

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

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In re: : Chapter 11  
: :  
LINCOLN POWER, L.L.C., *et al.*,<sup>1</sup> : Case No. 23-10382 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: **Hearing Date: May 25, 2023 at 2:00 p.m. (ET)**  
: **Objection Deadline: May 17, 2023 at 4:00 p.m. (ET)**  
: :  
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**NOTICE OF MOTION**

TO: (I) THE U.S. TRUSTEE; (II) THE UNITED STATES ATTORNEY’S OFFICE FOR THE DISTRICT OF DELAWARE; (III) THE UNITED STATES DEPARTMENT OF JUSTICE; (IV) THE ATTORNEYS GENERAL FOR THE STATES IN WHICH THE DEBTORS CONDUCT BUSINESS; (V) THE INTERNAL REVENUE SERVICE; (VI) THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND SIMILAR STATE ENVIRONMENTAL AGENCIES FOR STATES IN WHICH THE DEBTORS CONDUCT BUSINESS; (VII) THE FEDERAL ENERGY REGULATORY COMMISSION; (VIII) PJM INTERCONNECTION, L.L.C.; (IX) PJM SETTLEMENT, INC.; (X) THE CREDITORS LISTED ON THE DEBTORS’ CONSOLIDATED LIST OF THIRTY (30) CREDITORS HOLDING THE LARGEST UNSECURED CLAIMS; (XI) COUNSEL TO THE ADMINISTRATIVE AGENT; (XII) COUNSEL TO THE COLLATERAL AND DEPOSITARY AGENT; (XIII) COUNSEL TO THE ISSUING LENDER; AND (XIV) ANY PARTY THAT HAS REQUESTED NOTICE PURSUANT TO BANKRUPTCY RULE 2002

**PLEASE TAKE NOTICE** that the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) have filed the *Motion of Debtors for Entry of an Order (I) Approving the Settlement with PJM Interconnection, L.L.C. and PJM Settlement, Inc. and (II) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion must be filed on or before **May 17, 2023 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Lincoln Power, L.L.C. (6449), Cogentrix Lincoln Holdings, LLC (6060), Cogentrix Lincoln Holdings II, LLC (4004), Elgin Energy Center Holdings, LLC (N/A), Elgin Energy Center, LLC (4819), Valley Road Holdings, LLC (N/A), Valley Road Funding, LLC (1587), and Rocky Road Power, LLC (2701). The Debtors’ address is 13860 Ballantyne Corporate Place, Suite 300, Charlotte, North Carolina 28277.

N. Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned proposed counsel to the Debtors so as to be received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON MAY 25, 2023 AT 2:00 P.M. (ET) BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 2, WILMINGTON, DELAWARE 19801.**

**PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR HEARING.**

*[Signature page follows]*

Dated: May 3, 2023  
Wilmington, Delaware

Respectfully Submitted,

/s/ Kristin L. McElroy

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*Proposed Counsel for Debtors and Debtors in Possession*

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LINCOLN POWER, L.L.C., *et al.*,<sup>1</sup> : Case No. 23-10382 (LSS)  
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**MOTION OF DEBTORS FOR ENTRY OF AN ORDER  
(I) APPROVING THE SETTLEMENT WITH PJM INTERCONNECTION, L.L.C.  
AND PJM SETTLEMENT, INC. AND (II) GRANTING RELATED RELIEF**

The debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases (these “**Chapter 11 Cases**”) hereby file this motion (this “**Motion**”) under sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for entry of an order substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”) (i) approving a settlement (the “**Settlement**”), the terms of which are set forth in that certain Settlement Term Sheet, dated as of May 3, 2023, by and among PJM Interconnection, L.L.C. and PJM Settlement, Inc. (collectively, “**PJM**”) and the Debtors (together with PJM, the “**Parties**”), which is attached to the Proposed Order as Exhibit 1 (the “**Settlement Term Sheet**”), and (ii) granting related relief. In support of this Motion, the Debtors rely upon the *Declaration of Justin D. Pugh, Chief Restructuring Officer of the Debtors, in Support of Motion of Debtors for*

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Lincoln Power, L.L.C. (6449), Cogentrix Lincoln Holdings, LLC (6060), Cogentrix Lincoln Holdings II, LLC (4004), Elgin Energy Center Holdings, LLC (N/A), Elgin Energy Center, LLC (4819), Valley Road Holdings, LLC (N/A), Valley Road Funding, LLC (1587), and Rocky Road Power, LLC (2701). The Debtors’ address is 13860 Ballantyne Corporate Place, Suite 300, Charlotte, North Carolina 28277.

*Entry of an Order (I) Approving the Settlement with PJM Interconnection, L.L.C. and PJM Settlement, Inc. and (II) Granting Related Relief* filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion 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). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105 and 363 of the Bankruptcy Code. Such relief is warranted under Bankruptcy Rule 9019 and rules 2002-1 and 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**”).

### **BACKGROUND**

3. On March 31, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Justin D. Pugh, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 12] (the “**First Day Declaration**”),<sup>2</sup> which is fully incorporated into this Motion by reference.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration or the Settlement Term Sheet.

4. The Debtors continue to manage and operate their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in these Chapter 11 Cases, and no committees have been appointed as of the date hereof.

5. These Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b).

### **RELIEF REQUESTED**

6. By this Motion, the Debtors request entry of the Proposed Order (i) approving the Settlement and (ii) granting related relief.

### **THE SETTLEMENT**

#### **I. The Debtors' Agreements With PJM**

7. PJM is a regional transmission organization that directs the operation of the wholesale electricity system in the PJM market, which serves all or parts of thirteen states and the District of Columbia (the "**PJM Market**"). The Debtors' Plants (as defined below) are located within the PJM Market and Debtors Rocky Road Power, LLC ("**Rocky Road**") and Elgin Energy Center, LLC ("**Elgin**") are members of PJM Market ("**PJM Members**"). As PJM Members, the Debtors and PJM are parties to, or are otherwise subject to, several agreements and governing documents, including: (i) the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (as amended or otherwise modified from time to time, the "**PJM Operating Agreement**"), and (ii) the PJM Open Access Transmission Tariff (as amended or otherwise modified from time to time, the "**PJM Tariff**") and, together with the PJM Operating Agreement, the "**PJM Documents**"). The PJM Operating Agreement establishes the membership of Rocky Road Power and Elgin in the PJM Market. And the PJM Tariff generally governs the operations of PJM and sets out the rules that govern the PJM Market, including the PJM Members' participation therein.

8. The Debtors also participate in the capacity markets operated by PJM, called the Reliability Pricing Model. PJM holds capacity auctions (“**Capacity Auctions**”), pursuant to which PJM Members offer their available capacity for a future Delivery Year<sup>3</sup> in exchange for compensation in that future Delivery Year. If a resource is selected through a Capacity Auction, then PJM Members have capacity supply obligations (“**CSOs**”) that require such members to be available to deliver the electric energy that cleared in the applicable Capacity Auction during the applicable future Delivery Year, including during certain emergency periods (“**Performance Assessment Intervals**”) that are triggered upon PJM declaring an emergency action under the PJM Tariff. Failure to satisfy such CSOs during Performance Assessment Intervals potentially subjects power generators to financial penalties for non-performance (“**Non-Performance Penalties**”). Notably, pursuant to the PJM Tariff and PJM Operating Agreement, if PJM has reasonable grounds to believe that a PJM Member poses an unreasonable credit risk to the PJM Market, PJM may notify the PJM Member of such risk and issue a demand of collateral or other assurances (a “**Collateral Call**”). Failure to remit the required amount of collateral under the Collateral Call within the applicable cure period constitutes an event of default under the PJM Operating Agreement, which currently provides that the defaulting PJM Member shall be precluded from participating in the PJM Market until the default is remedied.

