EFiled: Dec 13 2016 01:03AM EST
Transaction ID 59946946
Case No. N16C-12-090 PRW CCLD

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

WILMINGTON TRUST COMPANY, solely in its capacity as Indenture Trustee, WILMINGTON SAVINGS FUND SOCIETY, FSB, solely in its capacity as Successor Indenture Trustee, YORK CAPITAL MANAGEMENT, L.P., YORK CREDIT OPPORTUNITIES FUND, L.P., YORK CREDIT OPPORTUNITIES INVESTMENTS MASTER FUND, L.P., YORK MULTI-STRATEGY MASTER FUND, L.P., YORK SELECT INVESTORS MASTER FUND, L.P., YORK SELECT MASTER FUND, L.P., YORK SELECT, L.P., SOLA LTD, SOLUS OPPORTUNITIES FUND 5 LP, ULTRA MASTER LTD, PAULSON CREDIT OPPORTUNITIES MASTER LTD, HIGHLAND FLOATING RATE OPPORTUNITIES FUND, HIGHLAND GLOBAL ALLOCATION FUND, HIGHLAND LOAN MASTER FUND, L.P., HIGHLAND OPPORTUNISTIC CREDIT FUND, PENSIONDANMARK PENSIONSFORSIKRINGSAKTIESEL SKAB, SERENGETI LYCAON MM LP, SERENGETI MULTI-SERIES MASTER LLC – SERIES E, SERENGETI OPPORTUNITIES MM LP, RAPAX OC MASTER FUND LTD, ZA CREDIT, L.L.C., SOUND POINT BEACON MASTER FUND, L.P., SOUND POINT CREDIT OPPORTUNITIES MASTER FUND, L.P., SOUND POINT MONTAUK

C.A. NO.: _____ [CCLD]

Jury Trial Demanded

FUND, L.P., FERNWOOD ASSOCIATES LLC, FERNWOOD FOUNDATION FUND LLC, FERNWOOD RESTRUCTURINGS LIMITED, ATLAS ENHANCED MASTER FUND, LTD., and ATLAS MASTER FUND, LTD.,

Plaintiffs,

v.

NRG ENERGY, INC. and GENON ENERGY, INC.,

Defendants.

**COMPLAINT**

Wilmington Trust Company ("Wilmington Trust"), as Indenture Trustee for the 9.875% Senior Unsecured Notes due 2020 issued by GenOn Energy, Inc. (the "2020 Notes"), certain holders of the 7.875% Senior Unsecured Notes due 2017 issued by GenOn Energy, Inc. (the "2017 Notes"), certain holders of the 9.500% Senior Unsecured Notes due 2018 issued by GenOn Energy, Inc. (the "2018 Notes" and, together with the 2017 Notes and the 2020 Notes, the "GenOn Energy Notes"), and Wilmington Savings Fund Society, FSB ("Wilmington Savings" or the "GenOn Americas Trustee"), as Successor Indenture Trustee for the 8.500% Senior Notes due 2021 (the "2021 Notes") and the 9.125% Senior Notes due 2031 (the "2031 Notes") issued by GenOn Americas Generation, LLC (collectively, the

"GenOn Americas Notes," and, together with the GenOn Energy Notes, the "GenOn Notes"), by and through their undersigned counsel, hereby bring this complaint against NRG Energy, Inc. ("NRG") and GenOn Energy, Inc. ("GenOn Energy"), and in support thereof respectfully allege as follows:

## NATURE OF THE ACTION

1. Plaintiffs bring this action to avoid fraudulent obligations, recover fraudulent transfers, and avoid insider preferences orchestrated and perpetrated by NRG.

2. On December 14, 2012, NRG acquired GenOn Energy and its subsidiaries (collectively, "GenOn") through a merger of GenOn Energy and a subsidiary of NRG (the "Acquisition"). Both GenOn and NRG are engaged in the ownership and operation of electric power generation facilities in the United States.

3. NRG designed the Acquisition so that GenOn, which had suffered net operating losses of hundreds of millions of dollars in the years prior to the Acquisition, would be operationally integrated with NRG, but would keep its historical capital structure separate from NRG. The goal of this structure was to allow NRG to exploit GenOn's assets for the benefit of NRG's shareholders, while at the same time isolating itself from GenOn's liabilities. GenOn was undercapitalized at the time of the Acquisition, and subsequent transfers of

GenOn's cash and other assets for the benefit of NRG and its shareholders worsened GenOn's capital impairment and accelerated its insolvency, all to the detriment of the holders of the GenOn Energy Notes (the "GenOn Energy Noteholders") and the holders of the GenOn Americas Notes (the "GenOn Americas Noteholders" and, together with the GenOn Energy Noteholders, the "GenOn Noteholders").

4. In connection with the Acquisition, NRG gained dominion and control over GenOn's business and decision-making by appointing its own employees to serve as the directors and officers of GenOn Energy and its subsidiaries. At all relevant times, those individuals remained NRG employees while simultaneously controlling the affairs of GenOn for the benefit of NRG.

5. Shortly after completing the Acquisition, NRG caused GenOn to enter into a services agreement with NRG, effective as of December 20, 2012 (the "Services Agreement"), pursuant to which NRG would perform services for GenOn in the following categories: (i) human resources; (ii) accounting; (iii) tax; (iv) information systems; (v) treasury; (vi) asset management; (vii) risk management; (viii) commercial operations; (ix) regulatory and public affairs; and (x) legal (collectively, the "Services").

6. The Services Agreement provides that the fees charged thereunder to GenOn will be equal to the "arm's-length cost to perform the Services . . .

calculated based on an allocation methodology *to be agreed upon from time to time by the Parties*." The Services Agreement thus requires that NRG charge GenOn an arm's-length cost for the Services.

7. Despite this, NRG charged GenOn approximately $193 million per year to perform the Services, an amount that is multiples of the arm's-length cost or fair market value of the Services. NRG itself has publicly admitted that it charges GenOn *at least double* its cost to provide the Services, which is far greater than what a third-party would charge to provide similar services. In short, the value of the Services that GenOn received from NRG is not reasonably equivalent to the value of the payments that GenOn made to NRG under the Services Agreement, as NRG has admitted.

8. While never reasonable, the $193 million annual fee paid by GenOn became increasingly unreasonable as NRG caused GenOn to sell off a material portion of its assets in a series of transactions from 2013 (shortly after the Acquisition) through and including September 2016. These dispositions, including one in which NRG transferred one of GenOn's most valuable assets to a non-GenOn subsidiary of NRG, combined with a number of closures of GenOn power generation facilities across the country during the same period, caused a substantial reduction in the scope of GenOn's operations, which, in turn, should have reduced

the Services necessary to run GenOn's business. However, NRG continued to extract from GenOn the same annual fee—$193 million per year.

9. The adverse impact of NRG's domination and control over the Services Agreement is also made plain by the fact that GenOn has never availed itself of other important rights under the contract. By its own terms, the Services Agreement automatically renews each year unless one of the parties gives notice of termination at least 60 days prior to the contractually-defined renewal date. GenOn also has the option of terminating the Services Agreement at any time with 90 days' notice. Thus, GenOn could have cancelled the agreement at any time and hired a third party to perform the Services at the prevailing market rate.

10. However, the conflicted directors and officers appointed (and employed) by NRG have allowed the Services Agreement to automatically renew *four times* without any alteration to the excessive fees charged by NRG under the agreement. Upon information and belief, none of GenOn's directors or officers has ever analyzed the market value of the Services, proposed a change to the annual fee for Services, or considered substitute service arrangements as potential alternatives to NRG and the Services Agreement.

11. Thus, the inflated cost of the Services remains unchanged, and GenOn has been unable to generate sufficient cash from operations to service its debt,

sustain its business, and make the excessive payments required under the Services Agreement.

12. GenOn has been able to maintain liquidity only through the above-described asset sales that NRG directed GenOn to conduct. In essence, NRG has caused GenOn to burn its own furniture to heat NRG's house with four years of overpayments under the Services Agreement.

13. Put simply, NRG dictated the terms of the Services Agreement, including the inflated fees paid thereunder, and then used those fees as a vehicle for capturing GenOn's available cash. But the law does not permit NRG to wring value from an undercapitalized and insolvent GenOn to the detriment of the GenOn Noteholders.

14. Accordingly, all payments made pursuant to the Services Agreement—whether made directly to NRG or to GenOn Energy first before going to NRG—are avoidable as fraudulent or preferential transfers. Plaintiffs therefore file this lawsuit on behalf of themselves and the GenOn Noteholders to remedy the harm caused by NRG.

## PARTIES

15. Plaintiff Wilmington Trust is a national banking association with its principal place of business at Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890. Wilmington Trust, solely in its capacity as the

Indenture Trustee for the 2020 Notes, brings this action at the direction of a majority of holders of the 2020 Notes on behalf of itself and the holders of the 2020 Notes (the "2020 Noteholders"). Each of the 2020 Noteholders directing Wilmington Trust to bring this action have assigned their right, title, and interest in all claims asserted in this Complaint to Wilmington Trust.

16. Plaintiff York Capital Management, L.P. is a Delaware limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

17. Plaintiff York Credit Opportunities Fund, L.P. is a Delaware limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

18. Plaintiff York Credit Opportunities Investments Master Fund, L.P. is a Cayman Islands exempted limited partnership with its principal place of business in Grand Cayman, Cayman Islands, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

19. Plaintiff York Multi-Strategy Master Fund, L.P. is a Cayman Islands exempted limited partnership with its principal place of business in Grand Cayman, Cayman Islands, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

20. Plaintiff York Select Investors Master Fund, L.P. is a Cayman Islands exempted limited partnership with its principal place of business in Grand Cayman, Cayman Islands, and is a beneficial owner of the 2018 Notes.

21. Plaintiff York Select Master Fund, L.P. is a Cayman Islands exempted limited partnership with its principal place of business in Grand Cayman, Cayman Islands, and is a beneficial owner of the 2018 Notes.

22. Plaintiff York Select, L.P. is a Delaware limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

23. Plaintiff Sola Ltd is a Cayman Islands limited company with its principal place of business in the Cayman Islands, and is a beneficial owner of the 2017 Notes.

24. Plaintiff Solus Opportunities Fund 5 LP is a Delaware limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes.

25. Plaintiff Ultra Master Ltd is a Cayman Islands limited company with its principal place of business in the Cayman Islands, and is a beneficial owner of the 2017 Notes.

26. Plaintiff Paulson Credit Opportunities Master Ltd is a company incorporated in the Cayman Islands with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

27. Plaintiff Highland Floating Rate Opportunities Fund is a series of trust established under Highland Funds I, a Delaware statutory trust, with its principal place of business in Dallas, Texas, and is a beneficial owner of the 2017 Notes.

28. Plaintiff Highland Global Allocation Fund is a series of trust established under Highland Funds II, a Massachusetts statutory trust, with its principal place of business in Dallas, Texas, and is a beneficial owner of the 2017 Notes.

29. Plaintiff Highland Loan Master Fund, L.P. is a Cayman Islands limited partnership with its principal place of business in Dallas, Texas, and is a beneficial owner of the 2017 Notes.

30. Plaintiff Highland Opportunistic Credit Fund is a series of trust established under Highland Funds I, a Delaware statutory trust, with its principal place of business in Dallas, Texas, and is a beneficial owner of the 2017 Notes.

31. Plaintiff PensionDanmark Pensionsforsikringsaktieselskab is a Danish private limited company with its principal place of business in Dallas, Texas, and is a beneficial owner of the 2017 Notes.

32. Plaintiff Serengeti Lycaon MM LP is a Cayman Islands limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

33. Plaintiff Serengeti Multi-Series Master LLC – Series E is a Delaware limited liability company with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

34. Plaintiff Serengeti Opportunities MM LP is a Cayman Islands limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

35. Plaintiff Rapax OC Master Fund LTD is a Cayman Islands corporation with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

36. Plaintiff ZA Credit, L.L.C. is a Delaware limited liability company with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

37. Plaintiff Sound Point Beacon Master Fund, L.P. is a Cayman Islands limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

38. Plaintiff Sound Point Credit Opportunities Master Fund, L.P. is a Cayman Islands limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

39. Plaintiff Sound Point Montauk Fund, L.P. is a Cayman Islands limited partnership with its principal place of business in New York, New York, and is a beneficial owner of the 2018 Notes.

40. Plaintiff Fernwood Associates LLC is a Delaware limited liability company with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

41. Plaintiff Fernwood Foundation Fund LLC is a Delaware limited liability company with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

42. Plaintiff Fernwood Restructurings Limited is a British Virgin Islands international business corporation with its principal place of business in New York, New York, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

43. Plaintiff Atlas Enhanced Master Fund, Ltd. is a Cayman Islands exempted company with its principal place of business in Chicago, Illinois, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

44. Plaintiff Atlas Master Fund, Ltd. is a Cayman Islands exempted company with its principal place of business in Chicago, Illinois, and is a beneficial owner of the 2017 Notes and the 2018 Notes.

45. The Plaintiffs named in paragraphs 15 through 44 shall be referred to collectively herein as the "GenOn Energy Plaintiffs."

46. Plaintiff Wilmington Savings is a federal savings bank with its principal place of business at 500 Delaware Avenue, Wilmington, Delaware, 19801. Wilmington Savings, solely in its capacity as the GenOn Americas Trustee, brings this action at the direction of a majority of holders of the 2021 Notes and a majority of holders of the 2031 Notes on behalf of itself and the GenOn Americas Noteholders. Each of the GenOn Americas Noteholders directing Wilmington Savings to bring this action have assigned their right, title, and interest in all claims asserted in this Complaint to Wilmington Savings.

47. Defendant NRG is a Delaware corporation with its principal place of business in Princeton, New Jersey.

48. Defendant GenOn Energy is a Delaware corporation with its principal place of business in Princeton, New Jersey, and a wholly-owned subsidiary of NRG.

## JURISDICTION

49. This Court has subject matter jurisdiction pursuant to Del. Const. art. 4, § 7 and 10 Del. C. § 541.

50. This Court has personal jurisdiction over NRG because, among other reasons, it was incorporated in the state of Delaware.

51. This Court has personal jurisdiction over GenOn Energy because, among other reasons, it was incorporated in the state of Delaware.

52. Assignment to the Superior Court's Complex Commercial Litigation Division (the "CCLD") is proper because the amount in controversy is more than one million dollars ($1 million).

## FACTUAL ALLEGATIONS

### I. Background

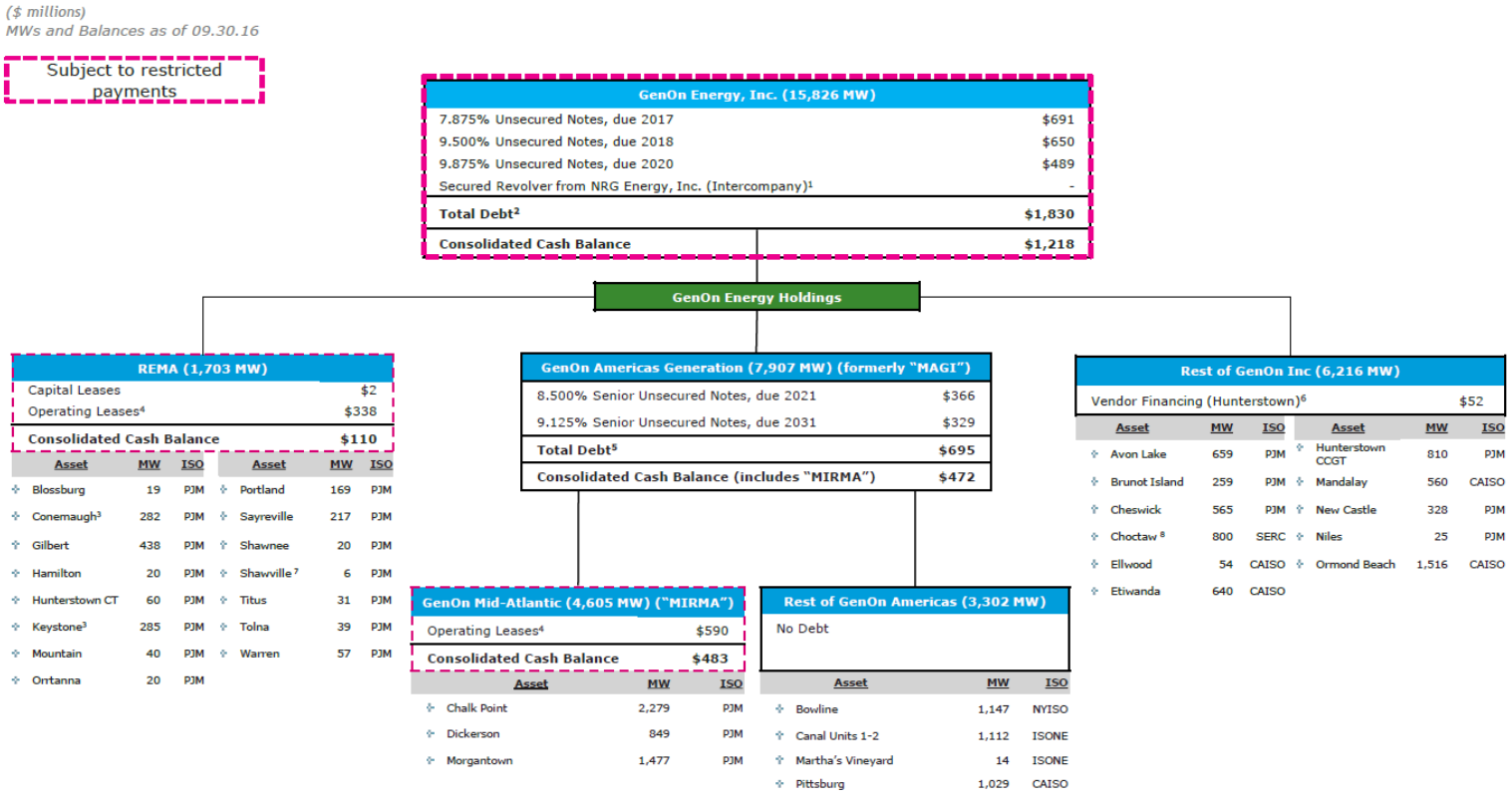
#### A. GenOn's Business and Operations

53. GenOn Energy was formed through the December 3, 2010 merger of two energy companies, Mirant Corporation and RRI Energy, Inc. (formerly known as Reliant Energy, Inc.). GenOn Energy and its subsidiaries are wholesale power generators engaged in the ownership and operation of power generation facilities in the United States.

54. GenOn Energy's principal operating subsidiaries are GenOn Americas Generation, LLC ("GenOn Americas"), GenOn Mid-Atlantic, LLC ("GenMA"), and NRG REMA, LLC, formerly known as GenOn REMA, LLC ("REMA").

55. GenOn Americas, GenMA, and REMA are indirect wholly-owned subsidiaries of GenOn. GenMA is an indirect wholly-owned subsidiary of GenOn Americas.

56. The following diagram, which is taken from NRG's third quarter earnings presentation given on November 4, 2016, presents a simplified schematic of the organizational and capital structures of GenOn Energy and its principal operating subsidiaries as of September 30, 2016:




[1]$207MM of LC's were issued and $293MM of the Intercompany Revolver was available; [2]Excludes premium of $92MM on GenOn debt; [3]REMA jointly leases portions of these plants; GenOn portion is subject to REMA liens; [4]The present value of the lease payments (10% discount rate at GenMA; 9.4% at REMA); [5]Excludes premiums of $52MM; [6]GAAP classification for portion of LTSA payments; [7]Mothballed in May 2015, Shawville units 1, 2,3 & 4 (597MW) expected to return to service no later than Q42016; 8 Includes 275 MW related to Choctaw Unit 1 which is in forced outage

57. As a power generation company, GenOn trades "energy," "capacity," and related products along with fuel and transportation services. Energy (or

power) in this context is generally the commodity of electricity, which can be used in homes and businesses. The forward market of "capacity," on the other hand, allows GenOn to be compensated for power that will be provided in the future. Because demand for electricity fluctuates based on season and time of day, different types of generation facilities are used depending on varying levels of demand. "Baseload" plants are designed to satisfy the minimum requirements while producing electricity at an essentially constant rate while running continuously; "intermediate" and "peak" load facilities are industry terms for the plants used to meet increased demand. Intermediate units are those expected to satisfy energy requirements greater than baseload but less than peak.

58. The sale of capacity and power from baseload and intermediate generation facilities accounts for the majority of GenOn's power generation revenues. In addition, GenOn's generation portfolio provides it with opportunities to earn additional revenues by selling power during periods of peak demand, offering capacity or similar products, and providing ancillary services to support system reliability.

59. As of September 30, 2016, GenOn had approximately 15,826 megawatts ("MW") of net generating capacity. Of that 15,826 MW, GenOn Americas and its subsidiaries account for approximately 7,907 MW of net generating capacity. Of that 7,907 MW, GenMA and its subsidiaries account for

approximately 4,605 MW of net generating capacity. Of GenOn's 15,826 MW, REMA accounts for approximately 1,703 MW of net generating capacity. The remainder of GenOn's generating capacity is held indirectly through various other subsidiaries.

### B. Restrictions on Distributions from GenMA and REMA

60. Two of GenOn's principal operating subsidiaries, GenMA and REMA, are parties to certain agreements, which impose covenants that restrict the ability of GenMA and REMA to pay dividends or make distributions to their respective equity owners, including their indirect equity owner GenOn Energy and, in the case of GenMA, its indirect equity owner GenOn Americas.

61. According to GenOn, GenMA has purportedly not satisfied the conditions under its restrictive covenants, and therefore has not made distributions to its equity owners since the quarter ended March 31, 2014, which was the only quarterly period in the last three years for which GenMA satisfied the conditions under its restrictive covenants.

62. REMA also has purportedly not satisfied the conditions under its restrictive covenants, and therefore has not made distributions to its equity owners since 2009.

63. As of September 30, 2016, the cash held by GenMA and REMA that is allegedly subject to the restrictive covenants accounts for nearly 50% of

GenOn's total cash on hand. As of September 30, 2016, excluding the restricted cash held by GenMA, GenOn Americas has *no cash on hand*.

64. GenOn Energy and GenOn Americas disclosed in their public filings for the quarter ended June 30, 2016 that their profitability is "adversely affected" by "the inability of [GenMA] and REMA to make distributions of cash and certain other restricted payments." These filings indicate that GenOn Energy and GenOn Americas had insufficient capital to manage their businesses in a way that would generate profits. GenOn Energy and GenOn Americas also disclosed in those filings that, partially as a result of the restrictive covenants preventing the distribution of cash held by GenMA and REMA, as described above, GenOn Energy "is not expected to have sufficient liquidity to repay the [2017 Notes]" on their maturity date and "there is no assurance GenOn will continue as a going concern."

### C. The GenOn Notes

65. The GenOn Notes were all incurred either before, or contemporaneously with, the formation of GenOn.

#### 1. The GenOn Energy Notes

66. The GenOn Energy Notes are comprised of three different series of unsecured bonds: (i) the 2017 Notes; (ii) the 2018 Notes; and (iii) the 2020 Notes. The 2017 Notes were issued pursuant to a Fifth Supplemental Indenture, dated as

of June 13, 2007, to the Senior Indenture, dated as of December 22, 2004, by and between Reliant Energy, Inc. (the predecessor-in-interest to GenOn Energy), as Issuer, and Wilmington Trust Company, as Trustee. The 2017 Notes bear interest at an annual rate of 7.875%, which is paid semi-annually in arrears on June 15 and December 15 of each year. The maturity date for the 2017 Notes is June 15, 2017.

67. The 2018 Notes and the 2020 Notes were issued pursuant to a Senior Notes Indenture, dated as of October 4, 2010, by and between GenOn Escrow Corp., as issuer, and Wilmington Trust Company, as Trustee. Pursuant to a Supplemental Indenture, dated as of December 3, 2010, by and between GenOn Escrow Corp., GenOn Energy, and Wilmington Trust Company, GenOn Energy expressly assumed all of the obligations of GenOn Escrow Corp. under the 2018 Notes and the 2020 Notes and the applicable Indenture. The 2018 Notes bear interest at an annual rate of 9.500%, which is paid semi-annually in arrears on April 15 and October 15 of each year. The maturity date for the 2018 Notes is October 15, 2018. The 2020 Notes bear interest at an annual rate of 9.875%, which is paid semi-annually in arrears on April 15 and October 15 of each year. The maturity date for the 2020 Notes is October 15, 2020.

68. As of September 30, 2016, approximately $691 million in principal amount of the 2017 Notes is outstanding, approximately $650 million in principal amount of the 2018 Notes is outstanding, and approximately $489 million in

principal amount of the 2020 Notes is outstanding, for a total of approximately $1.83 billion in outstanding principal balance for the GenOn Energy Notes.

**2. The GenOn Americas Notes**

69. The GenOn Americas Notes are comprised of two different series of unsecured bonds: (i) the 2021 Notes; and (ii) the 2031 Notes. The 2021 Notes were issued pursuant to a Fifth Supplemental Indenture, dated as of October 9, 2001, to the Indenture, dated as of May 1, 2001, by and between Mirant Americas Generation, Inc. (the predecessor-in-interest to GenOn Americas) and Bankers Trust Company, as Trustee. The 2021 Notes bear interest at an annual rate of 8.500%, which is paid semi-annually in arrears on April 1 and October 1 of each year. The maturity date for the 2021 Notes is October 1, 2021.

70. The 2031 Notes were issued pursuant to a Third Supplemental Indenture, dated as of May 1, 2001, to the Indenture, dated as of May 1, 2001, by and between Mirant Americas Generation, Inc. (the predecessor-in-interest to GenOn Americas) and Bankers Trust Company, as Trustee. The 2031 Notes bear interest at an annual rate of 9.125%, which is paid semi-annually in arrears on May 1 and November 1 of each year. The maturity date for the 2031 Notes is May 1, 2031.

71. As of September 30, 2016, approximately $366 million in principal amount of the 2021 Notes is outstanding, and approximately $329 million in

principal amount of the 2031 Notes is outstanding, for a total of approximately $695 million in outstanding principal balance for the GenOn Americas Notes.

## II. NRG Acquires GenOn, and Imposes the Services Agreement on GenOn

### A. The Acquisition

72. NRG is an integrated competitive power company, which produces, sells and delivers energy and energy products and services in major competitive power markets in the United States. NRG owns and operates approximately 46,000 MW of generation; engages in the trading of wholesale energy, capacity and related products; transacts in and trades fuel and transportation services; and directly sells energy, services, and sustainable products and services to retail customers under certain retail brand names owned by NRG.

73. On July 20, 2012, NRG, GenOn Energy, and Plus Merger Corporation (a direct wholly-owned subsidiary of NRG) entered into an Agreement and Plan of Merger (the "Acquisition Agreement"). The Acquisition Agreement provided for GenOn Energy to merge with Plus Merger Corporation, with GenOn continuing as the surviving corporation and as a wholly-owned subsidiary of NRG.

74. NRG structured the Acquisition such that: (i) GenOn Energy would remain a separate entity, with its debt also remaining separate from NRG; and (ii) the deal could be consummated without approval by any of the GenOn Noteholders. In a Joint Investor Presentation dated July 22, 2012, the day the

Acquisition was announced, NRG boasted that a shared services agreement between it and GenOn would enable NRG to "capture" the value of the merger synergies and highlighted that "no bondholder approvals [would be] required from either NRG or GenOn bondholders."

75. One of the principal economic rationales given by NRG for acquiring GenOn, as stated in NRG's July 22, 2012 press release announcing the Acquisition, was that shareholders would benefit from "cost and operational efficiency synergies" that would result in "$200 million in annual EBITDA enhancements" for NRG.

76. The projected "$200 million in annual EBITDA enhancements" for NRG, nearly all of which was to be created by capturing GenOn's cash through the Services Agreement and transferring it to NRG, accounted for approximately two-thirds of the total projected cash flow benefits to NRG from the Acquisition, and was identified in the press release as one of the key "Strategic Highlights" of the deal. As David Crane, NRG's CEO at the time, described it on a conference call shortly following the merger announcement, GenOn would be a "free cash flow generating machine" for NRG.

77. The Acquisition closed on December 14, 2012, and the Services Agreement was executed within one week of the closing. However, the fact that GenOn would pay an annual fee to NRG of approximately $193 million under the

Services Agreement was not publicly disclosed until February 27, 2013, the date on which GenOn filed its annual report for the fiscal year 2012, and the Services Agreement itself has never been made public as of the date hereof.

### B. NRG Gains Domination and Control Over GenOn Through the Acquisition

78. Upon the closing of the Acquisition, GenOn remained separate from NRG, but was in no way independent. To the contrary, NRG immediately took complete control of GenOn's business operations and decision-making.

79. First, immediately following the Acquisition, NRG appointed one of its senior executives to be the *sole director* of GenOn post-Acquisition.

80. Second, through its domination and control of the GenOn board, NRG appointed additional NRG employees to serve as officers of GenOn.

81. Upon information and belief, from the date of the Acquisition to the date GenOn appointed two purportedly independent directors during the second quarter of 2016, all directors of GenOn were simultaneously employed by NRG.

82. Upon information and belief, at all times since the Acquisition, each senior executive of GenOn has been simultaneously employed by NRG.

83. Upon information and belief, from the date of the Acquisition to the date GenOn appointed two purportedly independent directors during the second quarter of 2016, GenOn did not have any fiduciary independent of NRG to act on

its behalf in connection with the Services Agreement or in connection with any other aspect of GenOn's business.

84. Thus, upon information and belief, at all times since the Acquisition, NRG has exercised complete domination and control over the affairs of GenOn through, among other things, its domination and control of GenOn's board and senior executives.

### C. The Services Agreement

85. Once the Acquisition closed and NRG populated the GenOn Board and executive ranks with its own employees, NRG caused an undercapitalized GenOn to enter into the Services Agreement.

86. That NRG was on both sides of the Services Agreement is indisputable. The contract was executed: (i) on behalf of GenOn by an individual who was also a senior officer or executive of NRG; and (ii) on behalf of NRG by an individual who was also an officer of GenOn.

87. And given that GenOn's board and senior executives were all employees of NRG at the time the parties executed the Services Agreement, it is also clear that NRG dictated the terms of the contract without having to negotiate with any independent representative of GenOn.

88. The key terms of the Services Agreement are as follows:

**1. Scope of the Services**

89. Section 2.02 of the Services Agreement states that NRG will provide "any services that GenOn and NRG may agree from time to time that NRG is to perform," and Exhibit A of the agreement specifically identifies the following categories that the Services comprise: (i) executive and administrative; (ii) accounting; (iii) tax; (iv) information systems; (v) treasury and planning; (vi) operations and asset management; (vii) risk and commercial operations; and (viii) legal.

**2. The Annual Fee for the Services During the Initial Term**

90. In exchange for the Services, GenOn Energy agreed to pay "an annual fee (the 'Fee') *equal to an arm's-length cost* to perform the Services, which shall be calculated based on an allocation *methodology to be agreed upon from time to time by the Parties*, such agreement *not to be unreasonably withheld* by either of the Parties." Section 4.01(a) (emphasis added).

91. The initial term of the Services Agreement was December 20, 2012 through December 31, 2013 (the "Initial Term").

92. As stated in Exhibit B to the Services Agreement, the annual fee for the Initial Term was set at $192,600,000 per year, plus a pro-rated amount for the remaining period of 2012.

93. During the Initial Term, NRG charged, and GenOn paid, on a monthly basis, amounts totaling approximately $193 million per year, less any amounts incurred directly by GenOn Energy or its subsidiaries.

### 3. Information and Intellectual Property

94. The Services Agreement contains no confidentiality provisions and imposes no restrictions on the use of GenOn's information or intellectual property by NRG. Thus, nothing in the Services Agreement would prohibit NRG from using GenOn's information or intellectual property for its own purposes or in a manner adverse to GenOn. Indeed, under Section 2.04(b) of the Services Agreement, GenOn granted NRG an irrevocable, royalty-free, non-exclusive and non-transferable license to use any intellectual property provided by GenOn to NRG during the term of the contract.

