Date (other than conditions that by their nature are to be satisfied at the Closing) shall have been so fulfilled or waived, then no Party may terminate this Agreement prior to June 30, 2018; provided, further, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of any representations, warranties, covenants, agreements or obligations contained in this Agreement by Purchaser or Sellers, then the breaching Party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of both Sellers and Purchaser;

(c) by Purchaser, if any event or condition has resulted in one or more of the conditions to the obligations of Purchaser set forth in Sections 10.1 or 10.3 being unable to be fulfilled and such event or condition cannot be cured or has not been cured (or waived by Purchaser) by the earlier of (i) thirty (30) days after the giving of written notice by Purchaser to Sellers of such breach or (ii) the Outside Date; provided, however, that Purchaser may terminate this Agreement pursuant to this Section 4.4(c) only if Purchaser is not in material breach of this Agreement as of the date of such termination;

(d) by a Seller, if any event or condition has resulted in one or more condition to the obligations of Sellers set forth in Sections 10.2 or 10.3 being unable to be fulfilled and such event or condition cannot be cured or has not been cured (or waived by both Sellers) by the earlier of (i) thirty (30) days after the giving of written notice by such Seller to Purchaser of such breach or (ii) the Outside Date; provided, however, that a Seller may terminate this Agreement pursuant to this Section 4.4(d) only if both Sellers are not in material breach of this Agreement as of the date of such termination;

(e) by Purchaser, if there shall be a breach by either Seller of any representation or warranty, or any covenant, agreement or obligation contained in this Agreement which would result in a failure of a condition set forth in Sections 10.1 or 10.3 and which breach cannot be cured or has not been cured (or waived by Purchaser) by the earlier of (i) thirty (30) days after the giving of written notice by Purchaser to such Seller of such breach or (ii) the Outside Date; provided, however, that, in either case, if, at the end of such thirty (30) day period or upon the Outside Date, if earlier, such Seller is using its commercially reasonable efforts to cure such breach or inaccuracy, such Seller shall have an additional fifteen (15) days in which to effect such cure; provided, further, that Purchaser may terminate this Agreement

pursuant to this Section 4.4(e) only if Purchaser is not in material breach of this Agreement as of the date of such termination;

(f) by either Seller, if there shall be a breach by Purchaser of any representation or warranty, or any covenant, agreement or obligation contained in this Agreement which would result in a failure of a condition set forth in Sections 10.2 or 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) thirty (30) days after the giving of written notice by a Seller to Purchaser of such breach or (ii) the Outside Date; provided, however, that, in either case, if, at the end of such thirty (30) day period or upon the Outside Date, if earlier, Purchaser is using its commercially reasonable efforts to cure such breach or inaccuracy, Purchaser shall have an additional fifteen (15) days in which to effect such cure; provided, further, that a Seller may terminate this Agreement pursuant to this Section 4.4(f) only if both Sellers are not in material breach of this Agreement as of the date of such termination;

(g) by a Seller or Purchaser, if there shall be in effect a final nonappealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(h) by a Seller or Purchaser, if (i) either Seller enters into a definitive agreement with respect to an Alternative Transaction and the Bankruptcy Court enters an Order approving an Alternative Transaction and the Alternative Transaction closes, or (ii) the Bankruptcy Court enters an Order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement, subject to any limitations set forth in the Bidding Procedures Order; or

(i) by Purchaser, in accordance with the conditions set forth in Section 8.10(c).

4.5 Procedure Upon Termination. In the event of termination by Purchaser or a Seller, or both, pursuant to Section 4.4, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the Transactions, whether so obtained before or after the execution hereof, to the Party furnishing the same.

4.6 Effect of Termination.

(a) In the event that this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties, covenants, agreements and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Purchaser or Sellers; provided, however, that the covenants, agreements and obligations of the Parties set forth in Section 3.1(c), Section 4.5, this Section 4.6, Section 7.4, Section 8.5, Section 8.7, Section 11.3 and Article XIII shall survive any such termination and shall be enforceable hereunder.

(b) NOTHING IN THIS SECTION 4.6 SHALL RELIEVE PURCHASER OR SELLERS OF ANY LIABILITY FOR A BREACH OF THIS AGREEMENT PRIOR TO THE DATE OF TERMINATION OR THE CLOSING; PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS AGREEMENT, SELLERS' LIABILITY UNDER THIS AGREEMENT FOR ANY AND ALL SUCH BREACHES (INCLUDING ANY TERMINATION OF THIS AGREEMENT BY PURCHASER FOR ANY REASON WHATSOEVER) SHALL BE LIMITED ONLY TO THE RETURN OF THE DEPOSIT. THE LOSSES RECOVERABLE BY SELLERS FOR A BREACH OF THIS AGREEMENT BY PURCHASER PRIOR TO THE DATE OF TERMINATION OR THE CLOSING SHALL INCLUDE ALL ATTORNEYS' FEES REASONABLY INCURRED BY SELLERS IN CONNECTION WITH THE TRANSACTIONS. THE PARTIES AGREE THAT THE RETURN OF THE DEPOSIT BY SELLERS AS PROVIDED FOR ABOVE IS REASONABLE IN LIGHT OF THE ANTICIPATED OR ACTUAL HARM CAUSED BY ANY SUCH BREACH PRIOR TO THE DATE OF TERMINATION OR THE CLOSING BY SELLERS, THE DIFFICULTIES OF PROOF OF LOSS ARISING FROM SUCH BREACH, AND THE INCONVENIENCE OR INFEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY FOR SUCH BREACH.

(c) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in this Section 4.6 shall relieve Purchaser or Sellers of any obligations under the Confidentiality Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller hereby represents and warrants to Purchaser that, except as set forth in the Schedules (it being agreed that the disclosure of any matter in any of the Schedules shall be deemed to have been disclosed in any other section of such Schedules to which the applicability of such disclosure is reasonably apparent on its face):

5.1 Organization and Good Standing. Each Seller is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Each Seller is duly qualified or authorized to do business and is in good standing under the laws of each jurisdiction in which it leases or owns the Real Property or in which the conduct of its business or the ownership of its property requires such qualification or authorization, except where the failure to be so qualified, authorized or in good standing would not be reasonably likely to result in a Seller Material Adverse Effect.

5.2 Equity Interests; Capitalization. Schedule 5.2 accurately sets forth the ownership structure and capitalization of each Seller as of the Effective Date.

5.3 Authorization of Agreement. Upon the entry of the Sale Order, each Seller has all necessary power, and authority to execute and deliver the Seller Documents, to perform its obligations hereunder and thereunder and to consummate the Transactions. Upon the entry of

the Sale Order, execution, delivery and performance by Sellers of this Agreement and the Seller Documents to which such Seller is a party and the consummation of the Transactions have been duly authorized by all necessary limited liability company action on the part of such Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by Sellers and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and the entry of the Bidding Procedures Order) this Agreement constitutes, and the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of Sellers, enforceable against Sellers in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.4 Conflicts; Consents of Third Parties.

(a) Subject to the entry of the Sale Order and except as set forth on Schedule 5.4(a), none of the execution and delivery by Sellers of this Agreement or the Seller Documents to which either Seller is a party, the consummation of the Transactions, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the Organizational Documents of Sellers, (ii) any Order of any Governmental Body applicable to either Seller or any of the properties or assets of either Seller as of the date hereof or (iii) any applicable Law, other than, in the case of each of clauses (i) through (iii), such conflicts, violations, defaults, terminations or cancellations that would not be reasonably likely to result in a Seller Material Adverse Effect.

(b) Except as set forth on Schedule 5.4(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Body is required on the part of either Seller in connection with the execution and delivery of this Agreement or the Seller Documents to which such Seller is a party, the compliance by such Seller with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by such Seller or of any other action contemplated hereby or thereby, except for (i) such consents as have been (or prior to the Closing, will be) obtained, (ii) the entry of the Sale Order and the Bidding Procedures Order, (iii) compliance with the applicable requirements of the HSR Act and (iv) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not be reasonably likely to result in a Seller Material Adverse Effect.

5.5 Title to Purchased Assets. Except for any Real Property subject to a lease, intellectual property or other property licensed to either Seller, any personal property subject to a personal property lease, any other Permitted Encumbrances and as set forth on Schedule 5.5 or in Sections 5.16 and 6.10, (a) Sellers own the Purchased Assets, and (b) at the Closing and subject to the Sale Order, Purchaser will be vested with good and valid title to such Purchased Assets, free and clear of all Encumbrances, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.

5.6 Taxes.

(a) Except as set forth on Schedule 5.6 and except for matters that would not be reasonably likely to result in a Seller Material Adverse Effect, (i) all Tax Returns required to be filed with respect to the Purchased Assets, the Assumed Liabilities or the Business have been filed with the appropriate Governmental Bodies in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file), (ii) all such Tax Returns are correct and complete, and (iii) all Taxes shown as due on such Tax Returns have been paid.

(b) To the knowledge of Sellers, no election has ever been made by either Seller to treat either Seller as an association taxable as a corporation for U.S. federal income tax purposes.

(c) There are no Encumbrances for Taxes upon any of the Purchased Assets, other than Permitted Encumbrances.

(d) Any other representation or warranty contained in this Article V notwithstanding, the representations and warranties contained in this Section 5.6 constitute the sole representations and warranties of Sellers relating to Taxes.

5.7 Real Property. Schedule 5.7 sets forth a complete list of material real property and interests in real property that Handley owns or leases, or in which such Seller holds an easement interest, license or permit to use, including the Real Property, and any Contract relating thereto (collectively, the "Real Property Documents"). Handley has not received any written notice of any default or event that with notice or lapse of time would constitute a material default by Handley under any of the Real Property Documents. To the Knowledge of Sellers, there is no condemnation action pending or threatened (in writing) against any of the Real Property. To the Knowledge of Sellers, the Real Property (together with the Real Property Documents) constitutes all of the real property used or held for use in the conduct of the Business.

5.8 Reserved.

5.9 Material Contracts.

(a) Excluding any Contracts entered into after the Effective Date in accordance with Section 8.3, Schedule 5.9(a) sets forth a list of the following Contracts to which Sellers are a party (collectively, the "Material Contracts"):

(i) Contracts for the future purchase, exchange or sale of natural gas for the Handley Plant;

(ii) Contracts for the future purchase, exchange or sale of electric power or ancillary services for the Handley Plant;

(iii) Contracts for the future transportation or storage of natural gas or other fuel for the Handley Plant;

(iv) other than Contracts of the nature addressed by Section 5.9(a)(i) through (iii), Contracts related to the Handley Plant which involve the expenditure of more than \$250,000 in the aggregate or require performance by any party more than one (1) year from the date hereof that, in either case, are not terminable by Sellers without penalty on less than one hundred eighty (180) days' notice;

(v) other than Contracts of the nature addressed by Section 5.9(a)(i) through (iv), Contracts related to the Handley Plant involving the performance of services, delivery of goods or materials to, or payments by, Seller, in each case involving amounts in excess of \$250,000 per year;

(vi) other than Contracts of the nature addressed by Section 5.9(a)(i) through (v), Contracts related to the Handley Plant with any customers of Sellers involving the performance of services, delivery of goods or materials by, or payments to Sellers, in each case involving amounts in excess of \$250,000 per year;

(vii) Contracts for the future transmission of electric power for the Handley Plant;

(viii) interconnection Contracts for the Handley Plant;

(ix) other than Contracts of the nature addressed by Section 5.9(a)(i) through (viii), Contracts (A) for the sale of any Purchased Asset or (B) that grant a right or option to purchase or sell any Purchased Asset, other than in each case Contracts entered into in the Ordinary Course of Business relating to Purchased Assets with a value of less than \$500,000 individually or \$1,000,000 in the aggregate;

(x) other than Contracts of the nature addressed by Section 5.9(a)(i) through (ix), Contracts for the future receipt of any Purchased Assets or services requiring payments in excess of \$500,000 for each individual Contract;

(xi) Contracts under which Sellers have created, incurred, assumed or guaranteed any outstanding Indebtedness in excess of \$500,000 related to the Handley Plant;

(xii) outstanding agreements of guaranty, surety or indemnification (excluding indemnification provisions customarily included in Contracts entered into in the Ordinary Course of Business), direct or indirect, by Sellers related to the Handley Plant;

(xiii) Contracts for consulting services related to the Handley Plant providing annual compensation in excess of \$125,000 that are not cancellable by Sellers on notice of ninety (90) days or less; and

(xiv) Hedging Agreements.

(b) Except as set forth on Schedule 5.9(b), each Material Contract is valid and binding on Sellers party thereto and, to Knowledge of Sellers, on the counterparties therein, is in full force and effect. Except as set forth on Schedule 5.9(b), in connection with Sellers'

inability to pay pre-petition amounts owed under certain Material Contracts due to the commencement of the Bankruptcy Case, or the implementation of the automatic stay under Section 362 of the Bankruptcy Code, Sellers have not received any written notice of any default or event that with notice or lapse of time or both would constitute a default by Sellers under any Material Contract, except for defaults that would not be reasonably likely to result in a Seller Material Adverse Effect.

5.10 Regulatory Status.

(a) Handley has been determined by FERC to be an EWG within the meaning of the PUHCA pursuant to a FERC order that is not subject to rehearing or appeal or has filed with FERC a notice of self-certification of EWG status that is valid and effective. To the Knowledge of Sellers, the EWG status of Handley is not subject to any pending challenge, investigation or enforcement action by FERC.

(b) Each Seller is not a "public utility" as that term is defined under the FPA, and such Seller does not directly or indirectly own, operate or control any subsidiary that is a "public utility", whether or not such subsidiary is otherwise disclosed pursuant to Section 5.2.

(c) Each Seller either (i) is not subject to regulation under PUHCA as an "electric utility company" or a "holding company", or (ii) is exempt from FERC's regulations under PUHCA for regarding FERC access to books and records, waivers of accounting, and records-retention and reporting requirements.

5.11 Environmental Matters. The representations and warranties contained in this Section 5.11 are the sole and exclusive representations and warranties of Sellers pertaining or relating to any environmental, health or safety matters, including any arising under any Environmental Laws. Except as would not be reasonably likely to result in a Seller Material Adverse Effect or as set forth on Schedule 5.11:

(a) Handley holds, and has timely applied for renewal of, all Environmental Permits that are required for the ownership, use or operation of the Handley Plant by Handley in the manner in which it is currently owned and operated.

(b) The Company (solely with respect to the Business), Handley and the Handley Plant are, and during the two (2) years prior to the Effective Date have been, in material compliance with all Environmental Laws and Environmental Permits.

(c) The Company (solely with respect to the Business) and Handley have not received written notice of any Proceedings under any Environmental Laws that are currently outstanding, and to the Knowledge of Sellers, no Proceedings are threatened, against the Company (solely with respect to the Business) or Handley by any Person under any Environmental Laws.

(d) Schedule 5.11 lists, as of the Effective Date, all air pollutant emissions, Allowances and Air Emissions Credits currently allocated or granted pursuant to a third party contract for the Handley Plant's use, and Sellers have not entered into any contracts or

commitments to transfer or sell any such Allowances. All Allowances and Air Emissions Credits are owned solely by Handley or have been allocated to Handley pursuant to that certain Emissions Allowance Agreement, dated as of April 25, 2002, between TXU Generation Company LP and Handley and Mountain Creek Power, LLC (as successor in interest to ExTex LaPorte Limited Partnership) and constitute Purchased Assets hereunder.

5.12 Litigation. Except as set forth on Schedule 5.12, and except for the Bankruptcy Case and any Proceedings thereunder or related thereto, there are no Proceedings pending or, to the Knowledge of Sellers, threatened in writing against either Seller before any Governmental Body, which, if adversely determined, would be reasonably likely to result in a Seller Material Adverse Effect.

5.13 Compliance with Laws; Permits.

(a) Except as set forth on Schedule 5.13(a), each of the Company (solely with respect to the Business) and Handley is, and during the two (2) years prior to the Effective Date has been, in material compliance with all Laws and Orders applicable to it, except where the failure to be in compliance would not be reasonably likely to result in a Seller Material Adverse Effect; provided, however, that this Section 5.13 does not address Taxes, which are exclusively addressed in Section 5.6; or Environmental Laws, which are exclusively addressed in Section 5.11. Except as set forth on Schedule 5.13(a), each of the Company (solely with respect to the Business) and Handley has not received during the past two (2) years any written notice, Order, complaint or other communication from any Governmental Body (or in any earlier period if the matters raised in such notice, Order, complaint or other communication remain pending and would reasonably be expected to result in a Seller Material Adverse Effect) that it is not in compliance with any Law applicable to it, except where such non-compliance would not be reasonably likely to result in a Seller Material Adverse Effect.

(b) Except as set forth on Schedule 5.13(b) (excluding the Environmental Permits, which are exclusively addressed in Section 5.11), the Sellers have (i) all Permits that are required for the operation of the Business as it is currently conducted, and (ii) all Permits that are required for the use or operation of the Purchased Assets as they are currently used or operated, except in each case where the absence of which would not be reasonably likely to result in a Seller Material Adverse Effect. To the Knowledge of Sellers, each such Seller is not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which it is a party or applicable to the Purchased Assets, except where such default or violation would not be reasonably likely to result in a Seller Material Adverse Effect.

5.14 Sufficiency of Assets. Except as set forth in Schedule 5.14 and subject to Section 6.11, the Purchased Assets owned, leased, licensed or contracted by each Seller constitute all of the tangible assets that are sufficient to operate the Business as currently conducted in all material respects.

5.15 Insurance. Sellers maintain insurance policies or other arrangements with respect to the Handley Plant consistent with the insurance coverage described on Schedule 5.15, and

such insurance policies will be maintained until the Closing Date. For the avoidance of doubt, after the Closing, such insurance policies will be terminated by Sellers as they relate to the Handley Plant.

