

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

| | | |
|---|---|-------------------------------|
| In re: | § | Chapter 11 |
| | § | |
| HII TECHNOLOGIES, INC., et al.¹ | § | 15-60070 (DRJ) |
| Debtors | § | (Jointly Administered) |

DEBTORS’ EMERGENCY MOTION FOR ORDER (1) CONDITIONALLY APPROVING DISCLOSURE STATEMENT; (2) FIXING RECORD DATE FOR VOTING; (3) APPROVING PLAN SOLICITATION PACKAGE AND VOTING PROCEDURES; (4) SETTING DEADLINES TO VOTE ON PLAN AND OBJECT TO PLAN AND DISCLOSURE STATEMENT; AND (5) SETTING HEARING ON FINAL APPROVAL OF DISCLOSURE STATEMENT AND PLAN CONFIRMATION

A HEARING WILL BE CONDUCTED ON THIS MATTER ON March 10, 2016, AT 11:30 A.M. IN COURTROOM 400, 515 RUSK STREET, 4th FLOOR, HOUSTON, TEXAS.

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BEFORE THE HEARING** FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED. **Emergency consideration has been requested so you must file a response before the hearing.

The Honorable David R. Jones, United States Bankruptcy Judge:

HII Technologies, Inc. (“HII”) and its above-captioned affiliated debtors (collectively, the “Debtors”), file this Motion For Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date For Voting; (3) Approving Plan Solicitation Package And Voting Procedures; (4) Setting Deadlines To Vote On Plan And Object To Plan And Disclosure

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

Statement; And (5) Setting Hearing On Final Approval Of Disclosure Statement And Plan Confirmation (the “Motion”), and in support thereof, respectfully state as follows:

JURISDICTION, VENUE AND BASIS FOR EMERGENCY CONSIDERATION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Emergency Consideration² is warranted because the DIP Loan³ under the Final DIP Order would otherwise be in default, because without emergency consideration the estate is incurring expenses at a rate that would be unsustainable, and there is minimal prejudice to creditors or other parties in interest as they are afforded the opportunity to object on the relevant statutory bases.

INTRODUCTION

3. The Debtors seek conditional approval of their disclosure statement in order to immediately solicit votes on their chapter 11 plan. The Debtors seek a combined hearing on final approval of the disclosure statement and plan confirmation. The Debtors seek approval of a solicitation package setting deadlines and procedural requirements in connection with the chapter 11 plan confirmation process.

EXHIBITS TO THE MOTION

4. Debtors submit the following Exhibits to this Motion:

² A Declaration certifying to this paragraph is appended to the end of this motion.

³ Defined in the Final DIP Order, Docket #149.

| Exhibit | Description |
|----------------|--|
| Exhibit A | Proposed “Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date For Voting; (3) Approving Plan Solicitation Package And Voting Procedures; (4) Setting Deadlines To Vote On Plan And Object To Plan And Disclosure Statement; and (5) Setting Hearing On Final Disclosure Statement And Plan Confirmation” (the “Disclosure Statement Order”) |
| Exhibit A-1 | Notice of: (A) Deadline to Vote to Accept or Reject [Plan], to (B) Deadline to Object to Approval of Disclosure Statement, (C) Deadline to Object to Plan Confirmation, (D) Combined Hearing to Consider Final Approval of Disclosure Statement and Confirmation of [Plan], and (E) Related Matters and Procedures (the “Solicitation Notice”) |
| Exhibit A-2 | Form of Ballot |
| Exhibit A-3 | Notice to Non-Voting Creditors and Equity Interest Holders |

BACKGROUND

5. These cases were each filed on September 18, 2015 (the “Petition Date”) and joint administration was requested by the Debtors. On September 21, the Court entered an Order for Joint Administration of Cases (dkt #18). The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ cases.

6. On September 29, 2015, the United States Trustee appointed an Official Committee of Unsecured Creditors for all of the Debtors (the “Committee”) (dkt #69). The Committee originally included a member of the Ad Hoc Committee. On October 7, 2015, the United States Trustee reconstituted the Committee (dkt #115) because one of the Committee’s members chose to remain in the Ad Hoc Committee.

7. On September 29, 2015, the Court entered the Order Approving Debtors’ Emergency Motion to Engage Garden City Group as Noticing and Solicitation Agent (dkt #57).

Garden City Group (“GCG”) is the “Balloting Agent” for purposes of the chapter 11 plan described below.

8. On October 5, 2015, the Debtors filed their Schedules and Statements of Financial Affairs. Some of the Debtors’ Schedules were subsequently amended on October 27, 2015.

9. On December 17, 2015, the Court entered the Order Granting Motion to 1) Sell Certain Assets Under 11 U.S.C. § 363 Free of Liens, Claims and Encumbrances; 2) Approve Lease of Hydroflow Unites to Purchaser; and 3) Assign the Hydroflow Distribution Agreement (dkt #293).