### 4. Renewal/Termination of the Services Agreement

95. Under the Services Agreement, GenOn has the unconditional right to terminate the agreement upon 60 days' notice prior to the date on which the contract is set to automatically renew:

> At the end of the Initial Term and each subsequent Renewal Term (as defined below), as the case may be, the term of this Agreement shall be automatically renewed for a period of one (1) year (each a 'Renewal Term') unless either Party delivers a written termination notice to the other Party at least sixty (60) days prior to the end of the Initial Term or the then current Renewal Term, as the case may be.

Section 8.01.

96. Pursuant to Sections 8.02(b) and 8.03(b), respectively, GenOn and NRG may terminate the agreement at will with 90 days' notice.

97. Thus, pursuant to the unambiguous terms of the Services Agreement, GenOn had the right to terminate the agreement with proper notice before conclusion of the Initial Term or any Renewal Term (as defined below), and enter into a new contract with a substitute service provider.

98. Nevertheless, following the Initial Term, NRG continued to charge, and GenOn continued to pay, on a monthly basis, amounts totaling approximately $193 million per year, less any amounts incurred directly by GenOn Energy or its subsidiaries.

## III. GenOn's Initial Entry into the Services Agreement

### A. GenOn Did Not Receive Reasonably Equivalent Value in Exchange for Its Payment of Approximately $199 Million for the Services During the Initial Term

99. The express terms of the Services Agreement require that the Services be charged at arm's-length cost and provide that NRG's fee may be renegotiated from time to time based on *reasonable* terms.

100. Section 7.02 of the Services Agreement further states that: "NRG shall hire, employ and have supervision over such persons (including its consultants and contractors) as may be required to enable NRG to perform the

Services required hereunder in an *efficient and economically prudent manner and consistent with sound industry practice*."

101. Section 2.03(b) of the Services Agreement reinforces this notion, stating that: "NRG may utilize, as it deems necessary and appropriate, the services of any independent contractors or of its Affiliates qualified to perform such services; provided, however that such *services of NRG's Affiliates must be utilized on terms no less favorable to GenOn than those prevailing at the time* for comparable services of non-affiliated independent parties."

102. But that was not the reality of the Services Agreement: the cost of Services provided under the contract was neither arm's-length nor negotiated based on fair market rates. NRG exerted complete domination and control over GenOn and dictated a fee for the Services during the Initial Term that was so excessive—$193 million per year—that it was *multiple* times the arm's-length cost and the market value of the Services at the time of the Acquisition. After taking into account the fee for the 2012 stub period—December 20, 2012 through December 31, 2012—the total fee charged to GenOn Energy for the Initial Term, upon information and belief, was approximately $199 million.

103. Upon information and belief, neither GenOn's board nor any of its officers commissioned, performed or reviewed any analyses to determine whether

the annual fee was comparable to the arm's-length cost to perform the Services under the Services Agreement for the Initial Term.

104. Indeed, NRG itself has stated publicly that it has overcharged GenOn for the Services. On May 5, 2016, during a public conference call to discuss NRG's earnings for the first quarter of 2016, in response to a question from a research analyst addressing a hypothetical scenario in which GenOn was no longer a wholly-owned subsidiary of NRG, NRG's President and CEO disclosed NRG's "rule of thumb" for the relative value of the cost of the Services provided to GenOn as compared to the revenue generated by the Services Agreement to NRG, stating that it was "about 50% of the cost." The CEO was then cut off in mid-sentence by NRG's Executive Vice President and Chief Financial Officer ("CFO"), suggesting that public discussion of NRG's "rule of thumb" was not desirable.

105. The relevant passage from the conference call transcript is reprinted as follows:

> Q: (Research Analyst): And then just on the thinking on GenOn, so the support payments which I think are part of your NRG EBITDA, in the event that we go to the scenario where you do have to kind [of] let it go, can you cut cost significantly to kind of offset the loss to that revenue?
>
> A: (CEO): Yes, Steve. I mean, I think the rule of thumb is that it's about 50% of the cost that we...[1]
>
> A: (CFO): It is a significant portion of that number overall.

[1] This is not an ellipsis in the quotation to reflect omitted text, but rather appears in the transcript where the CFO interrupted the CEO in mid-sentence.

106. Applying the "rule of thumb" disclosed by NRG's CEO, the cost for the Services provided by NRG to GenOn during the Initial Term would have been no greater than 50% of the $193 million annual fee. It was actually far less.

107. Publicly-available data for the fiscal year 2012 for two independent power producers similar in size and profile to GenOn—the data that would have been most relevant to the Services Agreement at its inception—indicates that the cost of services similar to those provided by NRG to GenOn would have been between $41 million and $80 million for the fiscal year 2012, with a midpoint of approximately $60.5 million.

108. The approximately $193 million charged by NRG for the Services for 2013 was more than three times the $60.5 million midpoint.

109. Put another way, NRG caused GenOn to overpay it during the Initial Term by more than $130 million.

110. In short, the value of the Services that GenOn received from NRG during the Initial Term was not reasonably equivalent to the payments GenOn made to NRG during that period under the Services Agreement.

111. As a result, from the moment the Services Agreement was signed, GenOn faced the burden of paying NRG for Services that did not remotely justify their cost.

112. It was thus clear from the very beginning that NRG compelled GenOn to enter into the Services Agreement on unfair economic terms that would drain GenOn's cash. Upon the announcement of the Acquisition on July 22, 2012, five months before the Acquisition was completed, NRG announced to the market its plan to install "[a] shared services agreement between both companies *will enable the value of synergies to be captured by the parent*." The "parent," of course, is NRG. Indeed, the total fee charged by NRG to GenOn Energy for the Initial Term of approximately $199 million (including the 2012 stub period) was almost equivalent to the amount of "EBITDA enhancements" NRG promised to its shareholders in July 2012.

113. Thus, NRG knowingly caused GenOn to undertake the obligation to grossly overpay for the Services for the Initial Term, and knowingly received the overpayments from GenOn for the duration of the Initial Term. Thus, NRG did not act in good faith when it caused GenOn to enter into the Services Agreement and when it received payments from GenOn in respect of the inflated payment for the Initial Term.

### B. GenOn's Entry into the Services Agreement Left It Undercapitalized

114. At the time of the Acquisition, GenOn was already a company in need of capital.

115. In public filings before the Acquisition, both GenOn Energy and GenOn Americas identified certain core principles that were crucial to their ability to generate sufficient profits to sustain operations, including: (i) maintaining "appropriate liquidity" to be able to operate across a broad range of market conditions, including developments in the supply, demand, volume and pricing of electricity and other commodities such as coal and natural gas in the energy markets; and (ii) investing capital "prudently" to improve existing facilities, maintain near and long-term availability of existing facilities, and to develop or acquire new facilities.

116. During the period leading up to the Acquisition, the commodity price environment was extremely challenging. In the quarterly reports GenOn filed following the announcement of the Acquisition by NRG, GenOn reported that commodity prices were low compared to prior years and that the generation margin for its baseload coal plants was adversely affected by those low price levels. GenOn also noted that declining natural gas prices adversely affected its electricity generation volumes. By the end of 2012, GenOn had generated a net loss of approximately $486 million for the year, on total operating revenues of $2.673 billion. (GenOn recorded $1.825 billion in energy revenue and $848 million in capacity revenue, with a generation gross margin of $1.560 billion.)

117. The regulatory environment compounded the challenges created by low commodity prices. In its report for the quarter ended September 30, 2012, GenOn noted that more stringent environmental air and water quality requirements could lead to the retirement of some of GenOn's coal-fired power plants. Even if the commodity price environment were to improve, GenOn faced substantial environmental capital expenditures. In its annual report for the fiscal year 2012, "GenOn estimate[d] that environmental capital expenditures from 2013 through 2017 required to meet GenOn's regulatory environmental commitments [would] be approximately $232 million."

118. GenOn explained in its annual report for the fiscal year 2012 that the majority of its "generating facilities operate without long-term power sales agreements, and their revenues and results of operations depend on market and competitive forces that are beyond their control."

119. At the time of the Acquisition, GenOn was also facing the impending maturity of $575 million in outstanding face amount of senior unsecured notes, which were to become due in 2014. As of December 31, 2012, GenOn had only $825 million in cash and cash equivalents on hand to address this obligation and to fund its ongoing business, which suffered almost $500 million in net losses during 2012. GenOn did theoretically have access to a $500 million revolving secured credit facility provided by NRG, but more than half those commitments—$261

million—were taken up by letters of credit necessary for GenOn's day-to-day operations. Furthermore, NRG's domination and control of GenOn made it both a borrower and a lender under that facility. Upon information and belief, NRG has never once permitted GenOn to draw on that facility.

120. Also, as of the date of the Acquisition, approximately $800 million in principal amount of the 2017 Notes were outstanding, approximately $802 million in principal amount of the 2018 Notes were outstanding, and approximately $632 million in principal amount of the 2020 Notes were outstanding.

121. Further, the accounting adjustments related to the Acquisition revealed that the fair value of GenOn's overall net assets was a mere fraction of the historical carrying cost. In its form 10-Q for the quarter ended September 30, 2013, GenOn reported that the revised acquisition-date fair value of its net assets was $427 million, *less than one-tenth* of the historical carrying value of $4.69 billion. A substantial portion of this precipitous decline was due to adjustments in the value of property, plant and equipment—GenOn's generating assets. As GenOn explained in the 10-Q: "The estimated fair values of the property, plant and equipment were significantly lower than the book value, which reflects changes to expected market dynamics, including commodity prices, resulting in lower estimated cash flows and in some cases, shorter useful lives of the underlying assets."

122. In short, at the time of the Acquisition, GenOn was a company in need of *additional* capital to keep its business afloat, which made it undercapitalized when taking into account the volatility of its revenues and commodity costs, as well as transactions committed to and/or reasonably expected to occur in the near term, including the payments to be made under the Services Agreement, as dictated by NRG.

## IV. Annual Renewal of the Services Agreement

### A. GenOn Did Not Receive Reasonably Equivalent Value in Exchange for Its Payment of $193 Million for the Services During each Renewal Term

123. GenOn's NRG-dominated board and officers allowed the Services Agreement to renew three times following the Initial Term, for GenOn's fiscal years 2014, 2015, and 2016. Upon information and belief, GenOn did not give notice of non-renewal under the Services Agreement in 2016 and, therefore, the agreement will automatically renew again on December 31, for GenOn's 2017 fiscal year. Each such renewal of the Services Agreement for GenOn's fiscal years 2014, 2015, 2016, and 2017 shall be referred to herein as a "Renewal Term" and, collectively, as the "Renewal Terms."

124. Upon each renewal of the Services Agreement, GenOn Energy continued to pay an annual fee of approximately $193 million for each Renewal Term, the same annual fee established for the Initial Term.

125. At all relevant times, NRG charged the fee for each Renewal Term on a monthly basis, less amounts incurred directly by GenOn Energy or its subsidiaries.

126. The annual fee for each of the Renewal Terms was dictated by NRG, through its domination and control of GenOn, without any negotiation with an independent representative of GenOn.