9. Further, the PJM Operating Agreement and the PJM Tariff require that PJM Members pay any outstanding and unpaid obligations owed to PJM by a former member that is an affiliate of or equivalent to the applicant, without any exception for obligations owed by former members whose debt is discharged through bankruptcy. These agreements also provide PJM with broad discretion in terms of managing credit risks from PJM Members, including that any applicant

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<sup>3</sup> A “**Delivery Year**” runs from June 1 in one calendar year through and including May 31 of the following calendar year.

for membership may be subject to demands for collateral or other assurances of creditworthiness, also without exception for determinations made in connection with obligations owed by former members whose debt is dischargeable through bankruptcy. Absent the Settlement, there would be a substantial risk that PJM would attempt to impose the Penalties (as defined below) or an equivalent monetary charge on a potential purchaser of the Debtors' assets by requiring that the Penalties or equivalent monetary charge be paid, or by requiring that the purchaser provide other extraordinary credit enhancements, before the purchaser can be eligible for PJM membership.

10. The Plants participated in the Capacity Auction for the delivery of capacity during the 2022-2023 Delivery Year, and its offers were selected in that Capacity Auction, resulting in the Plants having CSOs from 2022-2023 Delivery Year (i.e., June 1, 2022 through May 31, 2023). The Plants also participated in the Capacity Auction for the delivery of capacity during the 2023-2024 and 2024-2025 Delivery Years, and its offers were selected in such Capacity Auctions as well. Accordingly, the Plants are slated to have CSOs from June 1, 2023 through May 31, 2025.

## **II. Winter Storm Elliott and the Disputed Penalties**

11. A severe winter storm struck the United States from December 22, 2022, through December 27, 2022 ("**Winter Storm Elliott**"), and inflicted record cold temperatures across much of the PJM Market. PJM declared emergency actions on December 23, 2022, and December 24, 2022 (the "**Winter Storm Elliott PAI**"), and called upon PJM Members to provide electric energy. Due to a number of factors, including the shortage of gas and gas transportation during the Winter Storm Elliott PAI, the Plants (along with many other PJM Members) allegedly failed to meet their performance obligations during the Winter Storm Elliott PAI. As a result, PJM indicated it would impose penalties on the Debtors. Specifically, on February 10, 2023, PJM sent the Debtors a report in which it indicated that (i) PJM estimated that Rocky Road and Elgin, respectively, owed \$14.33 million and \$24.56 million (together, the "**Penalties**") in Non-Performance Penalties for their



alleged failure to perform as required under the PJM Documents during Winter Storm Elliott; and (ii) final invoices for such penalties would begin with the March monthly bill that is issued on April 7, 2023. On February 17, 2023, PJM sent letters to Rocky Road and Elgin indicating that Rocky Road and Elgin posed a credit risk in light of the Penalties and, to mitigate such credit risk, must provide collateral of \$7 million in either lump-sum payments or through settlement withholdings (collectively, the “**Initial Collateral Calls**”). However, PJM ultimately lowered the demanded collateral in the Initial Collateral Calls and determined that it would withhold a weekly amount of \$150,000 and \$200,000 on Rocky Road’s and Elgin’s PJM settlement invoices (i.e., a portion of the capacity revenue to which Rocky Road and Elgin would be entitled for the relevant periods), respectively, beginning with the weekly settlement invoice of February 28, 2023. Rocky Road and Elgin sent letters on March 2, 2023, to PJM (i) stating their disagreement with the validity and PJM’s calculation of the Penalties and (ii) disputing the amount of collateral required by PJM, which was based on PJM’s calculation of the Penalties. Rocky Road and Elgin also directed PJM to the March 1, 2023 submissions they each made to the portal created by PJM to enable PJM Members to set forth various defenses and excuses with respect to the Penalties. On March 3, 2023, PJM responded that it was in receipt of the supplemental information that Rocky Road and Elgin provided, but that its proposed penalty and collateral requirements remained unchanged.

12. On March 15, 2023, PJM sent letters (the “**Additional Credit Risk Letters**”) to Rocky Road and Elgin in which PJM stated that the future assessment of the Penalties constituted a likely future material financial liability that increases the likelihood that Rocky Road and Elgin will default on their financial obligations and indicated that, to mitigate this credit risk, Rocky Road and Elgin would each need to make a lump-sum payment of, respectively, about \$600,000

and \$1,350,000 by March 31, 2023. On March 20, 2023, Rocky Road and Elgin sent letters to PJM (i) again stating their disagreement with the validity and PJM's calculation of the Penalties and (ii) disputing the additional collateral required by PJM.

13. Pursuant to the Initial Collateral Calls, PJM garnished approximately \$350,000 per week from Rocky Road and Elgin beginning with the weekly settlement invoice of February 28, 2023 and continuing until the Petition Date. Following the Petition Date, PJM placed an administrative hold on payments of any prepetition amounts owing to the Debtors. In total, PJM is holding approximately \$2.2 million pursuant to the Initial Collateral Calls and the administrative hold.

14. The Debtors continue to dispute the validity and PJM's calculation of the Penalties, and the collateral demands issued by PJM based on the Penalties, and believe Rocky Road and Elgin have meritorious defenses with respect to the Penalties. In addition, the Parties have disputed the treatment of the Penalties under the Bankruptcy Code and the protections that the Bankruptcy Code affords to the Debtors.

15. Upon commencement of these Chapter 11 Cases, the Debtors, with the assistance of their investment banker, Guggenheim Securities, LLC ("**Guggenheim Securities**"), began a marketing process for the sale of all or substantially all of the Debtors' assets. At the outset of these Chapter 11 Cases, the Debtors feared that the disputes with PJM would cause uncertainty regarding a potential purchaser's rights with respect to future participation in the PJM market and thereby impact the Debtors' ability to obtain the highest and best offer for their assets.

16. In order to obtain that certainty and finality, the Debtors were prepared, at the outset of these Chapter 11 Cases, to commence an adversary proceeding against PJM seeking declaratory judgments that: (i) the Penalties are dischargeable, (ii) the Debtors can sell their assets free and

clear of any interest PJM may have in such assets, (iii) the Debtors, the reorganized Debtors, or a purchaser of the Debtors' assets are subject to protection from certain discriminatory conduct by PJM in connection with these Chapter 11 Cases, and (iv) the Debtors are able to assume certain contractual obligations without curing specific defaults. In initial discussions with the Debtors, PJM indicated that it did not agree with the Debtors' positions on the Penalties and the treatment of such Penalties under the Bankruptcy Code, and PJM would be prepared to contest the adversary proceeding if filed (the "**Dispute**").

### III. Postpetition Negotiations

17. Immediately following the Petition Date, the Debtors began engaging with PJM on a potential resolution of the Dispute. In order to provide an opportunity to engage in good-faith discussions regarding the Dispute without the threat of the imminent commencement of litigation or the need to incur the time and expense of litigating, the Debtors and PJM entered into a Standstill Agreement on April 3, 2023.

18. Following extensive negotiations, the Debtors and PJM have agreed to the terms of the Settlement, which provides a comprehensive resolution of the Dispute and all issues among the Parties relating to these Chapter 11 Cases. Moreover, beyond resolving the Dispute, the Settlement ensures that the Debtors and PJM will not oppose key steps that are necessary to ensure these Chapter 11 Cases are brought to a successful conclusion. The key terms of Settlement are as follows:<sup>4</sup>

- i. **Restructuring Transaction and Support Commitments:** The Debtors will transfer the assets currently owned by Elgin and Rocky Road through an asset transfer, including the Debtors' gas-fired power plants (collectively, the

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<sup>4</sup> The summary of the Settlement provided herein is not intended to be a comprehensive recitation of all the terms and conditions of the Settlement. The summary is qualified in its entirety by the Settlement Term Sheet, and to the extent that there is any inconsistency between the summary provided herein and the Settlement Term Sheet, the Settlement Term Sheet shall control. Capitalized terms used but not otherwise defined in this summary of the Settlement shall have the meanings ascribed to such terms in the Settlement Term Sheet.

**“Plants”**), to one or more new owners (each, a **“Purchaser”** and, collectively, the **“Purchasers”**) pursuant to a plan of reorganization (a **“Plan”**).

PJM will not object to, delay, impede, or take any other action to interfere with the Restructuring that is consistent with the Settlement or take any action that would be materially inconsistent with the Settlement. Further, following commencement of solicitation of the Plan, PJM will (a) timely vote all of its claims to accept the Plan and not change or withdraw any such vote provided that the Plan remains consistent with the Settlement and (b) to the extent PJM is permitted to elect whether to opt out of the releases set forth in the Plan, elect not to opt out of the releases set forth in the Plan.