10. On February 29, the Debtors, DIP Lenders, Committee and Ad Hoc Committee of Unsecured Creditors for AES announced that they had reached a settlement, subject to court approval.

11. On March 4, 2016, the Debtors filed their First Amended Joint Plan of Reorganization (the “Plan”) (dkt #392) and the related First Amended Disclosure Statement in Support of Joint Plan of Reorganization (the “Disclosure Statement”) (dkt #393).

12. The Plan will be consummated upon approval of the Mediated Settlement Agreement. It creates a Litigation Trust which empowers the Litigation Trustee to prosecute the Debtors’ Causes of Action, administer Claims against the Debtors’ Estates and make Distributions to holders of Allowed Claims.

13. Under the Plan, one or more impaired classes of creditors are established who will be eligible to vote on the Plan. Interest holders are not expected to receive or retain anything under the Plan; as such, these interest holders will be deemed to reject the Plan, so the votes of interest holders will not be solicited.

14. Also, under the Plan, the Debtors are consolidated for voting and distribution purposes, but not otherwise. Thus, a holder of a claim against three debtors is considered to have a single claim for purposes of computing numerosity and amount of accepting impaired votes.

15. The Debtors seek to expedite the chapter 11 process to save administrative costs and avoid delay in the ultimate resolution of these chapter 11 cases. In furtherance of that goal, the Debtors seek the relief requested herein. Additionally, the Debtors are currently under an obligation to file a chapter 11 plan and disclosure statement and have such plan confirmed no later than April 30, 2016 under the Final DIP Order. This Motion seeks certain expedited relief relative to that process.

RELIEF REQUESTED AND BASIS THEREFOR

A. Relief Requested.

16. Pursuant to 11 U.S.C. § 105(d)(2), the Court may enter orders to make sure that a case is handled expeditiously and economically. Such orders include: (1) setting a date by which the debtor shall file a disclosure statement and plan; (2) setting a date by which the debtor shall solicit acceptances of a plan; (3) fixing the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; and (4) providing that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan. 11 U.S.C. § 105(d)(2)(B).

17. The Debtors seek the entry of an order, substantially in the form of the **Exhibit A** Disclosure Statement Order, conditionally approving the Disclosure Statement, approving the form, manner of notice procedures for solicitation of the Plan, including the solicitation of votes, voting, and form of ballots, on the final basis, and the fixing of the record date as set forth below, setting deadlines for voting on and objecting to the Plan and Disclosure Statement, setting dates

and times for a combined hearing at which the Court will consider the final approval of the Disclosure Statement and confirmation of the Plan and any objections thereto.

18. Bankruptcy Courts in Texas routinely grant conditional approval of a disclosure statement when cause is shown (such as the need to conserve dwindling estate resources). See, e.g., *In re Hingham Campus, LLC*, 2011 Bankr. LEXIS 3230 (Bankr. N.D. Tex. Aug. 22, 2011) (Jernigan, J.); *In re Round Rock Ltd.*, 2010 Bankr. LEXIS 4581 (Bankr. W.D. Tex. June 15, 2010) (Akard, J.); *In re Rodriguez*, 2007 Bankr. LEXIS 3678 (Bankr. N.D. Tex. Oct. 23, 2007) (Hale, J.), *see also* Fed. R. Bankr. P. 3017.1(a) (expressly permitting conditional approval of a disclosure statement in small business cases).

B. Conditional Approval of the Disclosure Statement.

19. Votes on a chapter 11 plan may not be solicited until the Court has approved a disclosure statement containing “adequate information.” 11 U.S.C § 1125(b).

20. “Adequate information” is defined at Section 1125(a)(1) of the Bankruptcy Code, which states:

(a) In this section - (1) “adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C § 1125(a)(1).

21. Fed. R. Bankr. P. 2002(b) and (d) and Fed. R. Bankr. P. 3017(a) generally provide that parties in interest receive not less than 28 days’ notice by mail of the time fixed for filing objections and the hearing to consider approval of a disclosure statement. However, Fed. R. Bankr. P. 9006(c)(1) provides that the Court for cause shown may in its discretion with or

without motion or notice, order the time periods reduced, unless Fed. R. Bankr. P. 9006(c)(2) prohibits such reduction. Fed. R. Bankr. P. 9006(c)(2) does not prohibit reduction of time under Fed. R. Bankr. P. 2002(b) and (d) or Fed. R. Bankr. P. 3017(a). Fed. R. Bankr. P. 9007 generally provides that the Court may designate the “time within which, the entities to whom, and the form and manner in which” notices shall be given.

