

**RESOLUTION AUTHORIZING THE SETTLEMENT OF LITIGATION AGAINST
COLUMBIA UTILITIES, LLC**

WHEREAS, on or about April 30, 2021, the Town of Saugerties entered into a Community Choice Aggregation Electricity Supply Agreement (“Supply Agreement”) with Columbia Utilities, LLC or its affiliate (“Columbia”) as Energy Service Company (“ESCO”) and Joule Assets Inc. (“Joule”), as Community Choice Aggregation Administrator, to provide energy benefits to certain residential and small non-residential customers within the Town of Saugerties; and

WHEREAS, on April 19, 2022, Columbia notified the Public Service Commission that it intended to transfer these customers to the local utility, Central Hudson Gas & Electric Corp. (“Central Hudson”), which transfer constituted an alleged breach of the Supply Agreement by terminating service without cause or in accordance with the terms of the Supply Agreement; and

WHEREAS, on June 3, 2022, the Town of Saugerties together with other participating municipalities (two of which later joined), Joule, and individual plaintiffs (collectively, the “Plaintiff Parties”) filed a Verified Complaint (the “Complaint”) against Columbia in New York State Supreme Court, captioned *Town of Saugerties et al., v. Columbia Utilities Power, LLC et al.*, Index No. EF2022-1113 (N.Y. Sup. Ct., Ulster Co.) (the “Action”), seeking injunctive relief and damages in connection with the CCA Program and Columbia’s purported intention to terminate the Supply Agreement and transfer all of its CCA Program customers back to Central Hudson;

WHEREAS, the New York State Public Service Commission (the “PSC”) intervened in the Action on behalf of the Plaintiff Parties;

WHEREAS, the parties to the Action engaged in extensive discovery as part of the litigation and subsequently sought to explore whether a resolution was possible;

WHEREAS, on April 3, 2024, the Plaintiff Parties, PSC, Columbia, and Central Hudson participated in a day-long mediation with Fred Fucci of Fucci Law & ADR, PLLC (the “Mediation”);

WHEREAS, as a result of the Mediation, all of the parties desire to resolve this action under terms set forth in the Settlement Agreement attached hereto as **Exhibit A**.

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is made and entered into by the Municipal Plaintiffs and the Individual Plaintiffs (each as defined further below) and Joule Assets, Inc. (“Joule”) (together with the Municipal Plaintiffs and Individual Plaintiffs, “Plaintiffs”) on their own behalf and on behalf of all Settlement Class Members (as defined below), and the New York State Public Service Commission, on its own behalf and on behalf of the People of the State of New York (the “PSC”) (together with Plaintiffs, the “Plaintiff Parties”), on one hand, and defendants Columbia Utilities Power, LLC and Columbia Utilities, LLC (together, “Columbia” or “Defendants”), on the other hand (collectively, the “Parties”).¹ The Parties intend this Agreement to resolve, discharge and settle the Released Claims (as defined below) fully, finally and forever according to the terms and conditions set forth below.

RECITALS

WHEREAS, the Municipal Plaintiffs each contracted with Columbia on or around April 30, 2021 to receive renewable electricity supplied through the Hudson Valley Power Community Choice Aggregation Program (the “CCA Program”), for which Columbia Utilities Power, LLC served as the Energy Service Company (“ESCO”), thereby providing the option for individual residents and small businesses located within those municipalities to participate in the CCA Program;

WHEREAS, on June 3, 2022, Plaintiffs filed a Verified Complaint (NYSCEF Doc. No. 2) (the “Complaint”) against Columbia in New York State Supreme Court, captioned *Town of Saugerties et al., v. Columbia Utilities Power, LLC et al.*, Index No. EF2022-1113 (N.Y. Sup. Ct., Ulster Co.) (the “Action”), seeking injunctive relief and damages in connection with the

¹ Unless indicated otherwise, capitalized terms used herein shall have the meaning in Section 1, titled “Defined Terms.”

CCA Program and Columbia's purported intention to terminate its contracts with the Plaintiff Municipalities and transfer all of its CCA Program customers (i.e., the Settlement Class Members (as defined below)) back to the local utility, Central Hudson Gas & Electric Corp. ("Central Hudson");

WHEREAS, the Complaint included claims and causes of action asserted against Columbia by the Individual Plaintiffs on their own behalf and as representatives of the putative class of all persons who, as of July 18, 2022, still participated in the CCA Program as a resident of or small business located within a municipality participating in the CCA Program for which Columbia has served as the ESCO (the "Settlement Class");

WHEREAS, in conjunction with their Complaint, Plaintiffs also filed a proposed Order to Show Cause on June 3, 2022, seeking to preliminarily enjoin and restrain Columbia from, among other things, transferring all of its CCA Program customers (including all Settlement Class Members (as defined below)) back to Central Hudson, which the Court so-ordered and entered on June 7, 2022 (the "Order to Show Cause"), including the temporary restraining order Plaintiffs requested (the "TRO");

WHEREAS, on June 6, 2022, the PSC filed a Proposed Intervenor's Complaint for Injunctive Relief and Penalties against Columbia in the Action (the "PSC Complaint"), based on the same facts and allegations and seeking similar relief as the Complaint filed by the Plaintiffs in the Action, pursuant to the PSC's accompanying motion to intervene, which the Court granted on August 12, 2024 by stipulation of the Parties;

WHEREAS, on July 18, 2021, while the TRO was in effect, the New York State Independent Operator ("NYISO") terminated Columbia's rights to participate in NYISO-administered market in New York State, which was followed by the transfer of all of Columbia's