- ii. **PJM Claims:** PJM will have allowed claims in the Bankruptcy Cases in the aggregate amount of \$42,777,661.54, which shall be comprised of an allowed claim of \$18,005,954.14 against Rocky Road and \$24,771,707.40 against Elgin (collectively, the **“Allowed PJM Claims”**). On the effective date of the Settlement, PJM shall retain collateral and funds withheld by PJM in the aggregate amount of \$2,183,362.78 as of April 17, 2023, together with any accrued interest thereon through the effective date of the Settlement (collectively, the **“Withheld Amounts”**), to secure Elgin’s and Rocky Road’s obligations with respect to capacity performance obligations, including the Penalties, and apply the Withheld Amounts against the Allowed PJM Claims.

Following application of the Withheld Amounts, PJM shall have allowed general unsecured claims in the aggregate amount of \$40,594,298.76, which shall be comprised of an allowed general unsecured claim of \$17,083,435.78 against Rocky Road and \$23,510,862.98 against Elgin (collectively, the **“PJM Allowed GUC Claims”**).

- iii. **Treatment of the Penalties:** The PJM Allowed GUC Claims shall be treated as general unsecured claims in the Bankruptcy Cases and may be classified separately from other general unsecured claims under the Plan, with PJM agreeing to not object to such separate classification provided that the treatment and distributions afforded to PJM under the Plan are equal to or greater than the treatment given to general unsecured creditors. PJM has further agreed that (a) the Debtors are entitled to consummate a Sale free and clear of any claims relating to the Penalties under section 363 of the Bankruptcy Code and (b) PJM shall not oppose the Debtors’ receipt of a discharge of any claims relating to the Penalties pursuant to a Plan under section 1141 of the Bankruptcy Code.

PJM will not seek to collect payment of the Penalties in part or in full, including against any Consenting Sponsor, or current or future affiliate or subsidiary thereof, that is currently, or seeks to become a PJM Member in the future, except as otherwise provided in the Settlement Term Sheet, and will not seek additional collateral from the Debtors’ post-petition revenues in connection with the Penalties before the Settlement is executed and the Penalties are discharged.

The Purchaser(s) shall have no liability for, on account of, or relating to the Penalties.

- iv. **Regulatory Matters:** Elgin, Rocky Road, and the Purchaser(s) will make any necessary filings with the Federal Energy Regulatory Commission (“**FERC**”) necessary to obtain approval of a Restructuring, and PJM will not object to or otherwise protest any regulatory filings with FERC that are consistent with the Settlement.
- v. **Treatment of the Operating Agreements:** The existing PJM Operating Agreements to which Elgin and Rocky Road are currently parties will, subject to entry of a final order of the Bankruptcy Court granting such relief, be rejected in these Chapter 11 Cases by separate motion, and any resulting rejection damages shall be treated as general unsecured claims of the applicable Debtor. PJM will (a) not oppose the Debtors’ motion to reject the existing PJM Operating Agreements, (b) enter into one or more new operating agreements with the Purchaser(s) subject to the Purchaser(s) satisfying the requirements for PJM membership and market participation, and (c) timely submit such operating agreements to FERC for approval under section 205 of the Federal Power Act.
- vi. **Interconnection Agreements:** The Debtors shall assume and assign the Interconnection Agreements to the Purchaser(s), and PJM agrees not to object to the Debtors’ assumption and assignment of the Interconnection Agreements and take all actions reasonably necessary to obtain FERC’s approval of the same, to the extent required.
- vii. **Ongoing PJM Participation and Associated Revenues:** Until the Restructuring is consummated, Elgin and Rocky Road will continue to have all PJM membership rights and obligations, including participating in PJM’s energy, capacity, and ancillary services markets, providing reactive supply and voltage control service, including being subject to setoff and netting performed by PJM in the ordinary course of business. Elgin and Rocky Road will continue to receive revenues associated with such participation, including capacity revenues until the later to occur of (a) the effective date of a Plan and (b) the end of the 2022-23 Delivery Year, and PJM shall not withhold, set off, or garnish such revenues, seek to foreclose on any collateral, or otherwise take any action to collect the Penalties or enforce remedies under the PJM Operating Agreement or the PJM Tariff except as provided under the Settlement Term Sheet.
- viii. **Transition Period of Service Agreements:** Cogentrix may continue to provide management, emergency management, and operation and maintenance services, including acting as the assets’ PJM market participant, to the Purchaser as part of a transition period, not to exceed 180 days following consummation of a Restructuring.

- ix. **Existing and Future Capacity Supply Obligations and Future Capacity Market Participation:** Upon consummation of the Restructuring, Elgin's and Rocky Road's future capacity supply commitments for the 2023-2024 and 2024-2025 Delivery Years will remain with Elgin and Rocky Road and will be terminated upon rejection of the PJM Operating Agreements. Upon consummation of the Restructuring, the Plants' ICAP and UCAP for the 2023-24 and 2024-25 Delivery Years will continue to be modeled in the PJM Capacity Exchange as available resources for the purpose of participating in the 2024-25 Incremental Auction(s) held after consummation of the Restructuring and execution of bilateral transactions with third parties.
- x. **Ancillary Services:** The Debtors shall assume and assign the obligations to provide ancillary services, as agreed in writing between the Parties, to the Purchaser(s). Upon consummation of the Restructuring, Purchaser(s) of the Plants shall continue to provide the same ancillary services on substantially the same terms and conditions as previously provided by the Plants. Purchaser(s) will use good utility practice in continuing to provide such ancillary services and shall use commercially reasonable efforts to obtain any necessary FERC approvals regarding any such services.
- xi. **Releases:** The Debtors and PJM will release each other and the Consenting Lenders (and certain related persons) from all claims or causes of action relating to the Settlement, this Motion, the Restructuring, the Penalties, or any acts or omissions during, relating to, or in connection with Winter Storm Elliot. The releases will be effective on the effective date of the Settlement, with the exception of the releases related to the Restructuring, which will be effective upon consummation of the Restructuring.
- xii. **Settlement Implementation and Termination:** The Settlement will become effective upon this Court's entry of the Proposed Order. The Parties' obligations under the Settlement Term Sheet and the Settlement shall terminate automatically upon the occurrence of the following events: (a) this Motion is denied, (b) the Proposed Order is not entered on or prior to June 22, 2023, or (c) after entry, the Proposed Order is vacated, reversed, or modified in a manner not acceptable to any Party.

In addition, in the event that any Party materially breaches its obligations under the Settlement Term Sheet, and any such material breach is not cured within two (2) business days of receipt of written notice of such breach from the non-breaching Party, the non-breaching Party may terminate the Settlement Term Sheet and the Settlement by providing written notice of such termination to the breaching Party.

## BASIS FOR RELIEF

### I. The Settlement Should be Approved Pursuant to Bankruptcy Rule 9019

19. Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Compromises and settlements are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. L.A. Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). A starting point in analyzing any proposed settlement is the general policy that “compromises are favored in bankruptcy” to “minimize litigation and expedite the administration of the bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankr. ¶ 9019.03[1] (15th ed. 1993)).

20. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a compromise should be approved: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *In re Martin*, 91 F.3d at 393; accord *Will v. Nw. Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor); see also *TMT Trailer Ferry, Inc.*, 390 U.S. at 424; *In re Marvel Entm’t Group, Inc.*, 222 B.R. 243 (D. Del. 1998) (holding that the proposed settlement was in the best interest of the estate); *In re Mavrode*, 205 B.R. 716, 721 (Bankr. D.N.J. 1997). The test boils down to whether the terms of the proposed compromise fall “within a reasonable range of litigation possibilities” from the debtor’s perspective. *Matter of Penn Cent. Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979) (citation omitted); see *In re Pa. Truck Lines, Inc.*, 150 B.R. 595, 598 (E.D. Pa. 1992) (same).

21. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible outcome; rather “[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness.” *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

22. In the Debtors’ business judgment, the Settlement is a fair and equitable compromise and in the best interests of the Debtors, their estates, their creditors, and other stakeholders. The Settlement was the product of extensive, good-faith negotiations between the Parties, culminating in an agreement that falls well within the range of reasonable litigation outcomes as to each of the issues encompassed by the Settlement. For the benefit of the Debtors’ estates, the Settlement resolves all disputes among the Debtors and PJM and avoids time-consuming and costly litigation that would threaten to consume the Debtors’ limited resources. In addition, as discussed below, each of the applicable *Martin* factors weigh in favor of approving the Settlement.

**A. The Probability of Success in Litigation**

23. Had the Parties failed to reach a consensual resolution, the Debtors could have been forced to litigate with PJM regarding the Dispute, including the treatment of the Penalties under the Bankruptcy Code. Litigation with PJM would have presented novel and complex questions regarding, *inter alia*, whether PJM is a governmental entity subject to section 525(a) of the Bankruptcy Code, whether PJM had appropriately declared an emergency, and whether and to



what extent sections 363, 365, and 1141 of the Bankruptcy Code prevail over potentially conflicting federal law governing the regulation electricity generators and wholesale electricity markets. Further, PJM may have sought relief from the automatic stay to exercise rights and remedies under the PJM Operating Agreements and the PJM Tariff, including potentially seeking relief to suspend the Debtors' membership in PJM, which, if granted, would have put an immediate end to the Debtors' ability to operate and generate revenue.<sup>5</sup> The issue of PJM's entitlement to relief from the automatic stay would also have presented difficult questions about whether PJM's exercise of rights and remedies was an action to enforce "police or regulatory power" under section 362(b)(4) of the Bankruptcy Code.

24. While the Debtors believe they would succeed in litigation with PJM, the Debtors recognize that success is not certain. Given the many complicated issues relating to PJM, it is possible that the Debtors would not prevail on certain issues, which could jeopardize the Debtors' ability to consummate a value-maximizing restructuring transaction. Moreover, a partial success in the adversary proceeding would not necessarily have provided a global resolution of all issues among the Parties or the clear path forward to a successful restructuring that the Settlement offers. For example, even if the Debtors were to prevail in establishing that the Penalties are dischargeable under section 1141 of the Bankruptcy Code, but were to not prevail on the issue of whether the Debtors can assume and assign the PJM Operating Agreements without satisfying the Penalties or whether the Debtors and a potential purchaser are entitled to the protections of section 525(a) with respect to PJM, it would be likely that the uncertainty regarding a potential purchasers rights vis-

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<sup>5</sup> This risk is more than a mere hypothetical considering that PJM had informed members in the aftermath of Winter Storm Elliott that there could be "membership consequences" if a PJM Member defaults on the Penalties.

à-vis PJM upon emergence from chapter 11 would have presented a significant impediment to maximizing the value of the Debtors' assets.

25. As discussed above, upon commencement of these Chapter 11 Cases, the Debtors, with the assistance of Guggenheim Securities, commenced a marketing process for the sale of the Debtors' assets. The disputes with PJM caused uncertainty regarding a potential purchaser's rights with respect to future participation in the PJM Market. The certainty provided by the Settlement regarding the terms on which a potential purchaser can participate in the PJM Market upon emergence from bankruptcy, however, should help facilitate a competitive sale process and the Debtors' efforts to obtain the highest and best offer for their assets. Regardless of the merits of their positions, the time and resources required to litigate with PJM to entry of a final order resolving the Dispute would deplete the Debtors' already limited resources and frustrate the Debtors' ability to bring these Chapter 11 Cases to a timely and efficient conclusion. In particular, without a swift and efficient resolution of the Disputes, there is an increased risk that the sale process would fail to result in a value-maximizing transaction and the Debtors would run out of liquidity without any prospect for further financing and face the prospect of immediate liquidation.

26. By contrast, the Settlement will preserve the Debtors' limited resources and enable the Debtors to run a sale process free from uncertainty that would otherwise present a significant impediment. In addition to resolving the Dispute, the Settlement ensures that the Debtors and PJM will cooperate to ensure these Chapter 11 Cases are brought to a successful conclusion. For example, PJM has committed to, *inter alia*, (a) not oppose the Debtors' motion to reject the existing PJM Operating Agreements, (b) enter into new operating agreements with any purchaser subject to the purchaser satisfying the requirements for PJM membership and market participation, which are applicable to all members, and not impose any additional collateral or credit enhancement

requirements on such purchaser, and (c) not oppose the Debtors' and/or any purchasers' efforts to obtain regulatory approvals needed to consummate a sale. The Debtors believe that PJM's support obligations as embodied in the Settlement are critical to running a competitive sale process and ensuring an orderly, efficient exit from Chapter 11.

27. In light of the foregoing, this *Martin* factor weighs significantly in favor of approving the Settlement.

**B. The Complexity of the Litigation and the Attendant Expense, Inconvenience, and Delay Necessarily Attending It**

28. Absent the Settlement, resolving the issues between the Parties could involve significant litigation and would likely necessitate one or more lengthy proceedings before this Court. Such litigation would require significant hours from estate professionals and result in substantial costs to the Debtors' estates.

29. Moreover, by litigating with PJM, the Debtors would risk jeopardizing the success of these Chapter 11 Cases, even if the litigation were ultimately successful. Both the Debtors' agreement on the consensual use of cash collateral and the Restructuring Support Agreement require that the Debtors obtain a final order resolving the Dispute no later than June 24, 2023 (i.e., eighty-five days after the Petition Date). It is possible that the Debtors may not have been able to satisfy that milestone due to delays or other complications associated with litigation that are beyond their control. If the Debtors lost access to cash collateral, or lost the support of their key stakeholders through termination of the Restructuring Support Agreement, it is highly unlikely that the Debtors would have a viable path to exit chapter 11. Likewise, even if the Debtors' prepetition lenders were willing to grant relief from the milestone, given the Debtors' liquidity situation it is unclear whether the Debtors would have had access to the funding needed to see the litigation through to a final judgment and may have faced the prospect of liquidation.

30. By fully and finally resolving all of the Parties' disputes pursuant to the Settlement, however, the Debtors, their estates, and their creditors will be afforded certainty with respect to such matters in a timely and efficient manner, without the need to incur the costs necessarily associated with litigation and the attendant distraction of the Debtors' efforts to achieve a value-maximizing restructuring transaction. Accordingly, this *Martin* factor weighs in favor of approving the Settlement.

**C. The Paramount Interest of Creditors**

31. The paramount interest of creditors will be best served by approving the Settlement. Approval will provide an immediate benefit to the Debtors' estates in the form of a favorable settlement for all of the Debtors' stakeholders, which, among other things and as described above, will resolve the disputed issues among the Debtors and PJM and provide the certainty and finality the Debtors need to maximize the value of the estates. By virtue of the Settlement, the Debtors will also preserve limited estate assets by avoiding costly and time-consuming litigation. Thus, the Court's approval of the Settlement is in the best interests of the Debtors, their creditors, and their estates, and this *Martin* factor weighs in favor of approving the Settlement.

32. Based on the foregoing, the Settlement satisfies Bankruptcy Rule 9019 as it is fair, reasonable, and in the best interests of the Debtors, their estates, and their stakeholders. As such, the Debtors respectfully request that the Court approve the Settlement.

**II. Approval of the Settlement is Appropriate under Section 363(b) of Bankruptcy Code.**

33. To the extent that the Settlement implicates sections 363(b) of the Bankruptcy Code, the Debtors seek authority thereunder to execute and perform their obligations under the Settlement.

34. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “the 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 the estate, courts routinely authorize sales of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at \*10 (Bankr. D. Del. Apr. 2. 2001). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

35. Under the business judgment standard, so long as a debtor’s decision is reasonable and in the best interests of the bankruptcy estate, courts generally defer to the business judgment of the debtor’s management. *See Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task. Delaware courts have said that it may be accomplished by showing either irrationality or inattention.”); *Montgomery Ward*, 242 B.R. at 153 (“In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a ‘business judgment test.’”). When applying the business judgment standard, courts show great deference to a debtor’s business decisions. *See, e.g., Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or

capriciously), courts will generally not entertain objections to the debtor's conduct."); *Pitt v. First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at \*3 (N.D. Ill. Sept. 8, 1989) ("Under this test, the debtor's business judgment . . . must be accorded deference unless shown that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion.").

36. For each of the reasons set forth above, the terms of the Settlement reflect the Debtors' exercise of their sound business judgment. Accordingly, to the extent any actions required to effectuate the terms of the Settlement implicate section 363(b) of the Bankruptcy Code, the Debtors should be authorized and approved.

### **III. The Settlement Should be Approved Pursuant to Section 105(a) of the Bankruptcy Code.**

37. Authorizing the Debtors to effectuate the terms of the Settlement is well within the equitable powers of this Court. 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]"); *see also Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code"); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws"). As discussed herein, the Settlement is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors. Thus, the Debtors submit that authorizing the Debtors to effectuate the terms of the Settlement is a sound exercise of the Court's equitable powers pursuant to section 105(a) of the Bankruptcy Code.

### **WAIVER OF BANKRUPTCY RULE 6004(h)**

38. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” For the reasons set forth herein, the Debtors submit that they have established cause to, and hereby request that the Court, waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h), to the extent such stay is applicable.

### **CONSENT TO JURISDICTION**

39. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

### **NOTICE**

40. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) the United States Attorney’s Office for the District of Delaware; (iii) the United States Department of Justice; (iv) the attorneys general for the states in which the Debtors conduct business; (v) the Internal Revenue Service; (vi) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (vii) the Federal Energy Regulatory Commission; (viii) PJM Interconnection, L.L.C.; (ix) PJM Settlement, Inc.; (x) the creditors listed on the Debtors’ consolidated list of thirty (30) creditors holding the largest unsecured claims; (xi) counsel to the Administrative Agent; (xii) counsel to the Collateral and Depositary Agent; (xiii) counsel to the Issuing Lender; and (xiv) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

41. A copy of this Motion is available on (i) this Court's website, at [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Omni Agent Solutions, at <https://omniagentsolutions.com/LincolnPower>.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order, granting the relief requested in this Motion and such other and further relief as may be just and proper.

*[Remainder of Page Intentionally Left Blank]*



Dated: May 3, 2023  
Wilmington, Delaware

Respectfully Submitted,

/s/ Kristin L. McElroy

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*Proposed Counsel for Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

----- X  
In re: : Chapter 11  
: :  
LINCOLN POWER, L.L.C., *et al.*,<sup>1</sup> : Case No. 23-10382 (LSS)  
: :  
Debtors. : (Jointly Administered)  
: :  
: Re: D.I. \_\_\_\_\_  
----- X

**ORDER (I) APPROVING  
THE SETTLEMENT WITH PJM INTERCONNECTION, L.L.C.  
AND PJM SETTLEMENT, INC. AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”) (i) approving the Settlement and (ii) granting related relief; and the Court having reviewed the Motion; and the Court having 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; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein;

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Lincoln Power, L.L.C. (6449), Cogentrix Lincoln Holdings, LLC (6060), Cogentrix Lincoln Holdings II, LLC (4004), Elgin Energy Center Holdings, LLC (N/A), Elgin Energy Center, LLC (4819), Valley Road Holdings, LLC (N/A), Valley Road Funding, LLC (1587), and Rocky Road Power, LLC (2701). The Debtors’ address is 13860 Ballantyne Corporate Place, Suite 300, Charlotte, North Carolina 28277.

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

and after due deliberation thereon; and this Court having determined that there is good and sufficient cause for the relief granted in this Order, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. All objections to the entry of this Order, to the extent not withdrawn or settled, are overruled.
3. The Settlement, including the Settlement Term Sheet attached to this Order as Exhibit 1, is approved. The terms and conditions of the Settlement Term Sheet are incorporated into this Order as if fully set forth herein and the failure to specifically include or reference any particular term or provision of the Settlement in this Order shall not diminish or impair the effectiveness of such term or provision.
4. The Debtors are authorized, but not directed, to take any and all actions as may be necessary or appropriate to effectuate and implement the terms and provisions of the Settlement and the Settlement Term Sheet.
5. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), or otherwise, this Order shall be immediately effective and enforceable upon its entry.
6. The Debtors are authorized to take all steps necessary or appropriate to carry out this Order.
7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**EXHIBIT 1**

**The Settlement Term Sheet**

**LINCOLN POWER, L.L.C., ET AL.**  
**PJM SETTLEMENT TERM SHEET**

**May 3, 2023**

This settlement term sheet (this “Term Sheet”)<sup>1</sup> is entered into as of May 3, 2023 and presents the principal terms of a settlement (the “Settlement”) of all claims, objections, and all other causes of action that have been or could be asserted by and among the Debtors<sup>2</sup> and PJM Interconnection, L.L.C. and PJM Settlement, Inc. (collectively, “PJM” and together with the Debtors, the “Parties”) against each of the other Parties relating to the Non-Performance Charges for the Performance Assessment Intervals relating to Winter Storm Elliot in late 2022 (the “Penalties”) and the Bankruptcy Cases.

**Whereas**, each Debtor (as defined below) filed a voluntary petition for relief in the United States Bankruptcy Court for the District of Delaware under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on March 31, 2023 (the “Petition Date”).

**Whereas**, the Restructuring Term Sheet, attached as Exhibit B to the Restructuring Support Agreement [Docket No. 12, Ex. B], contemplates a restructuring of the Debtors whereby (a) existing equity interests are cancelled and extinguished with no recovery, and (b) the Debtors’ Prepetition Lenders (as defined below) will acquire 100% of the equity of the reorganized Debtors.

**Now, therefore**, in consideration of the mutual covenants set forth in this Term Sheet and for the reasons set forth herein and elsewhere, the Parties subject to Bankruptcy Court approval hereby agree as follows:

<b>Settlement Terms</b>	
<b>1. Restructuring Transaction</b>	The Debtors shall transfer the assets currently owned by Elgin and Rocky Road through the transfer of the assets themselves, including the Debtors’ gas-fired power plants (collectively, the “ <u>Plants</u> ”), to one or more new owners (each, a “ <u>Purchaser</u> ” and collectively, the “ <u>Purchasers</u> ”) pursuant to a plan of reorganization (a “ <u>Plan</u> ”) or

<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the PJM Open Access Transmission Tariff.

<sup>2</sup> “Debtors” means collectively, Lincoln Power, L.L.C. (“Lincoln”), Cogentrix Lincoln Holdings, LLC, Cogentrix Lincoln Holdings II, LLC (“Holdings”), Elgin Energy Center Holdings, LLC, Elgin Energy Center, LLC (“Elgin”), Valley Road Holdings, LLC, Valley Road Funding, LLC, and Rocky Road Power, LLC (“Rocky Road”), each of which are debtors and debtors in possession in the bankruptcy cases jointly administered under *In re Lincoln Power, L.L.C.*, Case No. 23-10382 (LSS) (the “Bankruptcy Cases”), pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

a sale under section 363 of the Bankruptcy Code (a “Sale,” and each of a Sale and/or a Plan, as applicable, a “Restructuring”).

For the avoidance of doubt, the Debtors and PJM acknowledge that (a) the Purchaser(s) may be the lenders (the “Prepetition Lenders”) under that certain Credit Agreement, dated as of July 5, 2017 (as amended, restated, supplemented, waived, and/or modified from time to time, the “Credit Agreement”), by and among Lincoln, as borrower, Holdings, ABN AMRO Capital USA LLC, as issuing lender and revolving lender, the lenders party thereto, the subsidiary guarantors party thereto, and Investec Bank plc, as administrative agent, and (b) the Prepetition Lenders have retained their rights with respect to (i) credit bidding pursuant to and consistent with section 363(k) of the Bankruptcy Code and (ii) proposing a Plan resulting in a change of control to the syndicate. The Parties agree to not object to the Prepetition Lenders’ serving as the Purchasers on the basis of the Prepetition Lenders’ choice to credit bid or such entities’ existing lending relationship to the Debtors.

In either case, upon consummation of the Restructuring, neither the Consenting Sponsor,<sup>3</sup> nor Cogentrix Energy Power Management, LLC and any affiliate thereof (collectively, “Cogentrix”), will hold any ownership interest, either directly or indirectly, in Elgin or Rocky Road. As used in this Term Sheet, the Restructuring shall be deemed consummated upon, as applicable, (a) the Plan Effective Date<sup>4</sup> or (b) the Closing<sup>5</sup> of the Sale(s).

