

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
HERITAGE POWER, LLC, <i>et al.</i> , ¹)	Case No. 23-90032 (CML)
)	
Debtors.)	(Jointly Administered)
)	

NOTICE OF FILING OF PJM SETTLEMENT TERM SHEET

PLEASE TAKE NOTICE that on July 17, 2023, Heritage Power, LLC and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) filed the *Joint Chapter 11 Plan of Reorganization of Heritage Power, LLC, et al.* [Docket No. 376] (the “Plan”) and on August 21, 2023, the Debtors filed the *Second Amended Disclosure Statement for Joint Chapter 11 Plan of Reorganization of Heritage Power, LLC, et al.* [Docket No. 452] (the “Disclosure Statement”).

PLEASE TAKE FURTHER NOTICE that on August 21, 2023, the Court entered the *Order (I) Approving the Adequacy of the Second Amended Disclosure Statement, (II) Approving the Solicitation, Voting, and Tabulation Procedures, (III) Approving the Forms of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, (V) Approving Cure Notice and Assumed Contract Objection Procedures and (VI) Granting Related Relief* [Docket No. 455] (the “Disclosure Statement Order”). Among other things, the Disclosure Statement Order established September 25, 2023, at 4:00 p.m. Central Time as the deadline to file

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Heritage Power, LLC (9775); Blossburg Power, LLC (3538); Brunot Island Power, LLC (8482); Gilbert Power, LLC (2872); Hamilton Power, LLC (6256); Heritage Power Marketing, LLC (3891); Hunterstown Power, LLC (4065); Mountain Power, LLC (6709); New Castle Power, LLC (8606); Niles Power, LLC (6766); Orrtanna Power, LLC (8863); Portland Power, LLC (3465); Sayreville Power, LLC (6167); Shawnee Power, LLC (3714); Shawville Power, LLC (8264); Titus Power, LLC (6547); Tolna Power, LLC (8431); and Warren Generation, LLC (8699). The location of the Debtors’ service address is: 1360 Post Oak Blvd., Suite 2000, Houston, TX 77056.

objections to confirmation of the Plan, to request modifications to the Plan, or to object to the treatment of executory contracts or unexpired leases under the Plan.

PLEASE TAKE FURTHER NOTICE that to resolve, among other issues, certain comments to the Plan, including with respect to the assumption and treatment of certain executory contracts, the Debtors (with the consent of the Required Consenting Creditors in accordance with the terms of the Restructuring Support Agreement), PJM Interconnection, L.L.C., and PJM Settlement, Inc. (together with PJM Interconnection, L.L.C., "PJM") have entered into the *PJM Settlement Term Sheet* dated as of September 26, 2023 (the "PJM Settlement Term Sheet").

PLEASE TAKE FURTHER NOTICE that the PJM Settlement Term Sheet is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that at the confirmation hearing scheduled for October 4, 2023, at 2:00 p.m. Central Time, the Debtors intend to seek Bankruptcy Court approval of the PJM Settlement Term Sheet in connection with confirmation of the Plan.

Dated: September 26, 2023

Respectfully submitted,

By: /s/ Kenric D. Kattner

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Counsel for the Debtors

Certificate of Service

I certify that on September 26, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Kenric D. Kattner

Kenric D. Kattner

Exhibit A

PJM Settlement Term Sheet

HERITAGE POWER, LLC, ET AL.

PJM SETTLEMENT TERM SHEET

September 26, 2023

This term sheet (this “Term Sheet”) sets forth the principal terms of a potential settlement of all Claims, objections, and all other Causes of Action that have been or could be asserted by Heritage Power, LLC or its affiliated debtors and debtors in possession (collectively, including as such entities may be reorganized following emergence from bankruptcy, the “Debtors”) or PJM Interconnection, L.L.C. or PJM Settlement, Inc. (collectively, “PJM” and together with the Debtors, the “Parties”) against any of the other Parties relating to (a) the Non-Performance Charges for the Performance Assessment Intervals (“PAIs”) relating to Winter Storm Elliott in late 2022 (the “Non-Performance Charges”) or (b) the Chapter 11 Cases.

This Term Sheet shall not be effective unless and until the signature pages attached hereto are executed by the Parties and the United States Bankruptcy Court for the Southern District of Texas has approved this Term Sheet.

