

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

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In re: : Chapter 11  
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NORTHEAST GAS GENERATION, LLC, *et al.*, : Case No. 20-\_\_\_\_\_ (\_\_\_\_)  
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Debtors.<sup>1</sup> : (Joint Administration Pending)  
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**DECLARATION OF DALE E. LEBSACK, JR. IN SUPPORT OF  
CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS**

I, Dale E. Lebsack, Jr., hereby declare under penalty of perjury:

1. I am the President of NorthEast Gas Generation, LLC (“NEG”) and each of the other above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”). I have served in such capacity since February 21, 2017. Prior to joining NEG, I was a Vice President at Talen Energy where I managed a portfolio of gas-fired power generation assets in New Jersey, Pennsylvania and Massachusetts. I am generally familiar with the Debtors’ day-to-day operations, businesses, financial affairs, and books and records.

2. Concurrently with the filing of this declaration (this “Declaration”) on the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware. Each of the Debtors is operating its business and managing its properties as a debtor

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: NorthEast Gas Generation, LLC (N/A); NorthEast Gas Generation GP, LLC (N/A); Millennium Power Partners, L.P. (6688); and New Athens Generating Company, LLC (0156). The Debtors’ principal offices are located at 1780 Hughes Landing, Suite 800, The Woodlands, Texas 77380. A complete list of such information may be obtained on the website of the debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/NEG>.

in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no creditors' committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware (the "United States Trustee"). No trustee or examiner has been appointed in the Chapter 11 Cases.

3. To operate effectively and minimize certain of the potential adverse effects of the commencement of the Chapter 11 Cases, the Debtors have requested certain relief in "first day" applications and motions filed with the Court (collectively, the "First Day Pleadings"). As noted below, the Debtors seek by the First Day Pleadings to, among other things, (i) establish certain administrative procedures to promote a seamless transition into and through the Chapter 11 Cases, (ii) ensure the continuation of their business operations and cash management system without interruption, (iii) obtain debtor in possession financing and use cash collateral in the operation of their businesses, and (iv) preserve valuable relationships with trade vendors and other creditors. As further discussed below, I am familiar with the contents of each of the First Day Pleadings, including the factual bases for the relief requested therein, and I believe the Debtors would suffer immediate and irreparable harm absent the ability to continue their business operations as sought in the First Day Pleadings.

4. I submit this Declaration, pursuant to rule 1007-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to provide an overview of the Debtors, their businesses and the Chapter 11 Cases, as well as to support the Debtors' chapter 11 petitions and the First Day Pleadings. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge, my discussions with other members of the Debtors' senior management and the Debtors' advisors, my review of relevant documents, or my opinion based

on my experience, knowledge, and information concerning the Debtors' operations and financial condition. In making this Declaration, I have relied in part on information and materials that the Debtors' personnel and advisors have gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction, and/or for my benefit in preparing this Declaration. I am authorized to submit this Declaration on behalf of the Debtors, and, if called upon to testify, I would testify competently to the facts set forth herein.

5. Parts I through V of this Declaration provide an overview of the businesses, organizational structure, prior chapter 11 cases, and capital structure of the Debtors. Part VI provides an overview of the circumstances leading to the commencement of the Chapter 11 Cases. Part VII provides an overview of the prepetition negotiations among the various stakeholders and the DIP Facility (as defined below), and Part VIII addresses the First Day Pleadings with respect to which the Debtors are seeking immediate relief to avoid irreparable harm to their businesses and to promote a smooth transition into chapter 11.

#### **I. The Debtors' Businesses and Operations**

6. NEG owns and manages a portfolio of two natural gas-fired electric generating facilities located in the United States: (1) a 1,080 MW facility located in Athens, New York that achieved commercial operation on May 5, 2004 (the "Athens Facility"); and (2) a 360 MW facility, located in Charlton, Massachusetts, that achieved commercial operation on April 12, 2001 (the "Millennium Facility," and together with the Athens Facility, the "Facilities").

7. NEG generates revenues through the sale of energy, capacity, and ancillary services from the Facilities through various arrangements, including into relevant power markets pursuant to energy management agreements (each, an "Energy Management Agreement") with a reputable energy manager (the "Energy Manager"), currently its affiliate Talen Energy

Marketing, LLC (“Talen Marketing”).<sup>2</sup> The Facilities dispatch electricity into two power markets, both of which are served by independent system operators (“ISOs”). Specifically, the Athens Facility dispatches power into the region managed by the New York ISO, and the Millennium Facility into the region managed by ISO New England. Both of the Facilities utilize advanced frame “501G” combustion turbine generating technology and equipment supplied by leading manufacturers.