5.16 No Other Representations or Warranties; Schedules. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), WITHOUT LIMITING ANY OF THE PROVISIONS OF SECTION 6.10, NO SELLER MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH SELLER, THE BUSINESS, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES OR THE TRANSACTIONS, INCLUDING ANY CONDITION OF TITLE, PHYSICAL CONDITION, OR ENVIRONMENTAL CONDITION, ALL OF WHICH ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND SELLERS DISCLAIM ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLERS, ANY AFFILIATE OF SELLERS OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SCHEDULES), SELLERS (I) EXPRESSLY DISCLAIM AND NEGATE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO THE CONDITION OF THE PURCHASED ASSETS (INCLUDING ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS) AND (II) DISCLAIM ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO PURCHASER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT OR REPRESENTATIVE OF SELLERS OR ANY OF THEIR AFFILIATES). SELLERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES TO PURCHASER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE BUSINESS OR THE HANDLEY PLANT. THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD BE REASONABLY LIKELY TO RESULT IN A SELLER MATERIAL ADVERSE EFFECT.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that (it being agreed that the disclosure of any matter in any of the Schedules shall be deemed to have been disclosed in any other section of such Schedules to which the applicability of such disclosure is reasonably apparent on its face):

6.1 Organization and Good Standing. Purchaser is duly organized, validly existing and in good standing under the laws of the State of Pennsylvania and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 Authorization of Agreement. Purchaser has all requisite power and authority to execute and deliver the Purchaser Documents, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement and the Purchaser Documents and the consummation of the Transactions have been duly authorized by all necessary member action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the Transactions by Purchaser (or an Affiliate of Purchaser to which all or a portion of this Agreement has been assigned pursuant to Section 13.8) or Purchaser's compliance with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the Organizational Documents of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets is bound or (iii) any Order of any Governmental Body applicable to Purchaser or any of its properties or assets or (iv) any applicable Law.

(b) Except as set forth in Schedule 6.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Purchaser of any other action contemplated hereby or thereby, or for Purchaser to conduct the Business, except for (i) the entry of the Sale Order and the Bidding Procedures Order, (ii) compliance with the applicable requirements of the HSR Act, and (iii) such other consents, waivers, approvals, filings and notifications, the failure of which to obtain would not reasonably be likely to result in a Purchaser Material Adverse Effect.

6.4 Litigation. There are no Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a Purchaser Material Adverse Effect. Purchaser is not subject to any Order of any Governmental

Body except to the extent the same would not reasonably be expected to have a Purchaser Material Adverse Effect.

6.5 Bankruptcy. There are no bankruptcy, reorganization or insolvency proceedings pending against, being contemplated by or, to the knowledge of Purchaser, threatened against, Purchaser.

6.6 Financial Capability. Purchaser (a) has as of the date hereof, and at the Closing will have, sufficient funds available to pay the Purchase Price and any expenses incurred by Purchaser in connection with the Transactions, (b) has as of the date hereof, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder and the other Purchaser Documents, and (c) has not incurred any obligation, commitment, restriction or Liability of any kind, which would impair or adversely affect such resources and capabilities. After giving effect to this Agreement, Purchaser will be Solvent as of the Closing Date Effective Time, assuming both (x) the satisfaction of the conditions precedent to Purchaser's obligations to effect this agreement and (y) the accuracy of the representations and warranties set out in this Article VI.

6.7 Adequate Assurances Regarding Executory Contracts. Purchaser is and will be capable of satisfying the conditions in Section 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Purchaser shall be solely responsible for any fees and expenses it incurs in responding to any adequate assurance objections filed with the Bankruptcy Court.

6.8 Regulatory Status. Purchaser either (i) is not required to obtain FERC authorization to acquire the Purchased Assets and assume the Assumed Liabilities as provided for in this Agreement under Section 203(a) of the FPA (16 U.S.C. § 824b(a)) or (ii) is authorized to acquire the Purchased Assets and assume the Assumed Liabilities as provided for in this Agreement under Section 203(a) of the FPA (16 U.S.C. § 824b(a)) pursuant to blanket authorizations provided for in Section 33.1(c) of FERC's regulations (18 C.F.R. § 33.1(c)).

6.9 Ownership in ERCOT. As of the Effective Date, Purchaser and its Affiliates own and control less than 20% of the total installed generating capacity in ERCOT for purposes of calculating the limitation on ownership and control of installed generating capacity under Section 39.154 of the PURA.

6.10 No Additional Representations and Warranties. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, AND WITHOUT LIMITING ANY PROVISION OF SECTION 5.16, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLERS ARE NOT MAKING ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BEYOND THOSE EXPRESSLY GIVEN BY SELLERS IN ARTICLE V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED), AND PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE V, THE PURCHASED ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS AND WITHOUT REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR

ORAL, OF ANY KIND, NATURE OR DESCRIPTION, BY SELLERS, THEIR AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES. ANY CLAIMS PURCHASER MAY HAVE FOR BREACH OF REPRESENTATION OR WARRANTY SHALL BE BASED SOLELY ON THE REPRESENTATIONS AND WARRANTIES OF SELLERS SET FORTH IN ARTICLE V (AS MODIFIED BY THE SCHEDULES, AS SUPPLEMENTED OR AMENDED). PURCHASER FURTHER REPRESENTS AND AGREES (I) THAT NONE OF SELLERS, THEIR AFFILIATES, OR ANY OTHER PERSON HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION REGARDING SELLERS, THE BUSINESS OR THE TRANSACTIONS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, (II) PURCHASER, ITS AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES HAVE NOT RELIED ON ANY SUCH REPRESENTATIONS OR WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AND (III) THAT SELLERS HAVE NOT BEEN NOR WILL BE, NOR WILL ANY OF THEIR AFFILIATES OR ANY OTHER PERSON HAVE BEEN OR WILL BE, SUBJECT TO ANY LIABILITY TO PURCHASER OR ANY OTHER PERSON RESULTING FROM THE DISTRIBUTION TO PURCHASER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES OR PURCHASER'S USE OF, ANY INFORMATION, INCLUDING ANY CONFIDENTIAL MEMORANDA OR REPORTS DISTRIBUTED ON BEHALF OF SELLERS RELATING TO THE BUSINESS OR THE PURCHASED ASSETS OR OTHER PUBLICATIONS OR DATA ROOM INFORMATION PROVIDED TO PURCHASER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES, OR ANY OTHER DOCUMENT OR INFORMATION IN ANY FORM WHETHER WRITTEN OR ORAL PROVIDED TO PURCHASER, ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES IN CONNECTION WITH THE SALE OF THE BUSINESS, THE PURCHASED ASSETS AND THE TRANSACTIONS. PURCHASER ACKNOWLEDGES THAT IT HAS CONDUCTED TO ITS SATISFACTION ITS OWN INDEPENDENT INVESTIGATION OF THE BUSINESS AND THE PURCHASED ASSETS AND IN MAKING THE DETERMINATION TO PROCEED WITH THE TRANSACTIONS, PURCHASER HAS RELIED ON THE RESULTS OF ITS OWN INDEPENDENT INVESTIGATION AND THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH HEREIN AND NOT ON ANY OTHER REPRESENTATIONS OR WARRANTIES OF SELLERS, THEIR AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES NOT SET FORTH HEREIN. PURCHASER, ITS AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES HEREBY WAIVES ANY RIGHT OR CLAIM PURCHASER MAY HAVE AGAINST SELLERS, INCLUDING ANY CLAIMS IN CONTRACT OR TORT REGARDING FRAUD, FRAUDULENT INDUCEMENT AND/OR INTENTIONAL OR NEGLIGENT MISREPRESENTATION, WITH RESPECT TO ANY INACCURACY OR INCOMPLETENESS OF ANY REPRESENTATIONS OR WARRANTIES NOT EXPRESSLY SET FORTH HEREIN. WITHOUT LIMITING ANY OF THE FOREGOING, IF PURCHASER OR ANY OF ITS AFFILIATES HAS ACTUAL KNOWLEDGE, AS OF THE DATE OF THIS AGREEMENT, OF ANY CHANGE, EVENT, EFFECT, OCCURRENCE OR CIRCUMSTANCE WITH RESPECT TO THE BUSINESS, OPERATIONS, PROPERTIES OR CONDITION (FINANCIAL OR OTHERWISE) OF THE BUSINESS, INCLUDING THE COMPANY AND HANDLEY, THAT CAUSES ANY REPRESENTATION OR WARRANTY OF SELLERS TO BE UNTRUE OR INCORRECT (A "KNOWN FACT"), THEN SUCH

KNOWN FACT SHALL BE DEEMED TO HAVE BEEN DISCLOSED AS AN EXCEPTION TO ANY REPRESENTATION OF EITHER OR BOTH SELLERS CONTAINED IN THIS AGREEMENT OR IN ANY DOCUMENT, INSTRUMENT OR CERTIFICATE DELIVERED PURSUANT TO THIS AGREEMENT TO WHICH THE APPLICABILITY OF SUCH KNOWN FACT IS REASONABLY APPARENT ON ITS FACE.

6.11 Preparation of Purchased Asset Schedules. Representatives of Purchaser or Purchaser's Affiliates have prepared the initial drafts of and have approved the versions as of the date of this Agreement of Schedules 2.1(d)(ii), 2.1(h), 2.1(k), 2.1(o), 2.2(t) and 2.5(a). Purchaser agrees that (a) it is solely responsible for the omission of any Purchased Asset from such Schedules as such Schedules exist as of the date hereof, the inclusion of any Purchased Asset on Schedules 2.2(t) as such Schedule exists as of the date hereof, or the inclusion of any Contract on Schedule 2.5(a) as such Schedule may be supplemented by Purchaser from time to time and (b) that any such omission as of the date hereof shall not constitute a breach or inaccuracy of Section 5.14.

ARTICLE VII

BANKRUPTCY COURT MATTERS

7.1 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids (each a "Competing Bid"). From the date hereof (and any prior time) and until the Transactions are consummated, Sellers are permitted to cause their Representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents and representatives) in connection with any sale or other disposition of the Purchased Assets or the limited liability company interests in Sellers. In addition, Sellers may respond to any inquiries or offers to purchase all or any part of the Purchased Assets or the limited liability company interests in Sellers and perform any and all other acts related thereto that are required under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Sellers or any of their Affiliates to prospective purchasers.

7.2 Bankruptcy Court Filings. Sellers shall file with the Bankruptcy Court the Sale Motion seeking entry of the Sale Order and the Bidding Procedures Order. Subject to Purchaser being designated as the Successful Bidder, Sellers shall promptly use commercially reasonable efforts to obtain entry of the Sale Order approving this Agreement and authorizing the Transactions, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall not, without the prior written consent of Sellers, file, join in or otherwise support in any manner whatsoever any motion or other pleading relating to the Bidding Procedures Order. In the event the entry of the

Sale Order or the Bidding Procedures Order shall be appealed, Sellers and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

7.3 Back-Up Bidder. Sellers and Purchaser agree that, in the event that Purchaser is not the Successful Bidder at the Auction, and the Alternative Transaction with the Successful Bidder does not close, if and only if Purchaser is the Back-Up Bidder, Purchaser shall promptly consummate the Transactions upon the terms and conditions as set forth herein, including the Purchase Price as the same may be modified by Purchaser at the Auction. Purchaser acknowledges that time is of the essence in achieving Closing and shall undertake all commercially reasonable efforts to reach Closing in a timely manner.

7.4 Approval of Bid Protections and Overbid Protection. Subject to the entry of the Bidding Procedures Order, and only if (a) Purchaser is determined not to be the Successful Bidder at the Auction, (b) this Agreement is terminated pursuant to Section 4.4(h)(i) and at such time the conditions to the obligations of Purchaser set forth in Sections 10.1 and 10.3 (other than the condition set forth in Section 10.1(d)) have been satisfied (or if the Closing were to occur at such time, would be satisfied) and (c) Sellers close an Alternative Transaction contemplated by a Competing Bid with another bidder that is a Third Party, in consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation hereof and the identification and quantification of assets of Sellers, after the effective date of termination of this Agreement, Sellers shall pay to Purchaser from the proceeds of the Alternative Transaction described in clause (c) promptly all duly documented and reasonable out-of-pocket fees and expenses (provided that such fees and expenses shall not exceed three hundred thousand dollars (\$300,000)) incurred in connection with preparation, negotiation and documentation of this Agreement and related agreements ("Fees and Expenses") and the payment of a break-up fee of one and one quarter percent (1.25%) of the Initial Cash Consideration (the "Break-Up Fee", together with the Fees and Expenses, the "Bid Protections"). In addition, the Bidding Procedures Order shall provide for an initial overbid protection in the amount of two million dollars (\$2,000,000) over and above the aggregate of the Purchase Price and the Bid Protections, and minimum bid increments thereafter of two hundred fifty thousand dollars (\$250,000) (the "Overbid Protection"). The obligations of Sellers to pay the Bid Protections (i) shall be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against Sellers, other than as provided in any adequate protection order in existence at the time the Bid Protections are approved, and (iii) shall survive the termination of this Agreement in accordance with Section 4.5. The Sellers and the Purchaser shall seek to have the Bidding Procedures Order approve the Bid Protections as set forth in this paragraph. For the avoidance of doubt, and notwithstanding any other provision of this Agreement, including Section 4.5, the Bid Protections provided for hereunder shall only be paid to the Purchaser if the Purchaser is the Stalking Horse Bidder, this Agreement is the Stalking Horse Agreement as provided for in the Bidding Procedures Order and the Bankruptcy Court approves the Bid Protections. The Bid Protections shall not be paid to Purchaser (A) if Purchaser is the Successful Bidder at the Auction or if no Auction occurs (whether or not Purchaser closes the transaction contemplated by such winning bid) or (B) if Purchaser is not the Successful Bidder at the Auction and Sellers fail to close an Alternative Transaction contemplated by a Competing Bid by the date of termination of this Agreement.

ARTICLE VIII

COVENANTS

8.1 Regulatory and Other Approvals. During the Interim Period:

(a) The Parties will, in order to consummate the Transactions, (i) proceed diligently and in good faith and use commercially reasonable efforts, as promptly as reasonably practicable, to obtain the Consents reasonably needed prior to consummation of the Transactions as set forth on Schedule 8.1(a) (the "Required Consents"), in form and substance reasonably satisfactory to Sellers and Purchaser, and to make all required filings with, and to give all required notices to, the applicable Governmental Bodies and (ii) cooperate in good faith with the applicable Governmental Bodies and provide promptly such other information and communications to such Governmental Bodies or other Persons as such Governmental Bodies or other Persons may reasonably request in connection therewith; provided, however, notwithstanding anything to the contrary in this Agreement, except as otherwise contemplated in Section 8.1(c)(iv), the Parties acknowledge and agree that neither Purchaser nor Sellers shall have any obligation to pay any consideration, other than customary fees imposed by Governmental Bodies in order to obtain any of the Required Consents;

(b) Each Party will promptly notify the other when any such approval referred to in Section 8.1(a) is obtained, taken, made, given or denied, as applicable, and will advise each other of any communications with any Governmental Bodies or other Person regarding any of the Transactions; and

(c) In furtherance of the foregoing covenants:

(i) If required pursuant to the HSR Act, each Party shall prepare, or with respect to any required HSR Act filings, cause its "ultimate parent entity" (as defined in the HSR Act) to prepare, as soon as is reasonably practical following the Effective Date, in connection with the Transactions, all necessary filings under the HSR Act or any other applicable Laws. Each Party shall submit, or with respect to any required HSR Act filings (if any), cause its "ultimate parent entity" to submit, such filings as soon as practicable, but, with respect to filings under the HSR Act, in no event later than ten (10) Business Days after the Effective Date. If any such filings are made, the Parties shall request expedited treatment of any such filings, shall promptly make any appropriate or necessary subsequent or supplemental filings or provide any additional information or documents that the relevant Governmental Bodies or other Persons may reasonably request and that may be provided on a commercially reasonable basis and shall cooperate with each other in the preparation of such filings in such manner as is reasonably necessary and appropriate. The Parties shall consult with each other and shall agree in good faith upon the timing of such filings. Purchaser will pay all of the filing fees (if any) under the HSR Act;

(ii) Subject to applicable confidentiality restrictions or restrictions required by Law, each Party will notify the other promptly upon the receipt of (A) any written comments, questions or communications from any officials of any Governmental Body in

connection with any filings made pursuant to this Section 8.1 or the Transactions and (B) any written request by any officials of any Governmental Body for amendments or supplements to any filings made pursuant to any Laws of any Governmental Body or answers to any questions or the production of any documents relating to an investigation of the Transactions by any Governmental Body. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to this Section 8.1, each Party will promptly inform the other of such occurrence and cooperate in filing promptly with the applicable Governmental Body such amendment or supplement. Without limiting the generality of the foregoing, each Party shall promptly provide to the other (or the other's respective advisors) copies of all correspondence between such Party and any Governmental Body and any productions made by such Party or its Affiliates to any Governmental Body relating to the Transactions. The Parties may, as they deem advisable and necessary, designate any competitively sensitive materials provided to the other under this Section 8.1 as "outside counsel only." Such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient without the advance written consent of the Party providing such materials. In addition, all discussions, meetings and, to the extent reasonably practicable, telephone calls with a Governmental Body regarding the Transactions shall include Representatives of both Parties. Subject to applicable Law, the Parties will consult and cooperate with each other in connection with any analyses, appearances, presentations, memoranda, briefs, arguments and proposals made or submitted to any Governmental Body regarding the Transactions by or on behalf of any Party;

(iii) Purchaser shall use commercially reasonable efforts to take, in order to consummate the Transactions, all actions necessary or advisable to secure the expiration or termination of any applicable waiting period under the HSR Act and obtain any other Required Consents from a Governmental Body as promptly as practicable, and resolve as promptly as practicable any objections that may be asserted by any Governmental Body with respect to the Transactions, including by taking promptly, in the event that any temporary, permanent or preliminary injunction or other order is entered or becomes reasonably foreseeable to be entered in any proceeding that would make consummation of the Transactions unlawful or that would prevent or delay consummation of the Transactions, commercially reasonable steps necessary to vacate, modify or suspend such injunction or order; and

(iv) Purchaser shall use reasonable best efforts to take, in order to consummate the Transactions, all actions reasonably necessary to (A) keep Sellers apprised, during the pendency of the Bankruptcy Cases, of all material developments and filings made with respect to the Bidding Procedures Order or the Sale Order in the Bankruptcy Case, (B) comply in all material respects with, during the pendency of the Bankruptcy Case, the Bidding Procedures Order, the Sale Order and any other Orders of the Bankruptcy Court to the extent applicable to the Transactions and (C) respond to and seek to resolve as promptly as reasonably practicable any objections asserted by any Person with respect to the Bidding Procedures Order or the Sale Order during the pendency of the Bankruptcy Case. Without the prior written consent of Sellers, Purchaser shall not seek (or assist any other Person in seeking) to alter or enjoin the terms of, during the pendency of the Bankruptcy Cases, the Bidding Procedures Order

or the Sale Order in a manner that would reasonably be expected to prevent Purchaser from performing its obligations hereunder.