THIS TERM SHEET (AND ANY INFORMATION PROVIDED IN CONNECTION HEREWITH) IS PROVIDED IN CONFIDENCE. THIS TERM SHEET IS PROVIDED AS A SETTLEMENT PROPOSAL IN FURTHERANCE OF SETTLEMENT DISCUSSIONS. ACCORDINGLY, THIS TERM SHEET (AND ANY INFORMATION PROVIDED IN CONNECTION HEREWITH) IS ENTITLED TO THE PROTECTIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION AND INFORMATION EXCHANGED IN THE CONTEXT OF SETTLEMENT DISCUSSIONS. FURTHER, NOTHING IN THIS TERM SHEET SHALL BE AN ADMISSION OF FACT OR LIABILITY.

Recitals

WHEREAS, on January 24, 2023, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Chapter 11 Cases”);

WHEREAS, prior to commencing the Chapter 11 Cases, the Debtors engaged with GenOn Holdings, LLC and a group of consenting creditors (the “Consenting Creditors”) in negotiations that culminated in the execution of a Restructuring Support Agreement, which is filed on the docket of the Chapter 11 Cases at Docket No. 17-1 (the “RSA”);¹

WHEREAS, the Debtors own or operate sixteen power generation assets primarily fueled by natural gas and/or fuel oil in Pennsylvania, New Jersey, and Ohio (collectively, the “Plants”);

WHEREAS, Debtor Heritage Power Marketing, LLC (“HPM”) is a member of the PJM Market (“PJM Member”);

¹ Capitalized terms not defined herein shall have the meaning set forth in the RSA.

WHEREAS, as a PJM Member, HPM 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 (the "PJM Operating Agreement"); and (ii) the PJM Open Access Transmission Tariff (the "PJM Tariff" and together with the PJM Operating Agreement, the "PJM Documents");

WHEREAS, 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;

WHEREAS, 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;

WHEREAS, due to a number of factors, PJM asserts that and the Debtors refute that certain of the Plants (along with many other PJM Members) did not meet certain of their performance obligations during the Winter Storm Elliott PAI;

WHEREAS, on February 10, 2023, PJM estimated that HPM owed \$39,100,568.02 in Non-Performance Charges for its alleged failure to perform as required under the PJM Documents during Winter Storm Elliott;

WHEREAS, on March 6, 2023, the Debtors submitted to PJM a request for adjustments to the calculations of the Non-Performance Charges in accordance with applicable non-bankruptcy law ("Non-Bankruptcy Adjustments"), asserting that the total amount of Non-Performance Charges should be decreased by \$27,162,830 (the "Non-Performance Charge Adjustment Letter");

WHEREAS, on April 20, 2023, PJM filed a proof of claim in the bankruptcy case of HPM (the "Proof of Claim"). The Proof of Claim asserts a general unsecured claim against HPM in the net amount of \$23,902,471.71 (the "PJM Claim Amount")², reflecting that PJM had accepted only a portion of the Non-Bankruptcy Adjustments;

WHEREAS, the Debtors believe, and PJM refutes, that, in addition to the Non-Bankruptcy Adjustments, certain defenses to the Proof of Claim as well as other arguments and options ("Bankruptcy Adjustments") are available in the context of the Chapter 11 Cases, including without limitation section 365(b)(2)(D) of the Bankruptcy Code as well as others, that eliminate any obligation to pay the Non-Performance Charges in connection with the assumption of the PJM Operating Agreement;

WHEREAS, the Debtors and PJM desire to avoid the costs, delays, and uncertainty that would be involved with litigating the Non-Bankruptcy Adjustments and the Bankruptcy Adjustments, and the treatment of the PJM Operating Agreement in the Chapter 11 Cases; and

² The PJM Claim Amount of \$23,902,471.71 is a net claim amount equal to: (x) the gross claim amount of \$37,747,842.34, consisting of: (1) the Non-Performance Charges in the amount of \$37,151,079.05; (2) interest thereon, in the amount of \$446,724.48; and (3) various other pre-petition charges and adjustments, in the amount of \$150,038.81, minus (y) based on the information available to PJM when filing the Proof of Claim, the then-estimated amount of PAI bonus credit payable to HPM ("PAI Bonus"), including interest, in the amount of \$13,845,370.63. The amount of the PAI Bonus to which HPM will ultimately be entitled is a function of PJM Settlement's ongoing collection of similar PAI charges from other PJM market participants and, therefore, is not final.

WHEREAS, in accordance with the terms of the RSA, the Required Consenting Creditors consent to the Debtors' execution of this Term Sheet.