127. Upon information and belief, neither GenOn nor any of its conflicted directors or officers commissioned, performed or reviewed any analyses to: (i) determine the fair market value of the Services before agreeing to pay the annual fee during each Renewal Term; or (ii) assess whether the fee for each Renewal Term was equal to the arm's-length cost to perform the Services at that time.

128. And, upon information and belief, neither GenOn nor its conflicted directors or officers has ever commissioned, performed, or reviewed any analyses concerning the costs of, or even explored, possible alternatives to the Services Agreement from substitute service providers. And again, there was no incentive to do so, since it was NRG's design to use the $193 million annual fee under the Services Agreement as a "free cash flow generating machine" for NRG, without regard to the actual cost of the Services or GenOn's financial well-being.

129. Assuming that the arm's-length cost of the Services provided by NRG during each Renewal Term was substantially the same as it was during the Initial Term, the massive discrepancy between NRG's $193 million annual fee and the arm's-length cost to provide the Services, as described above, would have remained the same from the Initial Term through to the present. That alone would demonstrate that the value of the Services GenOn received from NRG during each Renewal Term was not reasonably equivalent to the value of the payments GenOn made to NRG during those periods.

130. But the arm's-length cost of the Services necessary to run GenOn's business should have *decreased* annually between 2012 and 2016, as NRG caused GenOn to: (i) sell major assets in a series of transactions; and (ii) close a number of its major power generation facilities. Put simply, as NRG caused the reduction of GenOn's asset base and power generation capacity, GenOn became a significantly smaller company in need of fewer Services by NRG. However, during that period, NRG's $193 million annual fee remained unchanged, further exacerbating the already profound imbalance between the arm's-length cost of, and the price paid for, the Services.

131. As of December 31, 2012, two weeks after the Acquisition, GenOn's total generation capacity was approximately 21,440 MW.

132. As of December 31, 2013, when the Services Agreement was renewed for the first time for the fiscal year 2014 for the same $193 million annual fee, GenOn's total generation capacity was approximately 19,997 MW, a decrease of approximately 6.7% (1,443 MW) from GenOn's total generation capacity at the time NRG originally set its $193 million annual fee under the Services Agreement.

133. Upon information and belief, the reduction in GenOn's total generation capacity during the fiscal year 2013 was attributable in significant part to the following actions directed by NRG: (i) GenOn Americas' closure of its Contra Costa generating facility in California; (ii) NRG's transfer of ownership of GenOn's Marsh Landing generating facility in California to a subsidiary of NRG Yield, Inc. concurrent with the initial public offering of NRG Yield, Inc.; and (iii) the deactivation of the Titus generating facility in Birdsboro, Pennsylvania, nearly two years ahead of its expected deactivation date.

134. As of December 31, 2014, when the Services Agreement was renewed for the second time for the fiscal year 2015 for the same $193 million annual fee, GenOn's total generation capacity was approximately 19,529 MW, a decrease of approximately 8.9% (1,911 MW) from GenOn's total generation capacity at the time NRG originally set its $193 million annual fee under the Services Agreement.

135. Upon information and belief, the reduction in GenOn's total generation capacity during the fiscal year 2014 was attributable in significant part

to two asset dispositions directed by NRG: (i) GenOn's January 31, 2014 sale of NRG Kendall LLC, which owned the 256 MW natural gas-fired Kendall generating facility located in Cambridge, Massachusetts; and (ii) GenOn's December 2, 2014 sale of its 50% interest in Sabine Cogen, L.P., which owned the 105 MW natural gas-fired Sabine cogeneration facility located in Orange, Texas.

136. As of December 31, 2015, when the Services Agreement was renewed for the third time for the fiscal year 2016 for the same $193 million annual fee, GenOn's total generation capacity was approximately 17,753 MW, a decrease of approximately 17.2% (3,687 MW) from GenOn's total generation capacity at the time NRG originally set its $193 million annual fee under the Services Agreement.

137. Upon information and belief, the reduction in GenOn's total generation capacity during fiscal year 2015 was attributable in significant part to its closure or deactivation of a number of its generating facilities directed by NRG, including Osceola in Holopaw, Florida, Coolwater in Dagget, California, Glen Gardner in Glen Gardner, New Jersey, Gilbert in Milford, New Jersey, Werner in South Amboy, New Jersey, Shawville Units 1, 2, 3, and 4 (for repowering) in Shawville, Pennsylvania, and Portland in Mount Bethel, Pennsylvania.

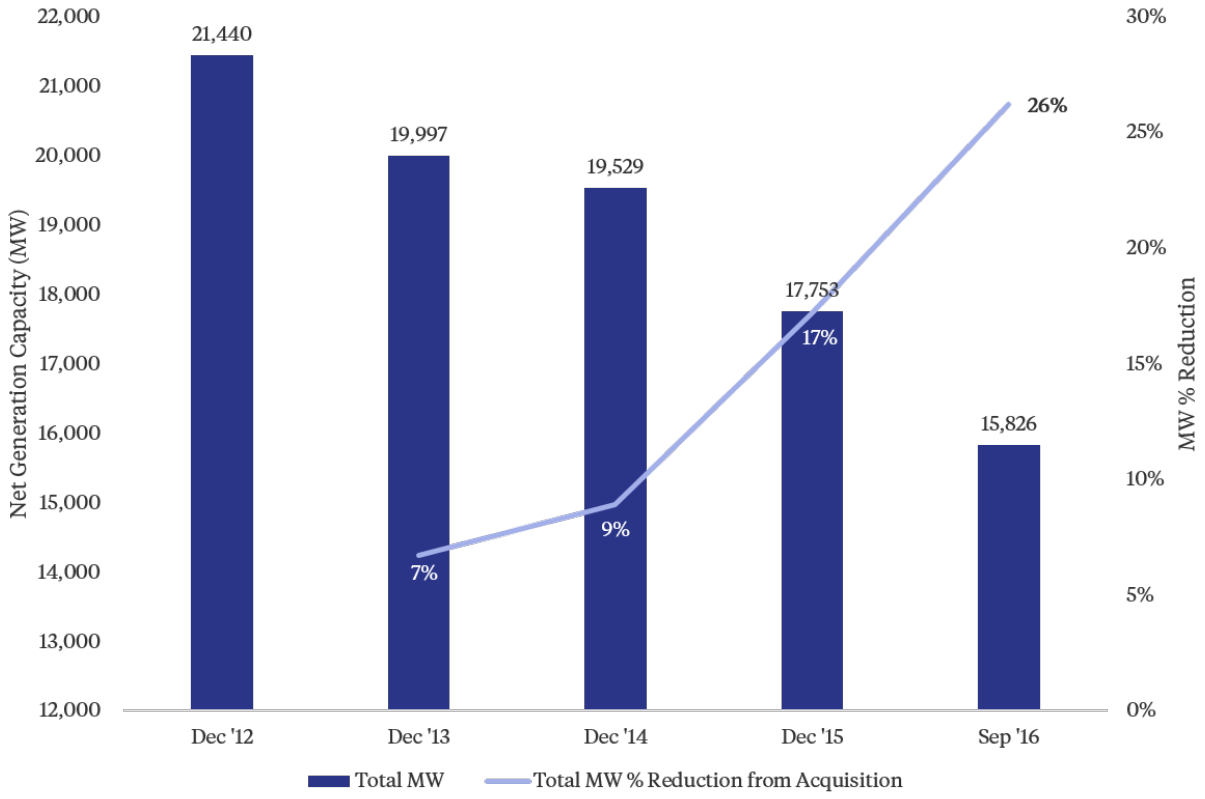
138. As of September 30, 2016, shortly before the Services Agreement was renewed for the fourth time for the fiscal year 2017, GenOn's total generation capacity was approximately 15,826 MW, a decrease of approximately 26.2%

(5,614 MW) from GenOn's total generation capacity at the time NRG originally set its $193 million annual fee under the Services Agreement.

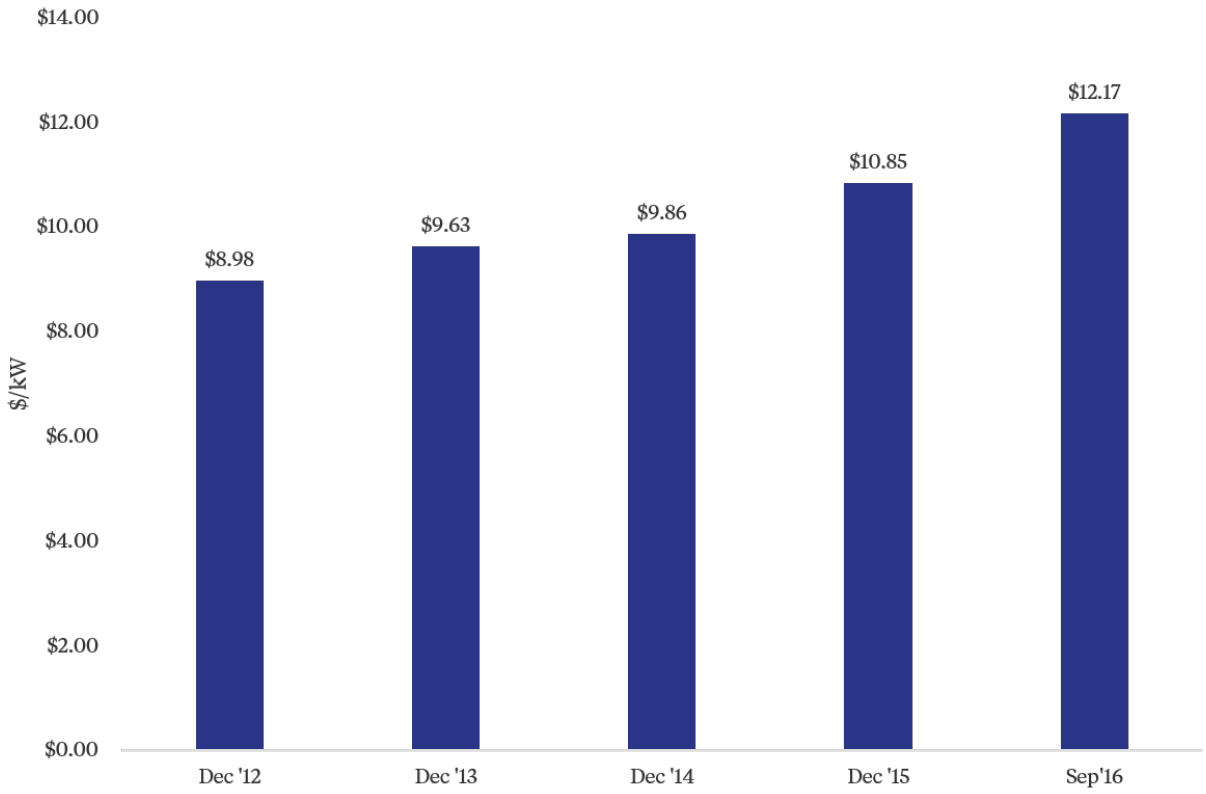
139. Upon information and belief, the reduction in GenOn's total generation capacity during fiscal year 2016 (through September 30, 2016) was attributable in significant part to three more asset dispositions directed by NRG: (i) GenOn's February 2, 2016 sale of its Seward generating facility, a 525 MW coal-fired facility located in New Florence, Pennsylvania; (ii) GenOn's March 1, 2016 sale of its Shelby generating facility, a 352 MW natural gas-fired facility located in Neoga, Illinois; and (iii) GenOn's July 12, 2016 sale of its Aurora generating facility, an 875 MW natural gas-fired facility located in Aurora, Illinois.