22. The Debtors submit that good cause exists to reduce the time period for objecting to the Disclosure Statement and to designate the time, form and manner of notice on the Disclosure Statement. First, the Plan is a simple plan to provide for post-363 sale administration of the reorganized Debtors. Second, the Debtors contend that the Disclosure Statement, as it may be amended prior to the granting of this Motion, contains adequate information. Third, under the procedure suggested, the Court will conditionally approve the Disclosure Statement in its consideration of this Motion in order to achieve compliance with 11 U.S.C. § 1125(b), but without prejudice to any party in interest filing an objection to the Disclosure Statement in connection with any objections to confirmation of the Plan under 11 U.S.C. § 1129. Under the proposed procedure, parties in interest will have at least 28 days’ notice to object to both the Disclosure Statement and the Plan. This procedure that combines the objection deadlines and hearings on the Disclosure Statement and the Plan will result in efficiency for the bankruptcy estates while preserving due process rights to all parties in interest.

23. Accordingly, the Debtors respectfully request that the Court conditionally approve the Disclosure Statement to allow the Debtors to proceed with solicitation of votes and the Plan confirmation process, without prejudice to parties in interest making Disclosure Statement objections at the time of Plan confirmation objections.

C. Request to Fix Record Date for Voting on Debtors' Plan.

24. Pursuant to Fed. R. Bankr. P. 3018(a), a holder of a claim is not entitled to vote unless he or she is the beneficial holder or holder of record on the date the disclosure statement is approved or on another date fixed by the Court, for cause, after notice and a hearing. Fed. R. Bankr. P. 3017(d) provides for the procedure for mailing ballots to creditors, and establishing a "record date" for eligibility to vote. It states in part:

For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

Fed. R. Bankr. P. 3017(d).

25. Accordingly, the Debtors request that the Court set the date of entry of the Disclosure Statement Order as the record date by which creditors must hold claims in order to be eligible to vote on the Plan (the "Record Date"). As stated above, the votes of interest holders will not be solicited as they are deemed to have rejected the Plan.

D. Approval of the Solicitation Package.

26. Rule 3017(d) provides that, upon approval of the disclosure statement, except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders, the plan proponent shall mail to all creditors and to the United States Trustee: (1) the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion. In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Fed. R. Bankr. P. 2002(b), and a form of ballot conforming

to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. Fed. R. Bankr. P. 3017(d).

27. The Debtors propose that the following documents (the “Solicitation Package”) be approved for transmission pursuant to Fed. R. Bankr. P. 3017(d) to the Classes entitled to vote on the Plan:

- a) the Disclosure Statement Order as entered by this Court (proposed in the form of **Exhibit A**);
- b) the Solicitation Notice, which shall contain notice of the deadline (i) for acceptances and rejections of the Plan and (ii) filing objections to the Disclosure Statement or Plan and any other information as the court may direct (proposed in the form of **Exhibit A-1**);
- c) a copy of the Disclosure Statement and Plan; and
- d) the Ballot (proposed in the form of **Exhibit A-2**).

28. The Debtors request that they be authorized (but not required) to distribute the Plan, the Disclosure Statement, and the Disclosure Statement Order (excluding exhibits) in PDF format on a CD-ROM and to send (as previously authorized) notices to equity interest holders indicating where they can download the information from a designated website. The Ballots and the Solicitation Notice will only be provided in paper format.

29. The Debtors propose that the Notice to Non-Voting Classes and Interests (proposed in the form of **Exhibit A-3**) be approved for transmission to holders of Unimpaired Claims and/or Equity Interests that are not entitled to vote on the Plan pursuant to Fed. R. Bankr. P. 3017(d)&(e).

E. Request to Fix the Service Date for the Solicitation Package.

30. The Debtors request that the Court establish the deadline for mailing the Solicitation Package and the Notice to Non-Voting Classes and Interests to creditors and interest holders (the “Service Date”) be set for March 15, 2016. Within two Business Days after the

Service Date, the Debtors shall cause to be filed a certificate of service with the Court certifying that the Solicitation Package and the Notice to Non-Voting Classes and Interests was mailed to parties in interest.

F. Request to Fix Dates and Times for Filing Acceptances or Rejections of and Objections to Debtors' Plan.

31. Fed. R. Bankr. P. 3017(c) provides that, on or before approval of the disclosure statement, the court shall fix a time within which the holders of claims may accept or reject the plan. Accordingly, the Debtors request that, at the hearing on this Motion, the Court set **April 8, 2016 at 5:00 p.m.** United States Central Time as the date and time for the receipt of ballots on the plan (the "Voting Deadline").

G. Request to Set Deadline to File and Serve Objections to the Disclosure Statement and Plan Confirmation.

32. Pursuant to Fed. R. Bankr. P. 3017(d), the Debtors request that the Court establish **April 8, 2016 at 5:00 p.m.** United States Central Time as the date and time to file and serve objections to approval of the Disclosure Statement and objections to the confirmation of the Plan (the "Objection Deadline").

