

Hearing Date: February 24, 2020 at 2:00 p.m. (ET)  
Objection Deadline: February 21, 2020 at 12:00 p.m. (ET)

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Debtors in Possession*

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

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In re:	)	
	)	Chapter 11
	)	
AGERA ENERGY LLC, et al., <sup>1</sup>	)	Case No. 19-23802 (RDD)
	)	
Debtors,	)	(Jointly Administered)
	)	
	)	
AGERA ENERGY LLC,	)	
	)	
Plaintiff,	)	Adv. Proc. No. 19-08554 (RDD)
	)	
v.	)	
	)	
SUNWAVE USA HOLDINGS, INC.,	)	
	)	
Defendant.	)	

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors' corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

**NOTICE OF HEARING ON  
MOTION FOR STAY OF ADVERSARY PROCEEDING**

**PLEASE TAKE NOTICE** that on February 14, 2020, Plaintiff Agera Energy LLC (the “Debtor”) filed the *Motion for Stay of Adversary Proceeding* (the “Motion”). A hearing (the “Hearing”) on the Motion will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on **February 24, 2020 at 2:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the Motion must comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, and be filed with the Bankruptcy Court (a) by attorneys practicing in the bankruptcy court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, on a CD-ROM, in text searchable portable document format (PDF) (with a hard copy delivered directly to Chambers), in accordance with the customary practices of the Bankruptcy Court and General Order M-399, to the extent applicable, and served in accordance with the *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* [Main Case Docket No. 96] (the “Case Management Procedures Order”). Objections, if any, to the Motion shall be filed and served, with a copy to the Court’s chambers, in a manner consistent with the Case Management Procedures Order by **February 21, 2020 at 12:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that if no objections are timely filed and served with respect to the Motion, the Debtors may, on or after the Objection Deadline, submit to the Court an order substantially in the form attached as **Exhibit A** to the Motion, which order the

Court may enter with no further notice or opportunity to be heard.

**PLEASE TAKE FURTHER NOTICE** that copies of the Motion may be obtained free of charge by visiting the website of Stretto at <http://cases.stretto.com/agera>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: February 14, 2020  
New York, NY

**MCDERMOTT WILL & EMERY LLP**

*/s/ Darren Azman*

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In re:	)	Chapter 11
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AGERA ENERGY LLC, et al., <sup>1</sup>	)	Case No. 19-23802 (RDD)
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Debtors,	)	(Jointly Administered)
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AGERA ENERGY LLC,	)	
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Plaintiff,	)	Adv. Proc. No. 19-08554 (RDD)
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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Agera Energy LLC (8122); Agera Holdings, LLC (3335); energy.me midwest llc (9484); Aequitas Energy, Inc. (7988); Utility Recovery LLC (4351); and Agera Solutions LLC (8749). The location of the Debtors' corporate headquarters and the service address for all Debtors is 555 Pleasantville Road, S-107, Briarcliff Manor, NY 10510.

**MOTION FOR STAY OF ADVERSARY PROCEEDING**

Agera Energy LLC (the “Debtor”), the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), hereby respectfully submits this motion (the “Motion”) for entry of an order (the “Order”) pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), substantially in the form attached hereto as **Exhibit A**, staying the Adversary Proceeding until the earlier of (i) August 1, 2020, (ii) 60 days after the effective date of a plan of liquidation in these chapter 11 cases (these “Chapter 11 Cases”), and (iii) 60 days after these Chapter 11 Cases are dismissed or converted to chapter 7 cases. In support of this Motion, the Debtor respectfully states as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein is Bankruptcy Code section 105(a).

**BACKGROUND**

4. On October 4, 2019 (the “Petition Date”), the Debtor and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. On October 11, 2019, the United States Trustee for the Southern District of New York (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Main Case Docket No. 61]. No trustee, examiner, or other official committee has been appointed in these Chapter 11 Cases.

7. A description of the Debtors’ business, capital structure, and the circumstances leading to these Chapter 11 Cases is set forth in the *Declaration of Todd Sandford Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [Main Case Docket. No. 3], incorporated herein by reference.

### **RELEVANT BACKGROUND**

8. The Debtors commenced these Chapter 11 Cases to sell their assets (composed almost exclusively of customer contracts) and wind down the remaining portions of the Debtors’ operations through a liquidating chapter 11 plan. In May, 2019, the Debtors commenced a thorough sale process and engaged with various creditor constituencies to negotiate a consensual wind down as expeditiously as possible in order to attain the maximum value in a sale of the Debtors’ assets.

9. On November 7, 2019, the Court entered a sale order, which approved the sale and assignment of a significant portion of the Debtors’ customer contracts to Exelon Generation Company, LLC (“Exelon”) pursuant to Bankruptcy Code sections 363 and 365 (the “Sale”). The Sale closed on November 20, 2019.