8.2 Access to Information. Sellers agree that, during the Interim Period, other than Privileged Communications, Purchaser is entitled, through its Representatives, to make such reasonable investigation of the properties, businesses and operations of the Business and such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities, during normal business hours and upon reasonable notice and consistent with reasonable procedures established by Sellers, as Purchaser reasonably deems fit. Notwithstanding anything herein to the contrary, for the avoidance of doubt, the Transactions and the provisions of this Section 8.2 are subject to the Confidentiality Agreement.

8.3 Conduct of the Business Pending the Closing.

(a) Except (1) as set forth on Schedule 8.3, (2) as required by applicable Law or by an Order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned, Sellers shall, during the Interim Period:

(i) use commercially reasonable efforts to conduct the Business only in the Ordinary Course of Business; and

(ii) use commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, and (B) preserve the present relationships with customers, suppliers and service providers of Sellers.

(b) Except (1) as set forth on Schedule 8.3, (2) as required by applicable Law or by an Order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement or (4) with the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned, Sellers shall not:

(i) take the following actions in respect of the Business, other than in the Ordinary Course of Business: (1) selling, assigning, licensing, conveying, leasing or otherwise disposing of any of the Purchased Assets (except for the purpose of disposing of obsolete or worthless assets or assets with a value under \$25,000 in the aggregate); (2) transferring any of the Purchased Assets (including fuel oil stored at the Handley Plant and other consumable inventory, spare parts or moveable assets stored at the Handley Plant and those assets located offsite for repair or refurbishment or storage) out of the Handley Plant or off-site storage areas, except for the temporary removal for purposes of refurbishment or repair; (3) (A) selling or consuming the fuel oil at the Handley Plant for any purpose other than the generation of electric power at the request of ERCOT for the purpose of ensuring grid stability or for any other ERCOT mandated dispatch purpose, and (B) if any such fuel oil was so consumed, it shall be replenished before the Closing Date, provided, that, if such fuel oil that was sold or consumed is not replenished before the Closing Date, then Purchaser's sole remedy for the breach of this Section 8.3(b)(i)(3) shall be reduction in the Initial Cash Consideration pursuant to Section 2.1 by an amount equal to (x) (I) the amount of fuel oil set forth on Schedule 8.3(b)(i)(3) (the "Fuel

Oil Baseline Amount") *minus* (II) the amount of fuel oil at Closing (to be measured using the procedures detailed in Schedule 8.3(b)(i)(3), the "Fuel Oil Closing Amount") *multiplied by* (y) the fair market value of such fuel oil determined in accordance with Schedule 8.3(b)(i)(3) (the "Fuel Oil Adjustment"); provided, that if the Fuel Oil Closing Amount exceeds the Fuel Oil Baseline Amount, then the Initial Cash Consideration shall be increased by, and the Fuel Oil Adjustment shall be, an amount equal to (y) (I) the Fuel Oil Closing Amount *minus* (II) the Fuel Oil Baseline Amount, *multiplied by* (z) the fair market value of such fuel oil determined in accordance with Schedule 8.3(b)(i)(3); (4) terminating or waiving any rights of Sellers or Purchaser under any Purchased Contracts or Excluded Contracts; (5) taking actions in respect of operation and maintenance of the Handley Plant that are not required by the Handley O&M Agreement and other Material Project Documents (as defined in the Credit Agreement); (6) dispatching the Handley Plant for non-economic reasons or to benefit Project Companies other than Handley, other than as directed by ERCOT; or (7) except as permitted by an Order of the Bankruptcy Court or required under the Bankruptcy Code, delaying payments to vendors past contractual due dates or normal practice;

(ii) subject any of the Purchased Assets to any Encumbrance, except for Permitted Encumbrances;

(iii) waive or release any material right of Sellers that constitutes a Purchased Asset;

(iv) except as required to comply with Section 8.3(b)(v), enter into any commitment for capital expenditures for the Handley Plant in excess of \$100,000 per year for any individual commitment and \$500,000 per year for all commitments in the aggregate;

(v) fail to promptly pay all amounts due and payable in respect of any operation and maintenance or capital expenditure for the Handley Plant set forth on Schedule 8.3(b)(v); and

(vi) agree to do or seek an Order from the Bankruptcy Court to do anything prohibited by this Section 8.3.

Notwithstanding anything to the contrary, with respect to any portion of the Business managed on a day-to-day basis by a party other than Seller (including Purchaser or Purchaser's Affiliates), Sellers' obligation under this Section 8.3 to take an action or not to take an action with respect to such portion of the Business shall only apply to the extent that the Sellers shall have the right to consent or withhold consent to such action pursuant to the Contracts entered into by Sellers and such third party.

8.4 Further Assurances. Sellers and Purchaser shall use their commercially reasonable efforts to (a) take all reasonable actions necessary or appropriate to consummate the Transactions and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions. Notwithstanding any provisions of this Agreement, no term or provision of this Agreement shall delay, hinder or effect the Sellers' or their Affiliate's ability to consummate any restructuring transactions contemplated by

any Chapter 11 plan of the Company and certain affiliated debtors and in no event shall the consummation of such restructuring transactions in and of itself give rise to a breach of this Agreement by either Seller.

8.5 Confidentiality. Purchaser acknowledges that the Confidential Information (as defined in the Confidentiality Agreement) provided to it in connection with this Agreement, including under Section 8.2, and the consummation of the Transactions, is subject to the terms of the confidentiality agreement between Purchaser and the Company, dated June 23, 2017 (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference.

8.6 Preservation of Records.

(a) Sellers and Purchaser agree to preserve and keep the records, or in the case of Sellers, arrange for the preservation and keeping of the records, held by it relating to the Business for a period of six (6) months from the Closing Date and shall make such records and personnel available to the other Parties as may be reasonably required by such Party in connection with, among other things, any insurance claims, Proceedings or Tax Claims against or governmental investigations of Sellers or Purchaser or any of Purchaser's Affiliates, administering the Bankruptcy Case, including in connection with any motion or claim objection filed or to be filed by or against Sellers or their Affiliates in the Bankruptcy Case, winding up Sellers, or in order to enable Sellers or Purchaser to comply with their obligations under this Agreement and the other Transaction Documents. Each Party understands that making personnel available to the other Party pursuant to this Section 8.6(a) includes making personnel available to assist with and/or to provide testimony (including deposition testimony) in connection with, among other things, any insurance claims, Proceedings or Tax Claims against or governmental investigations of Sellers or their Affiliates or Purchaser or any of Purchaser's Affiliates, administering the Bankruptcy Case or winding up Sellers. For the avoidance of doubt, references to "records" in this Section 8.6(a) shall be limited to Documents referred to in Section 2.1(j).

(b) Notwithstanding Section 8.6(a), in the event Sellers or Purchaser wish to destroy records subject to the preservation requirements of Section 8.6(a), such Party (the "Noticing Party") is entitled to destroy such records by (i) giving ninety (90) days prior written notice (the "Original Notice") to the other Parties and each of the other Parties shall have the right at its option and expense, upon prior written notice given to the Noticing Party within such ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of the Original Notice, or (ii) seeking and obtaining an Order of the Bankruptcy Court approving the destruction of such records and complying with such Order of the Bankruptcy Court.

(c) Neither Purchaser nor Sellers shall be obligated to provide the other Parties with access to any records (including personnel files) pursuant to this Section 8.6 where such access would violate any Law or, after consultation with legal counsel of the Party who possesses such records, it is determined by such Party's legal counsel that providing access to such records would likely lead to the loss of any privilege provided to such Party or such records.

8.7 Publicity. From and after the date of this Agreement, neither Sellers nor Purchaser shall issue any press release, communication or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld, delayed or conditioned, unless, in the reasonable judgment of Purchaser or Sellers in consultation with such Party's legal counsel, disclosure is otherwise required by applicable Law; provided, however, that the Party intending to make such release shall use its commercially reasonable efforts consistent with such applicable Law to consult with the other Party with respect to the content of such press release or public announcement.

8.8 Qualified Scheduling Entity and Other ERCOT Requirements. Purchaser acknowledges that an Affiliate of Sellers that serves as the Qualified Scheduling Entity with respect to the Handley Plant is not one of the Purchased Assets and that, except as otherwise agreed to by the Parties, as of the Closing Date such Affiliate may no longer continue to act as the Qualified Scheduling Entity with respect to the Handley Plant. Purchaser shall be responsible for appointing and maintaining a Qualified Scheduling Entity with respect to the Handley Plant after Closing and taking any actions pursuant to ERCOT Protocols and Other Binding Documents necessary for the Handley Plant to continue to participate in ERCOT after Closing.

8.9 Supplementation and Amendment of Schedules. Each Seller and Purchaser may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and such inclusion, or any references to U.S. dollar amounts, shall not be deemed to be an acknowledgement or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in the Schedules shall constitute a disclosure for all purposes under this Agreement notwithstanding any reference to a specific Section, and all such information shall be deemed to qualify the entire Agreement and not just such Section. From time to time during the Interim Period, Sellers and Purchaser shall have the right to supplement or amend the Schedules with respect to any matter hereafter arising or discovered after the delivery of the Schedules pursuant to this Agreement. No such supplement or amendment shall have any effect on the satisfaction of the condition to Closing set forth in Section 10.1(a); provided, however, if the Closing shall occur, Purchaser shall be deemed to have waived any right or claim pursuant to the terms of this Agreement or otherwise with respect to any and all matters disclosed pursuant to any such supplement or amendment at or prior to the Closing.

8.10 Casualty and Condemnation.

(a) If during the Interim Period any of the Purchased Assets are damaged or destroyed by any casualty event or are taken by any condemnation event, then Sellers shall promptly (and in any event before the Closing Date), notify the Purchaser of the occurrence of such casualty or condemnation event, and then use commercially reasonable efforts to prepare an estimate within forty-five (45) days following such event (i) in the case of such a casualty or condemnation event, for the reasonably anticipated cost of restoring the Purchased Assets damaged or destroyed by such event to a condition reasonably comparable to their condition immediately prior to such casualty event within a reasonable period of time, in accordance with

the general custom and practice of the construction industry in the area of the Purchased Assets, or (ii) in the case of such a condemnation event, the reasonably expected condemnation value therefor (excluding loss of business, relocation and moving expenses, goodwill and other non-physical property components of loss), in the case of the immediately preceding clauses (i) and (ii), net of and after giving effect to (1) any insurance, condemnation award or other third party proceeds reasonably expected to be available to the Purchaser for such event and receivable by the Purchaser after Closing and (2) any amounts expended or expected to be expended by the Sellers prior to the Closing to restore damage caused by such casualty event (as applicable, such estimate being a "Casualty Estimate"). Any Casualty Estimate shall be prepared based on the Sellers' best reasonably available information as of the date of such Casualty Estimate and, if the Closing is expected to occur prior to the expiration of the period referenced above for the preparation of the Casualty Estimate, then the Closing Date and, if the Outside Date would occur prior to such extended Closing Date, the Outside Date shall be extended to the fifth Business Day after such Casualty Estimate is delivered in accordance with this Section 8.10(a).

(b) Sellers may engage a nationally recognized financial advisory firm (which need not be independent of Sellers or their Affiliates) to prepare the Casualty Estimate (it being understood that the engagement of a financial advisor shall not extend the period referenced above) and payment of the costs and expenses of such financial advisory firm shall be borne by the Sellers. If Purchaser objects to all or part of the calculation of the Casualty Estimate, Purchaser must deliver to Sellers written notice of such objections (a "Purchaser's Objection Notice") not more than fifteen (15) days after the date Purchaser receives the Casualty Estimate. Purchaser's Objection Notice shall specify in reasonable detail the nature and amount of any and all items in dispute, the amounts of any proposed adjustments and the basis for Purchaser's proposed adjustments. If Purchaser does not deliver a Purchaser's Objection Notice to Sellers within such fifteen (15) day period, Purchaser shall be deemed to have accepted the Casualty Estimate. If Purchaser timely delivers a Purchaser's Objection Notice to Sellers, the Parties shall use commercially reasonable efforts to resolve all objections relating to the Casualty Estimate. If the Parties do not reach a final resolution of all such objections within fifteen (15) days of Sellers' receipt of the Purchaser's Objection Notice, the Parties shall submit the issues remaining in dispute to an independent, nationally recognized financial advisory and valuation firm to be mutually agreed by the Parties in good faith (the "Neutral Expert"). The Neutral Expert, acting as an expert and not an arbitrator, shall resolve such disputed items and determine the values to be ascribed thereto, and using those values (together with other items not in dispute) shall determine the final Casualty Estimate only, in each case as promptly as practicable. The Parties hereby agree that the Neutral Expert shall only decide the specific disputed items, the values ascribed thereto and that using those values (together with the other undisputed items in the calculation of the Casualty Estimate), shall determine the final Casualty Estimate, and the Neutral Expert's decision with respect to such disputed items and values must be within the range of values assigned to each such item in the applicable calculation of the Casualty Estimate and the Purchaser's Objection Notice, respectively. All fees and expenses relating to the work, if any, to be performed by the Neutral Expert will be borne equally by Purchaser and Sellers. Notwithstanding anything herein to the contrary, the dispute resolution mechanism contained in this Section 8.10(b) shall be the exclusive mechanism for resolving disputes, if any, regarding the amount and calculation of the Casualty Estimate, and the Neutral Expert's determination shall be final and binding on all Parties. The Neutral Expert shall make a determination in

accordance with the Rules for the Administration of Expert Proceedings of the International Chamber of Commerce, as modified by this Section 8.10(b).

(c) If the damage or destruction from a casualty event or taking from a condemnation event has resulted or would be reasonably likely to result in a Seller Material Adverse Effect, then within ten Business Days following the final determination of the Casualty Estimate pursuant to Section 8.10(b), Purchaser may, by written notice to Sellers, elect to (i) terminate this Agreement in accordance with Section 4.4(i); or (ii) at its sole discretion, reduce the Purchase Price by an amount equal to such Casualty Estimate and deliver to Sellers a written notice notifying them of such reduction. In all other cases, within ten Business Days following of the final determination of the Casualty Estimate pursuant to Section 8.10(b), Purchaser may, by written notice to Sellers, elect to (i) at its sole discretion, reduce the Purchase Price by an amount equal to such Casualty Estimate; or (ii) proceed with the Closing without any adjustment to the Purchase Price and receive all net insurance proceeds or condemnation awards therefor, *provided that*, with respect to the clauses (i) and (ii) of the immediately preceding two sentences, Sellers shall have no further liability hereunder to remedy such casualty or condemnation event and such casualty or condemnation event shall not otherwise affect the Closing and Purchaser shall be obligated to consummate the transactions contemplated by this Agreement (assuming the satisfaction or, when permissible, waiver of the conditions set forth in Article X (other than any such conditions which by their terms are not capable of being satisfied until the Closing Date)) in accordance with the terms of this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, this Section 8.10 shall be the sole and exclusive remedy of the Parties against each other with respect to any casualty or condemnation event that damages, impairs or destroys during the Interim Period any of the Purchased Assets.

8.11 Title Insurance. At Closing, Sellers shall procure for, and cause Fidelity National Title Insurance Company or such other a nationally recognized title insurance company selected by Purchaser and reasonably acceptable to Sellers (the "Title Company") to deliver to, Purchaser, subject to Purchaser's compliance with all requirements of the Title Company applicable to Purchaser, (a) at Purchaser's expense, a Texas Form T-1 owner's policy of title insurance (Rev. 1/3/14) in the amount of the Purchase Price, which shall show record title vested in Purchaser (or its designee) and which shall be in substance identical to that certain Title Commitment issued by Fidelity National Title Insurance Company under commitment number FAH17004044, issued June 1, 2017, and dated effective May 21, 2017 (the "Title Commitment"), and which shall include no new title exceptions on Schedule B thereof, and no new requirements on Schedule C thereof, in each case other than (i) any exception or requirement waived in writing by Purchaser, (ii) non-delinquent real property Taxes and special assessments (which may be paid by Sellers from the proceeds of the Purchase Price), (iii) any exceptions or requirements to the extent arising from Purchaser's actions or not arising from the actions of Sellers, (iv) Permitted Encumbrances and (v) the Sale Order and any Proceedings in the Bankruptcy Case (the "Title Policy") or (b) (i) a pro forma policy which shall be in substance identical to the Title Commitment (subject to the provisions of clause (a)), and (ii) a signed closing letter or other form of binding written commitment from the Title Company, in customary form and substance, affirming that it is irrevocably committed to issue to Purchaser

the Title Policy, subject only to payment of the applicable title policy premium. Purchaser shall reasonably cooperate with Sellers and the Title Company in connection with this Section 8.11. Notwithstanding the foregoing, nothing in this Section 8.11 shall require Sellers to make any warranty or representation, or to provide any indemnity, to the Title Company or Purchaser which shall expand or increase any covenant, warranty or representation of Sellers beyond those otherwise expressly provided elsewhere in this Agreement.