H. Form of Objections.

33. The Debtors request that any objections to approval of the Disclosure Statement and objections to the confirmation of the Plan shall: (1) be in writing, signed under Fed. R. Bankr. P. 9011 and be filed on the docket of these jointly administered cases; (2) state the name, address and phone number of the objecting party and nature of the claim of such party; (3) state with particularity the basis and nature of any objection; (4) if applicable, propose specific language changes to the Plan to cure the objection and indicate the corresponding section(s) and page(s) in the Plan to which such modifications are proposed to be made; (5) include a memorandum of legal authorities; and (6) served upon counsel for the Debtors, counsel to the

Committee, and the U.S. Trustee. Any objection not timely filed and served will be deemed to be waived and to be a consent to the Court's entry of an order confirming the Plan.

I. Responses to Objections.

34. The Debtors request that the Court set **April 14, 2016**, as the deadline by which the Debtors or parties in interest must file responses to any timely filed objections to approval of the Disclosure Statement and objections to the confirmation of the Plan.

J. Request to Set Date and Time for Hearing to Consider Final Approval of Disclosure Statement and Confirmation of Debtors' Plan.

35. Fed. R. Bankr. P. 3017(c) provides that, on or before approval of the disclosure statement, the court may fix a date for the hearing on confirmation. The Debtors expect that the hearing on final approval of the Disclosure Statement and confirmation of the Plan will not take more than one day. Accordingly, the Debtors request that the Court set **April 15, 2016 at 2:00 p.m.**, or some earlier date and time, as the date and time for the hearing on final approval of the Disclosure Statement and confirmation of the Plan.

K. Approval of Form of Ballot.

36. Pursuant to Fed. R. Bankr. P. 3017(d), the Debtors request that the Court approve the form and substance of the Ballot for voting on the Plan, which is attached hereto as **Exhibit A-2**.

L. Allowance of Claims for Voting Purposes.

37. The Debtors request that the Court establish the following rules, standards and protocols for the allowance of each claim against the Debtors for voting purposes only (and not for any other purposes):

- a. With respect to a claim identified in the Schedules as liquidated, non-contingent or undisputed, and for which no proof of claim has been filed timely, the claim amount for voting purposes shall be the amount as identified in the Schedules (the "Scheduled Amount").

- b. With respect to a liquidated, non-contingent, undisputed claim as to which proof of claim has been timely filed and as to which no objection has yet been filed, the amount and classification of such claim shall be that specified in such proof of claim, subject to any applicable limitations as set forth below.
- c. With respect to a proof of claim which is the subject of an objection filed at least ten (10) days prior to the Voting Deadline, the claim represented by such proof of claim as applicable, shall be disallowed for voting purposes unless the Court orders otherwise on motion filed by the claimant, so long as the Court determination occurs prior to the conclusion of the Confirmation Hearing.
- d. With respect to a claim that is unliquidated, contingent and/or disputed in part, the holder of such claim shall be entitled to vote only that portion of the claim that is liquidated, non-contingent and undisputed in the liquidated, non-contingent and undisputed amount, subject to any limitations set forth herein, unless otherwise ordered by the Court.
- e. A holder shall not be entitled to vote a claim to the extent such claim duplicates or has been superseded by another claim of such holder.
- f. A timely-filed proof of claim, or a claim that is listed in the Schedules, as wholly unliquidated and/or contingent shall be accorded one vote valued at \$1 for purposes of Section 1126(c) of the Bankruptcy Code (the “One Vote, One Dollar Procedure”), unless the Court orders otherwise on timely motion filed by the claimant, so long as the Court determination occurs prior to the conclusion of the Confirmation Hearing.
- g. With respect to a proof of claim that is the subject of an objection solely to the classification asserted in the proof of claim, such claim shall be allowed provisionally for voting purposes in the amount asserted in the claim and in the classification to which the objection seeks to re-classify said claim, unless the Court orders otherwise on motion filed by the claimant.
- h. With respect to a claim which has been estimated or otherwise allowed for voting purposes by order of the Court, the amount and classification of such claim shall be that set by the Court.