CCA Program customers (including all Settlement Class Members) back to Central Hudson as the local utility, after Columbia did not post approximately \$3.5 million in collateral by July 12, 2022 as required to comply with NYISO's creditworthiness requirements;

WHEREAS, on August 12, 2022, in addition to granting the PSC's Motion to Intervene, the Court in the Action adjourned the deadlines in the Order to Show Cause to allow the Parties to conduct discovery on whether Columbia was unable to comply with the TRO by meeting the NYISO's collateral demand and whether Columbia was able to prevent its termination and the subsequent transfer of its CCA Program customers (including all Settlement Class Members) back to Central Hudson;

WHEREAS, Columbia denies all material allegations against it in the Action, including the allegation that the Plaintiff Parties are or were entitled to injunctive relief; and

WHEREAS, the Parties have completed document discovery into the collateral demand and Columbia's ability to comply with the TRO, including the production of documents and information by Columbia in connection with Plaintiffs' and the PSC's allegations against Columbia, as well as third-party discovery from Central Hudson, and have engaged in settlement discussions;

WHEREAS, on April 3, 2024, the Parties and Central Hudson participated in a day-long mediation with Fred Fucci of Fucci Law & ADR, PLLC (the "Mediation");

WHEREAS, as a result of the Mediation, the Parties agreed to the material terms of a settlement, as further described in this Settlement Agreement, and the Plaintiff Parties have concluded that this settlement of all of the claims and causes brought by the Plaintiff Parties in the Action, including, without limitation, the claims and causes of action asserted on behalf of

the Settlement Class by the Individual Plaintiffs, is fair, reasonable, adequate, and in the best interests of all Settlement Class Members;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Municipal Plaintiffs, the Individual Plaintiffs (on their own behalf and on behalf of the Settlement Class and all Settlement Class Members), and the PSC, on the one hand, and Columbia, on the other hand, by and through the counsel or attorneys of record for each respective Party, that, subject to the approval of the Court pursuant to Article 9 of the New York Civil Practice and Rules (“CPLR”) and the terms set forth below, the Settlement Class and the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, as to all Parties, upon and subject to the terms and conditions of this Agreement, as follows:

DEFINITIONS

1. Defined Terms. Terms defined for purposes of this Agreement are as follows:²

1.1 “Action” means the putative class action commenced by Plaintiffs on June 3, 2023, against Columbia in New York State Supreme Court, captioned *Town of Saugerties, et al., v. Columbia Utilities Power, LLC, et al.*, Index No. EF2022-1113 (N.Y. Sup. Ct., Ulster Co.).

1.2 “Agreement” means this Settlement Agreement, inclusive of exhibits.

1.3 “CCA Program” means the Hudson Valley Power Community Choice Aggregation Program administered by Joule and through which Columbia contracted to supply renewable energy to Plaintiffs and the Settlement Class Members.

1.4 “Central Hudson” means Central Hudson Gas & Electric Corp. and each of its subsidiaries, affiliates, principals, officers, directors, employees, and agents.

² Terms defined in Section 1 shall have the same meaning hereinafter in this Agreement regardless of capitalization, and, with respect to any terms previously defined in the Recitals above, the definitions of those terms in this Section 1 shall control.

1.5 “Columbia” or “Defendants” means, collectively, Defendants Columbia Utilities Power, LLC and Columbia Utilities, LLC, and each of their subsidiaries, affiliates, principals, officers, directors, employees, and agents.

1.6 “Court” means the New York State Supreme Court of the County of Ulster presiding over the Action.

1.7 “Court Approval” shall mean the Court’s entry of the Order and Final Judgment substantially in the form of **Exhibit C** hereto.

1.8 “CPLR” means the New York Civil Practice Law and Rules.

1.9 “Effective Date” means the date upon which the Settlement embodied in this Agreement becomes effective, meaning the date on which the Judgment approving this Agreement, substantially in the form of **Exhibit C** to this Agreement, becomes Final as a matter of law, and all conditions set forth in Section 7 herein have been fully satisfied.

1.10 “ESCO” means energy service company as set forth under applicable rules and regulations set forth by the PSC and NYISO (each as defined herein).

1.11 “Escrow Account” means the escrow account into which Columbia shall pay the Settlement Fund as defined in Section 2.1, which shall be governed by the terms of the Escrow Agreement to be entered into between Plaintiffs’ Counsel and the bank selected by Plaintiffs’ Counsel.

1.12 “Fairness Hearing” shall mean the hearing to be held by the Court pursuant to the terms of the Hearing Order (defined below) to determine whether the Settlement should be approved as fair, reasonable and adequate within the meaning of Article 9 of the CPLR.

1.13 “Final” means when the last of the following with respect to the Judgment approving this Agreement, substantially in the form of **Exhibit C** attached hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under CPLR Rule 905 without any such motion having been filed; (ii) the expiration of the time for the filing or noticing of any appeal from the Judgment without any appeal having been taken; and (iii) if a motion to alter or amend is filed or if an appeal is taken, immediately after the final determination of that motion or appeal such that no further judicial review or appeal is permitted, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise in such a manner as to permit the consummation of the Settlement, substantially in accordance with the terms and conditions of this Agreement.

1.14 “Order and Final Judgment” or “Judgment” means the order and form of judgment approving this Agreement and dismissing the Action with prejudice upon Plaintiffs’ receipt of the full amount of the Settlement Fund, which order and judgment shall be substantially in the form attached hereto as **Exhibit C**.

1.15 “Hearing Order” shall mean the “Scheduling Order for Approval of Settlement of Class Action,” substantially in the form of **Exhibit A** hereto.