8.12 Fuel Transportation Agreements.

(a) Prior to the Closing Date, Purchaser and Sellers shall cooperate in good faith and undertake commercially reasonable efforts, with respect to each Pre-Closing Fuel Transportation Agreement, to negotiate, execute and enter into a Purchaser Fuel Transportation Agreement and a Seller Fuel Transportation Agreement, respectively, to replace such Pre-Closing Fuel Transportation Agreement. Without limiting the foregoing, Purchaser may request in writing that a Seller execute a new Purchaser Fuel Transportation Agreement with the counterparty thereto to replace a portion of a Pre-Closing Fuel Transportation Agreement exclusively related to the Business. Upon Sellers' receipt of Purchaser's request, Purchaser and Sellers shall cooperate in good faith and undertake commercially reasonable efforts, to negotiate and enter into a Purchaser Fuel Transportation Agreement that replaces the portion of the Pre-Closing Fuel Transportation Agreement exclusively related to the Business; provided that Sellers shall have no obligation to enter into such Purchaser Fuel Transportation Contract unless the terms of such Purchaser Fuel Transportation Contract (including, without limitation, as to economic terms, termination, assignability and credit support) are reasonably acceptable to Sellers; provided that, notwithstanding anything to the contrary in this Agreement or otherwise, Purchaser may not exclude such Purchaser Fuel Transportation Agreement from the Purchased Contracts to the extent the Purchaser has requested or approved the Seller's entry into such Purchaser Fuel Transportation Agreement. If a Seller or Purchaser and the counterparty thereto do not enter into a Purchaser Fuel Transportation Agreement or Sellers (or their applicable Affiliates) and the counterparty thereto do not enter into a Seller Fuel Transportation Agreement on or prior to the Closing Date, Purchaser and the Company shall continue to cooperate in good faith and undertake commercially reasonable efforts to negotiate and enter into such Purchaser Fuel Transportation Agreement and such Seller Fuel Transportation Agreement until such Purchaser Fuel Transportation Agreement and such Seller Fuel Transportation Agreement have been executed by Purchaser or Sellers (or their designated Affiliates), as applicable, and the counterparties thereto.

(b) None of Purchaser, Sellers or any of their Affiliates shall under any circumstance be required to pay or commit to pay any amount or incur any obligation in favor of or offer or grant any accommodation (financial or otherwise, including any requirements for the securing or posting of any bonds, letters of credit or similar instruments, or the furnishing of any guarantees) to any Person (a "Concession") in connection with the negotiation and entry into Fuel Transportation Agreements. Without limiting the foregoing, Purchaser may terminate or remove any and all credit support offered to or for the benefit of Sellers with respect to the Pre-Closing Fuel Transportation Agreements only effective as of the Closing and shall not be required to provide credit support to or for the benefit of Sellers with respect to (i) the Seller Fuel Transportation Agreements; (ii) the Purchaser Fuel Transportation Agreements in the event of

(A) termination of this Agreement for any reason, except to the extent set forth in such Purchaser Fuel Transportation Agreements, or (B) closing of an Alternative Transaction; or (iii) the Pre-Closing Fuel Transportation Agreements in amounts in excess of, or in different form of, the credit support provided as of the date of this Agreement.

(c) Neither the Purchaser nor the Sellers shall contemplate or request volume capacities at the specified delivery and receipt points other than as detailed in Schedule 2.5(d) unless agreed to between Purchaser and Seller in writing.

(d) From the Closing Date until Purchaser and the counterparty thereto enter into a Purchaser Fuel Transportation Agreement to replace a Pre-Closing Fuel Transportation Agreement (the end of such period, the "Replacement Date"): (i) the Company (A) shall use its reasonable best efforts to comply with the terms of the Pre-Closing Fuel Transportation Agreement that will be replaced by such Purchaser Fuel Transportation Agreement and undertake their reasonable best efforts not to breach such Pre-Closing Fuel Transportation Agreement in a manner that would cause a curtailment, suspension or termination of the supply of fuel pursuant to such Pre-Closing Fuel Transportation Agreements (other than a termination of such Pre-Closing Fuel Transportation Agreement by the counterparty thereto at the expiration of such Contract or pursuant to a provision of such Contract enabling the counterparty thereto to terminate for convenience or without cause, collectively the "Excluded Terminations") and (B) shall not terminate, deliver a notice of termination for or communicate in writing an intent to terminate such Pre-Closing Fuel Transportation Agreement, in each case of this clause (B) with such termination effective before the Replacement Date; (ii) Purchaser shall use its reasonable best efforts to comply with the terms of such Pre-Closing Fuel Transportation Agreement applicable to Handley and undertake its reasonable best efforts not to breach such Pre-Closing Fuel Transportation Agreement in a manner that would cause a curtailment, suspension or termination of the supply of fuel pursuant to such Pre-Closing Fuel Transportation Agreements (other than an Excluded Termination); and (iii) Sellers shall consult with Purchaser before exercising or failing to exercise the option, if any, included in a Pre-Closing Fuel Transportation Agreement to renew such Contract and will cooperate with Purchaser and consider in good faith Purchaser's proposals for the exercise of such option. Notwithstanding the foregoing, none of Purchaser, Sellers or any of their Affiliates shall under any circumstance be required to grant or agree to any Concession to renew or prevent the termination (other than an Excluded Termination) of any Pre-Closing Fuel Transportation Agreement.

ARTICLE IX

EMPLOYEES AND EMPLOYEE BENEFITS

9.1 Employment.

All Project Employees, including those on long-term leave or inactive status on the Closing Date, shall continue to be Project Employees effective as of the Closing Date. Purchaser shall be responsible for, and shall indemnify and hold harmless each Seller and its directors, officers, managers and equity holders from and against, and pay, any Liabilities, Losses or Claims arising out of Purchaser's or Purchaser's Affiliates' failure to employ all

Project Employees after the Closing, including any employment discrimination or severance claims or WARN Law claims.

9.2 Employee Benefits.

Nothing contained in this Article IX or elsewhere in this Agreement shall be construed to prevent the termination of employment of any individual Project Employee or any change in the particular employee benefits available to any individual Project Employee.

ARTICLE X

CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part):

(a) The representations and warranties of Sellers set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Seller Material Adverse Effect, shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that individually and in the aggregate would not be reasonably likely to result in a Seller Material Adverse Effect. Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date; provided, however, that the condition set forth in this Section 10.1(b) shall be deemed satisfied unless such failures to so perform or comply taken together would be reasonably likely to result in a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized signatory of Sellers, dated the Closing Date, to the foregoing effect;

(c) (i) Purchaser (or, upon Purchaser's request pursuant to Section 8.12(a), Seller) shall have executed with the counterparty to each Pre-Closing Fuel Transportation Agreement a Purchaser Fuel Transportation Agreement with such counterparty satisfying the requirements set forth in Schedule 2.5(d) under the heading "Purchaser," or (ii) Sellers shall have offered to Purchaser and kept open for at least fifteen (15) days before the Closing Date, a Purchaser Fuel Transportation Agreement, providing in all material respects the benefits contemplated by the applicable Pre-Closing Fuel Transportation Agreement (solely with respect to the Business) for the term of such Pre-Closing Fuel Transportation Agreement, with the counterparty to the Pre-Closing Fuel Transportation Agreement or with a third Person, in each case on commercial terms no more adverse to the Business than those set forth in the Pre-Closing Fuel Transportation Agreement and satisfying the requirements set forth in Schedule 2.5(d)

under the heading "Purchaser" (such Purchaser Fuel Transportation Agreement, an "Equivalent Agreement") or (iii) Purchaser shall have entered into an Equivalent Agreement for the applicable Purchaser Fuel Transportation Agreement;

(d) The effective date of a Chapter 11 plan (or an alternative transaction) of the Company and certain affiliated debtors has occurred (or shall occur concurrently), which plan or alternative transaction has been approved by the Bankruptcy Court pursuant to an Order (or the Bankruptcy Court has otherwise issued an Order) (i) approving releases and injunctions substantially in the form attached hereto as Exhibit E (subject to (A) such modifications as may be required by the Bankruptcy Court (provided that Sellers shall not have requested that the Bankruptcy Court require such modifications and provided further that such modification are no more unfavorable, considered as a whole, to Purchaser than to the ad hoc committee of Sellers' existing secured lenders identified in the plan of reorganization filed by Sellers on the date hereof) and (B) such other modifications as are reasonably acceptable to Purchaser and Sellers); and (ii) providing for modification of the existing agreements pertaining to the allocation and use of specified shared assets in a manner substantially consistent with the terms attached hereto as Exhibit F (subject to such modifications as may be mutually agreed to by Purchaser and Sellers); and

(e) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

10.2 Conditions Precedent to Obligations of Sellers. The obligation of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part):

(a) The representations and warranties of Purchaser set forth in this Agreement, disregarding all qualifications and exceptions contained therein relating to materiality or Purchaser Material Adverse Effect, shall be true and correct at and as of the Closing Date as if made on and as of the Closing Date (or, to the extent given as of a specific date, as of such date), except for such failures to be true and correct that individually and in the aggregate would not be reasonably likely to result in a Purchaser Material Adverse Effect. Sellers shall have received a certificate signed by an authorized signatory of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 4.3.

10.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the

fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part):

(a) There shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) The Required Consents shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Body shall have occurred.

(c) The Bankruptcy Court shall have entered the Bidding Procedures Order;
and

(d) The Bankruptcy Court shall have entered the Sale Order and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court.

10.4 Frustration of Closing Conditions. Neither Purchaser nor Sellers may rely on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, if such failure was directly caused by such Party's failure to comply with any material provision of this Agreement.

ARTICLE XI

SURVIVAL; REMEDIES; LIMITATION ON LIABILITY

11.1 No Survival of Representations and Warranties or Pre-Closing Covenants. All representations and warranties in this Agreement, and the covenants, agreements and obligations in this Agreement that are to be performed at or before the Closing, shall not survive the Closing and the consummation of the Transactions and none of the Parties shall have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants, agreements and obligations contained in this Agreement to be performed after the Closing shall survive the Closing, and, subject to the terms of this Agreement (including Section 11.3), each Party shall be liable to the other after the Closing for any breach thereof.

11.2 Injunctive Relief. Each Party agrees that any breach of this Agreement would constitute irreparable harm and damages at law are an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, either Party is entitled to injunctive relief with respect to any such breach, including specific performance of such covenants or obligations or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants or obligations contained in this Agreement. Each Party hereby waives any requirement for the securing or posting of any bond in connection with any such injunctive relief. The rights set forth in this Section 11.2 shall be in addition to any other rights that a Party may have at law or in equity pursuant to this Agreement.

11.3 Limitations on Liability.

(a) *Waiver of Claims.*

(i) IF THE CLOSING OCCURS, PURCHASER SHALL BE DEEMED TO HAVE WAIVED, AND HEREBY WAIVES, IN FULL ANY BREACH OF, AND CLAIMS ARISING THEREFROM, SELLERS' REPRESENTATIONS OR WARRANTIES, COVENANTS, AGREEMENTS OR OBLIGATIONS THAT ARE TO BE PERFORMED AT OR BEFORE THE CLOSING, WHETHER OR NOT PURCHASER IS AWARE OF, OR BECOMES AWARE OF, SUCH BREACH BEFORE, AT OR AFTER THE CLOSING.

(ii) IF THE CLOSING OCCURS, SELLERS SHALL BE DEEMED TO HAVE WAIVED, AND HEREBY WAIVE, IN FULL ANY BREACH OF PURCHASER'S REPRESENTATIONS OR WARRANTIES THAT ARE TO BE PERFORMED AT OR BEFORE THE CLOSING, WHETHER OR NOT SELLERS ARE AWARE OF, OR BECOME AWARE OF, SUCH BREACH BEFORE, AT OR AFTER THE CLOSING.

(b) *Dollar Limitations on Claims Against Sellers.* No claims under this Agreement may be made against either Seller until the total of all Losses with respect to such claims exceeds one percent (1%) of the Initial Cash Consideration, provided that any such claims shall be payable as of the first dollar associated with claim.

(c) *Dollar Limitations on Claims Against Purchaser.* No claims under this Agreement may be made against Purchaser until the total of all Losses with respect to such claims exceeds one percent (1%) of the Initial Cash Consideration, provided that any such claims shall be payable as of the first dollar associated with claim.

(d) *Maximum Liability.* NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IF THE CLOSING OCCURS, IN NO EVENT SHALL SELLERS' AGGREGATE LIABILITY FOR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS, WHETHER RELATING TO A BREACH OF A REPRESENTATION AND WARRANTY, COVENANT, AGREEMENT OR OBLIGATION IN THIS AGREEMENT AND WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAWS OR OTHERWISE, EXCEED SELLERS' LIABILITY CAP; PROVIDED, HOWEVER, THAT, SUCH LIMITATION ON LIABILITY SHALL NOT APPLY TO ANY SUCH LOSSES RESULTING FROM, ARISING OUT OF OR RELATING TO (I) ANY EXCLUDED LIABILITY (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF THE SPECIFIC EXCLUDED LIABILITY GIVING RISE TO THE LOSSES) OR (II) ANY FEES AND EXPENSES OWED TO ANY PERSON WHO HAS ACTED, DIRECTLY OR INDIRECTLY, AS A BROKER, FINDER OR FINANCIAL ADVISOR TO SELLERS IN CONNECTION WITH THE TRANSACTIONS (WHICH LOSSES SHALL BE LIMITED TO THE ACTUAL DOLLAR AMOUNT OF SUCH FEES AND EXPENSES). THE PARTIES AGREE THAT SELLERS' LIABILITY CAP IS AN AMOUNT THAT IS REASONABLE IN LIGHT OF THE ANTICIPATED OR ACTUAL HARM CAUSED BY ANY SUCH BREACH CONTEMPLATED ABOVE, THE DIFFICULTIES OF PROOF OF LOSS ARISING FROM

SUCH BREACH, AND THE INCONVENIENCE OR INFEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY FOR SUCH BREACH.

(e) *Limitation of Damages.* NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES (INCLUDING LOSS OF REVENUE, INCOME OR PROFITS BUT ONLY TO THE EXTENT THE SAME ARE NOT DIRECT DAMAGES), DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OF ANY OTHER PARTY OR ANY OF SUCH PARTY'S AFFILIATES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE; PROVIDED, HOWEVER, THAT SUCH LIMITATIONS SHALL NOT LIMIT ANY PARTY'S RIGHT TO RECOVER CONTRACT DAMAGES IN CONNECTION WITH THE OTHER PARTY'S FAILURE TO CLOSE IN VIOLATION OF THIS AGREEMENT.

(f) *Remedies Cumulative.* Subject to Sections 11.3(a) through (d) of this Agreement, all remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XII

TAXES

12.1 Transfer Taxes. The Parties agree that for purposes of Texas state sales and use taxes, each Party shall report the Transaction as a sale by Handley of the entire operating assets of its business, separate division, branch or identifiable segment of a business within the meaning of Texas Tax Code Section 151.304(b)(2) and Texas Administrative Code Section 3.316(d). In addition, the Parties further intend (and Sellers agree to cooperate with Purchaser's reporting position) that for purposes of Texas Tax Code Section 151.304(b)(3) and Texas Administrative Code Section 3.316(d), the Transaction will be considered a transfer of assets the result of which is that the real or ultimate ownership of the property is substantially similar to that which existed before the transfer. Purchaser shall be responsible for (and shall indemnify and hold harmless Sellers and their directors, officers, employees, Affiliates, agents, successors, members, managers, successors and assigns from and against) any sales, use, stamp, documentary, value added, goods and services, filing, recording, transfer or similar Taxes (including any real property transfer Taxes, UCC3 filing fees, real estate, aircraft and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings, and including any interest or penalty thereon) payable in connection with the Transaction ("Transfer Taxes"). Purchaser shall also be responsible for (and shall indemnify and hold harmless Sellers and their directors, officers, employees, Affiliates, agents, successors, members, managers and assigns from and against) any costs incurred by Sellers, including reasonable attorneys' fees, in the prosecution or defense of any audit or investigation with respect to Transfer Taxes that is initiated by any governmental authority. To the extent that any Transfer Taxes are required to be paid and are paid by Sellers or their Affiliates (or such Transfer Taxes are assessed against and paid by Sellers or their Affiliates), Purchaser shall promptly reimburse Sellers or such Affiliates for such Transfer Taxes. Sellers and Purchaser shall cooperate and consult with each other prior

to filing any Tax Returns in respect of Transfer Taxes. Sellers and Purchaser shall cooperate and otherwise take commercially reasonable efforts to allow Purchaser to qualify for any available exemptions for Transfer Taxes, including, the furnishing by Sellers to Purchaser of an executed Statement of Occasional Sale on Texas Form 01-917 at the Closing, indicating Sellers' belief that the occasional sale requirements described in the first sentence above of this Section 12.1, have been satisfied; provided, however, that if any exemptions that are claimed are ever denied or challenged by the Texas Comptroller of Public Accounts or any other Governmental Body, Purchaser shall be liable for such Transfer Taxes.

12.2 Tax Payments. Beginning as of the Closing Date, Purchaser shall be responsible for and shall pay all real and personal property Taxes or similar ad valorem Taxes payable with respect to the Purchased Assets, the Assumed Liabilities or the Business, regardless of the taxable period to which such Taxes are attributable.