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 hereby agree as follows:

Settlement Terms	
1. Restructuring Transaction	<p>The Debtors shall effectuate the Restructuring Transactions in accordance with the terms of the RSA. As set forth in the RSA, the Debtors will have new owners and a new operator. PJM's obligations under this Term Sheet shall be conditioned on GenOn Holdings, LLC and its non-Debtor parents, subsidiaries, and Affiliates (collectively, "<u>GenOn</u>") (i) not holding any ownership or other financial interest, either directly or indirectly, in the Plants or the Debtors upon consummation of the Restructuring Transaction and (ii) not providing management, energy management, or operation and maintenance services for the Plants or the Debtors upon consummation of the Restructuring Transaction; <i>provided, however</i>, the foregoing conditions shall not apply with respect to (a) any affiliate relationship among GenOn and Strategic Value Partners LLC, Strategic Value Master Fund, Ltd., Strategic Value Opportunities Fund, L.P., Strategic Value Special Situations Master Fund III, L.P., or Strategic Value Special Situations Master Fund IV, L.P.; and (b) GenOn's direct or indirect ownership or financial interest with respect to the Plant located in Clearfield County, Pennsylvania (the "<u>Shawville Plant</u>"), including the related land and facility leases.</p> <p>The Debtors will reorganize with adequate liquidity and funding to meet their obligations, including their obligations under the PJM Documents.</p> <p>PJM will support a Restructuring Transaction that is consistent with this Term Sheet and the RSA and take the actions reasonably necessary and requested by the Debtors for the Debtors to obtain FERC's approval of the same, to the extent required. PJM will not (i) take any action that is inconsistent with this Term Sheet or the Restructuring Transactions that would reasonably be expected to interfere with, delay or impede the Restructuring Transactions or Bankruptcy Court approval of this Term Sheet; or (ii) withhold any post-petition payments owed to the Debtors for setoff or recoupment against any alleged unpaid prepetition obligations of the Debtors, except as otherwise provided in this Term Sheet.</p> <p>To the extent the Restructuring Transaction consistent with this Term Sheet is implemented by the Plan, PJM shall; not directly or</p>

	<p>indirectly object to, join in any objection to, delay, impede, or take any other action to interfere with confirmation of the Plan.</p> <p>PJM shall not oppose the Debtors' receipt of a discharge of any Claims or Causes of Action against any Debtor relating to the Non-Performance Charges pursuant to a Plan under section 1141 of the Bankruptcy Code, provided however that the Debtor's obligation to pay the Cure Amount in accordance with this Term Sheet and the Debtor's obligation to make a distribution on the PJM Allowed GUC Claim pursuant to the terms of the Plan shall not be discharged.</p>
<p>2. Treatment of the PJM Operating Agreement</p>	<p>The existing PJM Operating Agreement to which HPM is currently a party will, subject to entry of a final order of the Bankruptcy Court granting such relief, be <i>assumed</i> in the Chapter 11 Cases by separate motion or through the Restructuring Transaction, in a manner reasonably acceptable to PJM. The total cure amount shall be equal to 60% of \$37,747,842.34 (the "<u>Cure Amount</u>").</p> <p>The Cure Amount will be satisfied in part by retention and application by PJM of the PAI Bonus³ toward the Cure Amount (the Cure Amount net of the PAI Bonus, the "<u>Cash Portion</u>"). If the effective date of the Restructuring Transaction occurs in October 2023, then seven ninths (7/9) of the Cash Portion shall be paid in cash and in full on the effective date of the Restructuring Transaction, and the balance (2/9) of the Cash Portion shall be paid in two equal monthly installments starting the first full month after the effective date of the Restructuring Transaction. If the effective date of the Restructuring Transaction occurs in November 2023, then eight ninths (8/9) of the Cash Portion shall be paid in cash and in full on the effective date of the Restructuring Transaction, and the balance (1/9) of the Cash Portion shall be paid in the first full month after the effective date of the Restructuring Transaction. If the effective date of the Restructuring Transaction occurs on or after December 2023, then the Cash Portion shall be paid in cash and in full on the effective date of the Restructuring Transaction.</p> <p>In consideration for payment of the Cure Amount as provided herein, PJM will not oppose the assumption (and, in the case of a Restructuring Transaction that is a Sale Transaction under the RSA, assignment to BidCo, subject to BidCo satisfying the requirements</p>

³ If the actual PAI bonus has not been determined as of the date of a payment required hereunder, for purposes of calculating the Cash Portion as of that date, the current estimated amount of PAI Bonus equal to \$9,379,328.77 shall be used. PJM will calculate and adjust the actual amount of the PAI Bonus for HPM in a consistent manner as for other PAI Bonus recipients and the adjusted PAI Bonus shall be used to determine any true up payments owed to PJM or HPM in respect of the Cash Portion as a result of such adjustment.