1.16 “Individual Plaintiffs” means, collectively, Fred Costello, the Supervisor of Municipal Plaintiff Town of Saugerties and a resident participant in the CCA Program, and Tim Rogers, the Mayor of Municipal Plaintiff Village of New Paltz and a resident participant in the CCA Program, on behalf of themselves and as representatives of the Settlement Class Members.

1.17 “Joule” means Plaintiff Joule Assets, Inc. as administrator of the CCA Program.

1.18 “Mediation” means the mediation that the Parties and Central Hudson participated in on April 3, 2024, with Fred Fucci of Fucci Law & ADR, PLLC as mediator, which resulted in the Settlement provided for in this Agreement.

1.19 “Municipal Plaintiffs” means, collectively, the Town of Saugerties, the Town of New Paltz, the Village of New Paltz, the City of Beacon, the Town of Clinton, the Town of Marbletown, the City of Poughkeepsie, the Town of Red Hook, the Town of Philipstown, and the Village of Cold Spring.

1.20 “Municipal Plaintiffs’ Approval” means the approval of the Settlement and this Agreement by the officials, representatives, and/or stakeholders with the proper and lawful authority to do so on behalf of each Municipal Plaintiff.

1.21 “Notice and Administration Expenses” means all fees, expenses, and interest thereon incurred as a result of providing Notice to the Settlement Class and otherwise administering the Settlement.

1.22 “NYISO” means the New York Independent System Operator.

1.23 “Opt Out” means the voluntary decision of any Settlement Class Member to request exclusion from the Settlement Class pursuant to the Settlement Notice attached hereto as **Exhibit B** and as provided herein under Section 5.3.

1.24 “Opt Out Deadline” means the deadline for Settlement Class Members to timely Opt Out of the Settlement pursuant to the Settlement Notice and as provided herein under Section 5.3.

1.25 “Order to Show Cause” means the proposed Order to Show Cause that Plaintiffs filed in the Action on June 3, 2022, seeking to preliminarily enjoin and restrain Columbia from, among other things, transferring all of its CCA Program customers (including all

Settlement Class Members back to Central Hudson), which the Court so-ordered and entered on June 7, 2022.

1.26 “Parties” means, collectively, the Plaintiff Parties and Columbia (both as defined herein) as parties to this Agreement.

1.27 “Person” or “Persons” means all persons and entities (including, without limitation natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, governments, political subdivisions, governmental agencies and authorities, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs and assigns).

1.28 “Plaintiffs” means, collectively, the Municipal Plaintiffs, the Individual Plaintiffs (on behalf of themselves and as representatives of the Settlement Class Members), and Joule (each as defined herein).

1.29 “Plaintiffs’ Counsel” means Hodgson Russ LLP.

1.30 “Plaintiff Parties” means, collectively, the Plaintiffs and the PSC (both as defined herein).

1.31 “PSC” means the New York State Public Service Commission acting (i) on its own behalf; (ii) as part and on the behalf of the New York Department of Public Service; and (iii) on behalf of the People of the State of New York.

1.32 “PSC Complaint” means the Proposed Intervenor’s Complaint for Injunctive Relief and Penalties filed by the PSC against Columbia in the Action on June 6, 2022, pursuant to the PSC’s accompanying motion to intervene, which the Court granted on August 12, 2024 by stipulation of the Parties.

1.33 “Released Claims” means any and all claims, including any and all claims, rights, and liabilities of any nature, including, but not limited to, actions, claims, demands, causes of action, obligations, damages, debts, charges, attorneys’ fees, costs, arbitrations, forfeitures, judgments, indebtedness, liens and losses of any kind, source or character whether arising out of federal or state law, whether known, suspected to exist or unknown, whether asserted or unasserted, whether asserted by any Releasing Party either on its own behalf or on behalf of any other Person, whether in contract, express or implied, tort, at law or in equity or arising under or by virtue of any statute or regulation, by reason of, arising out of, that are related to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practice or relationship, representations, omissions, circumstances or other matters related in any way to the Action, addressed in this Agreement, and/or that could have been brought in the Action against any of the Released Parties, including any claims related to the Released Parties’ conduct in connection with the CCA Program. For the avoidance of doubt, the Released Claims include “Unknown Claims” (as defined herein) related to the Action; however, the Released Claims do not include claims to enforce the Settlement pursuant to this Agreement.

1.34 “Released Parties” means, collectively, Columbia Utilities Power, LLC and Columbia Utilities, LLC and any of their former, present, and future assigns, predecessors, successors, affiliates, parent companies, subsidiaries, controller companies, employees, officers, directors, principals, and agents.

1.35 “Releasing Parties” means, collectively, that the Plaintiff Parties and all Settlement Class Members who do not Opt Out of the Settlement and this Agreement pursuant to the Settlement Notice (as defined herein), including their respective current and former officers, directors, employees, attorneys, heirs, executors, administrators, agents, legal representatives,

professional corporations, partnerships, members, assigns, and successors, but only, with respect to the Settlement Class Members, to the extent their claims are derived from the claims and causes of action that the Individual Plaintiffs asserted in the Complaint.

1.36 “Settlement” means the resolution, discharge and settlement of the Released Claims and the Action as provided for under this Agreement.

1.37 “Settlement Administrator” means the entity appointed by the Court to perform the settlement administration duties described in this Agreement, including the dissemination of the Settlement Notice and the use, allocation, and disbursement of the Total Settlement Fund (as defined herein). The Settlement Administrator shall also serve as the Escrow Agent for the Settlement Fund as provided under Section 2.3 herein. The Parties shall propose and recommend to the Court that Simpluris should serve as Settlement Administrator.