10. On November 8, 2019, the Debtor filed the *Complaint of Agera Energy LLC for Damages and Injunctive Relief Against Sunwave USA Holdings, Inc.* [Adv. Docket No. 1] (the “Complaint”), thereby initiating the Adversary Proceeding. As more fully described in the Complaint, the Debtor alleges that defendant Sunwave USA Holdings, Inc. (“Sunwave”) breached a non-solicitation and non-hire clause (collectively, the “Non-Solicitation Clause”) contained in a June 13, 2019 non-disclosure agreement (the “Agreement”), which the Debtors and Sunwave agreed to as part of a process to gain access to confidential information for the purpose of assessing a potential transaction between the parties.

11. Also on November 8, 2019, the Debtor filed the *Debtor’s Emergency Motion for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery* [Adv. Docket No. 2] (the “Motion for TRO”). A hearing on the Motion for TRO was held before the Court on November 13, 2019, and this Court granted certain temporary injunctive relief and limited expedited discovery in favor of the Debtor.

12. On November 21, 2019, the Court entered the *Stipulation and Order Resolving Debtor’s Emergency Motion for a Temporary Restraining Order, Preliminary Injunction, and Expedited Discovery* [Adv. Docket No. 10] (the “TRO Stipulation”). Pursuant to the TRO Stipulation, Sunwave agreed to abide by the terms of the Non-Solicitation Clause in the Agreement during the pendency of the Adversary Proceeding through no later than June 12, 2021, or until otherwise ordered by the Court. Also pursuant to the TRO Stipulation, the Debtor’s motion for a preliminary injunction and expedited discovery was withdrawn as moot, Sunwave’s time to answer or otherwise respond to the Complaint was extended to December 16, 2019, and any temporary restraining order issued by the Court on November 13, 2019 was vacated.

13. On December 30, 2019, Sunwave filed *Sunwave USA Holdings, Inc.’s Motion to Dismiss Agera Energy LLC’s Complaint* [Adv. Docket No. 12] (the “Motion to Dismiss”).

14. On January 17, 2020, the Court entered the first *Stipulation and Order Extending Time to Oppose or Otherwise Respond to Sunwave’s Motion to Dismiss* [Adv. Docket No. 13], which extended the deadline for the Debtor to oppose or otherwise respond to the Motion to Dismiss by two weeks, to February 4, 2020.

15. On February 13, 2020, the Court entered the second *Stipulation and Order Extending Time to Oppose or Otherwise Respond to Sunwave’s Motion to Dismiss* [Adv. Docket No. 13], which further extended the deadline for the Debtor to oppose or otherwise respond to the Motion to Dismiss by two weeks, to February 18, 2020.

16. Also on February 13, 2020, the Debtor submitted to the Court a third *Stipulation and Order Extending Time to Oppose or Otherwise Respond to Sunwave’s Motion to Dismiss*, which proposed a further two-week extension of the deadline for the Debtor to oppose or otherwise respond to the Motion to Dismiss, to March 3, 2020.

#### **RELIEF REQUESTED**

17. By this Motion, the Debtor seeks entry of the Order, substantially in the form attached hereto as **Exhibit A**, granting a stay of all proceedings and deadlines in this Adversary Proceeding until the earlier of (i) August 1, 2020, (ii) 60 days after the effective date of a plan of liquidation in these Chapter 11 Cases, and (iii) 60 days after these Chapter 11 Cases are dismissed or converted to chapter 7 cases.

#### **BASIS FOR RELIEF REQUESTED**

18. Courts have repeatedly stressed that a stay of proceedings is appropriate when necessary to conserve estate resources or effectuate judicial efficiency. *See, e.g., Louis Vuitton*



*Malletier S.A. v. LY USA Inc.*, 676 F.3d 83, 96 (2d Cir. 2012) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its own docket with economy of time and effort for itself, for counsel, and for litigants.”) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *In re Am. Spinning Mills, Inc.*, 43 B.R. 365, 367 (Bankr. E.D. Pa. 1984) (“If the continued prosecution of disputed matters in bankruptcy court proves to be unreasonably burdensome to the debtor, he may apply to the court to stay the proceedings or bar them under 11 U.S.C. § 105(a).”); *see also WMI Liquidating Trust v. Casey*, Adv. P. No. 14-50819 (MFW) (Bankr. D. Del. Jan. 7, 2015) (granting liquidating trust’s motion for stay of adversary proceeding because additional litigation costs and expenses might have impacted funding for the trust); *Schmitt v. Arbor Care Tree Experts, Inc. (In re Schmitt)*, Adv. P. No. 10-00572DK, 2010 Bankr. LEXIS 3364 (Bankr. D. Md. 2010) (granting a motion to stay adversary proceeding “for reasons of judicial efficiency”).

19. The most immediate concern that prompted the Debtor to commence this Adversary Proceeding was Sunwave’s interference with the sale process, as alleged in the Complaint. The Debtor succeeded in addressing this concern through entry of the TRO and the TRO Stipulation, which effectively enjoins Sunwave from continuing the alleged wrongful conduct.