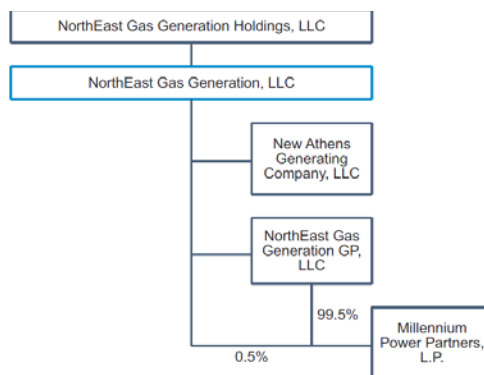
## **II. Corporate History and Organizational Structure**

8. The Debtors are part of a group of privately-owned independent power generation infrastructure companies indirectly owned by non-Debtors Talen Energy Corporation and Talen Energy Supply, LLC (“TES”). Non-Debtor NorthEast Gas Generation Holdings, LLC (f/k/a MACH Gen, LLC) (“Holdings”) is the direct parent company of NEG. NEG, in turn, is the direct or indirect parent company of the following project-owning Debtors: (i) New Athens Generating Company, LLC (“New Athens”), the current owner of the Athens Facility; and (ii) Millennium Power Partners, L.P. (“Millennium Power” and, together with New Athens, the “Project Debtors”), the current owner of the Millennium Facility. New Athens is wholly and directly owned by NEG. Millennium Power is also wholly owned by NEG, in part directly and in part indirectly, through NEG GP, LLC (a wholly and directly owned subsidiary of NEG) (“NEG GP”).

9. Set forth below is a simplified prepetition corporate organizational structure of the Debtors. Each entity depicted is a Debtor other than Holdings.

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<sup>2</sup> On June 17, 2020, the Energy Manager issued certain EMA Termination Notices (as defined below) as further described in Part VI below.



### III. Prior Chapter 11 Cases

10. This is the Debtors' third chapter 11 filing in six years. In March 2014, the Debtors and then-affiliate New Harquahala Generating Company, LLC (collectively, the "Prior Debtors") commenced chapter 11 cases in this Court, Case No. 14-10461 (MFW) et seq. (the "2014 Chapter 11 Cases"). In April 2014, the Court confirmed the Prior Debtors' prepackaged chapter 11 plan, through which the Prior Debtors reduced their funded indebtedness by approximately \$600 million while paying unsecured creditors in full and issuing 93.5% of new equity in reorganized NEG to former holders of second lien debt and 6.5% of new equity in reorganized NEG to the then-existing equity holders. The restructuring of the Prior Debtors pursuant to the 2014 Chapter 11 Cases became effective on April 28, 2014, and the 2014 Chapter 11 Cases were closed on December 6, 2014.

11. In June 2018, the Prior Debtors commenced their second chapter 11 case in this Court, Case No. 18-11368 (MFW) et seq. (the "2018 Chapter 11 Cases" and, together with the 2014 Chapter 11 Cases, the "Prior Chapter 11 Cases"). In July 2018, the Court confirmed the Prior Debtors' prepackaged chapter 11 plan, through which the Prior Debtors reduced their funded indebtedness by approximately \$70 million while paying unsecured creditors in full and transferring 100% of the equity in New Harquahala Generating Company, LLC to former holders of the Prior Debtors' first lien debt. The restructuring of the Prior Debtors pursuant to the 2018

Chapter 11 Cases became effective on September 6, 2018, and the 2018 Chapter 11 Cases were closed on November 30, 2018.

#### **IV. Management and Operations**

12. In the ordinary course of business, the Debtors are party to certain operation and management agreements pursuant to which certain third party contractors provide essential services and personnel to meet the business, commercial, and technical needs of NEG and the Facilities. Such services include, but are not limited to, providing facility personnel (the Debtors have none of their own employees), developing site-specific operations, management procedures and maintenance programs, identifying goods and services providers, purchasing required tools and equipment to maintain the facility, maintaining facility books and records, and making recommendations for capital improvements.