1.38 “Settlement Class” means the putative class of all Persons or businesses who, as of July 18, 2022, still participated in the CCA Program as a resident or small business located within a municipality participating in the CCA Program, as represented by the Individual Plaintiffs in the Action. For purposes of the Settlement only, the Action shall be certified as a class action pursuant to CPLR Article 9 on behalf of the Settlement Class. Excluded from the Settlement Class are (1) those Persons who timely and validly Opt Out of the Settlement pursuant to the Settlement Notice; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; and (3) any heirs, assigns, or successors of any of the Persons or entities described in parts (1) and (2) of this paragraph.

1.39 “Settlement Class Member” means a Person who is a member of the Settlement Class.

1.40 “Settlement Fund” is \$1,500,000.00 to be funded by Columbia to be paid into the Escrow Account in accordance with the terms provided herein under Section 2 of this Agreement.

1.41 “Settlement Notice” shall mean the “Notice of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear” substantially in the form of **Exhibit B** hereto.

1.42 “Tax” or “Taxes” mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including, but not limited to, any local, state, and federal taxes.

1.43 “Tax Expenses” means any costs or expenses incurred in connection with the administration of the Total Settlement Fund and/or the Escrow Account (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing or failure to file any related tax returns or other required filings or documentation).

1.44 “Total Settlement Fund” means the Settlement Fund plus all interest and accretions thereto earned after being deposited to the Escrow Account controlled by the Escrow Agent.

1.45 “TRO” means the Temporary Restraining Order that the Court entered against Columbia in the Action pursuant to the Order to Show Cause.

1.46 “Unknown Claims” means any and all Released Claims which the Plaintiff Parties, Plaintiff’s Counsel, or any Settlement Class Members do not know or suspect to exist in his or her favor at the time of the release of the Released Parties which, if known by him or her,

might have affected his or her settlement with and release of the Released Parties or might have affected his or her decision(s) with respect to the Settlement, including, but not limited to, whether or not to object to this Settlement or to the release of the Released Parties.

TERMS

2. Payment and Administration of The Settlement Fund.

2.1 The Settlement Fund. In full and final settlement of the claims asserted by the Plaintiff Parties, including those brought on behalf of the Settlement Class Members, against Columbia in the Action, and in exchange for the releases and other consideration set forth herein, Columbia agrees to pay a total of \$1,500,000.00 to the Settlement Fund as provided below:

(a) Payment of (i) \$1,000,000.00 shall be made by August 1, 2024; and (ii) \$500,000.00 shall be made by June 1, 2025 through monthly installment payments of \$50,000 beginning on September 1, 2024.

(b) Columbia may elect at its own discretion to pay more than the required monthly installment payment amount for any monthly installment payment provided for under Section 2.1(a) above, in which case any additional amount(s) paid over the required monthly installment payment amount shall be credited to future monthly installment payment(s), with the understanding that Columbia is obligated to pay a total of \$1,000,000.00 to the Settlement Fund by August 1, 2024 and to pay the remaining \$500,000.00 to the Settlement Fund by June 1, 2025 as provided under Section 2.1(a) above, for an aggregate amount of \$1,500,000.00.

2.2 Payment of the Settlement Fund into the Escrow Account.

(a) Payment of the Settlement Fund as provided under Section 2.1 above shall be made to the Escrow Account.

(b) Plaintiffs' Counsel shall provide Columbia with wire payee instructions for the Escrow Account and a W-9 form no later than June 1, 2024.

(c) The Escrow Account with the Settlement Fund shall be treated as a payment to a Qualified or Designated Settlement Fund under I.R.C. § 468B and the regulations or proposed regulations promulgated thereunder (including, without limitation, Treasury Reg. § 1.468B-1-5 or any successor regulation).

(d) Other than the obligation to pay or cause to be paid the Settlement Fund into the Escrow Account as provided under this Section, Columbia shall have no obligation to make any additional payments pursuant to this Agreement, and shall have no responsibility, obligation, or liability with respect to the Escrow Account or the funds maintained therein.

2.3 Escrow Agent. The Settlement Administrator, in its capacity as Escrow Agent, shall allocate, use, and/or disburse the funds in the Total Settlement Fund—following the deductions set forth in Section 2.5—in equal amounts to the members of the Settlement Class who have not opted out. All costs and liabilities related to the administration, maintenance, investment, use and/or disbursement of the Settlement Fund shall be borne by the Total Settlement Fund, and the Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

(a) The Escrow Agent shall not disburse any part of the Total Settlement Fund except as provided in this Agreement or by an order of the Court.

(b) Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Agreement, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Agreement. The Released Parties shall have

no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

(c) All funds held by the Escrow Agent pursuant to this Agreement and in its capacity as Settlement Administrator shall be deemed and considered to be in the legal custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Notwithstanding the fact that the Effective Date of the Settlement has not occurred, the Settlement Administrator may pay from the Settlement Fund, without further approval and/or order of the Court, reasonable costs and expenses actually incurred by the Settlement Administrator as Notice and Administration Expenses, including, without limitation, delivering the Settlement Notice to the Settlement Class by mail and/or other means, locating Settlement Class Members, assisting Settlement Class Members with inquiries or Opt Out requests, and in administering the Settlement and the Settlement Fund. The Released Parties shall have no responsibility for or liability whatsoever with respect to the Notice and Administration Expenses, nor shall they have any responsibility or liability whatsoever for any claims with respect thereto.