M. Approval of Procedures for Balloting and Tabulation of Ballots.

38. The Debtors request that the Court approve and authorize the following special procedures for balloting and for the tabulation of ballots with respect to the Plan (and not for any other purpose) (the “Voting Procedures”):

- a. For the purpose of voting on the Plan, Garden City Group, as Balloting Agent, will be deemed to be in constructive receipt of any ballot timely delivered:

By regular U.S. mail to:
HII Technologies, Inc.
Ballot Processing
c/o GCG
PO Box 10236
Dublin, OH 43017-5736

By messenger or overnight courier to:
HII Technologies, Inc.
Ballot Processing
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, OH 43017

- b. Any ballot received by the Balloting Agent after the Voting Deadline shall not be counted, unless the Court orders otherwise.
- c. Whenever a holder of a claim submits more than one ballot voting the same claim prior to the Voting Deadline, the last ballot timely received will supersede and revoke any earlier received ballot.
- d. Creditors must vote all of their claims within a particular Plan class either to accept or reject the Plan and may not split their vote. Accordingly, a ballot that partially rejects and partially accepts the Plan or that does not indicate an acceptance or a rejection of the Plan will not be counted. In addition, votes to accept or reject the Plan must be unequivocal and not conditional or qualified in any way.
- e. If a ballot is signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity, such persons should indicate such capacity when signing and, unless otherwise determined by the Debtors, must submit proper evidence satisfactory to the Balloting Agent and the Debtors to so act on behalf of the beneficial interest holder.
- f. Ballots will not be counted if they are delivered by facsimile, email or any other electronic means or that do not contain an original signature.
- g. All votes must be cast using the ballots distributed to the holders of claims. Votes cast in any manner other than by using such ballots will not be counted.
- h. Any holder of a claim in an impaired class who has delivered a valid ballot voting on the Plan may withdraw or change such vote solely in accordance with Fed. R. Bankr. P. 3018(a).
- i. Subject to any contrary order of the Bankruptcy Court, the Debtors reserve the absolute right to reject any and all ballots not proper in form, the acceptance of which would, in the opinion of the Debtors or their counsel, not be in accordance with the provisions of the Bankruptcy Code. Subject

to contrary order of the Court, the Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular ballot or, unless otherwise directed by the Bankruptcy Court. The Debtors' interpretation of the terms and conditions of the Plan (including the ballot and the voting instructions), shall be final and binding on all parties, unless otherwise directed by the Court. Neither the Debtors nor any other person or entity, including the Balloting Agent, will be under any duty to provide notification of defects or irregularities with respect to deliveries of ballots nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by the Court, delivery of such ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will not be counted.

- j. Deadline for filing a report of Plan voting: **April 14, 2016.**
- k. Each claim will be counted only once for amount and numerosity in determining acceptances by an impaired class, even if the claim is held against multiple debtors or the subject of multiple ballots. For creditors with secured claims against one debtor and unsecured (or undersecured) claims others, the claim is treated as secured to the extent it is secured as to any debtor.

NOTICE

39. Notice of this Motion has been provided by email or U.S. first class mail to all parties on the Debtors' most-current Master Service List. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request that the Court enter the proposed Disclosure Statement Order and grant the Debtors such other and further relief to which they may be entitled, either at law or in equity.

Dated: March 4, 2016.

McKool Smith, P.C.

By: /s/ Hugh M. Ray III
Hugh M. Ray, III
State Bar No. 24004246
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State Bar No. 24012913
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Counsel for Debtors-in-Possession

DECLARATION FOR EMERGENCY RELIEF PURSUANT TO BLR 9013

I certify under penalty of perjury that the information contained in Paragraph 2 of this Motion regarding the need for expedited relief is true and correct.

Dated: March 4, 2016

/s/ Hugh M. Ray, III

Hugh M. Ray, III

CERTIFICATE OF SERVICE

The undersigned certifies that on March 4, 2016, a true and correct copy of this document was served via the ECF system to the parties on the ECF service list, including the United States Trustee, and the pleading is being delivered to the Noticing Agent for service upon the parties on the Master Service List.

/s/ Hugh M. Ray, III

Hugh M. Ray, III

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re: § Chapter 11
§
HII TECHNOLOGIES, INC., et al.¹ § 15-60070 (DRJ)
Debtors § (Jointly Administered)

**ORDER (1) CONDITIONALLY APPROVING DISCLOSURE STATEMENT;
(2) FIXING RECORD DATE FOR VOTING; (3) APPROVING PLAN SOLICITATION
PACKAGE AND VOTING PROCEDURES; (4) SETTING DEADLINES TO VOTE ON
PLAN AND OBJECT TO PLAN AND DISCLOSURE STATEMENT; AND (5) SETTING
HEARING ON FINAL APPROVAL OF DISCLOSURE STATEMENT AND PLAN
CONFIRMATION**

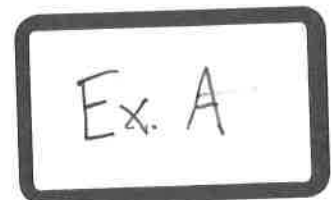
On consideration of the Debtors' Motion for Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Plan Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote on Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan Confirmation (Dkt. No. _____, the "Motion"), filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors");² the Court having reviewed the Motion and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY FOUND AND CONCLUDED, as follows:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
- B. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
- C. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
- D. Notice of the Motion and the Hearing and the relief granted herein was adequate under the circumstances and in full compliance with the requirement of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion or the applicable exhibits to the Motion.