12.3 Purchase Price Allocation. Purchaser shall allocate the Purchase Price (which shall include, for this purpose, the Assumed Liabilities) among the Purchased Assets in accordance with Section 1060 of the Code, and Treasury Regulations promulgated thereunder (the "Allocation"). The Allocation shall be conclusive and binding on Purchaser. Purchaser shall not (nor shall it permit any Affiliate of Purchaser to) take any position inconsistent with the Allocation on any Tax Return or in any Tax Claim, in each case, except to the extent otherwise required pursuant to a change in Law occurring after the date hereof, or a "determination" within the meaning of Section 1313(a) of the Code (or any analogous provision of state, local or foreign law). The Allocation shall be appropriately adjusted to the extent necessary to reflect any adjustments to the Purchase Price for U.S. federal income tax purposes.

12.4 Audits, Claims and Proceedings. Sellers shall have the right to control the conduct of the defense of any examination, contest, claim or other Proceeding relating to Taxes ("Tax Claim") to the extent relating to Excluded Taxes; provided, however, that Sellers will not have the right to settle any such Tax Claim if the resolution or determination of such Tax Claim is reasonably likely to materially adversely affect Purchaser without first obtaining Purchaser's written consent, such consent to not be unreasonably withheld, conditioned or delayed.

12.5 Cooperation. Sellers, on the one hand, and Purchaser, on the other hand, shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a Liability for Taxes or a right to a refund of, or a credit or prepayment of or against, Taxes, or participating in or conducting any Tax Claim. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Governmental Bodies. Any information obtained under this Section 12.5 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any Tax Claim.

ARTICLE XIII

MISCELLANEOUS

13.1 Expenses and Financial Advisors Fees. Except as otherwise provided in this Agreement, each Party shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and the other Transaction Documents and the consummation of the Transactions, including any fees and expenses owed to any Person who has acted, directly or indirectly, as a broker, finder or financial advisor for such Party in connection with the Transactions; provided, however, that Purchaser shall be responsible for and shall indemnify Sellers for any governmental charges relating to HSR Act filing fees (if any), UCC3 filing fees, Federal Aviation Administration, Interstate Commerce Commission, Department of Transportation, ERCOT, FERC, PUCT, RRC, real estate and motor vehicle registration, title recording or filing fees and other amounts payable in respect of transfer filings in connection with the Transactions.

13.2 Governing Law. This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement (including the Annexes, Exhibits and Schedules) or any other Transaction Document, or the negotiation, execution, termination, validity, performance or nonperformance of this Agreement or any other Transaction Document, or the Transactions shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such State, without regard to any conflict of laws principles thereof.

13.3 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement or any other Transaction Document and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement or any other Transaction Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all Proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.6; provided, however, that if the Bankruptcy Case has closed or is not commenced, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) To the fullest extent permitted by applicable Law, each of the Parties hereby consents to process being served by any Party in any suit, action or proceeding by

delivery of a copy thereof in accordance with the provisions of Section 13.6. For purposes of implementing the Parties' agreement to appoint and maintain an agent for service of process in the State of Delaware, to the extent that Purchaser has not as of the Effective Date already duly appointed such an agent, Purchaser shall, at or prior to the signing of this Agreement, appoint Corporate Creations Network Inc., with address at 3411 Silverside Road, Suite 104, Tatnall Building Wilmington, DE 19810, as such agent.

13.4 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, MATTER OR PROCEEDING BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT, ANY PROVISION HEREOF OR THEREOF OR ANY OF THE TRANSACTIONS.

13.5 Entire Agreement; Amendments and Waivers.

(a) This Agreement and the other Transaction Documents constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, which includes the Business, the Handley Plant and Transactions, and supersedes all of the Parties' prior and contemporaneous agreements, understandings, negotiations, inducements, representations, warranties, covenants or conditions, whether oral, written or electronic, whether express or implied, with respect to that subject matter.

(b) This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) five (5) days after being deposited with the United States Post Office, by registered or certified mail, postage prepaid, (c) one (1) Business Day following the day sent by overnight courier (with written confirmation of receipt), or (d) when sent by electronic mail (with acknowledgment received), in each case at the following addresses and (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

FTI Consulting, Inc.
1001 Fannin Street, Suite 3950
Houston, Texas 77002
Attention: David Rush
Email: David.Rush@FTIConsulting.com

Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Attention: Daniel DeFranceschi
Email: defranceschi@rlf.com

If to Purchaser, to:

Exelon Generation Company, LLC c/o Exelon Business Services Company,
LLC
Attention: Nadim Kazi, Associate General Counsel,
John Paffenbarger, Director, Corporate Development
10 S. Dearborn St.
Chicago, IL 60603
Email: nadim.kazi@exeloncorp.com

With a copy to:

DLA Piper LLP (US)
Attention: Richard Chesley
444 W Lake St #900
Chicago, IL 60606
Email: richard.chesley@dlapiper.com

13.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

13.8 Binding Effect; No Third-Party Beneficiaries; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any Third-Party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made

by Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties (by Sellers, in the case of a proposed assignment by Purchaser) and any attempted assignment without the required consents shall be void; provided, however, notwithstanding the foregoing, (a) Sellers are hereby authorized to assign this Agreement or of any their rights or obligations hereunder to any Permitted Assigns without the consent of Purchaser and (b) Purchaser may assign this Agreement or of any its rights or obligations hereunder to any Affiliate of Purchaser without the consent of the Sellers (provided that Purchaser's assignee agrees to assign this Agreement or all of the assigned rights or obligations back to Purchaser if at any time such assignee ceases to be an Affiliate of Purchaser). No assignment of this Agreement or any obligations hereunder shall relieve the Parties of their obligations under this Agreement. Upon any permitted assignment by Purchaser, as assignor, the references in this Agreement to Purchaser shall also apply to the assignee of Purchaser's rights or obligations unless the context otherwise requires. Upon any permitted assignment by Sellers, as assignors, the references in this Agreement to Sellers shall also apply to any assignee of Sellers' rights or obligations unless the context otherwise requires.

13.9 Non-Recourse.

(a) No past, present or future director, officer, employee, agent, advisor, incorporator, member, manager, partner, creditor, stockholder, interest holder or other non-Seller Affiliate of Sellers shall have any liability for any obligations or liabilities of Sellers under this Agreement or the Seller Documents of or for any claim based on, in respect of, or by reason of, the Transactions.

(b) No past, present or future director, officer, employee, agent, advisor (including any of the Sellers' Advisors), incorporator, member, manager, partner, creditor, stockholder, interest holder or other non-controlled Affiliate of Purchaser shall have any liability for any obligations or liabilities of Purchaser under this Agreement or the Purchaser Documents of or for any claim based on, in respect of, or by reason of, the Transactions.

13.10 Privileged Communications.

(a) Sellers and Purchaser hereby acknowledge and agree that notwithstanding any provision of this Agreement, neither Purchaser nor any of its Affiliates shall have access to (and each hereby waives any right of access it may otherwise have with respect to) any Privileged Communications, whether or not the Closing occurs. Without limiting the generality of the foregoing, Purchaser hereby acknowledges and agrees, upon and after the Closing: (i) neither Purchaser nor any of its Affiliates shall be a holder of, or have any right, title or interest to the Privileged Communications, (ii) only Sellers shall hold property rights in the Privileged Communications and shall have the right to waive or modify such property rights and (iii) Sellers shall have no duty whatsoever to reveal or disclose any Privileged Communications to Purchaser or any of its Affiliates.

(b) To the extent that any Privileged Communications otherwise not covered are disclosed or made available to Purchaser, the Parties hereby agree (i) that the disclosure, receipt and/or review of such Privileged Communication is entirely inadvertent and shall not

waive, modify, limit or impair in any form or fashion the protected nature of the Privileged Communications, (ii) it is their desire, intention and mutual understanding that the sharing of such material is not intended to, and shall not, waive or diminish in any way the confidentiality of such material or its continued protection under the attorney-client privilege, common interest privilege, work product doctrine or other applicable privilege and (iii) Sellers shall have the right in their sole discretion and at any time to require the return and/or destruction of the Privileged Communications.

13.11 Counterparts; Electronic Signature and Delivery.

(a) This Agreement and any other Transaction Documents may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the Parties and delivered to the other Parties.

(b) This Agreement and any other Transaction Documents may be signed electronically and any signature on this Agreement or any other Transaction Documents may be transmitted electronically and any such electronic signature or electronic transmission of a signature will constitute an original signature for all purposes. The delivery of copies of this Agreement or other Transaction Documents, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have duly executed this Agreement as of the date first written above.

SELLERS:

HANDLEY POWER, LLC

**By: EXGEN TEXAS POWER, LLC,
its sole member**


By: 
Name: David Rush
Title: Chief Restructuring Officer

EXGEN TEXAS POWER, LLC

By: 
Name: David Rush
Title: Chief Restructuring Officer

PURCHASER:

EXELON GENERATION COMPANY, LLC

By: 
Name: Kenneth W. Cornew
Title: President and CEO

ANNEX A

DEFINITIONS

"Accounts Payable" means, solely to the extent arising from the Business, money owed to suppliers, vendors or other trade counter parties for the delivery of goods and services to or for Handley, whether invoiced or unvoiced, and unpaid. Accounts Payable includes all amounts owed in the Ordinary Course of Business under documents and arrangements such as purchase requisitions, purchase orders, contracts, compliance with jurisdictional matters or utilities and oral arrangements. For purposes of this Agreement, Accounts Payable excludes Cure Costs and reimbursement for Critical Vendor Payments.

"Accounts Receivable" means, solely to the extent arising from the Business, (a) all trade accounts receivable and other rights to payment from customers of Handley and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Handley, including any amounts due to Handley from the Company in respect of trades placed by the Company or an entity acting on the Company's behalf as a qualified scheduling entity "market participant" on behalf of Handley in ERCOT, (b) all other accounts or notes receivable of Handley and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such Person, and the term "control" (including, with correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of Equity Interests, by contract or otherwise; provided that Sellers and any Persons controlled by Sellers shall not be considered to be Affiliates of Purchaser, and Purchaser and any Persons controlled by Purchaser (excluding Sellers and any Persons controlled by Sellers) shall not be considered to be Affiliates of Sellers.

"Agreement" has the meaning set forth in the preamble.

"Air Emissions Credit" shall mean a reduction of carbon dioxide (CO₂), nitrogen oxides (NO_x) or mercury that is certified by a Governmental Body as real, quantifiable, surplus, permanent and enforceable, and is recorded, inventoried, or approved as such.

"Allocation" has the meaning set forth in Section 12.3.

"Allowance" shall mean an authorization by the United States Environmental Protection Agency under the Clean Air Act (42 U.S.C. § 7401 et seq.) or any other similar Environmental Law (including applicable state Laws and the Regional Greenhouse Gas Initiative) to emit sulfur dioxide (SO₂), nitrogen oxide (NO_x) or carbon dioxide (CO₂) during a specified control period.

"Alternative Transaction" means a transaction or series of related transactions pursuant to which Sellers accept a bid for all or a substantial and material portion of the Purchased Assets or any group of assets that includes all or a substantial and material portion of the Purchased Assets, from a Person other than Purchaser or any Affiliate of Purchaser (or a group or joint venture that includes Purchaser or any Affiliate of Purchaser), as the highest or best offer, in accordance with the Bidding Procedures Order or otherwise, but does not mean the sale of goods or services of the Business conducted in the Ordinary Course of Business.

"Annexes" means the annexes attached to this Agreement.

"Article" has the meaning set forth in Section 1.2(a)(v).

"Assignment and Assumption Agreement" has the meaning set forth in Section 4.2(b).

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Auction" means that certain auction, if any, conducted pursuant to the terms of the Bidding Procedures Order.

"Avoidance Actions" means any and all claims and causes of action arising under the Bankruptcy Code, including Sections 544 through 553 thereof, or any similar laws of the United States or any state, territory or possession thereof, or the District of Columbia (including any preference or fraudulent conveyance action under such laws).

"Back-Up Bidder" has the meaning set forth in the Bidding Procedures Order.

"Bankruptcy Case" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bidding Procedures Order" means an order of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Sellers that, among other things, establishes a date by which qualified bids meeting the requirements approved in the Bidding Procedures Order must be submitted by bidders and establishes procedures for the Auction process.

"Bid Protections" has the meaning set forth in Section 7.4.

"Bill of Sale" has the meaning set forth in Section 4.2(a).

"Break-Up Fee" has the meaning set forth in Section 7.4.

"BSC" means Exelon Business Services Company, LLC.

"Business" means the ownership and operation of the Handley Plant as currently conducted by Sellers (it being understood that the Business shall not include any of the Excluded Business).

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business (other than Saturday or Sunday) and are not required or authorized to close, and shall be deemed to open at 9:00 a.m. and close at 5:00 p.m. (Prevailing Eastern Time).

"Cash and Cash Equivalents" means all of Sellers' cash (including petty cash and checks and drafts received or in transit, including all checks and drafts that have been submitted, posted or deposited, prior to the Closing Date Effective Time), checking account balances, bank deposits, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper and government securities, other cash equivalents and similar cash items.

"Casualty Estimate" has the meaning set forth in Section 8.10(a).

"Claim" has the meaning set forth in Section 101(5) of the Bankruptcy Code.

"Closing" has the meaning set forth in Section 4.1.

"Closing Date" has the meaning set forth in Section 4.1.

"Closing Date Effective Time" has the meaning set forth in Section 4.1.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" has the meaning set forth in the preamble.

"Competing Bid" has the meaning set forth in Section 7.1.

"Concession" has the meaning set forth in Section 8.12(b).

"Confidentiality Agreement" has the meaning set forth in Section 8.5.

"Consent" means all consents, waivers, approvals, allowances, authorizations, declarations, filings, recordings, registrations, validations or exemptions and notifications.

"Contract" means any written agreement, contract, indenture, note, bond, loan instrument, lease, purchase order, sales order, license or other agreement, and any amendments, modifications or supplements thereto.

"Credit Agreement" means that certain Credit Agreement, dated as of September 18, 2014, among (a) the Company, as borrower, (b) ExGen Texas Power Holdings, LLC and the Project Companies, as guarantors, (c) the Lenders (as defined therein), (d) Bank of America, N.A., as administrative agent for the Lenders, as Issuing Lender (as defined therein) and as collateral agent for the Secured Parties (as defined therein), as sole lead arranger and as sole

book runner, and (e) Wilmington Trust, National Association, as depository agent, as amended by that certain First Amendment to Credit Agreement, dated as of October 15, 2014, and as further amended by that certain Consent, Waiver and Amendment Agreement (the "CWA"), dated as of May 2, 2017.

"Critical Vendor Payments" means payments made by Sellers pursuant to an Order issued by the Bankruptcy Court providing for the payment of obligations owed to critical vendors (or other similar Order) in respect of (i) any Contract set forth on Schedule 2.1(h) or (ii) any other Purchased Contract.

"Cure Costs" means any and all amounts, costs or expenses that must be paid or actions that must be performed pursuant to Sections 365(b) and (f) of the Bankruptcy Code in connection with assumption and/or assignment of any Purchased Contract, as ultimately determined by the Bankruptcy Court.

"Debtor Relief Laws" means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions in effect from time to time.

"Deposit" has the meaning set forth in Section 3.1(b).

"Documents" means all files, documents, electronically stored information in any format or in any medium or other storage device including electronically transmitted written or vocal messages, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, other data or data compilations, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business and the Purchased Assets, in each case whether or not in electronic form.

"Effective Date" means the date of this Agreement.

"Encumbrances" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance.

"Environmental Law" means all applicable Law relating to protection of human health and safety, or the environment or the natural resources including the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), Resources Conservation and Recovery Act (42 U.S.C. §6901 et seq.), Safe Drinking Water Act (42 U.S.C. §3000(f) et seq.), Toxic Substances Control Act (15 U.S.C. §2601 et seq.), Clean Air Act (42 U.S.C. §7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §5101, et seq.), the Clean Water Act (33

U.S.C. §1311, et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001, et seq.) and the Occupational Safety and Health Act of 1970 (29 U.S.C. §651, et seq.).

"Environmental Permit" means any Permit required by an Environmental Law for the ownership or operation of the Handley Plant, Purchased Assets or the Business.

"Equity Interests" means capital stock, partnership or limited liability company interests, trust interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

"Equivalent Agreement" has the meaning set forth in Section 10.1(c).

"ERCOT" means the Electric Reliability Council of Texas, Inc., a Texas non-profit corporation, or any successor entity thereto.

"ERCOT Protocols and Other Binding Documents" mean the documents adopted by ERCOT, including any attachments or exhibits referenced therein, as amended from time to time, that contain the scheduling, operating, planning, reliability and settlement (including registration) policies, rules, guidelines, procedures, standards and criteria of ERCOT. "Other Binding Documents" include the ERCOT Market Guides. The version of the ERCOT Protocols or Other Binding Document in effect at the time of the performance or non-performance of an action shall govern with respect to that action.

"Escrow Agent" means the agent as described in the Escrow Agreement.

"Escrow Agreement" has the meaning set forth in Section 3.1(b).

"EWG" means an "Exempt Wholesale Generator" within the meaning of the PUHCA.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Business" means all of the Sellers businesses and operations other than the Business, including the ownership and operation of the Excluded Plants, in each case as currently conducted by Sellers.

"Excluded Contracts" means (a) the Contracts set forth on Schedule 2.5(a) or (b) the Hedging Agreements.

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Excluded Permit" means any of those permits set forth on Schedule 2.2(c).

"Excluded Plants" means the four (4) natural gas fired electricity generating power plants located in Texas in the ERCOT power market North and Houston zones and

located at 9201 Wolf Hollow Court, Granbury, Texas, 3863 S. State Highway 60, Wharton, Texas, 10202 Strang Road, LaPorte, Texas, and 2233A Mountain Creek Parkway, Dallas, Texas.

"Excluded Taxes" means any Taxes imposed on or with respect to, arising out of, or relating to, the Purchased Assets, the Assumed Liabilities or the Business for any Pre-Closing Period; provided, however, that Excluded Taxes shall not include any (a) Taxes resulting from any act taken or transaction entered into by Purchaser or any of its Affiliates after the Closing, (b) Transfer Taxes; (c) real or personal (including intangible) property Taxes or similar ad valorem Taxes payable on or after the Closing Date or (d) Taxes imposed on a consolidated, combined or unitary basis on Purchaser or its Affiliates. For purposes of this Agreement, in the case of any Straddle Period, (x) any real or personal (including intangible) property Taxes or similar ad valorem Taxes and any other Taxes imposed on a periodic basis for the Pre-Closing Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Period and the denominator of which is the number of days in the entire Straddle Period and (y) any Taxes for the Pre-Closing Period other than those Taxes covered in clause (x) above shall be computed as if such taxable period ended as of the close of business on the Closing Date.

"Excluded Terminations" has the meaning set forth in Section 8.12(c).

"ExGen" has the meaning set forth in the Preamble.

"Exhibits" means the exhibits attached to this Agreement.

"Fees and Expenses" has the meaning set forth in Section 7.4.

"FERC" means the Federal Energy Regulatory Commission.

"FPA" means the Federal Power Act, as amended, including the regulations promulgated thereunder.

"Fuel Oil Adjustment" has the meaning set forth in Section 8.3(b)(i)(3).

"Fuel Oil Baseline Amount" has the meaning set forth in Section 8.3(b)(i)(3).

"Fuel Oil Closing Amount" has the meaning set forth in Section 8.3(b)(i)(3).

"Fuel Transportation Agreements" has the meaning set forth in Section 2.5(d).

"Furniture and Equipment" means all equipment, machinery, fixtures, vehicles, spare parts, furniture and other tangible property owned or leased by Sellers, in each case located at the Handley Plant and designated or intended to be used in the operation of the Business, including all attachments, appliances, fittings, gas and oil burners, lighting fixtures, signs, doors, cabinets, partitions, desks, mantels, rolling stock, machines, tools, motors, pumps, screens, plumbing, heating, air conditioning, refrigerators, freezers, refrigerating and cooling systems, racks, ovens, stoves, carpets, floor coverings, wall coverings, artwork, office equipment, kitchen

appliances, Software, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, registers, safes, trash containers, meters and scales, combinations, codes and keys, and any other furniture, fixtures, equipment and supplies, in each case Primarily Related to the Business.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"GO" means the "Generator Owner" as defined in "Appendix 5B - Statement of Compliance Registry Criteria", as promulgated from time to time by NERC.

"GOP" means the "Generator Operator" as defined in "Appendix 5B - Statement of Compliance Registry Criteria", as promulgated from time to time by NERC.

"Governmental Body" means any federal, state, local, municipal, foreign or other (a) government, (b) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal) or (c) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature, including any arbitration tribunal.

"Handley" has the meaning set forth in the Recitals.

"Handley O&M Agreement" means that certain Operation and Maintenance Agreement between Handley and ExGen dated as of September 10, 2014.

"Handley Plant" has the meaning set forth in the Recitals.

"Hardware" means any and all computer and computer-related hardware, including computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Hazardous Material" means any materials (including substances, chemicals compounds, mixtures, wastes, pollutants and contaminants) (a) to the extent such materials are prohibited, limited or regulated by Environmental Laws as "hazardous" or "toxic," or (b) petroleum products and their derivatives to the extent regulated by Environmental Laws.

"Hedging Agreements" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, congestion revenue rights or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published

by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement, including any such obligations or liabilities under any such master agreement or related schedules, other than the Hedging Agreements listed on Part A of Schedule 2.1(h).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Improvements" means buildings, structures, systems, fixtures and facilities located on, and easements, rights-of-way, privileges, improvements, licenses, hereditaments, appurtenances, roads, sidewalks, parking lots, infrastructure improvements, whether benefiting or encumbering, and all other rights, benefits, duties and liabilities belonging, or Primarily Related, to the Real Property.

"Indebtedness" of any Person means, without duplication: (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business), (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, (e) all obligations of the type referred to in clauses (a) through (d) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations and (f) all obligations of the type referred to in clauses (a) through (e) of other Persons secured by any Encumbrance on any property of such Person (whether or not such obligation is assumed by such Person).

"Initial Cash Consideration" has the meaning set forth in Section 3.1(a).

"Intellectual Property" means the following intellectual property rights, both statutory and common law rights, if applicable: (a) works of authorship, copyrights, and registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, business names, logos, trade dress, and registrations and applications for registrations thereof and (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom.

"Interim Period" means the period of time from the Effective Date until either (a) the Closing Date or (b) the date any valid termination of this Agreement becomes effective.

"Knowledge of Sellers" means the actual knowledge of only those Representatives of Sellers identified on Schedule 1.1.

"Known Fact" has the meaning set forth in Section 6.10.

"Laws" means all applicable laws, statutes, codes, treaties, rules, regulations, ordinances and other pronouncements having the effect of law of any Governmental Body and all Debtor Relief Laws. For the avoidance of doubt, Laws include PUCT Rules, ERCOT Protocols and Other Binding Documents, RRC Rules, and Reliability Standards.

"Liability" means any debts, adverse claims, commitments, responsibilities, liability or obligation of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, vested or unvested, accrued or unaccrued, liquidated or unliquidated, or due or to become due and whether or not reflected, or required to be reflected, in such Person's balance sheet or other books and records), and including all costs and expenses relating thereto.

"Loss" means any actual losses, liabilities, claims, damages or expenses (excluding any costs of investigation or defense, attorneys' fees and expenses) of a Party arising from or in connection with a breach or alleged breach by the other Party of this Agreement or the Transaction Documents, or other claim arising out of or in connection with this Agreement or the Transaction Documents.

"Material Contracts" has the meaning set forth in Section 5.9(a).

"NERC" means the North American Electric Reliability Corporation.

"NERC Compliance Registry" means the listing of all organizations registered by NERC and therefore subject to compliance with its Reliability Standards.

"Neutral Expert" has the meaning set forth in Section 8.10(b).

"Nonassignable Assets" has the meaning set forth in Section 2.6(c).

"Noticing Party" has the meaning set forth in Section 8.6(b).

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice taking into account, with respect to Sellers, the business exigencies arising from Sellers' financial condition and status as potential filers under Chapter 11 of the Bankruptcy Code.

"Organizational Documents" means (a) the certificate or articles of incorporation or charter documents and bylaws of each Person that is a corporation, (b) the certificate of formation, articles of organization, limited liability company agreements or regulations, as applicable, of each Person that is a limited liability company, (c) the certificates of limited partnership and the agreements of limited partnership of each Person that is a limited partnership, (d) the trust declaration, trust agreement, indenture or other governing instrument for any statutory or common law trust and (e) the memorandum or articles of association, charter, constitution, shareholders agreement, business license or other documentation governing the

formation, organization, governance, ownership and existence of any Person organized under the Laws of a jurisdiction other than the United States of America, the District of Columbia or any State of the United States of America.

"Original Notice" has the meaning set forth in Section 8.6(b).

"Outside Date" has the meaning set forth in Section 4.4(a).

"Overbid Protection" has the meaning set forth in Section 7.4.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Body.

"Permitted Assigns" means any Person, including a liquidating trust, appointed (a) pursuant to a plan of reorganization or liquidation to administer and implement such plan of reorganization or liquidation, as applicable, or (b) to facilitate the administration and closure of the Bankruptcy Case whether under Chapter 11 or Chapter 7 of the Bankruptcy Code.

"Permitted Encumbrances" means (a) those exceptions to title for the Purchased Assets identified in Schedule 5.5, (b) Encumbrances created by any mortgage indenture that will be released prior to or at the Closing, (c) statutory Encumbrances for Taxes or other governmental charges or assessments not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings, (d) mechanics', materialmen's, carriers', workers', repairers' and other similar liens arising or incurred in the Ordinary Course of Business relating to obligations as to which there is no default on the part of Sellers or the validity of which are being contested in good faith, (e) zoning, entitlement, environmental or conservation restrictions and other land use and environmental regulations imposed by Governmental Bodies, (f) recorded Encumbrances, easements, restrictions, covenants and licenses affecting real property incurred in the Ordinary Course of Business, that do not secure monetary obligations and do not materially interfere with the conduct of the business as currently operated at the Handley Plant or materially detract from the value of the Handley Plant, (g) the covenants and restrictions set forth in this Agreement or any other Transaction Document, (h) any Encumbrances arising in the Ordinary Course of Business by operation of Law with respect to a liability that is not yet due or delinquent or that is being contested in good faith by Sellers, (i) all matters that are disclosed (whether or not subsequently deleted or endorsed over) in the Real Property Documents or title insurance policies (if any) in the form made available to Purchaser prior to the Effective Date, (j) non-exclusive licenses with respect to intellectual property granted in the Ordinary Course of Business, (k) variations between fences, retaining walls, curbs, steps, hedges, shrubs, trees and record lines of title, (l) any minor encumbrances and other minor matters that do not require the payment of money (provided, however, that the same (i) do not materially and adversely interfere with the use and enjoyment of the Real Property at the Closing Date and (ii) do not materially prejudice the anticipated future uses to which the Real Property could be put) (m) provider, utility and telephone company rights and easements to maintain, install or remove poles, wires, cables, pipes, pipelines, boxes and other facilities and equipment

in, over and upon the Real Property and rights and easements for the installation, maintenance and replacement of water mains and sewer lines and facilities and equipment in, over and upon the Real Property, (n) the terms and conditions of the Material Contracts or the Contracts listed on Schedule 5.9(a), (o) any Encumbrance to be released on or prior to Closing, (p) any Encumbrances arising under the Project Financing Documents or any other Documents entered into in connection with the Project Financing Indebtedness, (q) liens or encumbrances that arise solely by reason of acts of or with the approval of Purchaser and (r) any other Encumbrance that is not likely to result in a Seller Material Adverse Effect.

"Person" means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

"Preamble" means the preamble of this Agreement.

"Pre-Closing Fuel Transportation Agreements" means, collectively, the (a) Amended and Restated Natural Gas Transportation Agreement, dated May 1, 2012, between Energy Transportation Fuel, L.P. and the Company (as assignee of ExTex LaPorte), as amended by the First Amendment, dated May 1, 2017 and as amended by the Second Amendment, dated November 1, 2017; and (b) Interruptible Natural Gas Transportation Agreement (ATP-MC#7176), dated as of May 1, 2017, between the Company and Atmos Texas as amended by Amendment No. 1 dated October 27, 2017.

"Pre-Closing Period" means any taxable period ending on or prior to the Closing Date and, in the case of any Straddle Period, the portion of such period ending on and including the Closing Date.

"Primarily Related" to any business, asset or liability, shall mean owned or held primarily by, required primarily for, or used, intended for use, leased or licensed, primarily in connection with, or (in the case of liabilities) to the extent accrued, reserved or incurred in connection with, such business, asset or liability.

"Privileged Communications" means any attorney-client communications, confidences, files, work product or other communications related to the Seller Engagements between Richards, Layton & Finger, P.A., on the one hand, and either FTI Consulting, Inc., Scotia Capital (USA) Inc. or the Sellers, on the other hand, that have not been shared with the Purchaser or its Affiliates or their Representatives before the Closing Date.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Project Companies" means Handley, Mountain Creek Power, LLC, a Delaware limited liability company, LaPorte Power, LLC, a Delaware limited liability company, Wolf Hollow I Power, LLC, a Delaware limited liability company and Colorado Bend I Power, LLC, a Delaware limited liability company.

"Project Employee" means any person employed by an affiliate of Sellers at the Handley Plant as of the Closing Date.

"Project Financing Documents" means all "Financing Documents" (as defined in the Credit Agreement) and the CWA.

"Project Financing Indebtedness" means, at any time, the unpaid balance of principal and accrued interest on the Loans (as defined in the Credit Agreement) and other Indebtedness at such time outstanding under the Credit Agreement and the CWA.

"PUCT" means the Public Utility Commission of Texas or any successor thereto.

"PUCT Rules" mean the substantive rules of the PUCT set forth in Title 16, Chapter 25 of the Texas Administrative Code.

"PUHCA" means the Public Utility Holding Company Act of 2005, as amended, and the regulations of FERC promulgated thereunder.

"PURA" means the Texas Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001 – 43.152 (West 2016) and the regulations of the PUCT thereunder.

"Purchase Price" has the meaning set forth in Section 3.1.

"Purchased Assets" has the meaning set forth in Section 2.1.

"Purchased Contracts" means all Contracts exclusively related to the Purchased Assets to which Sellers are a party, including outstanding purchase orders or other Contracts relating to the provision of services or the sale of products by Sellers, other than the Excluded Contracts.

"Purchased Intellectual Property" has the meaning set forth in Section 2.1(g).

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Documents" means this Agreement and any other agreement, document, instrument or certificate contemplated by this Agreement to which Purchaser is a party or to be executed by Purchaser in connection with the consummation of the Transactions, including the Exhibits.

"Purchaser Fuel Transportation Agreements" has the meaning set forth in Section 2.5(d).

"Purchaser Material Adverse Effect" means, unless the context expressly provides otherwise, a material adverse effect on the business, operations, properties or condition (financial or otherwise) of Purchaser taken together as a whole or on the ability of Purchaser to perform its obligations under this Agreement or to consummate the Transactions; provided, however, that in determining whether a Purchaser Material Adverse Effect has occurred, there shall not be taken

into account any effect resulting from (a) any change in economic or business conditions generally, financial markets generally or in the industry or markets in which any Purchaser operates or is involved, (b) any change in general legal, regulatory or political conditions, including any commencement, continuation or escalation of war, material armed hostilities or terrorist activities or other material international or national calamity or act of terrorism directly or indirectly involving or affecting the United States, (c) any changes in accounting rules or principles (or any interpretations thereof), including changes in GAAP, (d) any change in any Laws (including Environmental Laws), (e) any increases in the costs of commodities or supplies, including fuel, or decreases in the price of electricity, (f) the announcement of the execution of this Agreement or the other Transaction Documents or the purchase of Sellers by Purchaser, or the pendency of or consummation of the Transactions, or any actions required to be taken or not to be taken hereunder or thereunder, including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners or employees of Purchaser or any of its Affiliates, to the extent due to the announcement and performance of this Agreement or the other Transaction Documents or the identity of Sellers, or the consummation of the Transactions, and (g) any change in market design and pricing; provided, further, that, in the case of clauses (a), (b), (e) or (f), only to the extent such changes do not have a disproportionately adverse effect on Purchaser, taken as a whole, compared to other Persons operating in the same industry and jurisdictions in which Purchaser operates.

"Purchaser's Objection Notice" has the meaning set forth in Section 8.10(b).

"Qualified Scheduling Entity" has the meaning set forth in the ERCOT Nodal Protocols, Section 2.1, Definitions and Acronyms, dated June 1, 2017, as the same may be hereafter amended, supplemented or replaced.

"Real Property" means every parcel of real property on which the Handley Plant is located, as described on Schedule 5.7.

"Real Property Documents" has the meaning set forth in Section 5.7.

"Recitals" means the recitals to this Agreement.

"Release" means any spill, emission, migration, leaking, pumping, injection, deposit, disposal or discharge of any Hazardous Materials into the environment, to the extent giving rise to liability under applicable Environmental Laws, but excludes (a) any release which results in exposure to persons solely within a workplace, (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine, (c) the normal application of fertilizer and (d) any discharge in compliance with a Permit.

"Reliability Standards" mean the enforceable NERC or Texas RE Reliability Standard that has been approved by FERC.

"Remedial Action" means all actions to (a) investigate, respond to, clean up, remove, remediate or otherwise mitigate or address any Release of a Hazardous Material into the environment, (b) prevent or minimize the Release or threatened Release of any Hazardous

Material so that it does not migrate to cause substantial danger to the public health or welfare or the environment or (c) perform pre-remedial studies and investigations or post-remedial monitoring and care.

"Replacement Date" has the meaning set forth in Section 8.12(c).

"Representatives" means, as to any Person, its officers, directors, managers, members, employees, agents, counsel, accountants, financial advisers, restructuring advisers, bankers, insurers, financing sources and consultants.

"Required Consents" has the meaning set forth in Section 8.1(a).

"Retained Accounts" has the meaning set forth in Section 2.2(a).

"RRC" means the Railroad Commission of Texas.

"RRC Rules" mean the substantive rules of the RRC set forth in Title 16, Chapters 8 and 18 of the Texas Administrative Code.

"Sale Motion" means the motion or motions of Sellers seeking approval and entry of the Bidding Procedures Order and Sale Order.

"Sale Order" means an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to Purchaser and Sellers approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the Transactions.

"Schedules" means the disclosure schedules attached to this Agreement.

"Section" has the meaning set forth in Section 1.2(a)(v).

"Secured Parties" has the meaning set forth in Project Financing Documents.

"Seller" and "Sellers" have the meanings set forth in the Preamble.

"Sellers' Advisors" means, collectively, Richards, Layton & Finger PA, acting as counsel to the Sellers, and the FTI Consulting, Inc, acting as chief restructuring officer to the Sellers, as replaced from time to time.

"Seller Documents" means this Agreement and any other agreement, document, instrument or certificate contemplated by this Agreement to which a particular Seller is a party or to be executed by that Seller in connection with the consummation of the Transactions, including the Exhibits.

"Seller Engagements" means any matters for which Sellers have engaged Richards, Layton & Finger, P.A., FTI Consulting, Inc., and Scotia Capital (USA) Inc. in connection with a possible negotiated transaction involving Sellers and a Third Party, state or

federal bankruptcy or insolvency proceeding, an out-of-court restructuring and/or any financing transaction.