2.4 Taxes.

(a) The Parties and the Escrow Agent agree to treat the Escrow Account, including the Total Settlement Fund as being at all times a “qualified settlement fund[s]” within the meaning of Treas. Reg. § 1.468B-1. The Parties and the Escrow Agent further agree that the Settlement Fund shall be established pursuant to the Court’s subject matter jurisdiction within the meaning of Treas. Reg. § 1.468B-1(c)(1). In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this

Section 2.4, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of § 1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” (as defined in Treas. Reg. § 1.468B-2(k)(3)) shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the elections described in Section 2.4(a) hereof) shall be consistent with this Section 2.4 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of those funds respectively as provided in Section 2.4(c) below.

(c) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Total Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period, after the payment in full of the Settlement Fund as provided above in Section 2 hereto, during which the Total Settlement Fund does not qualify as a “qualified settlement fund[s]” for federal or state income tax purposes; and (ii) Tax Expenses shall be paid out of the Settlement Fund.

(d) Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Total Settlement Fund without prior order from the Court, and the Escrow Agent shall be authorized (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)).

(e) In no event shall the Released Parties have any liability or responsibility whatsoever for the Taxes or the Tax Expenses. The Escrow Agent, through the Total Settlement Fund, shall indemnify and hold each of the Released Parties harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

(f) The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section 2.4.

2.5 Administration of the Total Settlement Fund.

(a) The Settlement Administrator, subject to such supervision and direction of Plaintiffs' Counsel and the Court as may be necessary or as circumstances may require, shall administer and oversee the use and distribution of the Total Settlement Fund (i) to pay the Notice and Administration Expenses; (ii) to pay the Taxes and Tax Expenses; (iii) to pay the actual, reasonable attorneys' fees and costs of Plaintiffs' counsel, not to exceed 20% of the Total Settlement Fund; and (iv) after the Effective Date, to use to, disburse and allocate the Total Settlement Fund, after the above-referenced payments, in equal amounts to the members of the

Settlement Class who have not opted out. Upon the completion of all the above-referenced payments, any remaining amount in the Settlement Fund shall be divided among and distributed to the Municipal Plaintiffs in proportion to their populations.

(b) No Person shall have any claim against any of the Released Parties, Plaintiffs' Counsel or the Settlement Administrator, or any other Person designated by the Settlement Administrator based on determinations or distributions made substantially in accordance with this Agreement and the Settlement contained herein.

(c) It is understood and agreed by the Parties that any proposed or actual use, allocation, or disbursement of any part of the Total Settlement Fund as provided under Section 2.5(a) is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and any order or proceeding relating to the use, allocation, or disbursement of any part of the Total Settlement Fund shall not operate to terminate or cancel this Agreement or affect the finality of the Order and Final Judgment approving this Agreement and the Settlement set forth herein, or any other orders entered pursuant to the Agreement.

3. Releases.

3.1 Releasing Parties' Releases. The Plaintiff Parties agree and acknowledge that Columbia's payment of the Settlement Fund constitutes real and valuable consideration that will confer substantial benefit to the Settlement Class, and the Parties agree and acknowledge that the Settlement Class would not have received such benefits but for the Plaintiff Parties' prosecution of the Action. In exchange for this and other such valuable consideration set forth in this Agreement, the Releasing Parties hereby provide the following releases to the Released

Parties, which shall be effective upon Columbia's payment in full of the Settlement Fund to the Escrow Account as provided under Section 2 of this Agreement:

(a) The Releasing Parties shall each be deemed to, and by operation of the Order and Final Judgment shall fully, finally, and forever release, relinquish, discharge, and dismiss with prejudice, on the merits and without costs or attorneys' fees, the Action and any and all of the Released Claims against any and all of the Released Parties; provided, however, that the Plaintiff Parties shall retain the right to enforce the terms of this Agreement.

(b) The Releasing Parties shall each be deemed to, and by operation of the Order and Final Judgment shall, be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, or administrative forum, or other forum of any kind, any and all of the Released Claims against any and all of the Released Parties; provided, however, that the Plaintiff Parties shall retain the right to enforce the terms of this Agreement.

(c) In addition to the releases set forth above as a Releasing Party, for the avoidance of doubt, the PSC expressly agrees and acknowledges that: (i) the Settlement and this Agreement shall fully, finally, and forever resolve any and all enforcement actions against Columbia in connection with the allegations and/or claims in the Action, and further agrees that the PSC shall not take any action whatsoever to pursue any actual or potential claims or enforcement action against Columbia in connection with the allegations and/or claims in the Action; (ii) upon satisfying its payment obligations under Section 2 of this Agreement, Columbia will remain eligible to supply electricity and/or natural gas to customers using the transmission or distribution system of a utility as an ESCO in New York State; and (iii) the PSC will not

challenge Columbia's ability to re-enter the NYISO-administered market as an ESCO based on any conduct or allegations relating to the Action or the Released Claims.

3.2 Released Parties' Releases. In full and final settlement of the claims asserted by the Releasing Parties, and in exchange for and upon receiving the releases and other such consideration as set forth herein, the Released Parties, and anyone claiming through or on behalf of any of them, shall be deemed to, and by operation of the Order and Final Judgment shall fully, finally, and forever release, relinquish, and discharge any and all claims against the Releasing Parties and any of their former, present, and future assigns, predecessors, successors, affiliates, parent companies, subsidiaries, controller companies, employees, officers, directors, principals, and agents, from any and all claims arising out of or relating to their filing, prosecution, and settlement of the Action and the Released Claims; provided, however, that the Released Parties shall retain the right to enforce the terms of this Agreement.

3.3 Consideration and Intent for Releases. The releases set forth in this Section 3 of the Agreement are provided in exchange and in consideration for the Settlement, and, with respect to the Releasing Parties, for Columbia's payment of the Settlement Fund as provided under Section 2 herein, and are intended to extinguish all Released Claims, including Unknown Claims, and, consistent with such intentions, the Plaintiff Parties, Settlement Class Members, and the Released Persons shall irrevocably waive their rights to the extent permitted by state law, federal law, foreign law or principle of common law that might otherwise have the effect of limiting the releases set forth above.

4. Settlement Class. Columbia agrees, solely for the purpose of effectuating the Settlement provided for in this Agreement, that the Action may be maintained as a class action, pursuant to CPLR § 901, *et. seq.*, on behalf of the Settlement Class. In the event the Settlement

does not become final for any reason, Columbia reserves the right to oppose certification of any plaintiff class in future proceedings.

5. Order and Notice Regarding Proposed Settlement and Fairness Hearing.

5.1 Hearing Order and Fairness Hearing. As soon as practicable following the execution of this Agreement, it shall be submitted to the Court together with the proposed Hearing Order, in the form annexed hereto as **Exhibit A**:

(a) Conditionally approving, pursuant to CPLR 901 *et seq.*, the maintenance of the Action as a class action on behalf of the Settlement Class, solely for the purpose of effectuating the Settlement provided for herein, including the conditional appointment of Simpluris as the Settlement Administrator for such purposes until the Order and Final Judgment is approved;

(b) Approving the form and manner of the Settlement Notice; and

(c) Scheduling a Fairness Hearing for the purpose of determining whether the Settlement and dismissal of the Action on the terms set forth herein, and the entry of the Order and Final Judgment, should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class.

5.2 Notice To Settlement Class Members. Such Hearing Order shall provide that the Settlement Administrator and Plaintiffs' Counsel shall be responsible for providing the Settlement Notice, substantially in the form of **Exhibit B** hereto either in hard copy form or by a notification directing the reader to a version available online, to the Settlement Class Members, advising them of the claims asserted in the Action and the proposed Settlement thereof, and of the Fairness Hearing and their rights in connection therewith, including, as set forth below under Section 5.3. The Settlement Administrator and Plaintiffs' Counsel will be responsible for notifying Settlement Class Members through the Settlement Notice, and all Notice and

Administration Expenses shall be administered by the Settlement Administrator and paid out of the Total Settlement Fund in accordance with the terms hereto. In no event shall any of the Released Parties or their counsel have any liability or responsibility whatsoever for the Settlement Notice or any Notice and Administration Expenses.

5.3 Opt Outs and Objections.

(a) Putative Settlement Class Members have the right to exclude themselves or “Opt Out” from this Settlement and from the Settlement Class by timely submitting a request to Opt Out in accordance with the Opt Out procedure approved by the Court and outlined in the Settlement Notice, substantially in the form of **Exhibit B** hereto. Persons who properly request to Opt Out shall be excluded from this Settlement and from the Settlement Class. The Parties will request that the Court determine that the Opt Out Deadline for Settlement Class Members be thirty (30) calendar days prior to the Fairness Hearing.

(b) Within ten (10) days after receiving an Opt Out request, the Settlement Administrator shall apprise the other Parties of such request and shall furnish the Parties with a complete and updated list of all proper Opt Out requests to date. Any Person who does not properly request to Opt Out who would otherwise be considered a Settlement Class Member shall be deemed a Settlement Class Member and shall be bound by the Settlement, the terms of this Agreement, and the Order and Final Judgment. Any such Person who timely submits a request to Opt Out shall have until two (2) business days before the Fairness Hearing to deliver to Settlement Administrator a written revocation of such request to Opt Out. Plaintiffs’ Counsel shall timely apprise the other Parties and the Court of such revocations.

(c) Settlement Class Members shall have until thirty (30) calendar days prior to the date of the Fairness Hearing to file, in the manner specified in the Settlement Notice, any written objection or other response to this Agreement.

6. **Terms of Order And Final Judgment.** If the Settlement is approved by the Court, the Parties shall jointly request that the Court enter the Order and Final Judgment, substantially in the form of **Exhibit C** hereto, approving the dismissal of the Action with prejudice and the releases provided for herein, effective upon the receipt of the full amount due by the Released Parties to the Settlement Fund.

7. **Conditions of Settlement.** The consummation of the Settlement through the occurrence of the Effective Date is subject to the following conditions, each of which must occur and be fulfilled for this Settlement to be effective: (a) The Municipal Plaintiffs' Approval; (b) Payment of the Settlement Fund in full as provided under Section 2; (c) Certification of the Settlement Class for settlement purposes only as provided under Section 4; and (d) Court Approval and entry of the Order and Final Judgment substantially in the form of **Exhibit C** hereto, which approves in all material respects: (i) the dismissal with prejudice of any and all claims made in the Action; and (ii) the releases provided for in this Agreement; and either (c) expiration of the time to appeal or otherwise seek review of the Order and Final Judgment without any appeal having been taken or review sought, or (ii) if an appeal is taken or review sought, the expiration of five (5) days after an appeal or review shall have been dismissed or finally determined by the highest court before which such appeal or review is sought and which affirms the material terms of the Settlement and/or the Order and Final Judgment and the denial of (or the expiration of the time for seeking) further judicial review, provided that proceedings or

appeals regarding solely an application for attorneys' fees and expenses shall not affect or delay the effectiveness of the Settlement.