13. Certain affiliates of the Debtors also provide vital operational and management services to the Debtors in the ordinary course of business. Under the Energy Management Agreements with each of New Athens and Millennium, the Energy Manager, on behalf of the applicable Project Debtor: (i) solicits and enters into electric energy and capacity transactions; and (ii) schedules, bids, and dispatches energy from the Facilities into the relevant markets and coordinates with transmission providers. The Energy Manager assists NEG in identifying commercial strategies to maximize the value of the Facilities' electric energy and capacity margin. In an effort to procure fuel for the Facilities at the lowest cost possible, the Energy Manager deals with all market participants, for and on behalf of each Facility, from a credit standpoint and acts as the applicable Project Debtor's counterparty in purchasing natural gas. In addition TES provided the Debtors with certain asset management services, including executive leadership, operations and maintenance oversight, in-house accounting, in-house legal, treasury, regulatory, and insurance administration services, as well as overhead related to those services.

## V. Prepetition Indebtedness and Capital Structure

14. In connection with their emergence from the 2018 Chapter 11 Cases, the Debtors entered into the First Lien Credit Agreement and Second Lien Credit Agreements (as defined below). As of the Petition Date, the Debtors have approximately \$585.2 million of aggregate funded indebtedness, comprised of approximately: (i) \$554.7 million outstanding under the First Lien Facility (as defined herein) plus issued and outstanding letters of credit pursuant to the First Lien Credit Agreement with an aggregate face amount of approximately \$23.2 million; and (ii) \$30.5 million outstanding under the Second Lien Facility (as defined herein) plus issued and outstanding letters of credit pursuant to the LC Support Agreement (as defined herein) with an aggregate face amount of approximately \$23.2 million. In addition, the Debtors have approximately \$13.3 million in unsecured debt as of the Petition Date, of which approximately \$10.5 million relates to unpaid trade debt to third-party vendors, contractors, and suppliers.

15. A detailed discussion of the Debtors' capital structure, including their various debt obligations, is set forth below.

### *i. First Lien Credit Facility*

16. The Debtors have outstanding secured debt pursuant to that certain *Exit First Lien Credit and Guaranty Agreement*,<sup>3</sup> dated as of September 6, 2018 (as amended, supplemented, restated or otherwise modified from time to time, including by the Emergency Bridge First Lien Loan Amendments (defined below), the "First Lien Credit Agreement," and together with the other Loan Documents under and as defined in the First Lien Credit Agreement, the "First Lien Loan Documents"), among NEG, the other Debtors (as guarantors), the Lenders (as defined therein) (the "First Lien Lenders"), and CLMG Corp. ("CLMG"), as administrative agent and

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<sup>3</sup> Any summary of an agreement in this First Day Declaration is qualified in its entirety by the terms of that agreement.

first lien collateral agent for the First Lien Lenders (CLMG in such capacities, the “First Lien Collateral and Administrative Agent” and, together with the First Lien Lenders, the “First Lien Secured Parties”). The First Lien Credit Agreement provides for, among other things, a term B loan facility in the principal amount of \$448,068,099, a term C loan facility in the principal amount of \$54,947,535, a revolving letter of credit facility in the principal amount of \$10,000,000, as well as the issuance of the Project LCs (as defined below) (collectively, the “First Lien Credit Facility”).

17. As of the Petition Date, the outstanding amounts owed by the Debtors under the First Lien Credit Facility are: (i) approximately \$461.1 million in respect of the term B loan facility, (ii) approximately \$82.3 million in respect of the term C loan facility, (iii) approximately \$10.3 million on the revolving credit facility, (iv) an emergency loan in the amount of \$966,156.69,<sup>4</sup> plus (v) issued and outstanding Project LCs with an aggregate face amount of approximately \$23.2 million (collectively, together with all accrued and unpaid interest thereon, and any fees, expenses, indemnification obligations, guarantee obligations, and reimbursement obligations, including, without limitation, any attorneys’, accountants, consultants’, appraisers’ and financial and other advisors’ fees that are chargeable, reimbursable or otherwise payable under the First Lien Loan Documents, and any other costs, charges or amounts incurred or accrued prior to the Petition Date in accordance with the First Lien Credit Facility, and further including all “Obligations” as described in the First Lien Credit Agreement, including all

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<sup>4</sup> Such emergency loan was issued pursuant to (i) that certain *Emergency Loan Amendment to Exit First Lien Credit and Guaranty Agreement*, dated as of May 28, 2020, entered into by NEG, the borrowers, NEG GP, New Athens, and Millennium, as the guarantors, the Lenders (as defined therein), and the First Lien Collateral and Administrative Agent and (ii) that certain *Second Emergency Loan Amendment to Exit First Lien Credit and Guaranty Agreement*, dated as of June 15, 2020, entered into by NEG, the borrowers, NEG GP, New Athens, and Millennium, as the guarantors, the Lenders (as defined therein), and the First Lien Collateral and Administrative Agent (collectively, the “Emergency Bridge First Lien Loan Amendments”). The Emergency Bridge First Lien Loan Amendments and related emergency financing is further described in Part VII below.



obligations with respect to cash management services and bank products, and all interest, fees, costs and other charges, the “First Lien Obligations”). NEG is liable as borrower for the First Lien Obligations, with NEG GP, New Athens, and Millennium as guarantors, and such obligations are secured by first priority liens and security interests in substantially all of their assets and property, including the property of and equity interests in each of the Debtors.

ii. *Second Lien Facility*

18. The Debtors also have outstanding secured debt to non-Debtor affiliate TES pursuant to that certain *Second Lien Credit and Guaranty Agreement*, dated as of September 6, 2018 (as amended, supplemented, restated or otherwise modified from time to time, the “Second Lien Credit Agreement,” and together with the other Loan Documents under and as defined in the Second Lien Credit Agreement, including the LC Support Agreement, the “Second Lien Loan Documents”), among NEG, the Lenders (as defined therein) (the “Second Lien Lenders”), TES, as administrative agent, and TES (as successor to Talen Investment Corporation “TIC”), as second lien collateral agent for the Second Lien Lenders (TES in such capacities, the “Second Lien Collateral and Administrative Agent” and, together with the Second Lien Lenders and the LC Support Provider (as defined below), the “Second Lien Secured Parties”). The Second Lien Credit Agreement provides for, among other things, a \$25 million term loan facility (the “Second Lien Credit Facility”).

19. As of the Petition Date, the outstanding amount owed by the Debtors under the Second Lien Credit Facility is approximately \$30.5 million (collectively, together with any costs and other charges or amounts paid, incurred or accrued prior to the Petition Date in accordance with the Second Lien Credit Facility, and further including all “Obligations” as described in the Second Lien Credit Agreement, including all obligations with respect to cash management services and bank products, and all interest, fees, costs and other charges allowable under section

506(b) of the Bankruptcy Code, the “Second Lien Obligations”). NEG is liable as borrower for the Second Lien Obligations, with NEG GP, New Athens, and Millennium as guarantors, and such obligations are secured by second priority liens and security interests in substantially all of their assets and property, including the property of and equity interests in NEG, NEG GP, New Athens and Millennium.

*iii. Letters of Credit*

20. The Debtors also have outstanding obligations to non-Debtor affiliate TES pursuant to that certain *LC Support Agreement*, dated as of September 6, 2018 (as amended, supplemented, restated or otherwise modified from time to time, the “LC Support Agreement”), by and among the Second Lien Collateral and Administrative Agent, TES, as the letter of credit provider (in such capacity, the “LC Support Provider”), NEG GP, New Athens, and Millennium, as guarantors, and NEG, as borrower.<sup>5</sup> Under the First Lien Credit Facility, the First Lien Lenders are required to cause Wells Fargo Bank, N.A. (or another bank reasonably acceptable to NEG) to issue and maintain certain letters of credit (as amended, extended or replaced from time to time in accordance with the First Lien Credit Agreement, the “Project LCs”) for the benefit of the Project Debtors and certain third parties.

21. Pursuant to the LC Support Agreement and the Intercreditor Agreement, any draws made on the Project LCs constitute Prepetition First Lien Obligations of the Debtors and may also be offset by draws made on a letter of credit issued by TES in favor of the First Lien Collateral and Administrative Agent (the “TES LC”). As of the Petition Date, the aggregate

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<sup>5</sup> Among other things, the relationship between and among (i) the First Lien Secured Parties and (ii) the Second Lien Secured Parties (in their capacities as such), including, but not limited to, the relative priority of the security interests of, and the obligations of the Debtors to, such parties, is governed by that certain *Collateral Agency and Intercreditor Agreement*, dated as of September 6, 2018 (the “Intercreditor Agreement”), by and among the Debtors, the Initial Lender (as defined therein), the First Lien Collateral and Administrative Agent, the Second Lien Collateral and Administrative Agent, and the LC Support Provider.

undrawn amount of outstanding Project LCs and obligations under the TES LC is approximately \$23.2 million.

*iv. Trade Debt*

22. The Debtors are party to various purchase orders and operation and maintenance, equipment supply and other services agreements pursuant to which third party vendors and contractors provide critical supplies and services to the Facilities. Such supplies and services include, but are not limited to, providing personnel to manage and operate each facility; providing office and other administrative services necessary to operate the facility; supplying parts and engineering and maintenance services necessary to maintain each facility's combustion turbines and steam turbines; supplying parts necessary to maintain facility equipment; and furnishing engineering and skilled labor necessary to repair and maintain facility equipment. As of the Petition Date, Debtors estimate that they owe approximately \$10.5 million in trade debt in connection with services provided under the operation and management agreements related to the Facilities.

**VI. Circumstances Leading to Commencement of these Chapter 11 Cases**

23. As noted above, the Debtors emerged from the 2018 Chapter 11 Cases almost two years ago with a substantially deleveraged capital structure. Under normal operating conditions, the Debtors' steady cash flows would enable them to reliably service their funded debt obligations and weather ordinary variations in customer demands, but recent extraordinary fluctuations in the energy market have presented the Debtors with new balance sheet challenges.

24. Natural gas prices have remained historically low, continuing downward pressure on electric energy prices in the Debtors' markets, which are heavily dependent on gas-fired generation. At the same time, supply is increasing relative to demand in the Debtors' markets, further challenging energy prices and driving down capacity prices. This oversupply stems from

(i) the ongoing deployment of energy saving and distributed generation technologies, which reduces demand for electricity, and (ii) the addition of new renewable energy capacity, driven by regulatory policy and lower equipment costs, and new gas-fired generation, spurred by cheap natural gas. With energy prices already facing these headwinds, winter 2019-2020 electricity demand was pushed even lower by record-high seasonal temperatures across the Debtors' markets. A much warmer-than-normal winter reduced the need for home heating, a substantial source of consumer energy consumption. Looking forward, the problem of demand destruction is now being abetted by the coronavirus pandemic and economic recession, which has resulted in significant reductions in electricity demand from industrial and commercial users throughout the region and country

25. As a result of these market pressures, the Debtors have been operating under liquidity challenges for the last several months. Facing growing uncertainty with respect to their ability to continue as a going concern, severe liquidity constraints and upcoming interest payments, the Debtors, Holdings, the Second Lien Secured Parties and the First Lien Secured Parties entered discussions in March 2020 regarding the Debtors' liquidity challenges and the terms and implementation of potential strategic restructuring transactions. To facilitate these discussions, on April 3, 2020, the Debtors and Holdings entered into forbearance agreements with each of (i) the First Lien Secured Parties and (ii) the Second Lien Secured Parties, with respect to various defaults under the Credit Agreements, including a payment default (the "Credit Agreement Defaults"). The Debtors and Holdings subsequently entered into additional forbearance agreements with the First Lien Secured Parties and the Second Lien Secured Parties, respectively, on May 15, 2020 and on June 5, 2020, including as to certain additional specified defaults under the Credit Agreements that had occurred, in a continued effort to reach a

consensual resolution regarding the Credit Agreement Defaults and a strategic restructuring of the Debtors.

26. The forbearance agreements expired on June 12, 2020. On June 15, 2020, the First Lien Collateral and Administrative Agent sent: (i) NEG a notice pursuant to the First Lien Credit Documents (as defined in the First Lien Credit Agreement) declaring all First Lien Obligations immediately due and payable; and (ii) Citibank, N.A., in its capacity as depositary (the “Depositary”) under the Security Deposit Agreement,<sup>6</sup> a notice pursuant to the First Lien Credit Documents instructing the Depositary to accept notices and instructions only from the First Lien Collateral and Administrative Agent, and not NEG, related to disposition of funds in NEG’s bank accounts.

27. On June 17, 2020, the Energy Manager issued termination notices to the Project Debtors under the terms of the applicable Energy Management Agreement (the “EMA Termination Notices”). By the Termination Notices, the Energy Manager notified the respective Project Debtor of its intent to suspend performance under, and termination of, the applicable Energy Management Agreement effective upon the earlier of (the “EMA Termination Date”): (i) 11:59 p.m. (Eastern Time) on July 10, 2020 (unless extended in writing by the Energy Manager, in its absolute discretion); (ii) any default, event of default, enforcement, or termination pursuant to any debtor in possession financing entered into by the applicable Project Debtor or an affiliate of such Project Debtor (unless waived in writing by the Energy Manager in its absolute discretion); (iii) any subsequent breach of or event of default under the Energy Management

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<sup>6</sup> “Security Deposit Agreement” means that certain Security Deposit Agreement, dated as of September 6, 2018 (amended, supplemented, restated or otherwise modified from time to time), by and among (i) NEG, as borrower, (ii) NEG GP, New Athens Generating Company, LLC, and Millennium, as guarantors, (iii) the First Lien Collateral and Administrative Agent, (iv) TIC, as second lien collateral agent, and (v) the Depositary.

Agreement by the applicable Project Debtor (unless waived in writing by the Energy Manager in its absolute discretion); and (iv) execution of an amended and restated energy management agreement with the Energy Manager on terms acceptable to the Energy Manager in its absolute discretion. The Energy Manager will continue to provide services under the Energy Management Agreements until the EMA Termination Date.

28. Notwithstanding the EMA Termination Notices, the Debtors anticipate that the parties will negotiate in good faith and will enter into replacement Energy Management Agreements prior to the EMA Termination Date and within the period required by the credit agreement related to the DIP Facility (as defined below) (the “DIP Credit Agreement”).<sup>7</sup>

## **VII. Negotiations with Stakeholders and the DIP Facility**

29. Given the Debtors’ liquidity challenges and the Credit Agreement Defaults, the First Lien Secured Parties and the Second Lien Secured Parties engaged in extensive, good faith and arm’s-length discussions regarding, among other things, a proposed restructuring, a potential sale of the Debtors’ assets, the need to commence these Chapter 11 Cases, and various financing scenarios related thereto. In April 2020, the Debtors forecasted a liquidity shortfall by early June 2020. Given the anticipated liquidity shortfall and potential resulting damage therefrom, as well as the occurrence of certain addition defaults under the Credit Agreement, the Debtors and the First Lien Lenders began discussions regarding an emergency bridge loan to provide additional liquidity required by the Debtors to allow them to commence these Chapter 11 Cases. As a result of these discussions, the Debtors and the Prepetition First Lien Secured Parties entered into the Emergency Bridge First Lien Loan Amendments, pursuant to which the First Lien Lenders

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<sup>7</sup> Section 5.01(u) of the DIP Credit Agreement requires, among other things, that the Debtors use commercially reasonable efforts to enter into an amendment or replacement of the Energy Management Agreements with the Energy Manger, in no event later than twenty-one (21) days following entry into the DIP Credit Agreement.

made available to NEG an emergency bridge term loan in the amount of \$966,156.69 (the “Emergency Bridge First Lien Loans”).

30. Notwithstanding the incremental liquidity provided by the Emergency Bridge First Lien Loan, the Debtors and their advisors determined that additional financing would be required to support their activities in these Chapter 11 Cases. During the discussions among the parties, and in light of the Debtors’ operational challenges and limited amount of cash on hand, the First Lien Secured Parties made an offer to provide postpetition financing to the Debtor to allow them to effectuate an orderly restructuring process in chapter 11, pursuant to which the Debtors anticipate consummating a transaction that will transfer, sell, or otherwise convey substantially all of the Debtors’ assets to the First Lien Secured Parties or their designee. The postpetition financing proposed to be provided by the First Lien Secured Parties is intended to allow the Debtors to preserve going concern value and continue to operate their businesses during these Chapter 11 Cases, including the continued payment of critical trade vendors and other necessary operating expenses in accordance with an agreed budget.

31. The proposed financing consists of: (i) a first lien senior secured superpriority multi-draw term loan facility in an aggregate principal amount not to exceed \$40 million (the “DIP Term Loan Facility”), of which an aggregate principal amount not to exceed \$15 will be available during the interim period prior to the entry of a final order approving such DIP Term Loan Facility; and (ii) a first lien senior secured superpriority loan facility in an aggregate principal amount of \$966,156.69 (the “Emergency Bridge DIP Facility,” and together with the DIP Term Loan Facility, the “DIP Facility”; and the loans thereunder, the “Emergency Bridge Roll-Up Loans” and, together with the DIP Term Loans, the “DIP Loans”), which Emergency Bridge Roll-Up Loans shall, upon the entry of an interim order, be used to refinance on a dollar-

for-dollar basis the aggregate outstanding amount of the Emergency Bridge First Lien Loan (such refinancing, the “Emergency Bridge Loan Refinancing”).

32. Additionally, the DIP Facility includes the following chapter 11 milestones:<sup>8</sup>

| <b>MILESTONE</b>  | <b>DEADLINE</b>   |
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| The Court shall have entered the Interim Financing Order.   | No later than four (4) business days after the Petition Date.   |
| The Debtors shall have filed a motion (the “ <u>Bar Date Motion</u> ”) seeking to approve an order setting the deadline for all persons or entities to file proofs of claim in the Chapter 11 Cases against the Debtors arising prior to the Petition Date (the “ <u>General Claims Bar Date</u> ”), which motion and order shall each be in a form that is reasonably acceptable to the DIP Lenders. | No later than ten (10) calendar days after the Petition Date.   |
| The Court shall have entered (i) the Final Order in a form that is acceptable to the DIP Lenders; and (ii) a final order authorizing the continuation of the NorthEast Gen Entities’ cash management system on the terms set forth in the Security Deposit Agreement and the Final Order, and otherwise reasonably acceptable to the DIP Lenders.   | No later than forty-five (45) calendar days after the Petition Date.  |
| Each of the Debtors shall have filed schedules and statements of financial affairs pursuant to Bankruptcy Rule 1007.  | No later than thirty (30) days after the Petition Date.   |
| The Debtors shall file (i) a plan of reorganization in form and substance acceptable to the DIP Lenders (the “ <u>Acceptable Plan</u> ”), (ii) a related disclosure statement in form and substance acceptable to the DIP Lenders (a “ <u>Disclosure Statement</u> ”), (iii) a motion to approve the Disclosure Statement, and (iv) solicitation materials.   | No later than sixty (60) calendar days after the Petition Date.   |
| Each of the Debtors shall file applications seeking orders from (i) FERC, pursuant to Section 203 of the Federal Power Act, as amended, (ii) the NY PSC, (iii) the FCC and (iv) any other necessary Regulatory Authorizations.  | No later than sixty (60) calendar days after the Petition Date  |
| The General Claims Bar Date shall have occurred.  | No later than seventy (70) calendar days after the Petition Date.   |
| The Court shall have entered an order (in form and substance reasonably acceptable to the DIP Lenders) approving the Disclosure Statement.  | No later than forty-five (45) calendar days following the filing of an Acceptable Plan and the Disclosure Statement,. |
| The Debtors shall have commenced solicitation on an Acceptable Plan.  | No later than three (3) days after the entry of the order approving the Disclosure Statement.                         |
| The Court shall have entered an order confirming an Acceptable Plan (including, without limitation, authorizing the transfer of the reorganized Project Company equity or   | No later than forty-five (45) calendar days after the entry of the order approving the Disclosure                     |

<sup>8</sup> Capitalized terms used, but not defined herein, related to the milestones shall have the same meanings ascribed to such terms in the motion seeking approval of the DIP Facility filed contemporaneously herewith.



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| assets (as previously determined by the DIP Lenders and First Lien Lenders in their sole discretion) to the DIP Lenders and First Lien Lenders or their designee(s), in form and substance acceptable to the DIP Lenders (the " <u>Confirmation Order</u> "). | Statement,  |
| The Consummation Date shall have occurred. <sup>9</sup>   | No later than 180 calendar days after the Petition Date (the " <u>Outside Date</u> "), provided that if, by the Outside Date, all conditions to consummation have been satisfied or waived, and no other conditions to the Consummation Date remain, other than obtaining one or more of the regulatory authorizations (and (x) the NorthEast Gen Entities (and, if applicable, Talen) have diligently used all commercially reasonable efforts to obtain such regulatory authorization(s), and (y) such regulatory authorization(s) are outstanding and have not been otherwise been denied or withdrawn), then solely in such case, the Outside Date shall be automatically extended until 200 days from the filing date with FERC and the NY PSC; and provided further that, if the conditions specified in the prior proviso have been satisfied, the Outside Date may be further extended, solely upon the prior agreement in writing of the DIP Lender. |

33. The Debtors and their advisors evaluated the proposed DIP Facility, including the chapter 11 milestones therein, and concluded that (i) the DIP facility, including the Emergency Bridge Loan Refinancing, was in the best interests of the Debtors and (ii) the only party likely to lend to the Debtors on such favorable terms were the First Lien Secured Parties. Critically, the DIP Facility, as a package covering all of the Debtors' typical financing needs, will fund the costs of administering the Chapter 11 Cases and provide the working capital necessary to allow the Debtors to, among other things, continue operating their businesses in chapter 11, in each case in accordance with an agreed budget, which in turn will help maintain the value of the Debtors' estates for the benefit of all creditors and parties in interest. The Debtors believe that

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<sup>9</sup> "Consummation Date" is defined to be the date by which the later to occur of (i) the date falling fourteen (14) calendar days from the date the Court enters the Confirmation Order, or (ii) the fifteenth (15) calendar day immediately following the date on which the NorthEast Gen Entities receive all necessary regulatory authorizations (including, without limitation, from FERC, the NY PSC, and the FCC) and other necessary approvals to consummate the transactions contemplated by an Acceptable Plan.

without access to the DIP Facility, the Debtors would lack sufficient liquidity to operate their business, thereby immediately and irreparably harming their businesses. The Debtors further believe that the initial success of these Chapter 11 Cases depends on the comfort level of the Debtors' stakeholders and that approval and implementation of the DIP Facility will ensure the continued functioning of the Debtors and a successful reorganization.

34. The Debtors believe that any third-party proposal would have involved execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees. Moreover, due largely to the fact that substantially of the Debtors' assets are encumbered under the First Lien Credit Facility, including the Emergency Bridge First Lien Loan Facility, and the Second Lien Credit Facility (subject to the terms of the Intercreditor Agreement), the Debtors believe that a workable DIP financing, and successful start to these Chapter 11 Cases, is likely only if such DIP Financing has the support of, or is provided by, the First Lien Secured Parties. Accordingly, the proposed DIP Facility offered by the First Lien Lenders allow the Debtors to avoid the need to engage in a costly and time-consuming priming fight at the outset of these Chapter 11 Cases.

35. Accordingly, based on the foregoing and those additional reasons set forth in the motion to approve the DIP Facility, I believe that the DIP Facility is necessary to avoid immediate and irreparable harm and is in the best interests of the Debtors' estates and their creditors and all other parties in interest.

### **VIII. The First Day Pleadings**

36. To enable the Debtors to minimize any adverse effects caused by the commencement of the Chapter 11 Cases on their businesses, the Debtors are seeking approval of the following First Day Pleadings: (i) a motion seeking joint administration of the Chapter 11 Cases for procedural purposes only; (ii) an application for an order approving the retention of

Prime Clerk LLC as claims and noticing agent pursuant to section 156(c) of the Judicial Code and Local Rule 2002-1(f); (iii) a motion for an order authorizing the continued use of the Debtor's cash management system, including authorizing the Debtors to maintain existing bank accounts and business forms; (iv) a motion for an order authorizing the Debtor to provide adequate assurance of future payment to utility companies pursuant to section 366(b) of the Bankruptcy Code; (v) a motion for an order authorizing the Debtors to maintain their existing insurance coverage; (vi) a motion for an order authorizing the Debtors to pay certain tax claims that were due and owing as of the Petition Date; (vii) a motion seek to pay the prepetition claims of certain critical vendors; and (viii) a motion for an order authorizing the Debtor to enter into the DIP Facility and granting certain related relief.

37. I have reviewed each of the First Day Pleadings, proposed orders, and exhibits thereto, and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings is vital to enabling the Debtors to make the transition to chapter 11 and to therefore preserve and maximize the value of the Debtors' estates for the benefit of the Debtors' stakeholders. The relief requested in connection with the First Day Pleading is also narrowly tailored so as to only seek such relief as the Debtors believe is necessary to avoid immediate and irreparable harm to the Debtors' estates.

### **CONCLUSION**

38. The Debtors' ultimate goal in these Chapter 11 Cases is to maximize the value of their estates for the benefit of their stakeholders. I believe that if the Court grants the First Day Pleadings, the prospect for achieving this objective will be enhanced.

39. I hereby certify that the foregoing statements are true and correct to the best of my knowledge, information and belief and respectfully request that all of the relief requested in the First Day Pleadings be granted, together with such other and further relief as is just and proper.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 18, 2020

/s/ Dale E. Lebsack, Jr.

Dale E. Lebsack, Jr.

President

NorthEast Gas Generation, LLC, *et al.*