"Sellers Fuel Transportation Agreements" has the meaning set forth in Section 2.5(d).

"Seller Material Adverse Effect" means, unless the context expressly provides otherwise, a material adverse effect on the business, operations, properties or condition (financial or otherwise) of the Business taken together as a whole; provided, however, that in determining whether a Seller Material Adverse Effect has occurred, there shall not be taken into account any effect resulting from (a) any change in economic or business conditions generally, financial markets generally or in the industry or markets in which the Business operates or are involved, (b) any change in general legal, regulatory or political conditions, including any commencement, continuation or escalation of war, material armed hostilities or terrorist activities or other material international or national calamity or act of terrorism directly or indirectly involving or affecting the United States, (c) any changes in accounting rules or principles (or any interpretations thereof), including changes in GAAP, (d) any change in any Laws (including Environmental Laws), (e) any increases in the costs of commodities or supplies, including fuel or natural gas, or decreases in the price of electricity, (f) the announcement of the execution of this Agreement or the other Transaction Documents or the sale of the Business, or the pendency of or consummation of the Transactions, or any actions required to be taken or not to be taken hereunder or thereunder, including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners or employees of Sellers or any of their Affiliates, to the extent due to the announcement and performance of this Agreement or the other Transaction Documents or the identity of Purchaser, or the consummation of the Transactions, (g) any change in market design and pricing, (h) the pendency of the Bankruptcy Case and any action approved by, or motion made before, the Bankruptcy Court; provided, further, that, in the case of clauses (a), (b) or (e), only to the extent such changes do not have a disproportionately adverse effect on the Business, taken as a whole, compared to other Persons operating in the same industry and jurisdictions in which the Business operates.

"Seller's Liability Cap" means an amount not to exceed five percent (5%) of the Initial Cash Consideration.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, schematics, flow charts and other work product used to design, plan, organize and develop any of the foregoing and (d) all documentation, user manuals and training materials, relating to any of the foregoing, in each case owned, leased, licensed or otherwise used by Sellers in the conduct of the Business.

"Solvent" means, in relation to a Person, that as of any date of determination, (a) the fair value of the assets of such Person will exceed its consolidated Liabilities, (b) the present fair saleable value of the property of such Person will be greater than the amount that will be

required to pay the probable aggregate amount of its Liabilities, as such Liabilities become absolute and mature, (c) such Person will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following such date and (d) such Person will not have incurred and does not intend to incur, or believes it will incur, any Liabilities that it does not believe that it will be able to pay (based on its assets and cash flow) as such Liabilities become due (whether at maturity or otherwise).

"Stalking Horse Agreement" has the meaning ascribed to such term in the Bidding Procedures Order.

"Stalking Horse Bidder" has the meaning ascribed to such term in the Bidding Procedures Order.

"Straddle Period" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"Successful Bidder" means any Person who acquires all or substantially all of the Purchased Assets (in a single transaction or a series of transactions) of Sellers or any of their successors by reason of having submitted the successful bid at the Auction in a manner consistent with and authorized by the Bidding Procedures Order, regardless of whether such Person has acquired such assets or limited liability company interests for investment, strategic operation, liquidation or other purpose.

"Taxes" means all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees and assessments of any kind whatsoever, and any interest, penalty or, addition to tax or additional amount with respect thereto, that are imposed, assessed or collected by any Governmental Body, and any liability for payment of the foregoing amounts as a transferee or successor.

"Tax Claim" has the meaning set forth in Section 12.4.

"Tax Return" means any return, declaration, report, disclosure, statement, information statement, worksheet, schedule and any other document filed, required to be filed or required to be prepared (including any documentation required to be prepared in connection with any applicable transfer pricing law) with respect to Taxes, including any claims for refunds of Taxes and any amendments or supplements to any of the foregoing.

"Texas RE" means Texas Reliability Entity, Inc., a Texas 501(c)(3) non-profit corporation.

"Third Party" means a Person that is not a party to this Agreement (it being understood that Affiliates of Purchaser are not Third Parties).

"Title Commitment" has the meaning set forth in Section 8.11.

"Title Company" has the meaning set forth in Section 8.11.

"Title Policy" has the meaning set forth in Section 8.11.

"Transaction Documents" means this Agreement, each of the officer certificates required by this Agreement to be delivered pursuant to Articles IV and X as conditions to Closing, the Seller Documents and the Purchaser Documents.

"Transactions" means the transactions contemplated by this Agreement and the other Transaction Documents.

"Transfer Taxes" has the meaning set forth in Section 12.1.

"Transferred Credits and Allowances" has the meaning set forth in Section 2.1(l).

"Transmission and Interconnection Facilities" means the electric transmission and distribution, substation and communication facilities located on the Real Property and related Purchased Assets that are used solely in connection with the operation of the Handley Plant, together with all related interconnection rights, rights-of-way and corridor easements Primarily Related to such facilities.

"Treasury Regulations" means the regulations promulgated under the Code by the Internal Revenue Service.

"WARN Laws" means Worker Adjustment and Retaining Notification Act, 29 U.S.C. § 21.01 et seq., and any other similar provision of any Law governing plant closings or mass layoffs.

EXHIBIT A
ESCROW AGREEMENT

[TO BE AGREED]

EXHIBIT B

BILL OF SALE

BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale"), dated as of [_____, 2017], is made and entered into by EXGEN TEXAS POWER, LLC, a Delaware limited liability company (the "Company"), HANDLEY POWER, LLC, a Delaware limited liability company (the "Project Company") and, together with the Company, each a "Seller" and collectively, "Sellers") for the benefit of [EXELON GENERATION COMPANY, LLC, a Pennsylvania limited liability company] ("Purchaser").

WHEREAS, Sellers and Purchaser are parties to that certain Asset Purchase Agreement, dated as of October __, 2017 (as may be amended, modified or supplemented from time to time, the "Purchase Agreement"), pursuant to which Purchaser has purchased certain assets of Sellers;

WHEREAS, capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement; and

WHEREAS, pursuant to this Bill of Sale, Sellers desire to evidence the sale, transfer, assignment, conveyance, grant and delivery to Purchaser of the Purchased Assets.

NOW THEREFORE, for the Purchase Price and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Sellers and Purchaser do hereby agree as follows:

Transfer of Purchased Assets. Each Seller hereby sells, transfers, conveys, delivers and assigns to Purchaser, effective as of 12:00 a.m. (Prevailing Eastern Time) on the date hereof, all of such Seller's right, title and interest, legal and equitable, in and to all of the Purchased Assets.

Further Actions. Sellers covenant and agree to execute and deliver further instruments of transfer and assignment and take such other actions, in each case as Purchaser may reasonably request to more effectively transfer and assign to Purchaser, and vest in Purchaser to title to, each of the Purchased Assets, all at the sole cost and expense of Purchaser.

Terms of the Purchase Agreement. The terms of the Purchase Agreement are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

Governing Law; Submission to Jurisdiction. Without limiting any party's right to appeal any order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Bill of Sale and any other Transaction Document and to decide any claims or disputes which may arise or result from, or be connected with, this Bill of Sale or any other Transaction

Document, any breach or default hereunder or thereunder, or the transactions contemplated hereby or thereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.6 of the Purchase Agreement; provided, however, that if the Bankruptcy Case has closed or is not commenced, the parties hereto agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereto hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. To the fullest extent permitted by applicable Law, each of the parties hereto hereby consents to process being served by any party hereto in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13.6 of the Purchase Agreement.

Binding Effect; Amendments and Waivers. This Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Bill of Sale can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Bill of Sale signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought.

Invalid Provisions. If any term or other provision of this Bill of Sale is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Bill of Sale shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Bill of Sale so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Counterparts. This Bill of Sale may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties hereto and delivered to the other parties.

[Signature Page Follows]

IN WITNESS WHEREOF, Sellers have duly executed this Bill of Sale as of the date first set forth above.

SELLERS:

EXGEN TEXAS POWER, LLC

By: _____
Name: David Rush
Title: Chief Restructuring Officer

HANDLEY POWER, LLC

By: EXGEN TEXAS POWER, LLC,
its sole member

By: _____
Name: David Rush
Title: Chief Restructuring Officer

Acknowledged and agreed to by:

PURCHASER:

[_____]

By: _____

Name:

Title:

EXHIBIT C

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment Agreement"), dated as of [_____, 2017], is made and entered into between EXGEN TEXAS POWER, LLC, a Delaware limited liability company (the "Company"), HANDLEY POWER, LLC, a Delaware limited liability company (the "Project Company" and, together with the Company, each an "Assignor", and collectively, "Assignors"), and [EXELON GENERATION COMPANY, LLC, a Pennsylvania limited liability company] ("Assignee").

WHEREAS, Assignors and Assignee are parties to that certain Asset Purchase Agreement, dated as of October __, 2017 (as may be amended, modified or supplemented from time to time, the "Purchase Agreement"), pursuant to which Assignee has purchased certain assets of Assignors and agreed to assume certain obligations of Assignors and this Assignment Agreement is being entered into in connection with the Purchase Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement;

WHEREAS, pursuant to this Assignment Agreement, Assignors desire to assign certain rights and agreements to Assignee and Assignee desires to assume certain obligations of Assignors;

NOW THEREFORE, for the Purchase Price and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignors and Assignee do hereby agree as follows:

1. Assignment and Assumption. Each Assignor hereby sells, transfers, conveys, delivers and assigns to Assignee, effective as of 12:00 a.m. (Prevailing Eastern Time) on the date hereof (the "Assignment"), all of Assignor's right, title and interest, legal and equitable, in and to each of the Purchased Assets, and any and all of the Assumed Liabilities. Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants of any one or more of Assignors, and to pay and discharge all of the liabilities of any one or more of Assignors to be observed, performed, paid or discharged from and after the date hereof arising from the Purchased Assets and the Assumed Liabilities.

2. Further Actions. Assignors covenant and agree to execute and deliver such further instruments of transfer and assignment and take such other actions, in each case as Assignee may reasonably request to more effectively consummate the assignments and

assumptions contemplated by this Assignment Agreement, all at the sole cost and expense of Assignee.

3. Terms of the Purchase Agreement. The terms of the Purchase Agreement are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

4. Governing Law; Submission to Jurisdiction. Without limiting any party's right to appeal any order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Assignment Agreement and any other Transaction Document and to decide any claims or disputes which may arise or result from, or be connected with, this Assignment Agreement or any other Transaction Document, any breach or default hereunder or thereunder, or the transactions contemplated hereby or thereby, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereto hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 13.6 of the Purchase Agreement; provided, however, that if the Bankruptcy Case has closed or is not commenced, the parties hereto agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County or the courts of the State of Delaware sitting in New Castle County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereto hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. To the fullest extent permitted by applicable Law, each of the parties hereto hereby consents to process being served by any party hereto in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 13.6 of the Purchase Agreement.

5. Binding Effect; Amendments and Waivers. This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Assignment Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Assignment Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought.

6. Invalid Provisions. If any term or other provision of this Assignment Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Assignment Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Assignment Agreement so as to effect the original intent of the

parties hereto as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

7. Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties hereto and delivered to the other parties.

[Signature Page Follows]

IN WITNESS WHEREOF, each of Assignors and Assignee has duly executed this Assignment on the date first set above.

ASSIGNOR:

EXGEN TEXAS POWER, LLC

By: _____
Name: David Rush
Title: Chief Restructuring Officer

HANDLEY POWER, LLC

By: EXGEN TEXAS POWER, LLC,
its sole member

By: _____
Name: David Rush
Title: Chief Restructuring Officer

ASSIGNEE:

[_____]

By: _____

Name:

Title:

EXHIBIT D

DEED

[TO BE AGREED]

EXHIBIT E

FORM OF RELEASES

Capitalized terms not otherwise defined in this Exhibit shall have the meanings assigned thereto in the plan of reorganization filed by the Sellers on the date hereof.

1. Definitions

“*Non-Debtor Releasing Parties*” means, collectively, the following, in each case in their capacity as such: (i) the Ad Hoc Committee and the members thereof, (ii) the Prepetition Agents, (iii) the Releasing Prepetition Lenders, (iv) the Commodity Hedge Counterparty (other than in connection with its rights under the Amended and Restated Hedge Agreement); (v) Bank of America, N.A., in its capacity as the Secured Financial Hedge Counterparty (as defined in the Prepetition Intercreditor Agreement), (vi) the Sponsor (other than in connection with its rights under (x) the Handley APA, (y) any other agreement entered into on or after the Petition Date in connection with the Handley Sale and (z) to the extent relating to any time after the Effective Date, the Sponsor Compromise) and (vii) the Holders of Unimpaired Claims and those Holders of General Unsecured Claims that (a) vote to accept the Plan or (b) either (i) abstain from voting or (ii) vote to reject the Plan and, in the case of either (b)(i) or (b)(ii), do not opt out of the voluntary release contained in Article X.B.2 of the Plan by checking the opt out box on the Ballot, and returning it in accordance with the instructions set forth thereon, indicating that they opt not to grant the releases provided in the Plan.

“*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and each of their respective subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members and managing members), managers, managed accounts or funds, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity at any time on or after the Petition Date, and any Person claiming by or through any of them, including such Related Persons’ respective heirs, executors, estates, servants, and nominees; provided, however, that no insurer of any Debtor shall constitute a Related Person of any Debtor or Reorganized Debtor.

“*Released Party*” means, collectively, the following, in each case in their capacity as such: (i) the Debtors; (ii) the Reorganized Debtors; (iii) the Ad Hoc Committee and the members thereof; (iv) the Prepetition Agents; (v) the Releasing Prepetition Lenders; (vi) the Commodity Hedge Counterparty (other than in connection with its obligations under the Amended and Restated Hedge Agreement); (vii) Bank of America, N.A., in its capacity as the Secured Financial Hedge Counterparty (as defined in the Prepetition Intercreditor Agreement); (viii) the Sponsor (other than in connection with its obligations under (x) the Handley APA, (y) any other agreement entered into on or after the Petition Date in connection with the Handley Sale and (z) to the extent relating to any time after the Effective Date, the Sponsor Compromise); and, in each case of (i) to (viii), the respective Related Persons of each of the foregoing Entities (including, for the avoidance of doubt, the Ad Hoc Committee Professionals).

“*Sponsor*” means Exelon Generation Company, LLC, owner of 100% of the Equity Interests in Parent.

2. Releases

Notwithstanding anything contained to the contrary herein, nothing in this Article X shall be deemed to release, discharge or enjoin the enforcement of any obligations of any Person or Entity under the Handley APA, any other agreement entered into on or after the Petition Date in connection with the Handley Sale, the Sponsor Compromise or the Amended Hedge Agreement (other than Commodity Hedge Agreement Claims due and owing by any of the Debtors as of the Effective Date that have been paid in full in Cash prior to the Effective Date).

Release of Claims and Causes of Action

Release by the Debtors and Their Estates. Pursuant to section 1123(b) and any other applicable provisions of the Bankruptcy Code, and except as otherwise expressly provided in this Plan, effective as of the Effective Date, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, the Debtors and the Reorganized Debtors, in their respective individual capacities and as debtors-in-possession, and on behalf of themselves and their respective Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code (collectively, the “Debtor Releasing Parties”) will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Debtor Releasing Parties) and their respective assets and properties (the “Debtor Release”) from any and all Claims, Causes of Action, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, 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 circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of (i) the Debtors, the Chapter 11 Cases, the marketing of any of the Debtors’ assets, the Handley Sale and the negotiations, formulations and/or preparations of the Handley APA and all other documents and agreements entered into in connection with such sale, including without limitation, the Handley Sale Order, the Disclosure Statement, this Plan and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, including, but not limited to, the Prepetition Credit Agreement and the Sponsor Affiliate Agreements, (iv) the negotiation, formulation or preparation of this Plan, the Disclosure Statement, the Restructuring Documents, or related agreements, instruments or other documents, including the Settled Claims and the Sponsor Compromise, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale, or rescission of the purchase or sale of any Claim or Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other Entity would have been legally entitled to assert for, or on behalf or in the name of, any Debtor, its respective Estate or any Reorganized Debtor (whether directly or derivatively) against any of the Released Parties; *provided, however*, that the foregoing provisions of this Debtor Release shall not operate to waive, release or otherwise impair: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction and/or (ii) the rights of such Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other

agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Settled Claims or liabilities released pursuant to this Debtor Release. Notwithstanding the foregoing, nothing in this Article X.B shall or shall be deemed to (i) prohibit the Debtors or the Reorganized Debtors from asserting and enforcing any claims, obligations, suits, judgments, demands, debts, rights, Causes of Action, Settled Claims or liabilities they may have against any Person that is based upon an alleged breach of a confidentiality or non-compete obligation owed to the Debtors or the Reorganized Debtors and/or (ii) operate as a release or waiver of any Intercompany Claims, in each case unless otherwise expressly provided for in this Plan.