IT IS HEREBY ORDERED THAT:

1. The Disclosure Statement is conditionally approved, pursuant to section 1125 of the Bankruptcy Code. A hearing on final approval of the Disclosure Statement will be held on April 15, 2016 at 2:00 PM Central time 515 Rusk, Courtroom 400, Houston Texas 77002, USA, being the same time as the hearing on confirmation of the Plan.
2. The date by which creditors must hold claims in order to be eligible to vote for the Plan (the "Record Date"), is the same date as the entry of this Disclosure Statement Order.
3. The Solicitation Package and Voting Procedures set forth in the Motion are approved and the Debtors are authorized to send the notices as requested in the Motion.
4. The Service Date is set for March 15, 2016.
5. The Voting Deadline is set for April 8, 2016 at 5:00 pm prevailing United States Central Time as the time for the receipt of ballots on the Plan.
6. The Objection Deadline is set for April 8, 2016 at 5:00 p.m. prevailing United States Central time to file and serve objections to approval of the Disclosure Statement and objections to confirmation of the Plan. Responses to any such objections must be filed on or before April 14, 2016.
7. The hearing on confirmation of the Plan and final approval of the Disclosure Statement is set for April 15, 2016 at 2:30 p.m.
8. The Ballot for voting on the Plan (Exhibit A-2 of the Motion) is approved.

SIGNED: _____, 2016.

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re: § Chapter 11
§
HII TECHNOLOGIES, INC., et al.¹ § 15-60070 (DRJ)
Debtors § (Jointly Administered)

**NOTICE OF (A) DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN;
(B) DEADLINE TO OBJECT TO APPROVAL OF DISCLOSURE STATEMENT;
(C) DEADLINE TO OBJECT TO PLAN CONFIRMATION; AND
(D) COMBINED HEARING TO CONSIDER FINAL APPROVAL OF
DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN; AND
(E) RELATED MATTERS AND PROCEDURES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On March 4, 2016, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed: (a) the Debtors’ Amended Joint Plan of Reorganization (Dkt. No. 392) (as the same may be amended or modified, the “Plan”); and (b) the related First Amended Disclosure Statement in Support of the Joint Plan of Reorganization (Dkt. No. 393) (as the same may be amended or modified, the “Disclosure Statement”). A copy of both the Disclosure Statement and the Plan are included in this packet.

2. Also on March 4, 2016, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the *Debtors’ Motion for Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Plan Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote on Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan Confirmation* (Dkt. No. _____).

3. On March 10, 2016, the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”) entered its *Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote On Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan*

¹ The Debtors in these chapter 11 cases and with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

Ex. A-1

Confirmation (the "Disclosure Statement Order"). A copy of the Disclosure Statement Order is included in this packet.

4. The Disclosure Statement Order conditionally approved the Disclosure Statement. A hearing on final approval of the Disclosure Statement will occur as set forth below.

5. The Disclosure Statement Order further approved the solicitation of votes to accept or reject the Plan.

6. If you are entitled to vote to accept or reject the Plan, the deadline by which you must vote to accept or reject the Plan (the "Voting Deadline") is set for 5:00 p.m. prevailing Central time on April 8, 2016. Further, if you are entitled to vote to accept or reject the Plan, you should have received with this Notice a ballot form (the "Ballot") and voting instructions, as well as a copy of the Disclosure Statement, the Plan, and other materials.

7. A hearing to consider the confirmation of the Plan and final approval of the Disclosure Statement (the "Confirmation Hearing") will be held before the Honorable David R. Jones, United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), at 515 Rusk Street, Courtroom 400, Houston, Texas 77002, on April 15, 2016, at 2:00 p.m. (prevailing Central time).

8. Objections, if any, to the confirmation of the Plan and final approval of the Disclosure Statement must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of any objection; (d) if applicable, propose specific language changes to the Plan or Disclosure Statement to cure the objection and indicate the corresponding section(s) and page(s) in the Plan or Disclosure Statement to which such modifications are proposed to be made; (e) include a memorandum of legal authorities; and, (f) be filed with the Bankruptcy Court and served in accordance with Rule 3017 by April 8, 2016 at 5:00 prevailing Central Time (one week before the hearing).

Dated: _____

McKool SMITH, P.C.