140. As GenOn disposed of these assets or otherwise ceased operations at these facilities, the scope of the Services provided by NRG that were necessary to run GenOn's business should have declined. Nonetheless, NRG continued to charge GenOn the same $193 million every year.

141. The following chart shows GenOn's total generation capacity over time following the Acquisition:



142. The following chart shows the fees paid by GenOn (including the fees allocated to its subsidiaries) under the Services Agreement, on a per-kW basis, over time following the Acquisition:




143. Publicly-available data for the fiscal years 2013, 2014, and 2015 for two independent power producers similar in size and profile to GenOn indicates that, for the fiscal year 2013, the cost of services similar to those provided by NRG to GenOn would have been between $42 million and $78 million, with a midpoint of approximately $60 million, for the fiscal year 2014, between $51 million and $66 million, with a midpoint of approximately $58.5 million, and for the fiscal

year 2015, between $37 million and $40 million, with a midpoint of approximately $38.5 million.

144. The approximately $193 million charged annually by NRG for the Services for each Renewal Term was more than three times the midpoint for each of the fiscal years 2013 and 2014, and more than five times the midpoint for the fiscal year 2015.

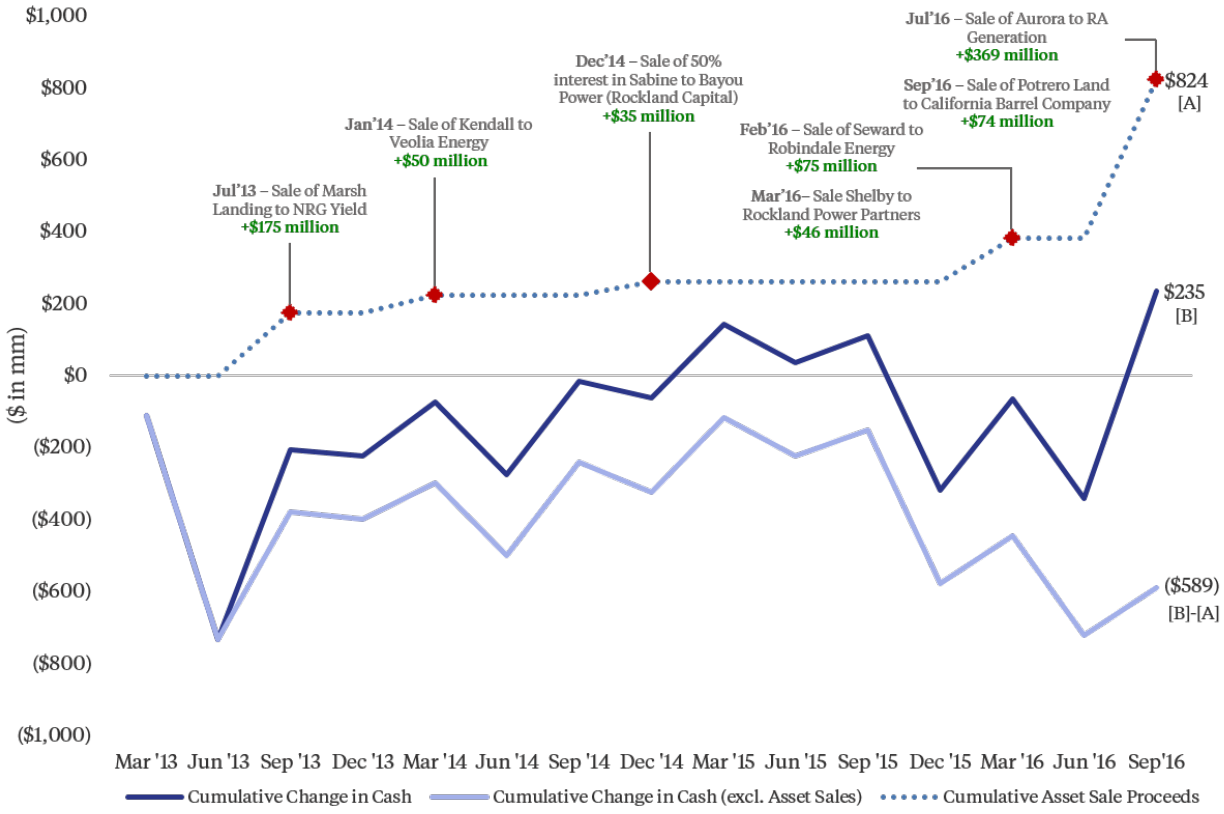
145. Put another way, NRG caused GenOn to overpay it annually during each Renewal Term by at least $130 million and perhaps by more than $150 million.

146. NRG knowingly caused GenOn to undertake the obligations and to grossly overpay for the Services for each Renewal Term, and knowingly received the overpayments from GenOn for the duration of each Renewal Term. Thus, NRG did not act in good faith when it caused GenOn to enter into the Services Agreement or renew the Services Agreement, and when it received payments from GenOn in respect of the inflated payments for each Renewal Term.

### B. GenOn's Payment of Inflated Fees Under the Services Agreement During Each Renewal Term Left GenOn Further Undercapitalized and Balance Sheet Insolvent

147. A review of GenOn's historical unrestricted cash balances demonstrates that GenOn was inadequately capitalized at the time of the Acquisition and subsequently at all relevant times. Since the Acquisition, GenOn

has engaged in numerous asset sales that have generated cumulative proceeds of approximately $824 million, which is roughly equivalent to the aggregate amount of payments GenOn has made to NRG under the Services Agreement during the same period. As the chart below shows, excluding the proceeds of those asset sales, GenOn has burned approximately $589 million in cash from December 15, 2012 through September 30, 2016.




148. Over the past four years, GenOn's operating cash flows have been inadequate to service its debt, operate its business and fund the inflated payments under the Services Agreement. GenOn has sustained its financial position solely through the above-described asset sales directed by NRG.

149. Moreover, the burden of GenOn's payments under the Services Agreement, when combined with GenOn's declining asset base, its poor operating performance, and its inability to access cash generated at GenMA and REMA because of the restrictive covenants in certain agreements, resulted in GenOn becoming balance sheet insolvent as early as June 30, 2014. The restricted cash at GenMA and REMA are reported as assets on GenOn's GAAP balance sheet. However, at a fair valuation, GenOn's assets should exclude that cash, because it has not been available to support GenOn's obligations under its debt instruments or the Services Agreement. As shown in the chart below, if the restricted cash is excluded from GenOn's balance sheet, the book value of GenOn Energy's equity has been consistently negative by tens or hundreds of millions of dollars for the past ten fiscal quarters.

| | 2012 | 2013 | | | | 2014 | | | | 2015 | | | | 2016 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Dec '12 | Mar '13 | Jun '13 | Sep '13 | Dec '13 | Mar '14 | Jun '14 | Sep '14 | Dec '14 | Mar '15 | Jun '15 | Sep '15 | Dec '15 | Mar '16 | Jun '16 | Sep '16 |
| **Compliance with Restricted Payment Test** | | | | | | | | | | | | | | | | |
| REMA | No | No | No | No | No | No | No | No | No | No | No | No | No | No | No | No |
| GenMA | Yes | Yes | Yes | Yes | No | Yes | No | No | No | No | No | No | No | No | No | No |
| **Consolidated GenOn Book Equity Value, Less Cash of Sub if Non-Complaint with Restricted Payment Test** | | | | | | | | | | | | | | | | |
| Consolidated GenOn Book Equity Value | $413 | $166 | $241 | $396 | $313 | $317 | $301 | $341 | $401 | $389 | $370 | $428 | $272 | $373 | $257 | $520 |
| Less: Restricted Cash at REMA | (28) | (20) | (39) | (65) | (130) | (284) | (355) | (320) | (322) | (334) | (283) | (226) | (192) | (171) | (149) | (110) |
| Less: Restricted Cash at GenMA | | | | | (64) | | (35) | (129) | (157) | (275) | (217) | (291) | (299) | (428) | (324) | (483) |
| **Adjusted GenOn Book Equity Value** | **$385** | **$146** | **$202** | **$331** | **$119** | **$33** | **($89)** | **($108)** | **($78)** | **($220)** | **($130)** | **($89)** | **($219)** | **($226)** | **($216)** | **($73)** |

150. As a result of the obligations incurred and/or the payments made for the Initial Term of the Services Agreement, as well as NRG's self-interested management of GenOn, GenOn Energy was engaged, or was about to engage, in business or transactions for which the assets of GenOn Energy were unreasonably small in relation to its business, and GenOn Americas was engaged, or was about

to engage, in business or transactions for which the assets of GenOn Americas were unreasonably small in relation to its business.

151. As a result of the obligations incurred and/or the payments made for each Renewal Term, as well as NRG's self-interested management of GenOn, GenOn Energy was either rendered insolvent, or was engaged, or was about to engage, in business or transactions for which the assets of GenOn Energy were unreasonably small in relation to its business, and GenOn Americas was engaged, or was about to engage, in business or transactions for which the assets of GenOn Americas were unreasonably small in relation to its business, or both.

## V. The Payments Made by GenOn to NRG Under the Services Agreement Constitute Insider Preferences

152. Even if GenOn's obligations and payments under the Services Agreement were determined to be valid rather than the fraudulent transfers that they are, plaintiffs are nonetheless entitled to recover all payments under the Services Agreement within the past year as insider preferences.

153. If GenOn's obligations under the Services Agreement are valid obligations, then all payments GenOn has made to NRG in respect of the annual fee are payments on an antecedent debt.

154. As discussed above in paragraph 149 above, for more than the past year, the book value of GenOn Energy's equity has been consistently negative and GenOn Energy has been balance sheet insolvent.

155. During the past year, NRG has had reasonable cause to believe that GenOn was insolvent. GenOn's insolvency became so acute in the past year that a recent quarterly report disclosed that GenOn Energy "is not expected to have sufficient liquidity to repay the [2017 Notes]" on their maturity date and "there is no assurance GenOn will continue as a going concern."

## VI. Allocation of NRG's Fees Under the Services Agreement to GenOn Americas

156. Upon information and belief, at all relevant times, the fees paid by GenOn Energy under the Services Agreement were "allocated," in part, to its subsidiary GenOn Americas, based on its planned operating expenses relative to all operating subsidiaries of GenOn. GenOn Americas is not a party to the Services Agreement.