	<p>for PJM membership and market participation) of the existing PJM Documents by HPM,</p> <p>The Parties agree that any PAI Bonus is a pre-petition credit to HPM that may be set off against the pre-petition obligation of HPM to PJM.</p> <p>The Cure Amount is calculated by applying a 40% litigation risk adjustment (“<u>Litigation Risk Adjustment</u>”) to the gross amount of PJM’s claim.</p> <p>The Litigation Risk Adjustment is based on the cost, delay, and uncertainty that would be involved in litigating issues in Bankruptcy Court related to, among other things, the Non-Bankruptcy Adjustments and the Bankruptcy Adjustments, including arguments that the Non-Performance Charges are a penalty rate or penalty provision and therefore under section 365(b)(2)(D) of the Bankruptcy Code would not have to be paid as a cure to assume the PJM Operating Agreement.</p> <p>HPM shall be subject to any prior period adjustments or “true ups” made by PJM in accordance with the PJM Tariff and its ordinary billing and settlement practices, without regard to whether any prior period adjustments or “true ups” occurred or arose before or after the petition date; <i>provided, however</i>, that there shall be no adjustments to the HPM Non-Performance Charges related to Winter Storm Elliott, the Cure Amount, or the Litigation Risk Adjustment.</p>
<p>3. PJM General Unsecured Claim and Treatment</p>	<p>PJM will have an allowed, general unsecured claim equal to \$37,747,842.34 less the Cure Amount (the “<u>PJM Allowed GUC Claim</u>”). The PJM Allowed GUC Claim shall be satisfied through distribution to PJM on the same timing and to the same extent as distributions are made to other general unsecured creditors under the Plan.</p>
<p>4. Regulatory Matters</p>	<p>PJM will not oppose any filings by the Debtors with the Federal Energy Regulatory Commission (“<u>FERC</u>”) to obtain approval of a Restructuring Transaction and the Settlement, and PJM will cooperate with the Debtors with regard to regulatory filings with FERC that are consistent with this Term Sheet. Following the Debtors’ filing of this Term Sheet with the Bankruptcy Court for approval, PJM will withdraw its opposition contained in the comments filed in FERC Docket Nos. ER23-2602-000 and EC23-117-000 and will submit a statement of resolution attaching the Term Sheet indicating the concerns expressed in PJM’s comments have been resolved.</p>

<p>5. Interconnection Agreements</p>	<p>The Debtors shall assume any of its currently existing Interconnection Agreements subject to approval by FERC and/or the Bankruptcy Court as applicable. PJM agrees it will not object or otherwise protest the Debtors' assumption of the Interconnection Agreements and shall cooperate and take the actions reasonably requested by the Debtors for the Debtors to obtain FERC's approval of the same, to the extent required. The Debtors shall cooperate and take the actions reasonably requested by PJM to amend or clarify Interconnection Agreements as may be necessary or appropriate to obtain FERC's approval of same to the extent required.</p>
<p>6. Ongoing PJM Participation and Associated Revenues</p>	<p>The Debtors will continue, subject to complying with the PJM Documents and this Term Sheet, to have all PJM membership rights and obligations, including the ability to participate in PJM's energy, capacity, and ancillary services markets and providing reactive supply and voltage control service. The Debtors will continue to receive revenues associated with such participation, including capacity revenues. PJM shall not in connection with Non-Performance Charges withhold, set off, or garnish such revenues, seek to foreclose on any collateral, or otherwise take any action to collect the Non-Performance Charges or enforce remedies under the PJM Operating Agreement or the PJM Tariff provided that the Debtors or their successors make timely payment of the Cure Amount in accordance with this Term Sheet.</p>
<p>7. Ancillary Services</p>	<p>The Debtors shall assume all obligations to provide any ancillary services on the same terms and conditions as previously provided by the Plants, without prejudice to FERC's ability to require changes to such terms and conditions. PJM agrees it will not object or otherwise protest the Debtors' assumption of such obligations and PJM will take the actions reasonably requested by the Debtors for the Debtors to obtain FERC's approval of the same, to the extent required.</p>
<p>8. Releases</p>	<p>The Debtors will release PJM and PJM will release each of the following persons (collectively, and in each case in its capacity as such, the "<u>Released Parties</u>") from all Claims and Causes of Action relating to the Settlement, the Plan, the Non-Performance Charges, any Restructuring Transaction, or any acts or omissions related to any Debtor during, relating to, or in connection with Winter Storm Elliot or the Chapter 11 Cases: (a) each Debtor; (b) each Debtor as reorganized after the effective date of a Plan; (c) BidCo and its subsidiaries; (d) each Agent; (e) each of the Consenting Creditors; (f) each holder of a First Lien Claim; (g) GenOn Holdings, Inc., GenOn Energy Services, LLC and GenOn Holdings, LLC ("<u>Parent Sponsor</u>"), together with Parent Sponsor's direct and indirect parent entities and other Affiliates (excluding the Debtors); (h) Financial Sponsor; (i) each party, as of the effective date of a Plan, holding</p>