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 herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including the Sponsor Compromise; (ii) a good faith settlement and compromise of the Claims released by the Debtor Release; (iii) in the best interest of the Debtors and their Estates; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

Release by Third Parties. Except as otherwise expressly provided in this Plan, effective as of the Effective Date, to the fullest extent permitted by applicable law, for good and valuable consideration provided by each of the Released Parties, the adequacy and sufficiency of which is hereby confirmed, and without limiting or otherwise modifying the scope of the Debtor Release provided by the Debtor Releasing Parties above, each Non-Debtor Releasing Party (together with the Debtor Releasing Parties, the "Releasing Parties") will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever provided a full discharge, waiver and release to each of the Released Parties (and each such Released Party so released shall be deemed forever released, waived and discharged by the Non-Debtor Releasing Parties) and their respective assets and properties (the "Third Party Release") from any and all Claims, Causes of Action, Litigation Claims and any other debts, obligations, rights, suits, damages, actions, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, whether directly or derivatively held, existing as of the Effective Date or thereafter arising, 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 circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to any of (i) the Debtors, the Chapter 11 Cases, the marketing of any of the Debtors' assets, the sale effectuated by, or otherwise contemplated by, the Handley APA and the Handley Sale Order, the Disclosure Statement, this Plan and the Restructuring Documents, (ii) the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in this Plan, (iii) the business or contractual arrangements between any Debtor and any Released Parties, including, but not limited to, the Prepetition Credit Agreement and the Sponsor Affiliate Agreements, (iv) the negotiation, formulation or preparation of this Plan, the Disclosure Statement, the Restructuring Documents, or related agreements, instruments or other documents, including the Settled Claims and the Sponsor Compromise, (v) the restructuring of Claims or Equity Interests prior to or during the Chapter 11 Cases, (vi) the purchase, sale or rescission of the purchase or sale of any Claim or

Equity Interest of the Debtors or the Reorganized Debtors, and/or (vii) the Confirmation or Consummation of this Plan or the solicitation of votes on this Plan that such Non-Debtor Releasing Party would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties; provided, however, that the foregoing provisions of this Third Party Release shall not operate to waive, release or otherwise impair: (i) any Causes of Action arising from willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction; (ii) any of the indebtedness and obligations of the Debtors and/or the Reorganized Debtors under this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; (iii) the rights of such Non-Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements and documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to Final Order of the Bankruptcy Court; and/or (iv) any objections with respect to any Professional's final fee application or accrued Professional Fee Claims in these Chapter 11 Cases.

The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person and the Confirmation Order will permanently enjoin the commencement or prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, Settled Claims or liabilities released pursuant to this Third Party Release.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (i) in exchange for the good and valuable consideration provided by the Released Parties, including the Sponsor Compromise; (ii) a good faith settlement and compromise of the Claims released by the Third Party Release; (iii) in the best interest of the Debtors and all Holders of Claims and Equity Interests; (iv) fair, equitable and reasonable; and (v) given and made after due notice and opportunity for hearing.

Waiver of Statutory Limitations on Releases

Each of the Releasing Parties in each of the releases contained above expressly acknowledges that although ordinarily a general release may not extend to Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives any and all rights conferred upon it by any statute or rule of law which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the release, which if known by it may have materially affected its settlement with the released party. The releases contained in this Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

Injunction

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE EFFECTIVE DATE, ALL PERSONS

AND ENTITIES ARE, TO THE FULLEST EXTENT PROVIDED UNDER SECTION 524 AND OTHER APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, PERMANENTLY ENJOINED FROM (I) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY SUIT, ACTION OR OTHER PROCEEDING; (II) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE, OR ORDER; (III) CREATING, PERFECTING, OR ENFORCING ANY LIEN OR ENCUMBRANCE; (IV) ASSERTING A SETOFF OR RIGHT OF SUBROGATION OF ANY KIND; OR (V) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, IN EACH CASE ON ACCOUNT OF OR WITH RESPECT TO ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, SETTLED CLAIMS, EQUITY INTEREST, OR REMEDY RELEASED OR TO BE RELEASED, SETTLED OR TO BE SETTLED OR DISCHARGED OR TO BE DISCHARGED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER AGAINST ANY PERSON OR ENTITY SO RELEASED OR DISCHARGED (OR THE PROPERTY OR ESTATE OF ANY PERSON OR ENTITY SO RELEASED, DISCHARGED). ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASES UNDER SECTION 105 OR SECTION 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE.

EXHIBIT F**SHARED ASSETS AGREEMENTS TERM SHEET**

	Description	Proposed Resolution
1.	Shared Assets	<p>The shared assets set forth on Exhibit A hereto and currently held by Colorado Bend Services, LLC (“<u>CBS</u>”) and Wolf Hollow Services, LLC (“<u>WHS</u>”, and with CBS, the “<u>Shared Asset Entities</u>”) will be contributed to Colorado Bend I Power, LLC (“<u>CBI</u>”) or Wolf Hollow I Power, LLC (“<u>WHI</u>”), as applicable, without additional compensation.</p> <p>The following shared assets shall remain the property of CBS and WHS, as applicable: (i) the Colorado Bend (“<u>CB</u>”) well operating permit, (ii) the Wolf Hollow (“<u>WH</u>”) water supply agreement, (iii) WH water supply infrastructure (including related controls), (iv) CB and WH wastewater discharge permits, (v) CB and WH wastewater discharge lines, (vi) crossing permits, (vii) CB security fence between CBI and Colorado Bend II Power, LLC (“<u>CBII</u>”), and (viii) certain reciprocal easements, which, in each case, will remain shared assets (collectively, with spare water pumps referenced in next sentence, the “<u>Shared Assets</u>”).</p> <p>CB and WH spare water pumps for shared assets currently held by CBI and WHI to be contributed to the Shared Asset Entities, without additional compensation.</p> <p>CBI shall transfer to CBII all of its right, title and interest, if any, in and to approximately [0.574]¹ acres of land surrounding Well 5, subject to the absence of any utility, road, transmission line, pipeline or other equipment or property used in the operation of the CBI facility (“<u>CBI Equipment</u>”) (other than CBI Equipment not material to the operation of the CBI facility which may be accessed (for purposes of operation and</p>

¹ Note to Draft: This is the maximum amount of land requested by CBII. Although the exact parcel to be transferred remains subject to continuing review by CBI, the amount of land transferred will be the minimum amount that will satisfy CBII’s needs (not to exceed the requested parcel), subject to the restrictions set forth herein.

	Description	Proposed Resolution
		maintenance) and operated by the CBI O&M Operator pursuant to an easement under the reciprocal easement agreement). CBII shall pay any transfer taxes associated with such transfer.
2.	Shared Asset Entities	<p>WHS or successor entity shall be owned 50%/50% by the direct or indirect owners of WHI and Wolf Hollow II Power, LLC (“<u>WHII</u>”), respectively.</p> <p>CBS or successor entity shall be owned 50%/50% by the direct or indirect owners of CBI and CBII respectively.</p>
3.	Liability of each Project Company	Individual project companies shall be liable under shared asset agreements for amounts to be agreed. In addition, each of WHI/WHII and CBI/CBII shall be individually responsible for fines or penalties assessed by Brazos River Authority, Coastal Bend Groundwater Conservation District or TCEQ resulting from breach of the respective permits caused by the applicable project company breaching the water intake and wastewater discharge allocations specified herein.
4.	Shared Assets Operator ²	Exelon Generation Company, LLC will operate the shared assets retained by CBS/WHS for the benefit of CBI/WHI and CBII/WHII in accordance with prudent industry practices.
5.	Term of Appointment of Shared Assets Operator	4 years; subject to automatic renewal for successive one year terms unless Shared Assets Operator declines.
6.	Removal of Shared Assets Operator by WHI/CBI	<p>Until second anniversary of plan effective date, Shared Assets Operator removeable by CBI/WHI alone only for material breach of the shared assets CB O&M agreement or WH O&M agreement, respectively, subject to customary cure periods to be agreed. Thereafter, operator removeable by CBI/WHI alone upon 120 days’ prior written notice.</p> <p>Replacement operator must be mutually acceptable to both parties.</p>
7.	Termination by Shared Assets Operator	Shared Assets Operator shall terminate operator

² Shared Assets Operator for CB and WH pursuant to separate O&M agreements for Shared Assets other than the WH water infrastructure. For the avoidance of doubt, the Shared Assets Operator will administer the WH BRA Water Supply Agreement, subject to Section 25 hereof.

	Description	Proposed Resolution
		relationship as to CBS or WHS, applicable, in event of change of control of CBII/WHII, non-payment of fees by CBS/WHS or gross negligence by Shared Assets Operator with respect to CBS/WHS.
8.	Compensation	<p>Payment to the Shared Assets Operator by each of the Shared Assets Entities (who shall in turn be funded by Project Companies in accordance with the cost allocation set forth herein) of (i) a fixed fee of \$60,000/year (as adjusted by budgetary process) in respect of WH Shared Assets (other than raw water infrastructure); (ii) \$40,000/year (as adjusted by budgetary process) in respect of CB shared assets; and (iii) reimbursement of variable costs and expenses in respect of WH and CB to the extent consistent with the applicable budget and an adjustment process to be agreed to with respect to emergency and unexpected expenses. Annual budgetary process requiring approval of both project companies.</p> <p>Payments shall be made quarterly in advance of payments.</p>
9.	Liability of Shared Assets Operator	<p>For CB, liability of Shared Assets Operator will be capped at the lesser of (x) 24 months of O&M fixed fee payments and (y) O&M fixed fee payments to date.</p> <p>For WH, liability of Shared Assets Operator will be capped at the lesser of (x) 24 months of O&M fixed fee payments and (y) O&M fixed fee payments to date.</p>
10.	CB Well Allocation	<p>CBI (A) to own wells 1, 2 and 3 and (B) subject to (i) payment of associated expenses and (ii) notice, consultation and cooperation procedures to be agreed, right to use well 5 (until the date that is 2 years following the effective date of a plan of reorganization of CBI).</p> <p>CBII (A) to own wells 4 and 5 and (B) subject to (i) payment of associated expenses and (ii) notice, consultation and cooperation procedures to be agreed, to have the right to use well 2 (until the date that is 2 years following the effective date of a plan of reorganization of CBI).</p>

	Description	Proposed Resolution
		<p>Access to the other project company's well shall only occur in the event water is not available due to a physical limit, historical use limit or average annual use limit on the supply from the accessing party's own wells. In the event of a shortage of available water due to such access of the other project company's well, the well owner shall have the priority in the available supply.</p> <p>Priority of water of each project company to its own wells shall be determined in accordance with such project company's good faith determination of projected use of water at the respective plant for the remaining term of the permit as of the time of determination plus a margin to be agreed in definitive documentation.</p> <p>Each of CBI and CBII agree to maintain each of the respective project company's wells in accordance with prudent industry practices.</p> <p>Alternatively, CBI and CBII may enter into such other arrangement as mutually agreed to eliminate the need to share wells.</p>
11.	CB Water Allocation	<p>CBI shall be entitled to 75% of available groundwater under shared permit (i.e., 7,290 acre feet over 2017 through 2019) and required to pay 75% of associated costs.</p> <p>CBII shall be entitled to 25% of available groundwater under shared permit (i.e., 2,430 acre feet over 2017 through 2019) and required to pay 25% of associated costs.</p> <p>No limits other than overall permit limits (i.e., unused availability in any year may be allocated to other years).</p> <p>At least 812 acre feet/year of historic usage to be allocated to CBII.</p>
12.	CB Well Spacing Requirements	<p>Each of CBI and CBII shall waive any well spacing requirements that would otherwise apply to drilling of new wells by either and shall cooperate in obtaining regulatory approval for the drilling of such new wells.</p>
13.	Split of CB Groundwater Permit	CBI and CBII shall work cooperatively to split CB

	Description	Proposed Resolution
		groundwater permit into two (with the split permits implementing the above allocation).
14.	WH Water Allocation	<p>WHI shall be entitled to 50% of available raw water under water supply agreement and required to pay 50% of annual fee.</p> <p>WHII shall be entitled to 50% of available raw water under water supply agreement and required to pay 50% of annual fee.</p>
15.	Split of WH Water Supply Agreement	WHI and WHII shall work cooperatively to split WH water supply agreement into two (with the split agreements implementing the above allocation).
16.	WH Raw Water Intake System and WH Raw Water Intake System Operator	<p>Raw water lift control system will physically remain in WHI control room and WHI O&M operator (pursuant to O&M agreement with the Shared Asset Entity) will operate and maintain (including long-term maintenance) raw water lift control system, including pumps at Lake Granbury, and raw water line.</p> <p>WHI O&M operator will perform its duties in accordance with prudent industry practice and in accordance with certain protocols to be agreed to between the parties.</p> <p>WHI O&M operator liability will be capped at the lesser of (x) 24 months of total O&M payments and (y) O&M payments to date.</p> <p>Costs and expenses of the Raw Water Intake System will be split 50/50.</p> <p>WHII will have access to the raw water intake system in order to perform emergency repairs if required.</p> <p>WHI O&M operator will cooperate with Shared Assets Operator in communicating and complying with Brazos River Authority in respect of the BRA Water Supply Agreement.</p> <p>Until second anniversary of appointment, WHI O&M Operator removeable by WHII alone only for material breach of the raw water intake shared assets WH O&M agreement, subject to customary</p>

	Description	Proposed Resolution
		<p>cure periods to be agreed. Thereafter, removeable by WHII alone upon 120 days' prior written notice.</p> <p>WHII will have alarm and monitoring capability included in WHII control room. WHII will also have ability to monitor and coordinate maintenance activities of raw water intake system.</p>
17.	CB Wastewater Discharge Allocation	<p>CBI shall be entitled to 70% of effluent flow volume permitted under wastewater discharge permit and available capacity of the water discharge line and shall be required to pay 70% of associated costs.</p> <p>CBII shall be entitled to 30% of effluent flow volume permitted under wastewater discharge permit and available capacity of the water discharge line and shall be required to pay 30% of associated costs.</p>
18.	WH Wastewater Discharge Allocation	<p>WHI shall be entitled to 60% of effluent flow volume permitted under wastewater discharge permit and available capacity of the water discharge line and shall be required to pay 60% of associated costs.</p> <p>WHII shall be entitled to 40% of effluent flow volume permitted under wastewater discharge permit and available capacity of the water discharge line and shall be required to pay 40% of associated costs.</p>
19.	Splitting of Wastewater Discharge Permits	<p>Either party may request to split wastewater discharge permits subject to splits consistent with the above allocation. Both parties shall work cooperatively to obtain separate wastewater discharge permits if so requested.</p>
20.	CB Allocation of Other Expenses	<p>CBI shall bear 50% of all other expenses of applicable shared asset entity.</p> <p>CBII shall bear 50% of all other expenses of applicable shared asset entity.</p>
21.	WH Allocation of Other Expenses	<p>WHI shall bear 50% of all other expenses of applicable Shared Asset Entity.</p> <p>WHII shall bear 50% of all other expenses of</p>

	Description	Proposed Resolution
		applicable Shared Asset Entity.
22.	Disconnection Procedures	Upon non-compliance (as will be defined in detail), other party may seek expedited arbitration of dispute. If such arbitration is decided in favor of complaining party, complaining party may instruct the applicable Shared Asset Entity to instruct the Shared Assets Operator or the Raw Water Lift Control System Operator, and the Shared Assets Operator or the Raw Water Intake System Operator, as applicable, shall disconnect non-compliant party from water intake and/or wastewater discharge system, as applicable.
23.	Governance	<p>Major decisions shall require approval of both applicable project companies, including sale of all or a material portion of the assets or incurrence of liens or pledges.</p> <p>In the event budget cannot be agreed, budget for the preceding year plus an incremental increase of 5% shall apply.</p> <p>If either project company objects to a major maintenance expenditures, Shared Asset Entity may proceed but (i) proponent project company shall bear upfront cost and (ii) proponent project company must seek reimbursement from objecting project company through expert proceedings with a mutually agreed independent engineering firm.</p>
24.	Administration of Permits	WHI/WHII and CBI/CBII will cooperate in good faith in the administration of permits, including renewals, and no project company or Shared Asset Entity shall unreasonably condition, withhold consent to or reject any action in respect of such permits required or permitted to be taken in accordance with prudent industry practice.
25.	Remaining Terms	The remaining terms of the shared assets and services agreements, reciprocal easement agreements, O&M agreements and contribution agreements and other agreements related to the shared assets and shared services shall be as reasonably acceptable to WHI/CBI, WHII/CBII and the required lenders under the existing secured credit facility entered into by WHI, CBI and certain of their affiliates.

	Description	Proposed Resolution
		For the avoidance of doubt, the terms and conditions of the shared asset agreements to which CBI and CBII and WHI and WHII are party shall remain in full force and effect until the entry into effect of new shared asset and shared services agreements substantially in accordance with the terms set forth in this term sheet and otherwise on terms and conditions reasonably acceptable to the parties.

Exhibit A
Contributed Assets

Acquired by CBI from CBS

1. Water Wells Numbered 1, 2 and 3 as identified in Well Operating Permit No. OP-06021502 issued by Coastal Bend Groundwater Conservation District on February 21, 2017, including associated on-site pumps, tanks, supply lines, and telephone lines.
2. Administrative Building (including Control Room inside the Administrative Building) and the contents of the same, including any office furniture, phone systems, security systems, computers and computers system and related software, safety equipment and control systems (other than Excluded IT Assets).
3. Storage Warehouse B and Install Building and the contents of the same, including any tools, garage equipment, safety equipment and the contents of the shop located therein.
4. Oil Storage Building and the contents of the same.
5. Technical Library/Storage Building and contents of the same.
6. The following vehicles:
 - a. 2014 GMC Truck – Vin # 3GTP1UEC1EG166374
 - b. 2014 Ford Truck – Vin # 1FT7W2B64EEA77832
 - c. Forklifts and other industrial vehicles (if any) used and stored on the site.
7. FCC radio license

Acquired by WHI from WHS

1. Storm water retention pond, water tanks.
2. Administrative Building, Control Room and Maintenance Shop and the contents of the same, including any office furniture, phone systems, security systems, computers and computers system and related software, safety equipment and control systems (other than Excluded IT Assets).
3. Storage Warehouses 1 through 4 and the contents of the same, including any tools, garage equipment, safety equipment and the contents of the shop located therein.
4. The following vehicles:
 - a. 2002 Ford Truck – VIN # 1FTNW21F92EB39021

- b. 2012 Ford Truck – VIN # 1FDRF3G67CEA28687
 - c. 6 Utility vehicles (maintenance carts)
 - d. 2 Golf Carts (operations carts)
 - e. WHI warehouse forklift
- 5. Security infrastructure, including guardhouse and fencing surrounding Wolf Hollow I.
 - 6. FCC radio license