PJM will not object to, delay, impede, or take any other action to interfere with the Restructuring that is consistent with the Settlement or take any action that would be materially inconsistent with the Settlement.

To the extent a Restructuring is consummated pursuant to a Plan, following commencement of solicitation of the Plan, PJM shall (a) timely vote all of its claims<sup>6</sup> to accept the Plan and not change or withdraw (or cause to be changed or withdrawn) any such vote

<sup>3</sup> “Consenting Sponsor” means, collectively, Carlyle Power CPP II Lincoln, L.L.C., Carlyle Power Partners II-C, L.P., CPP II General Partners, L.P., and TC Group CPP II, L.L.C., in their respective capacities as direct or indirect holders of equity interests in Lincoln and its subsidiaries, any affiliate thereof, and any other fund or entity held or managed by The Carlyle Group.

<sup>4</sup> “Plan Effective Date” means the date on which all conditions to the effectiveness of the Plan have been satisfied or waived in accordance with its terms.

<sup>5</sup> “Closing” means the date on which all conditions to the effectiveness of the Sale have been satisfied or waived in accordance with the applicable purchase agreement(s).

<sup>6</sup> “Claim” has the meaning ascribed to such term under 11 U.S.C. § 101(5).

	<p>provided that the Plan remains consistent with the Settlement and (b) to the extent PJM is permitted to elect whether to opt out of the releases set forth in the Plan, elect not to opt out of the releases set forth in the Plan (it being understood that PJM shall decline to opt out of the releases by timely delivering its duly executed and completed ballot designating that it does not opt out of the releases).</p>
<p><b>2. Treatment of the Penalties</b></p>	<p>The PJM Allowed GUC Claims, as defined under Section 10 hereof, shall be treated as general unsecured claims in the Bankruptcy Cases, and may be classified separately from other general unsecured claims under the Plan, with PJM agreeing to not object to such separate classification provided that the treatment and distributions afforded to PJM under the Plan are equal to or greater than the treatment given to general unsecured creditors. PJM agrees and acknowledges that (a) the Debtors are entitled to consummate a Sale free and clear of any claims relating to the Penalties under section 363 of the Bankruptcy Code and (b) PJM shall not oppose the Debtors' receipt of a discharge of any claims relating to the Penalties pursuant to a Plan under section 1141 of the Bankruptcy Code.</p> <p>PJM will not seek to collect payment of the Penalties in part or in full, including against any Consenting Sponsor, or current or future affiliate or subsidiary thereof, that is currently, or seeks to become a PJM member in the future, except as otherwise provided in Section 10 hereof and will not seek additional collateral from the Debtors' post-petition revenues in connection with the Penalties before the Settlement is executed and the Penalties are discharged.</p> <p>For the avoidance of doubt, upon consummation of the Restructuring, the Purchaser(s) shall have no liability for, on account of, or relating to the Penalties.</p>
<p><b>3. Regulatory Matters</b></p>	<p>Elgin, Rocky Road, and the Purchaser(s) will file any FERC<sup>7</sup> FPA<sup>8</sup> Section 203 application necessary to obtain approval of a Restructuring.</p> <p>The documents governing any Restructuring will require that the Purchaser(s) will file with FERC to succeed to or to replace the Reactive Power tariffs for the Plants.</p>

<sup>7</sup> “FERC” means the Federal Regulatory Energy Commission.

<sup>8</sup> “FPA” means the Federal Power Act.



	<p>PJM will not object to or otherwise protest any FERC filings made by Elgin, Rocky Road, and/or the Purchaser(s) regarding, without limitation, to the extent such filings are consistent with the Settlement, (a) any FPA Section 203 application for approval of a change of control of Elgin and Rocky Road (a “<u>Change of Control</u>”), (b) any application for market-based rate authority pursuant to FPA Section 205, (c) any application for or self-certification of exempt wholesale generator status under the Public Utility Holding Company Act of 2005 and (d) any application for replacement of or succession to Reactive Power tariffs, that Elgin, Rocky Road, and the Purchaser(s) determine is necessary or advisable for consummation of the Restructuring. For the avoidance of doubt, any objection or opposition filed with respect to any FERC filings by any PJM member or PJM’s Independent Market Monitor shall not be attributable to PJM or constitute a breach of PJM’s commitments under this Settlement.</p>
<p><b>4. Treatment of Operating Agreement</b></p>	<p>The existing PJM Operating Agreements to which Elgin and Rocky Road are currently parties will, subject to entry of a final order of the Bankruptcy Court granting such relief, be rejected in the Bankruptcy Cases, and any resulting rejection damages shall be treated as general unsecured claims of the applicable Debtor. PJM will not oppose the Debtors’ motion to reject the existing Operating Agreements filed in the Bankruptcy Cases.</p> <p>As a condition precedent to a Change of Control pursuant to the Restructuring, PJM will (a) enter into one or more new Operating Agreements with the Purchaser(s) subject to the Purchaser(s) satisfying the requirements for PJM membership and market participation and (b) timely submit such Operating Agreements to FERC for approval under FPA Section 205. For the avoidance of doubt, PJM agrees not to impose any condition that it would not otherwise impose in the ordinary course of its business absent the Bankruptcy Cases commenced by Elgin and Rocky Road, including, without limitation, any additional requirement to hold collateral, pay the Penalties or any portion thereof, other than as provided in Section 10 hereof, or achieve any non-ordinary course credit enhancements. For the avoidance of doubt, PJM’s obligations under this Section 4 shall be conditioned on (a) neither the Consenting Sponsor nor Cogentrix holding any ownership or other financial interest, either directly or indirectly, in the Plants or the Purchaser upon consummation of the Restructuring and (b) Cogentrix not providing management, energy management, or operation and maintenance services beyond the Transition Period; <i>provided, however</i>, that notwithstanding anything herein to the</p>

	<p>contrary, payments to Cogentrix during the Transition Period shall not constitute a breach of this Term Sheet.</p> <p>Rejection of the existing PJM Operating Agreements shall be subject to Bankruptcy Court approval and effective contemporaneously with the effective date of the new Operating Agreements with PJM.</p>
<p><b>5. Interconnection Agreements</b></p>	<p>The Debtors shall assume and assign the Interconnection Agreements to the Purchaser(s), subject to the Purchaser(s) providing typical performance assurances. PJM agrees not to object to the Debtors' assumption and assignment of the Interconnection Agreements to Purchaser(s) and take all actions reasonably necessary to obtain FERC's approval of the same, if required. For the avoidance of doubt, any necessary updates or amendments to the Interconnection Agreements that typically occur as part of the assignment process shall not constitute a breach of the Parties' commitments in this Section 5.</p>
<p><b>6. Ongoing PJM Participation and Associated Revenues</b></p>	<p>Until the Restructuring is consummated, Elgin and Rocky Road will continue to have all PJM membership rights and obligations to participate in PJM's energy, capacity, and ancillary services markets, and providing certain ancillary services, including reactive supply and voltage control service, under the existing PJM Operating Agreements and applicable tariffs, including being subject to setoff and netting performed by PJM in the ordinary course of business. For the avoidance of doubt, Elgin and Rocky Road shall continue to be subject to any monetary obligations of a PJM member required to remain in good standing that arise after the Petition Date and PJM shall be permitted to perform setoff and netting of any such postpetition monetary obligations owed to PJM against postpetition monetary obligations owed by PJM to Elgin and Rocky Road, as applicable, in the ordinary course of PJM's business; <i>provided</i> that, for the avoidance of doubt, the Penalties shall not be considered postpetition monetary obligations in any respects and PJM shall not seek any financial assurances, collateral requirements, or other credit enhancements under the PJM Operating Agreements or the PJM Open Access Transmission Tariff in respect of the Penalties. Subject to the foregoing, Elgin and Rocky Road will continue to receive revenues associated with such participation, including capacity revenues until the later to occur of (a) the Plan Effective Date and (b) the end of the 2022-23 Delivery Year, and PJM shall not withhold, set off, or garnish such revenues, seek to foreclose on any collateral, or otherwise take any action to collect the Penalties or enforce remedies under the PJM</p>