8. Termination, Disapproval, Cancellation of Settlement and Agreement.

8.1 If any of the conditions set forth above in Section 7 do not occur and/or are not fulfilled, this Agreement shall automatically be cancelled and terminated unless counsel for each of the Parties, within ten (10) business days from receipt of such ruling or event, agrees in writing with counsel for the other Parties to proceed with this Agreement and Settlement, including only with such modifications, if any, as to which all other Parties in their sole judgment and discretion may agree. For purposes of this Section 8, an intent to proceed shall not be valid unless it is expressed in a signed writing.

8.2 Columbia shall have the right to withdraw and terminate the Settlement and render the Settlement and this Agreement null and void in the event that ten (10) percent or more of Persons who would otherwise be Settlement Class Members timely and validly Opt Out pursuant to Section 5.3. If Columbia chooses to terminate the Agreement, Columbia will deliver notice of the termination to the other Parties no later than five (5) calendar days prior to the Fairness Hearing, or by such later date as shall be agreed upon in writing as between counsel for the respective Parties.

8.3 If, before the Settlement becomes Final, Columbia files for protection under the Bankruptcy Code, or any similar law, or a trustee, receiver, conservator, or other fiduciary is appointed under bankruptcy, or any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money or any portion thereof to the Escrow Agent by Columbia to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned to Columbia out

of the Escrow Account, and such amount is not promptly placed in the Escrow Account by others, then the Parties shall jointly move the Court to vacate and set aside the Judgment, including the releases pursuant thereto, and the Settlement and this Agreement shall terminate.

8.4 Unless otherwise ordered by the Court, in the event this Agreement is not approved or this Agreement or the Settlement is terminated, or canceled, or the Effective Date otherwise fails to occur for any reason, including, without limitation, in the event the Judgment is reversed or vacated or materially altered following any appeal taken therefrom, or is successfully collaterally attacked, within ten (10) business days after written notification of such event is sent by counsel for any of the Parties to the Escrow Agent, the Total Settlement Fund, less Taxes, Tax Expenses and Notice and Administration Expenses which have either been disbursed or are chargeable to the Total Settlement Fund pursuant to or as provided in Section 2 above, shall be refunded by the Escrow Agent to Columbia. Such refunds shall be pursuant to written instructions from Columbia's counsel. The Escrow Agent or its designee shall apply for any Tax refund owed on the Total Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund to the same Persons in the same manner as the Total Settlement Fund described in this Section 8.4. Such payments shall be pursuant to written instructions from Columbia counsel.

8.5 In the event that the Settlement does not receive Court Approval or this Agreement or the Settlement is terminated, canceled, or the Effective Date otherwise fails to occur for any reason, the Parties shall be restored to their respective positions as of the date upon which the final party signs this Settlement Agreement, and Columbia will be entitled to a return of all money contributed to the Settlement Fund pursuant to Section 2.1. In such event, the terms and provisions of the Agreement, except as otherwise provided herein, shall have no further

force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

8.6 If the Effective Date does not occur, or if this Agreement is terminated pursuant to its terms, neither the Plaintiff Parties nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to Sections 2.3 and 2.4. In addition, any amounts already incurred pursuant to Section 2.3 and 2.4 hereof at the time of such termination or cancellation but which have not been paid shall be paid by the Escrow Agent in accordance with the terms of this Agreement prior to the balance being refunded in accordance with Section 8.4 hereof.

9. No Admission of Wrongdoing or Liability.

9.1 Defendants have denied, and continue to deny, that they committed any violation of law or of their contractual obligations or engaged in any of the wrongful acts alleged against them in the Action. Defendants are entering into this Agreement solely because the proposed Settlement would eliminate the burden, expense and risk of further litigation.

9.2 The Plaintiff Parties contend that they brought the Action against Columbia in good faith and that the claims asserted against Columbia in the Action have legal merit, but nevertheless acknowledge that Columbia would continue to assert legal and factual defenses to such claims. With the informed understanding—based on the representations of Columbia—and recognition that further litigation in the Action would only deplete any potential recovery for the Plaintiff Parties, and thereby reduce the amount of funds that could be used for the benefit of the Settlement Class, and considering that the Settlement would eliminate the

burden, expense, and risk of further litigation, the Plaintiff Parties believe that the terms of the Settlement are fair, reasonable, adequate and in the best interest of the Settlement Class.

9.3 This Agreement, whether or not consummated, and any proceedings taken thereto:

(a) Shall not be offered or received against any of the Released Persons as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Released Persons with respect to the truth of any fact alleged in the Action by Plaintiffs or any Settlement Class Member or the validity of any claim or defense that has been or could have been asserted in the Action or in any action, or of any liability, negligence, fault, or wrongdoing of any of the Released Persons;

(b) Shall not be offered or received against any Plaintiff Party or any Settlement Class Member as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Plaintiff Party or any Settlement Class Member with respect to the truth, strength, or merit of any claim or defense that has been or could have been asserted in the Action or in any action, or with respect to any liability, negligence, fault, or wrongdoing of the Released Persons, or with respect to any alleged infirmity in the claims of Plaintiffs and the Settlement Class; nor

(c) Shall not be offered or received against any Party to the Action as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if the Settlement is

approved by the Court, the Parties hereto may refer to the Agreement to effectuate its terms or in any action to effectuate the Settlement.

10. Miscellaneous.

10.1 The Parties agree to cooperate fully and in good faith in filing any applications necessary to effect or otherwise facilitate the completion of the terms of the Settlement and as provided or contemplated.