20. The Debtor has good reason to believe that Sunwave’s conduct prior to filing the Complaint caused the Debtor economic harm, which will ultimately be realized through a reduced purchase price under section 2.07 of the Asset Purchase Agreement. [Main Case Docket No. 116] (the “APA”). The Debtor seeks a stay of this Adversary Proceeding because there is no immediate need to seek damages, and the continued prosecution of this Adversary Proceeding is best left to a liquidation trustee or plan administrator after the Debtor confirms a chapter 11

liquidating plan. The same can be said for other aspects of these Chapter 11 Cases, including other causes of action the Debtors may have (*e.g.*, avoidance actions) and claims objections. A stay of this Adversary Proceeding will conserve the liquidating Debtors' limited resources.

21. Moreover, the Debtor will not be in a position to prove specific damages until after the indemnity period expires under the APA with Exelon. The Debtors have until the later of the last date of assignment of an assigned contract or March 19, 2020 to effect the transfer of assigned contracts to Exelon (the "Final Assignment Date"). APA § 2.07(b)(v). After expiration of the Final Assignment Date, there is a "Claim Period" of no longer than 90 days during which Exelon may determine and assert indemnification claims against the Debtors. APA § 2.07(c)(ii). The Claim Period will end no later than June 17, 2020. Thus, the Adversary Proceeding should be stayed also for purposes of judicial economy.

22. Sunwave will not be prejudiced from a brief stay of this Adversary Proceeding. Sunwave has already agreed to a preliminary injunction that runs through June 12, 2021 (and, in any event, the injunction merely prohibits Sunwave from taking action that it agreed by contract it would not do). The Debtors submit that a stay of this Adversary Proceeding is warranted to conserve the Debtors' limited resources and promote judicial economy.

### **MOTION PRACTICE**

23. This Motion includes citations to the application rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Debtor submits that this Motion satisfies Local Rule 9013-1(a).

### **NOTICE**

24. The Debtor has provided notice of this Motion to: (1) Sunwave, by electronic mail and overnight mail to Sunwave's counsel; (2) the entities listed on the Master Service List (as

defined in paragraph 12 of the *Order (A) Establishing Certain Notice, Case Management, and Administrative Procedures and (B) Granting Related Relief* [Main Case Docket No. 96] (the “Case Management Procedures Order”)) via electronic mail and overnight mail; and (3) the 2002 List (as defined in paragraph 12 of the Case Management Procedures Order) via electronic mail and overnight mail.

**NO PRIOR REQUEST**

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

WHEREFORE, the Debtor respectfully requests that the Court enter the Order, substantially in the form annexed as **Exhibit A** hereto, granting a stay of all proceedings and deadlines in this Adversary Proceeding until the earlier of (i) August 1, 2020, (ii) 60 days after the effective date of a plan of liquidation in these Chapter 11 Cases, and (iii) 60 days after these Chapter 11 Cases are dismissed or converted to chapter 7 cases.

Dated: February 14, 2020  
New York, NY

Respectfully submitted,

**MCDERMOTT WILL & EMERY LLP**

*/s/ Darren Azman*

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**Exhibit A**

Proposed Order

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

_____	)	
In re:	)	Chapter 11
	)	
AGERA ENERGY LLC, et al., <sup>1</sup>	)	Case No. 19-23802 (RDD)
	)	
Debtors,	)	(Jointly Administered)
_____	)	
	)	
AGERA ENERGY LLC,	)	
	)	
Plaintiff,	)	Adv. Proc. No. 19-08554 (RDD)
	)	
v.	)	
	)	<b>Re: Adv. Docket No. ___</b>
SUNWAVE USA HOLDINGS, INC.,	)	
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING MOTION FOR STAY OF ADVERSARY PROCEEDING**

Upon the motion (the “Motion”)<sup>2</sup> of plaintiff Agera Energy LLC (the “Debtor”) for entry of an order pursuant to Bankruptcy Code section 105(a) staying the Adversary Proceeding until the earlier of (i) August 1, 2020, (ii) 60 days after the effective date of a plan of liquidation in these Chapter 11 Cases, and (iii) 60 days after these Chapter 11 Cases are dismissed or converted to chapter 7 cases; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and

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

this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and that this Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. This Adversary Proceeding, including all deadlines herein, is stayed until the earlier of (i) August 1, 2020, (ii) 60 days after the effective date of a plan of liquidation in these Chapter 11 Cases, and (iii) 60 days after these Chapter 11 Cases are dismissed or converted to chapter 7 cases.
3. Entry of this Order shall be without prejudice to the Debtor's right to seek a further stay of this Adversary Proceeding.
4. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of the Motion and this Order.

Dated: \_\_\_\_\_, 2020  
White Plains, New York

\_\_\_\_\_  
THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE