

**ENTERED**

February 15, 2023

Nathan Ochsner, Clerk

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

In re:

HERITAGE POWER, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 23-90032 (CML)  
)  
)  
) Jointly Administered  
)**FINAL ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR  
INTERIM AND FINAL ORDERS AUTHORIZING (A) MAINTENANCE OF  
THE CASH MANAGEMENT SYSTEM; (B) MAINTENANCE OF THE  
EXISTING BANK ACCOUNTS; (C) ENERGY MANAGER TO CONTINUE  
MANAGING THE ENERGY MANAGER CONTROLLED ACCOUNTS; (D)  
CONTINUED USE OF EXISTING BUSINESS FORMS; AND (E) GRANTING  
RELATED RELIEF**

Upon the *Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing (A) the Maintenance of the Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; and (D) Granting Related Relief* (the "Motion")<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b); and the Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final

<sup>1</sup> 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 Intermediate Holdings, LLC (8767); 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.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and the Court having considered the First Day Declaration; and this Court having previously entered the *Interim Order Authorizing (A) the Maintenance of the Cash Management System; (B) Maintenance of the Existing Bank Accounts; (C) Continued Use of Existing Business Forms; and (D) Granting Related Relief* [Docket No. 41] (the “Interim Order”); and the Court having determined that the legal and factual basis set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief sought in the Motion and at the Hearing is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein on a final basis.
2. The Debtors are authorized to maintain and use the Cash Management System and the Energy Manager is permitted to continue to manage the Energy Manager Controlled Account including effecting setoffs in accordance with the terms of the agreements between the Debtors and the Energy Manager in the ordinary course of business as described in the Motion.
3. The Debtors are authorized to (a) designate, maintain and continue to use, with the same account numbers, the Bank Accounts, (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession, (c) use, in their present form, all Business Forms, without alteration or reference to their status as debtors in possession, except as otherwise provided in this Final Order, (d) deposit funds in, and withdraw funds from, the Bank Accounts including

checks, wire transfers, ACH transfers, direct deposits, and other similar methods, and (e) pay ordinary-course Bank Fees, including any prepetition amounts, incurred in connection with the Bank Accounts.

4. The Banks are hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided, however*, that any check drawn or issued by the Debtors before the Petition Date may be honored by the Banks only if specifically authorized by order of this Court.

5. Notwithstanding any other provision of this Final Order, if the Banks honor a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors, (b) in good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of reasonable item handling procedures, it shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Final Order.

6. The Banks are authorized to debit the Bank Accounts without need for further order of this Court for: (a) all checks, automated clearing house entries, and other items deposited or credited to the Bank Accounts prior to filing of these Chapter 11 Cases that have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to filing of these Chapter 11 Cases and (b) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to the Banks as service charges for the maintenance of the Cash Management System.

7. The Banks may rely on the representations of the Debtors with respect to whether any check, item, or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and the Banks shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

8. All deposit account control agreements (i) between the Debtors and the Banks or (ii) entered into in connection with or on account of the Credit Facility shall remain unchanged postpetition except that the Debtors are not required to comply with the Transfer Restrictions. All remaining provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. The Debtors may, without further order of this Court, implement changes to the Debtors' Cash Management System in the ordinary course of business pursuant to the terms of those existing deposit agreements, including, without limitation, the opening and closing of bank accounts and amending such existing agreements; *provided*, however, the opening of new accounts and the closing of Bank Accounts shall be subject to the consent of the Administrative Agent and the Ad Hoc Group of Lenders unless otherwise ordered by the Court. Subject to the foregoing, any new account that the Debtors open will be (a) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (b) designated as an authorized depository by the U.S. Trustee, and (c) designated a "Debtor in Possession" account by the relevant bank. The Debtors shall give notice within 10 days thereafter to the U.S. Trustee, counsel for the Ad Hoc Group of Lenders, counsel for the Administrative Agent, and any statutory committees appointed in these Chapter 11 Cases of any new accounts that are opened, or Bank Accounts that are closed; *provided* that such opening shall be timely indicated on the Debtors' monthly operating reports; *provided, further*, that the Debtors shall only open any such new bank

accounts at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at banks that are willing to immediately execute such an agreement. To the extent the Debtors open any new bank accounts with a bank other than the Banks, the provisions of this Interim Order shall apply with equal force to such banks.

9. The Banks are authorized to honor the Debtors' requests to open or close (as the case may be) any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided*, that the Banks shall not have any liability to any party for relying in good faith on such representations to the extent such reliance otherwise complies with applicable law.

10. The Debtors are authorized to use their existing Business Forms; *provided*, that the Debtors shall direct BNY Mellon that future checks include the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks as soon as it is reasonably practicable to do so.

11. Nothing contained in the Motion or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

12. Nothing contained in the Motion or this Final Order shall be construed to alter in any way the prepetition restrictions or use of the Energy Manager Controlled Account.

13. To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the UST Operating Guidelines, such requirements or guidelines are waived.

14. Notwithstanding use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the actual disbursements of each Debtor.

15. Within five business days from the date of the entry of this Final Order, the Debtors shall (i) serve a copy of this Final Order on the Banks and (ii) request that the Banks internally code the Bank Accounts as “debtor in possession” accounts.

16. Notwithstanding anything contained in the Motion or this Final Order, any payment authorized to be made by the Debtors herein shall be subject to and consistent with the terms and conditions contained in any order entered by this Court authorizing the use of cash collateral and any order authorizing postpetition financing (collectively, a “Financing Order”), including compliance with any budget or cash flow forecast in connection therewith. To the extent there is any conflict between this Final Order and a Financing Order, the terms of the Financing Order shall control.

17. Nothing contained in this Final Order or any payment made pursuant to the authority granted by this Final Order is intended to be or shall be deemed as (i) an admission as to the amount of, basis for, or validity of any claim against the Debtors, (ii) an impairment, waiver or limitation of the Debtors’ or any other party-in-interest’s rights to dispute the amount of, basis for, or validity of any claim, against, or interest in, any Debtor, its property or its estates, (iii) an impairment or waiver of the Debtors’ or any other party-in-interest’s rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an approval, adoption, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code, (v) a promise or requirement to pay any prepetition claim, (vi) an implication or admission that any particular claim is of a type specified or defined in the Motion, this Final Order or any

order granting the relief requested by the Motion, (vii) an implication, admission, or finding as to (a) the validity, enforceability, or perfection of any interest or encumbrance on the property of any Debtor or its estate, or (b) the applicability of any exception or exclusion from property of the estate under Section 541 of the Bankruptcy Code or other applicable law, or (viii) an impairment or waiver of any claims or causes of action which may exist against any entity.

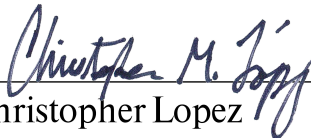
18. Under the circumstances of these Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

19. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

20. The Debtors are authorized to take all steps necessary or appropriate to carry out the relief granted in this Final Order.

21. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Signed: February 15, 2023

  
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Christopher Lopez  
United States Bankruptcy Judge