	Operating Agreements or the PJM Open Access Transmission Tariff for obligations arising prior to the Petition Date except as provided in Section 10 hereof.
<b>7. Transition Period of Service Agreements</b>	Cogentrix may continue to provide management, emergency management, and operation and maintenance services, including acting as the assets’ PJM market participant, to the Purchaser as part of a transition period, not to exceed 180 days following consummation of a Restructuring.
<b>8. Existing and Future Capacity Supply Obligations and Future Capacity Market Participation</b>	<p>Upon consummation of the Restructuring, Elgin’s and Rocky Road’s future capacity supply commitments for the 2023–2024 and 2024–2025 Delivery Years will remain with Elgin and Rocky Road and will be terminated upon rejection of the PJM Operating Agreements.</p> <p>Upon consummation of the Restructuring, the Plants’ ICAP and UCAP for the 2023–24 and 2024–25 Delivery Years will continue to be modeled in the PJM Capacity Exchange (as defined below) as available resources for the purpose of participating in any 2024–25 Incremental Auction(s) held after consummation of the Restructuring and for execution of bilateral capacity transactions with third parties.</p> <p>“<u>PJM Capacity Exchange</u>” means the exchange made available by PJM and used by market participants to submit capacity offers for generation in the RPM Auctions, submit bids to purchase replacement capacity in Incremental Auctions, and create bilateral transactions, among other things.</p>
<b>9. Ancillary Services</b>	The Debtors shall assume and assign the obligations to provide ancillary services, as agreed in writing between the Parties, to the Purchaser(s). Upon consummation of the Restructuring, Purchaser(s) of the Plants shall continue to provide the same ancillary services on substantially the same terms and conditions as previously provided by the Plants. Purchaser(s) will use good utility practice in continuing to provide such ancillary services and shall use commercially reasonable efforts to obtain any necessary FERC approvals regarding any such services.
<b>10. PJM Claim</b>	PJM shall have allowed claims in the Bankruptcy Cases in the aggregate amount of \$42,777,661.54, which shall be comprised of an allowed claim of \$18,005,954.14 against Rocky Road and \$24,771,707.40 against Elgin (collectively, the “ <u>Allowed PJM</u> ”

	<p>Claims”). On the Settlement Effective Date (as defined in <b>Exhibit A</b> attached hereto), PJM shall retain collateral and withheld funds held by PJM in the aggregate amount of \$2,183,362.78 as of April 17, 2023, together with any accrued interest thereon through the Settlement Effective Date (collectively, the “<u>Withheld Amounts</u>”), to secure Elgin’s and Rocky Road’s obligations with respect to capacity performance obligations, including the Penalties, and apply the Withheld Amounts against the Allowed PJM Claims.</p> <p>Following application of the Withheld Amounts, PJM shall have allowed general unsecured claims in the aggregate amount of \$40,594,298.76,<sup>9</sup> which shall be comprised of an allowed general unsecured claim of \$17,083,435.78 against Rocky Road and \$23,510,862.98 against Elgin (collectively, the “<u>PJM Allowed GUC Claims</u>”).</p> <p>PJM shall not seek to appoint an official committee of unsecured creditors or join any official committee of unsecured creditors that may be appointed in the Bankruptcy Cases.</p> <p>Upon the effectiveness of this Settlement, the Debtors shall not commence, prosecute, intervene in, join, or otherwise participate in any litigation or other court, administrative, or regulatory proceeding against PJM relating to the Non-Performance Charges for the Performance Assessment Intervals relating to Winter Storm Elliot.</p>
<p><b>11. Releases</b></p>	<p>Upon the effectiveness of the Settlement, in accordance with Section 12 hereof, the releases set forth in <b>Exhibit A</b> attached hereto shall become effective on the terms and conditions set forth therein.</p>
<p><b>12. Settlement Implementation/ Termination</b></p>	<p>The Parties intend for this term sheet to be binding upon the Parties hereto, and to memorialize the legal and enforceable rights and obligations of each party hereto. By signing this term sheet, the Parties agree to the foregoing and further agree to implement the Settlement as set forth in this Section 12. The Debtors shall file a motion to approve the Settlement pursuant to Bankruptcy Rule 9019 no later than April 28, 2023, which shall attach this term sheet thereto (the “<u>9019 Motion</u>”). The 9019 Motion and any order granting the 9019 Motion (the “<u>9019 Order</u>”) shall be in form and substance satisfactory to the Parties and the Consenting Lenders (as</p>

<sup>9</sup> Amount subject to further reduction for interest on Withheld Amounts accruing from April 18, 2023 until the Settlement Effective Date.

	<p>defined in <b>Exhibit A</b> attached hereto). The Parties agree to use their best efforts to support entry of the 9019 Order no later than May 26, 2023. The Settlement shall become effective upon the Bankruptcy Court’s entry of an order approving the 9019 Motion.</p> <p>PJM is authorized by the Debtors to provide FERC with a copy of the Settlement once fully executed by the Parties. Upon the filing of the 9019 Motion, the Debtors shall provide FERC with notice of same and PJM upon the filing of the 9019 Motion shall be authorized to provide a copy of the 9019 Motion to its members. For the avoidance of doubt, any objection or opposition to the 9019 Motion filed by any PJM member on PJM’s Independent Market Monitor shall not be attributable to PJM or constitute a breach of PJM’s commitments or obligations under the Settlement.</p> <p>The Parties’ obligations under this binding term sheet and the Settlement shall terminate automatically upon the occurrence of any of the following events: (a) the 9019 Motion is denied; (b) the 9019 Order is not entered on or prior to June 22, 2023; or (c) after entry, the 9019 Order is vacated, reversed or modified in a manner not acceptable to any Party.</p> <p>In addition, in the event that any Party materially breaches its obligations under this binding term sheet (including, without limitation, this Section 12), and such material breach is not cured within two (2) business days of receipt of written notice of such breach from the non-breaching Party, the non-breaching Party may terminate this binding term sheet and the Settlement by providing written notice of such termination to the breaching Party. Such termination shall not waive, prejudice, or otherwise limit any rights or remedies available to the non-breaching Party in law or equity.</p> <p>For purposes of this term sheet, written notice may be provided by mail, hand delivery, facsimile, or electronic mail (including, in each case, from counsel to any Party hereto).</p>
<p><b>13. Governing Law</b></p>	<p>This Term Sheet and the Settlement memorialized herein shall be governed by and construed in accordance with the laws of the State of Delaware. In connection with any dispute arising out of this Term Sheet or Settlement, the parties hereto irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the Bankruptcy Court.</p>

**LINCOLN POWER, L.L.C.  
COGENTRIX LINCOLN HOLDINGS, L.L.C.  
COGENTRIX LINCOLN HOLDINGS II, L.L.C.  
ELGIN ENERGY CENTER HOLDINGS, L.L.C.  
ELGIN ENERGY CENTER, L.L.C.  
VALLEY ROAD HOLDINGS, L.L.C.  
VALLEY ROAD FUNDING, L.L.C.  
ROCKY ROAD POWER, L.L.C.**

By: *Justin D. Pugh*  
Name: Justin D. Pugh  
Title: Chief Restructuring Officer

**PJM INTERCONNECTION, L.L.C.**

By: Eric Scherly  
Name: Eric Scherly  
Title: Assistant General Counsel


**PJM SETTLEMENT, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**PJM INTERCONNECTION, L.L.C.**

By: \_\_\_\_\_  
Name:  
Title:

**PJM SETTLEMENT, INC.**

By:   
Name: STEPHEN D. LAWSON  
Title: PRESIDENT



**EXHIBIT A**  
**Release Provisions**

## **Releases by the Debtors**

For good and valuable consideration, the PJM Parties and the Consenting Lenders are deemed released and discharged by the Released Parties from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted by or on behalf of the Debtors, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), (a) the Restructuring effective upon the Consummation of the Restructuring and (b) any Avoidance Actions, the negotiation, documentation, or filing of the Settlement, or any Settlement Approval Motion, or the Penalties or any acts or omissions of the PJM Parties during, relating to, or in connection with Winter Storm Elliot effective upon the Settlement Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above shall not be construed as releasing any PJM Party from obligations and Claims arising in or provided for in the Settlement.