By: /s/ Hugh M. Ray III
Hugh M. Ray, III
State Bar No. 24004246
600 Travis, Suite 7000
Houston, Texas 77002
Tel: 713-485-7300
Fax: 713-485-7344

Counsel for the Debtors-in-Possession

**CLASS [] BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re: § **Chapter 11**
§
HII TECHNOLOGIES, INC., et al.¹ § **15-60070 (DRJ)**
Debtors § **(Jointly Administered)**

**CLASS [] BALLOT FOR ACCEPTING OR REJECTING
PLAN OF REORGANIZATION**

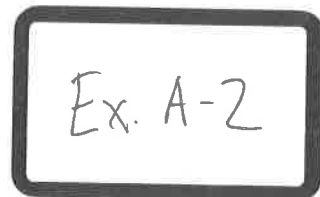
HII Technologies, Inc. and its subsidiaries, as debtors and debtors-in-possession in these chapter 11 cases (collectively, the “Debtors”), filed a plan of reorganization dated March 4, 2016 [docket #392] (the “Plan”) for the Debtors in these jointly administered cases. The Court has conditionally approved a disclosure statement with respect to the Plan [docket #393] (the “Disclosure Statement”). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy by writing to HII Technologies, Inc. Case Administration c/o GCG, P.O. Box 10236, Dublin, OH 43017-5736 or by email at HIICaseInfo@gardencitygroup.com. Copies of the Disclosure Statement and all relevant pleadings are also available for review, without charge, via the internet at www.gardencitygroup.com/cases/HII. The Court’s conditional approval of the Disclosure Statement does not indicate approval of the Plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your claim has been placed in class [] under the Plan. If you hold claims in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by the Debtors’ Balloting Agent, Garden City Group on or before April 8, 2016, at 5:00 p.m. Central Time, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan. If you send a ballot by regular U.S. mail, it must be sent to HII Technologies, Inc., Ballot Processing, c/o Garden City Group, PO Box 10236, Dublin, OH 43017-5736. If you hand deliver a ballot or send one by courier, it must be sent to HII Technologies, Inc., Ballot Processing, c/o Garden City Group, 5151 Blazer Parkway, Suite A, Dublin, OH 43017.

If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).



You may elect to have your claim treated as a Class 3 Convenience Claim. If you make such an election, you will receive a one-time cash payment on the Effective Date of the Plan, in the following amount: (a) if your allowed claim equals or exceeds \$1,000, you will receive \$500; (b) if your allowed claim is less than \$1,000, you will receive 50% of your allowed claim. If you elect to have your claim treated as a Class 3 Convenience Claim, your vote will be tabulated among Class 3 Convenience Claims, and not among the class to which your claim would otherwise belong. To have your claim treated as a Class 3 Convenience Claim, check the box below labeled "ACCEPTS THE PLAN AS CLASS 3 CONVENIENCE CLAIMANT".

ACCEPTANCE OR REJECTION OF THE PLAN

The undersigned, the holder of a Class [] claim against the Debtor in the unpaid amount of _____ Dollars (\$ _____).

(Check one box only)

[] ACCEPTS THE PLAN [] REJECTS THE PLAN

[] ACCEPTS THE PLAN AS CLASS 3 CONVENIENCE CLAIMANT

Dated: _____

Print or type name: _____

Signature: _____

Title (if corporation or partnership) _____

Address: _____

RETURN THIS BALLOT TO:

By regular U.S. mail to:
HII Technologies, Inc.
Ballot Processing
c/o GCG
PO Box 10236
Dublin, OH 43017-5736

By messenger or overnight courier to:
HII Technologies, Inc.
Ballot Processing
c/o GCG
5151 Blazer Parkway, Suite A
Dublin, OH 43017

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re: § Chapter 11
§
HII TECHNOLOGIES, INC., et al.¹ § 15-60070 (DRJ)
Debtors § (Jointly Administered)

**NOTICE OF NONVOTING STATUS UNDER JOINT PLAN OF REORGANIZATION
PROPOSED BY DEBTORS AND DEBTORS-IN-POSSESSION**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On March 4, 2016, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed: (a) the Debtors’ Amended Joint Plan of Reorganization (Dkt. No. 392) (as the same may be amended or modified, the “Plan”), and (b) the related First Amended Disclosure Statement in Support of the Joint Plan of Reorganization (Dkt. No. 393) (as the same may be amended or modified, the “Disclosure Statement”).

2. Pursuant to an order of the Bankruptcy Court dated [_____], 2016 (the “Disclosure Statement Order”), the Disclosure Statement and certain related materials have been conditionally approved for solicitation of votes to accept or reject the Plan.

3. A hearing to consider the confirmation of the Plan and final approval of the Disclosure Statement (the “Confirmation Hearing”) will be held before the Honorable David R. Jones, United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), at 515 Rusk Street, Courtroom 400, Houston, Texas 77002, on April 15, 2016, at 2:00 p.m. (prevailing United States Central time).