157. Upon information and belief, there are three possibilities for how the intercompany "allocation" of fees under the Services Agreement was effectuated:

- GenOn Americas paid its allocated fees directly to NRG, in which case NRG would have potential liability as a direct transferee and beneficiary;
- GenOn Americas paid its allocated fees to GenOn Energy, which then transferred the fees to NRG as part of its payments, in which case NRG would have potential liability as a subsequent transferee and beneficiary; or
- GenOn Americas may have accrued intercompany obligations owing to GenOn Energy on account of its allocated fees, in which case GenOn Energy would have potential liability as the beneficiary of an obligation to the extent it recovers value from NRG.

158. Based upon GenOn's public filings, it appears that GenOn Energy and its subsidiaries paid fees (or were allocated costs) under the Services Agreement as follows:

| Fiscal Year | GenOn Energy and its subsidiaries (including GenOn Americas, GenMA, and REMA) | GenOn Americas and its subsidiaries (including GenMA) |
|---|---|---|
| 2012 (December 20 through December 31) | $6 million | $5 million |
| 2013 | $193 million | $83 million |
| 2014 | $193 million | $86 million |
| 2015 | $193 million | $84 million |
| 2016 (as of September 30, 2016) | $145 million | $64 million |
| **TOTAL** | **$730 million** | **$322 million** |

## COUNT I

### Avoidance of Fraudulent Obligations and Fraudulent Transfers for the Initial Term of the Services Agreement

### GenOn Energy Plaintiffs Against NRG

159. The GenOn Energy Plaintiffs repeat and reallege the allegations of paragraphs 1 through 158 as though fully set forth herein.

160. The obligations incurred by GenOn Energy for the Initial Term of the Services Agreement constitute fraudulent obligations under 6 Del. C. § 1304(a)(2) (the "Initial Term Fraudulent Obligations").

161. The GenOn Energy Plaintiffs and the GenOn Energy Noteholders have been creditors of GenOn Energy within the meaning of 6 Del. C. § 1301(4) at all relevant times.

162. GenOn Energy was undercapitalized at the time of its initial entry into the Services Agreement and thereafter.

163. To the extent GenOn Energy was not undercapitalized at the time of its initial entry into the Services Agreement, the incurrence of the Initial Term Fraudulent Obligations rendered GenOn Energy undercapitalized, and it remained undercapitalized thereafter.

164. NRG had reasonable cause to believe that GenOn Energy was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and thereafter or was rendered undercapitalized thereby.

165. At the time of its initial entry into the Services Agreement and thereafter, GenOn Energy was engaged, or was about to engage, in businesses or transactions for which it had unreasonably small capital.

166. At the time of its initial entry into the Services Agreement and thereafter, GenOn Energy intended to, did believe, or reasonably should have believed, that it had or would incur debts beyond its ability to pay as they became due.

167. Through its domination and control of GenOn Energy, NRG caused GenOn Energy to agree to pay inflated fees under the Services Agreement for the benefit of NRG. Through the Services Agreement, NRG captured all of the benefits from the Acquisition to the detriment of GenOn Energy, GenOn Americas, and the GenOn Noteholders.

168. The terms of the Services Agreement were not negotiated at arm's length. In fact, the terms of the Services Agreement may not have been negotiated at all.

169. The obligations incurred under the Services Agreement for the Initial Term were not incurred in good faith, because GenOn entered into the Services Agreement at the direction of NRG, an interested insider, without any independent representative of GenOn at a time when NRG knew or should have known that GenOn Energy was undercapitalized.

170. The annual fee that was due and payable under the Services Agreement for the Initial Term grossly exceeded the arm's-length cost and the fair market value of the Services provided by NRG. As evidenced by NRG's public statements, the cost of the Services was less than half of the rate paid by GenOn Energy to NRG. A third party would have performed the Services at a significantly lower rate. The obligations incurred by GenOn Energy pursuant to

the Services Agreement for the Initial Term thus were not incurred for reasonably equivalent value.

171. Each monthly payment made pursuant to the Services Agreement by GenOn Energy during the Initial Term constitutes a fraudulent transfer under 6 Del. C. § 1304(a)(2) (the "Initial Term Fraudulent Transfers").

172. The payments made by GenOn Energy under the Services Agreement for the Initial Term involved the transfer of GenOn Energy's assets directly to NRG.

173. Because all obligations under the Services Agreement for the Initial Term were fraudulent, GenOn Energy did not receive reasonably equivalent value for the Initial Term Fraudulent Transfers.

174. GenOn Energy was undercapitalized at all times it made payments to NRG under the Services Agreement for the Initial Term.

175. By reason of the foregoing, (i) the Initial Term Fraudulent Obligations should be avoided in their entirety, (ii) the amount of the Initial Term Fraudulent Transfers should be returned to GenOn Energy, and (iii) such other and further relief as the circumstances may require should be granted to the GenOn Energy Plaintiffs.

## COUNT II

### Avoidance of Fraudulent Obligations and/or Fraudulent Transfers for the Renewal Terms of the Services Agreement

### GenOn Energy Plaintiffs Against NRG

176. The GenOn Energy Plaintiffs repeat and reallege the allegations of paragraphs 1 through 175 as though fully set forth herein.

177. GenOn Energy incurred an obligation to pay an annual fee under the Services Agreement for each Renewal Term either (i) in the amount of approximately $193 million for each Renewal Term (the "Renewal Term Fraudulent Obligations"), or (ii) in an amount equal to the arm's-length cost to perform the Services (the "Renewal Term Arm's-Length Obligations").

178. To the Extent GenOn Energy incurred the Renewal Term Fraudulent Obligations for each Renewal Term, such obligations constitute fraudulent obligations and each payment made under the Services Agreement for each Renewal Term (the "Renewal Term Fraudulent Transfers") constitute fraudulent transfers under 6 Del. C. §§ 1304(a)(2) and/or 1305(a). To the extent GenOn Energy incurred the Renewal Term Arm's-Length Obligations for each Renewal Term, each Renewal Term Fraudulent Transfer constitutes a fraudulent transfer under 6 Del. C. §§ 1304(a)(2) and/or 1305(a).

179. The GenOn Energy Plaintiffs and the GenOn Energy Noteholders have been creditors of GenOn Energy within the meaning of 6 Del. C. § 1301(4) at all relevant times.

180. GenOn Energy was undercapitalized at the time of its initial entry into the Services Agreement and at all relevant times thereafter.

181. GenOn Energy was insolvent from and after June 30, 2014.

182. To the extent GenOn Energy was not undercapitalized or insolvent at the time of its initial entry into the Services Agreement or at any relevant time thereafter, the incurrence of the Renewal Term Fraudulent Obligations and/or the payment of the Renewal Term Fraudulent Transfers rendered it undercapitalized and/or insolvent, and it remained undercapitalized and/or insolvent thereafter. In fact, GenOn Energy was undercapitalized at all times it made payments to NRG for each Renewal Term and insolvent with respect to all payments made from and after June 30, 2014.

183. NRG had reasonable cause to believe that GenOn Energy was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and all relevant times thereafter, or was rendered undercapitalized by the Renewal Term Fraudulent Obligations and/or the Renewal Term Fraudulent Transfers.

184. At the time of its initial entry into the Services Agreement and at all relevant times thereafter, GenOn Energy was engaged, or was about to engage, in businesses or transactions for which it had unreasonably small capital.

185. At the time of its initial entry into the Services Agreement and at all relevant times thereafter, GenOn Energy intended to, did believe, or reasonably should have believed, that it had or would incur debts beyond its ability to pay as they became due.

186. Through its domination and control of GenOn Energy, NRG caused GenOn Energy to pay inflated fees under the Services Agreement for the benefit of NRG. Through the Services Agreement, NRG captured all of the benefits from the Acquisition to the detriment of GenOn Energy, GenOn Americas, and the GenOn Noteholders.

187. The terms of the Services Agreement, including for each Renewal Period, were not negotiated at arm's length. In fact, the terms of the Services Agreement may not have been negotiated at all.

188. The obligations incurred under the Services Agreement for each Renewal Period were not incurred in good faith, because GenOn entered into the Services Agreement at the direction of NRG and the annual renewals of the Services Agreement were caused by NRG, an interested insider, without any

independent representative of GenOn at a time when NRG knew or should have known that GenOn Energy was undercapitalized.

189. The annual fee that was paid under the Services Agreement for each Renewal Term grossly exceeded the arm's-length cost and the fair market value of the Services provided by NRG. As evidenced by NRG's public statements, the cost of the Services was less than half of the rate paid by GenOn Energy to NRG. A third party would have performed the Services at a significantly lower rate.

190. The payments made by GenOn Energy under the Services Agreement for each Renewal Term involved the transfer of GenOn Energy's assets directly to NRG.

191. Accordingly, (i) to the extent the Renewal Term Fraudulent Obligations were incurred, such obligations were not incurred for reasonably equivalent value, and GenOn Energy did not receive reasonably equivalent value for the Renewal Term Fraudulent Transfers, and (ii) to the extent the Renewal Term Arm's-Length Obligations were incurred, GenOn Energy did not receive reasonably equivalent value for the Renewal Term Fraudulent Transfers.

192. By reason of the foregoing, (i) the Renewal Fraudulent Obligations should be avoided in their entirety, (ii) the amount of the Renewal Term Fraudulent Transfers should be returned to GenOn Energy, and (iii) such other and

further relief as the circumstances may require should be granted to the GenOn Energy Plaintiffs.

## COUNT III

### Insider Preference

### GenOn Energy Plaintiffs Against NRG

193. The GenOn Energy Plaintiffs repeat and reallege the allegations of paragraphs 1 through 192 as though fully set forth herein.

194. The payments made by GenOn Energy to NRG within one year preceding this action constitute insider preferences under 6 Del. C. § 1305(b) (the "Preferential Payments").

195. The GenOn Energy Plaintiffs and the GenOn Energy Noteholders have been creditors of GenOn Energy within the meaning of 6 Del. C. § 1301(4) at all relevant times.

196. The claims of the GenOn Energy Plaintiffs and the GenOn Energy Noteholders arose prior to the time the Preferential Payments were made.

197. All the Preferential Payments were made to NRG, an insider of GenOn Energy.

198. To the extent the obligations under the Services Agreement are valid obligations, the Preferential Payments constitute payments on an antecedent debt.

199. NRG had reasonable cause to believe that GenOn Energy was insolvent at the time the Preferential Payments were made.

200. By reason of the foregoing, (i) the Preferential Payments should be avoided in their entirety, (ii) the amount of any and all Preferential Payments should be returned to GenOn Energy, and (iii) such other and further relief as the circumstances may require should be granted to the GenOn Energy Plaintiffs.

## COUNT IV

### Avoidance of Fraudulent Transfers for Payments Made in Respect of Allocated Obligations Under the Services Agreement

### GenOn Americas Trustee Against NRG

201. Plaintiff GenOn Americas Trustee repeats and realleges the allegations of paragraphs 1 through 200 as though fully set forth herein.