	<p>loans or making commitments under the Exit Facility and any administrative agents or collateral agents under the Exit Facility; (j) each financial institution and other entity that commits to backstop the funding of the Exit Facility under a commitment letter setting forth the terms and conditions under which such entities have committed to backstop the funding of the Exit Facility; (k) each current and former Affiliate of each entity in clause (a) through the following clause (l); and (l) each Related Party of each Entity in clause (a) through this clause (l); provided that in each case, an Entity will not be a Released Party if it timely files with the Bankruptcy Court on the docket of the Chapter 11 Cases an objection to the approval of this Term Sheet. The releases will be effective on the effective date of the Settlement, with the exception of the releases related to the Plan, which will be effective upon the effective date of the Plan. Notwithstanding anything to the contrary herein, the releases set forth above do not release (i) any obligations under this Term Sheet or any post-Transaction Consummation Date obligations under the Plan, the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement executed to implement the Plan; or (ii) any Claim or Causes of Action held by any Debtor (or their successors or assigns) for payment of capacity or similar revenues. The releases provided herein shall not be extended to release the Released Parties or PJM from any Claims or Causes of Action independent from and unrelated to the Debtors and Winter Storm Elliott.</p>
<p>9. Settlement Implementation and Termination</p>	<p>The Settlement will become effective upon the Bankruptcy Court's entry of an order approving the Settlement, which may be incorporated in the Plan. The Debtors shall seek Bankruptcy Court approval of this Term Sheet. PJM shall support the Debtors' efforts to obtain Bankruptcy Court approval of this Term Sheet</p> <p>The Parties' obligations under this Term Sheet shall terminate automatically upon (x) entry of any order vacating, reversing, or modifying the order approving this Term Sheet in a manner not acceptable to the Debtors or PJM and such event is not remedied, corrected, or otherwise cured within fourteen (14) days after the occurrence thereof; or (y) to the extent the Debtors or PJM elect to terminate this settlement by written notice to the other Parties following a termination of the RSA in accordance with its terms. In addition, in the event that any Party materially breaches its obligations under this Term Sheet, and any such material breach is not cured within five (5) business days of the breaching Party's receipt of written notice of such breach from the nonbreaching Party, the non-breaching Party may terminate this Term Sheet by providing written notice of such termination to the breaching Party. All</p>

	respective rights of the Debtors and PJM are reserved in the event of a termination of this Term Sheet.
10. Collateral Requirements	PJM will not impose any credit support obligations on the Debtors or any of their Affiliates or the Debtors' or their Affiliates' successors and assigns, including any collateral posting requirements, on the basis of the Chapter 11 Cases or on the basis of the Non-Performance Charges in existence as of the date of this Term Sheet.

[Signature Pages Follow]

Execution Version

Heritage Power, LLC
Blossburg Power, LLC
Brunot Island Power, LLC
Gilbert Power, LLC
Hamilton Power, LLC
Heritage Power Intermediate Holdings, LLC
Heritage Power Marketing, LLC
Hunterstown Power, LLC
Mountain Power, LLC
New Castle Power, LLC
Niles Power, LLC
Orrtanna Power, LLC
Portland Power, LLC
Sayreville Power, LLC
Shawnee Power, LLC
Shawville Power, LLC
Titus Power, LLC
Tolna Power, LLC
Warren Generation, LLC

By: _____

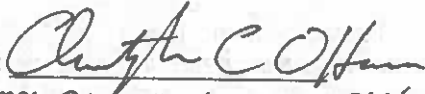


Name: David Freysinger

Title: President

Execution Version

PJM Interconnection, L.L.C.

By: 
Name: Christopher C. O'Hara
Title: SVP, General Counsel

PJM Settlement, Inc.

By: _____
Name:
Title:

Execution Version

PJM Interconnection, L.L.C.

By: _____
Name:
Title:

PJM Settlement, Inc.

By: Stephen D. Lawson
Name: STEPHEN D. LAWSON
Title: PRESIDENT