4. UNDER THE TERMS OF THE PLAN, YOUR CLAIM(S) AGAINST AND/OR INTERESTS IN THE DEBTORS IN CLASSES 2 (PRIORITY NON-TAX), 2A (MULLINIKS/COX PRIORITY CLAIMS), 5 (SUBORDINATED CLAIMS), OR 6 (EQUITY INTERESTS), ARE NOT ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN.

5. Objections, if any, to the confirmation of the Plan and final approval of the Disclosure Statement must: (a) be in writing and signed; (b) state the name and address of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

Ex. A-3

objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of any objection; (d) if applicable, propose specific language changes to the Plan or Disclosure Statement to cure the objection and indicate the corresponding section(s) and page(s) in the Plan or Disclosure Statement to which such modifications are proposed to be made; (e) include a memorandum of legal authorities; and, (f) be filed with the Bankruptcy Court and served in accordance with Rule 3017 before April 8, 2016, 2016 at 5:00 p.m. prevailing United States Central Time (one week before the hearing).

6. The Confirmation Hearing may be continued from time to time without further notice other than the announcement of the continued date at the Confirmation Hearing or any continued hearing.

Dated: _____

McKool SMITH, P.C.

By: /s/ Benjamin W. Hugon
Hugh M. Ray, III
State Bar No. 24004246
Christopher D. Johnson
State Bar No. 24012913
Benjamin W. Hugon
State Bar No. 24078702
600 Travis, Suite 7000
Houston, Texas 77002
Tel: 713-485-7300
Fax: 713-485-7344

Counsel for the Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

| | | |
|---|---|-------------------------------|
| In re: | § | Chapter 11 |
| | § | |
| HII TECHNOLOGIES, INC., et al.¹ | § | 15-60070 (DRJ) |
| Debtors | § | (Jointly Administered) |

**NOTICE OF HEARING ON PLAN CONFIRMATION AND FINAL APPROVAL OF
THE DISCLOSURE STATEMENT**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. The above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed: (a) the Debtors’ Amended Joint Plan of Reorganization (Dkt. No. 392) (as the same may be amended or modified, the “Plan”) on March 4, 2016; and (b) the related First Amended Disclosure Statement in Support of the Joint Plan of Reorganization (Dkt. No. 393) (as the same may be amended or modified, the “Disclosure Statement”) on March 4, 2016.

2. Pursuant to an order of the Bankruptcy Court dated [____], 2016 (the “Disclosure Statement Order”), the Disclosure Statement and certain related materials have been conditionally approved for solicitation of votes to accept or reject the Plan.

3. A hearing to consider the confirmation of the Plan and final approval of the Disclosure Statement (the “Confirmation Hearing”) will be held before the Honorable David R. Jones, United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”), 515 Rusk Street, Courtroom 400, Houston, Texas 77002, on April 15, 2016, at 2:00 p.m. (prevailing Central time).

4. Pursuant to Rule 3017(d) of the Federal Rules of Bankruptcy Procedure (collectively, the “Bankruptcy Rules”) and/or the Bankruptcy Court’s February 11, 2016 Order Establishing Notice Procedures, the Debtors are not required to provide the Solicitation Package² to holders of equity interests in classes under the Plan that are conclusively presumed to reject the Plan.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

² Terms not defined herein shall have the meaning set forth in the Debtors’ *Motion for Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Plan Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote on Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan Confirmation.*

Accordingly, you are receiving this Notice in lieu of the Solicitation Package containing, among other things, copies of the Disclosure Statement and the Plan.

5. Objections, if any, to the confirmation of the Plan and final approval of the Disclosure Statement must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of any objection; (d) if applicable, propose specific language changes to the Plan or Disclosure Statement to cure the objection and indicate the corresponding section(s) and page(s) in the Plan or Disclosure Statement to which such modifications are proposed to be made; (e) include a memorandum of legal authorities; and, (f) be filed with the Bankruptcy Court and served in accordance with Rule 3017 by April 8, 2016 at 5:00 p.m. prevailing United States Central Time(one week before the hearing date).

6. In accordance with Bankruptcy Rule 3017(a), requests for copies of the Plan and Disclosure Statement by parties in interest may be made in writing to HII Technologies, Inc. Case Administration c/o GCG, P.O. Box 10236, Dublin, OH 43017-5736 or by email at HIICaseInfo@gardencitygroup.com. Copies of the Disclosure Statement and all relevant pleadings are available for review, without charge, via the internet at www.gardencitygroup.com/cases/HII.

7. The Confirmation Hearing may be continued from time to time without further notice other than the announcement of the adjourned date at the Confirmation Hearing or any continued hearing.

Dated: _____

McKool SMITH, P.C.

By: _____
Hugh M. Ray, III
State Bar No. 24004246
Christopher D. Johnson
State Bar No. 24012913
Benjamin W. Hugon
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