202. GenOn Americas is not a party to the Services Agreement and owes no obligations to NRG thereunder.

203. From the inception of the Services Agreement, GenOn Americas has received services from NRG under the Services Agreement.

204. From the inception of the Services Agreement, GenOn Americas has been allocated a portion of the obligations thereunder by GenOn Energy for services rendered to GenOn Americas and its subsidiaries (the "Allocated Obligations").

205. Upon information and belief, GenOn Americas may have made payments directly to NRG in respect of the Allocated Obligations (the "GenOn Americas Direct Transfers").

206. Upon information and belief, GenOn Americas may have paid amounts to GenOn Energy in respect of the Allocated Obligations that were subsequently paid over to NRG (the "GenOn Americas Indirect Transfers" and, together with the GenOn Americas Direct Transfers, the "GenOn Americas Transfers").

207. The GenOn Americas Transfers constitute fraudulent transfers under 6 Del. C. § 1304(a)(2).

208. The GenOn Americas Trustee and the GenOn Americas Noteholders have been creditors of GenOn Americas within the meaning of 6 Del. C. § 1301(4) at all relevant times.

209. GenOn Americas was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and thereafter.

210. To the extent GenOn Americas was not undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement, the Allocated Obligations and the GenOn Americas Transfers rendered GenOn Americas undercapitalized, and it remained undercapitalized thereafter.

211. NRG had reasonable cause to believe that GenOn Americas was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and thereafter or was rendered undercapitalized by the GenOn Americas Transfers.

212. At the time of GenOn Energy's initial entry into the Services Agreement and thereafter, GenOn Americas was engaged, or was about to engage, in businesses or transactions for which it had unreasonably small capital.

213. At the time of GenOn Energy's initial entry into the Services Agreement and thereafter, GenOn Americas intended to, did believe, or reasonably should have believed, that it had or would incur debts beyond its ability to pay as they became due.

214. Through its domination and control of GenOn Americas, NRG caused GenOn Americas to make the GenOn Americas Transfers for the benefit of NRG.

215. The terms of the Services Agreement were not negotiated at arm's length. In fact, the terms of the Services Agreement may not have been negotiated at all. From and after the entry of NRG and GenOn Energy into the Services Agreement, the annual fee under the Services Agreement has not changed.

216. The obligations incurred under the Services Agreement were not incurred in good faith, because GenOn Energy entered into the Services Agreement at the direction of NRG, an interested insider, without any independent representative of GenOn Energy at a time when NRG knew or should have known that GenOn Energy was undercapitalized.

217. The Allocated Obligations were not imposed on GenOn Americas in good faith, because such obligations were imposed at the direction of NRG, an

interested insider, without any independent representative of GenOn Americas at a time when NRG knew or should have known that GenOn Americas was undercapitalized.

218. The Allocated Obligations grossly exceeded the arm's-length cost and the fair market value of the Services provided to GenOn Americas by NRG. As evidenced by NRG's public statements, the cost of the Services was less than half of the rate paid by GenOn Energy to NRG. A third party would have performed the Services at a significantly lower rate.

219. Any GenOn Americas Transfers involved the transfer of GenOn America's assets directly or indirectly to NRG.

220. To the extent that GenOn Energy did not receive reasonably equivalent value for the Allocated Obligations, GenOn Americas did not receive reasonably equivalent value in exchange for the GenOn Americas Transfers.

221. GenOn Americas was undercapitalized at all times it made the GenOn Americas Direct Transfers.

222. By reason of the foregoing, (i) NRG should return the amounts of the GenOn Americas Direct Transfers to GenOn Americas, (ii) to the extent GenOn Energy recovers any GenOn Americas Indirect Transfers from NRG, GenOn Energy should return the amount of the GenOn Energy Indirect Transfers to

GenOn Americas, and (iii) such other and further relief as the circumstances may require should be granted to the GenOn Americas Trustee.

## COUNT V

### Avoidance of Allocated Obligations Under the Services Agreement

### GenOn Americas Trustee Against GenOn Energy

223. Plaintiff GenOn Americas Trustee repeats and realleges the allegations of paragraphs 1 through 222 as though fully set forth herein.

224. GenOn Americas is not a party to the Services Agreement and owes no obligations to NRG thereunder.

225. From the inception of the Services Agreement, GenOn Americas has received services from NRG under the Services Agreement.

226. From the inception of the Services Agreement, GenOn Americas has been allocated the Allocated Obligations.

227. Upon information and belief, GenOn Americas may have incurred accounts payable or intercompany loans to GenOn Energy in respect of the Allocated Obligations paid by GenOn in respect of services received by GenOn Americas (the "GenOn Americas Intercompany Obligations").

228. Any GenOn Americas Intercompany Obligations constitute fraudulent obligations under 6 Del. C. § 1304(a)(2).

229. The GenOn Americas Trustee and the GenOn Americas Noteholders have been creditors of GenOn Americas within the meaning of 6 Del. C. § 1301(4) at all relevant times.

230. GenOn Americas was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and thereafter.

231. To the extent GenOn Americas was not undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement, the GenOn Americas Intercompany Obligations rendered GenOn Americas undercapitalized, and it remained undercapitalized thereafter.

232. NRG had reasonable cause to believe that GenOn Americas was undercapitalized at the time of GenOn Energy's initial entry into the Services Agreement and thereafter or was rendered insolvent by the GenOn Americas Intercompany Obligations.

233. At the time of GenOn Energy's initial entry into the Services Agreement and thereafter, GenOn Americas was engaged, or was about to engage, in businesses or transactions for which it had unreasonably small capital.

234. At the time of GenOn Energy's initial entry into the Services Agreement and thereafter, GenOn Americas intended to, did believe, or reasonably should have believed, that it had or would incur debts beyond its ability to pay as they became due.

235. Through its domination and control of GenOn Americas, NRG caused GenOn Americas to incur the GenOn Americas Intercompany Obligations for the benefit of NRG. GenOn Americas did not receive reasonably equivalent value in exchange for the GenOn Americas Intercompany Obligations.

236. The terms of the Services Agreement were not negotiated at arm's length. In fact, the terms of the Services Agreement may not have been negotiated at all. From and after the entry of NRG and GenOn Energy into the Services Agreement, the annual fee under the Services Agreement has not changed.

237. The obligations incurred under the Services Agreement were not incurred in good faith, because GenOn entered into the Services Agreement at the direction of NRG, an interested insider, without any independent representative of GenOn Energy at a time when NRG knew or should have known that GenOn Energy was undercapitalized.

238. The Allocated Obligations were not imposed on GenOn Americas in good faith, because such obligations were imposed at the direction of NRG, an interested insider, without any independent representative of GenOn Americas at a time when NRG knew or should have known that GenOn Americas was undercapitalized.

239. The Allocated Obligations grossly exceeded the arm's-length cost and the fair market value of the Services provided to GenOn Americas by NRG. As

evidenced by NRG's public statements, the cost of the Services was less than half of the rate paid by GenOn Energy to NRG. A third party would have performed the Services at a significantly lower rate.

240. GenOn Americas was undercapitalized at all times it incurred the GenOn Americas Intercompany Obligations.

241. Because the Allocated Obligations were not imposed in good faith, GenOn Energy did not incur the GenOn Americas Intercompany Obligations in good faith.

242. By reason of the foregoing, (i) to the extent GenOn Energy recovers the value of any transfers made in respect of Allocated Obligations from NRG, the associated GenOn Americas Intercompany Obligations should be avoided in their entirety, and (ii) such other and further relief as the circumstances may require should be granted to Plaintiffs.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs respectfully request that this Court enter an order granting the following relief:

(a) On Count I, (i) avoidance as fraudulent obligations pursuant to 6 Del. C. § 1304(a)(2) of all the obligations incurred by GenOn Energy upon its initial entry into the Services Agreement, (ii) avoidance as fraudulent transfers pursuant to 6 Del. C. § 1304(a)(2) of all amounts paid to NRG under the Services

Agreement, and (iii) an award to the GenOn Energy Plaintiffs, for the benefit of the GenOn Energy Plaintiffs and the 2020 Noteholders, of damages in an amount to be determined at trial.

(b) On Count II, (i) avoidance as fraudulent obligations pursuant to 6 Del. C. §§ 1304(a)(2) and/or 1305(a) of all the obligations incurred by GenOn Energy relating to each Renewal Term, (ii) avoidance as fraudulent transfers pursuant to 6 Del. C. §§ 1304(a)(2) and/or 1305(a) of all amounts paid to NRG under the Services Agreement relating to each Renewal Term, and (iii) an award to the GenOn Energy Plaintiffs, for the benefit of the GenOn Energy Plaintiffs and the 2020 Noteholders, of damages in an amount to be determined at trial.

(c) On Count III, (i) avoidance as insider preferences pursuant to 6 Del. C. § 1305(b) of all amounts paid to NRG under the Services Agreement in the past year and (ii) an award to the GenOn Energy Plaintiffs, for the benefit of the GenOn Energy Plaintiffs and the 2020 Noteholders, of damages in an amount to be determined at trial.

(d) On Count IV, (i) avoidance as fraudulent transfers pursuant to 6 Del. C. § 1304(a)(2) of all GenOn Americas Transfers, (ii) an award to the GenOn Americas Trustee, for the benefit of the GenOn Americas Trustee and the GenOn Americas Noteholders, of damages against NRG in respect of the GenOn Americas Transfers in an amount to be determined at trial, and (iii) to the extent GenOn

Energy recovers the value of any GenOn Americas Indirect Transfers from NRG, an award to the GenOn Americas Trustee, for the benefit of the GenOn Americas Trustee and the GenOn Americas Noteholders, of damages against GenOn Energy in respect of the GenOn Americas Indirect Transfers recovered by GenOn Energy in an amount to be determined at trial.

(e) On Count V, to the extent that GenOn Energy recovers from NRG the value of any transfers made in respect of Allocated Obligations, avoidance as fraudulent obligations pursuant to 6 Del. C. § 1304(a)(2) of all associated GenOn Americas Intercompany Obligations.

(f) An award to Plaintiffs of their costs and expenses in connection with this action, including attorneys' fees and expenses to the extent permitted by law.

(g) An award of pre- and post-judgment interest.

(h) Such other and further relief as this Court deems appropriate.

## DEMAND FOR JURY TRIAL

Plaintiffs herein demand a trial by jury on all issues so triable.

OF COUNSEL:

David Hennes
Keith H. Wofford
Stephen Moeller-Sally
Brian F. Shaughnessy
Marc B. Roitman
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, New York 10036-8704

*/s/ Gregory P. Williams*
Gregory P. Williams (#2168)
Kelly E. Farnan (#4395)
Travis S. Hunter (#5350)
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, DE 19801

*Attorneys for Plaintiffs*

Dated: December 12, 2016