## **Releases by PJM**

For good and valuable consideration, the Released Parties and the Consenting Lenders are deemed released and discharged by the PJM Parties from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted by or on behalf of the Debtors, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, or asserted by or on behalf of the PJM Parties, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), (a) the Restructuring effective upon the Consummation of the Restructuring and (b) the negotiation, documentation, or filing of the Settlement, or any Settlement Approval Motion, or the Penalties or any acts or omissions of the Released Parties during, relating to, or in connection with Winter Storm Elliot effective upon the Settlement Effective Date; *provided, however*, that to the extent set forth in the Settlement, the Penalties shall be allowed Claims in the Bankruptcy Cases which shall be entitled to the treatment under any Plan that is equal to or greater than the treatment given to general unsecured creditors. Notwithstanding anything to the contrary in the foregoing, the releases set forth above shall not be construed as releasing any Released Party from obligations and Claims (including the PJM Allowed GUC Claims) arising in or provided for in the Settlement.

## **Definitions used in the Releases**

“*Affiliates*” has the meaning set forth in section 101(2) of the Bankruptcy Code as if such Entity was a debtor in a case under the Bankruptcy Code.

“*Avoidance Actions*” means, collectively, any and all actual or potential avoidance, recovery, subordination, or other similar Claims and Causes of Action, or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the

Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, Claims, Causes of Action, or remedies arising under chapter 5 of the Bankruptcy Code or under similar or related local, state, federal, or foreign statutes or common law, including fraudulent transfer laws.

“Bankruptcy Cases” means the bankruptcy cases filed by the Debtors and jointly administered under *In re Lincoln Power, L.L.C.*, Case No. 23-10382 (LSS), pending in the United States Bankruptcy Court for the District of Delaware.

“Bankruptcy Code” means title 11 of the United States Code.

“Causes of Action” means, collectively, any and all claims, interests, controversies, actions, proceedings, reimbursement claims, contribution claims, recoupment rights, debts, third-party claims, indemnity claims, damages, remedies, causes of action, demands, rights, suits, obligations, liabilities, accounts, judgments, defenses, offsets, powers, privileges, licenses, franchises, Liens, guaranties, Avoidance Actions, agreements, counterclaims, and cross-claims, of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, asserted or unasserted, direct or indirect, assertable directly or derivatively, choate or inchoate, reduced to judgment or otherwise, secured or unsecured, whether arising before, on, or after the Petition Date, in tort, law, equity, or otherwise pursuant to any theory of civil law (whether local, state, or federal United States law or non-United States law). Causes of Action also include, without limitation: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) any Claim (whether under local, state, federal United States law or non-United States law) based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, fraudulent transfer or fraudulent conveyance or voidable transaction law, violation of local, state, or federal non-United States civil law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) the right to object to or otherwise contest Claims or Interests; (d) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; and (e) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Consummation” means the Plan Effective Date or the Closing of a Sale, as applicable.

“Claim” has the meaning ascribed to such term under section 101(5) of the Bankruptcy Code.

“Closing” means the date on which all conditions to the effectiveness of the Sale have been satisfied or waived in accordance with the applicable purchase agreement(s).

“Consenting Lenders” means the lenders under the Debtors’ prepetition credit facilities that are party to that certain Restructuring Support Agreement, dated as of March 30, 2023, by and among the Debtors, such lenders, and certain entities comprising the Consenting Sponsor, as may be amended, supplemented, or otherwise modified from time to time.

“Consenting Sponsor” means, collectively, Carlyle Power CPP II Lincoln, L.L.C., Carlyle Power Partners II-C, L.P., CPP II General Partners, L.P., and TC Group CPP II, L.L.C., in their respective capacities as direct or indirect holders of Interests in the Debtors, any affiliate thereof, and any other fund or entity held or managed by The Carlyle Group.

“Debtors” means, collectively, Lincoln Power, L.L.C., Cogentrix Lincoln Holdings, LLC, Cogentrix Lincoln Holdings II, LLC, Elgin Energy Center Holdings, LLC, Elgin Energy Center, LLC, Valley Road Holdings, LLC, Valley Road Funding, LLC, and Rocky Road Power, LLC.

“Entity” has the meaning set forth in section 101(15) of the Bankruptcy Code

“Estate” means, as to each Debtor, the estate created for such Debtor in its Bankruptcy Case pursuant to section 541 of the Bankruptcy Code upon the commencement of such Debtor’s Bankruptcy Case.

“Final Order” means, as applicable, an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the relevant subject matter, that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for a new trial, reargument, or rehearing has been timely taken; or as to which, any appeal that has been taken or any petition for certiorari that has been or may be filed has been withdrawn with prejudice, resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought, or the new trial, reargument, or rehearing has been denied, resulted in no stay pending appeal or modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order will not preclude such order from being a Final Order.

“Holder” means an Entity holding a Claim against or an Interest in any Debtor, as applicable.

“Interest” means, collectively, any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor and American depositary shares, American depositary receipts, options, warrants, rights, restricted stock awards, performance share awards, performance share units, stock appreciation rights, phantom stock rights, stock settled restricted stock units, cash-settled restricted stock units, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (in each case whether or not arising under or in connection with any employment agreement, separation agreement, or employee incentive plan or program of a Debtor as of the Petition Date and whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or similar security).

“Non-Performance Charge” has the meaning ascribed to such term in the PJM Open Access Transmission Tariff.

“Penalties” means any Performance Assessment Interval or Non-Performance Charge, or any other penalty assessed by PJM pursuant to the PJM Operating Agreements, which has accrued prior to the Settlement Effective Date.

“Performance Assessment Interval” has the meaning ascribed to such term in the PJM Operating Agreement.

“PJM” means, collectively, PJM Interconnection, L.L.C. and PJM Settlement, Inc.

“PJM Member” means a member of PJM as defined by the PJM Operating Agreement.

“PJM Parties” means, collectively, PJM and each of its predecessors, successors and assigns, subsidiaries, Affiliates, current and former officers, directors, managers, principals, shareholders, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, and other professionals, and such Entities’ respective heirs, executors, estates, servants, and nominees; *provided* that, for the avoidance of doubt, the term “PJM Parties” shall not include the members of PJM, in their respective capacities as such, or PJM’s Independent Market Monitor.

“PJM Operating Agreement” means the Amended and Restated Operating Agreement between PJM and the applicable Debtors.

“Plan” means any plan of reorganization or plan of liquidation proposed by the Debtors in the Bankruptcy Cases.

“Plan Effective Date” means the date on which all conditions to the effectiveness of the Plan have been satisfied or waived in accordance with its terms.

“Released Parties” means, collectively, and in each case in its capacity as such: (a) the Debtors, (b) the Reorganized Debtors, as applicable, (c) the Consenting Sponsor, and (d) with respect to each of the foregoing entities in clauses (a) through (c), each such Entities’ predecessors, successors and assigns, subsidiaries, Affiliates, managed accounts or funds, current and former officers, directors, managers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, and such Entities’ respective heirs, executors, Estate, servants, and nominees.

“Reorganized Debtors” means the Debtors, as reorganized pursuant to or under a Plan, on and after the Plan Effective Date.

“Restructuring” means a restructuring of the existing indebtedness of, and equity interests in, the Debtors, which shall be consummated pursuant to a Plan or Sale.

“Sale” means a sale of all or substantially all of the Debtors’ assets (which, for the avoidance of doubt, may be structured as an asset sale or a transfer of the Interests in the Debtors) pursuant to section 363 of the Bankruptcy Code.

“Settlement” has the meaning ascribed to such term in the Term Sheet.

“Settlement Approval Motion” means any motion to approve the Settlement pursuant to Bankruptcy Rule 9019, including, without limitation, a Plan incorporating the terms of the Settlement.

“Settlement Effective Date” means the earliest date on which the 9019 Order (as defined in the Term Sheet) has been entered and is unstayed and in full force and effect.

“Winter Storm Elliot” means the winter storm that struck most of the United States, including the PJM market, from December 22, 2022 through December 27, 2022.