10.2 The Parties shall not be liable for any delay or non-performance of their obligations under this Agreement arising from any act of God, governmental act, act of terrorism, war, fire, flood, earthquake, explosion, or civil commotion. The performance of the Parties' obligations under this Agreement, to the extent affected by such delay, shall be suspended for the period during which the cause, or the Parties' substantial inability to perform arising from the cause, persists.

10.3 This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties; it is not subject to any condition not provided for herein. This Agreement supersedes any prior agreements or understandings, whether written or oral, between and among the Parties regarding the Action. This Agreement shall not be modified in any respect except by a writing executed by both Parties.

10.4 This Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was placed on any representations other than those contained herein. The Parties agree that this Agreement shall be construed by its own terms, and not by referring to, or considering, the terms of any other settlement, and not by any presumption against the drafter.

10.5 The use of captions and headings in this Agreement is solely for convenience and shall have no legal effect.

10.6 This Agreement and all agreements, exhibits, and documents relating to this Agreement shall be construed under the laws of the State of New York, except that federal law shall apply to the extent the federal law of the United States requires that federal law governs.

10.7 Except as otherwise provided in this Agreement, it is expressly agreed and stipulated that the New York Supreme Court of Ulster County shall have exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative or otherwise, which may be instituted by any person, individually or derivatively, with respect to this Agreement.

10.8 Except as otherwise provided in this Agreement, each Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction and venue of the New York Supreme Court of Ulster County for any suit, action, proceeding, case, controversy, or dispute relating to this Agreement and agrees not to assert by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of such Court, or that such Court is in any way an improper venue or an inconvenient forum. Furthermore, the Parties shall jointly request the Court to include the provisions of this Section in the order finally approving this Agreement.

10.9 This Agreement may be executed in counterparts, each of which shall constitute an original. Facsimile signatures shall be considered valid signatures as of the date thereof, although the original signature pages shall thereafter be appended to this Agreement.

10.10 The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns for each of the Plaintiff Parties, all Settlement Class Members, and Columbia.

10.11 The provisions of this Agreement are intended to be severable. Should any provision be found illegal, invalid or unenforceable by any court of competent jurisdiction for any reason, it shall be severable from the remainder of this Agreement, and the remainder of this Agreement shall be unchanged and shall be read as if it did not contain the illegal invalid provision, except that if the Releasing Parties' releases in Section 3 hereof is deemed invalid then Columbia shall have the option to void the remainder of this Agreement.

10.12 The Parties agree that this Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way, shall not be construed as an admission of liability or wrongdoing or breach of any duty on the part of Columbia. This Agreement shall not be admissible as evidence of any kind in any proceeding except an action to enforce the terms of the Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements or proceeding shall be construed as, offered as, received as, used as or deemed to be evidence of any waiver of any applicable defense or protection by Columbia. The Parties agree that this Section 10.12 shall survive the termination or cancellation of this Agreement.

(a)

10.13 By the signature affixed hereto, each Party acknowledges that it, he, or she has read this Agreement, fully understands the agreements, representations, covenants, obligations, conditions, warranties, releases, and terms contained herein, and has had the advice of counsel pertaining thereto, prior to the time of execution.

10.14 Each Person signing this Agreement on behalf of a Party represents and warrants that he or she has all requisite power and authority to enter into this Agreement and to implement the transactions contemplated herein, and is duly authorized to execute this Agreement on behalf of that Party.

10.15 All notices to the Parties required under this Agreement (except for Notices to the Settlement Class) shall be sent by certified mail, return receipt requested, or by hand delivery to the recipients designated below (or to later designated recipients). All notices shall be measured by the date of mailing.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed by their duly authorized attorneys or representatives on the dates set forth below.

PLAINTIFFS

Town of Saugerties

Date
: _____

By: _____
Name: _____
Title: _____

Town of New Paltz

Date
: _____

By: _____
Name: _____
Title: _____

Village of New Paltz

Date
: _____

By: _____
Name: _____
Title: _____

City of Beacon

Date
: _____

By: _____

Name: _____
Title: _____
Town of Clinton

Date
: _____

By: _____

Name: _____
Title: _____

Town of Marbletown

Date
: _____

By: _____

Name: _____
Title: _____

City of Poughkeepsie

Date
: _____

By: _____

Name: _____
Title: _____

Town of Red Hook

Date
: _____

By: _____

Name: _____
Title: _____

Town of Philipstown

Date
: _____

By: _____

Name: _____
Title: _____

Village of Cold Spring

Date
: _____

By: _____

Name: _____
Title:

Date
: _____

INDIVIDUAL PLAINTIFFS

Fred Costello

Date
: _____

Tim Rogers

Date
: _____

JOULE ASSETS, INC.

By: _____

Name: _____
Title:

Date
: _____

NEW YORK PUBLIC SERVICE COMMISSION

By: _____

Name: **Dennis DiBari**
Title: **Managing Attorney**

DEFENDANTS

Columbia Utilities Power, LLC

Date

:

By:

Name:

Title:

Columbia Utilities, LLC

Date

:

By:

Name:

Title:

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

TOWN OF SAUGERTIES, TOWN OF NEW
PALTZ, VILLAGE OF NEW PALTZ, CITY OF
BEACON, TOWN OF CLINTON, TOWN OF
MARBLETOWN, CITY OF POUGHKEEPSIE,
TOWN OF RED HOOK, TOWN OF
PHILIPSTOWN, VILLAGE OF COLD SPRING,
FRED COSTELLO, TIM ROGERS, and JOULE
ASSETS, INC.,

Plaintiffs,

-against-

COLUMBIA UTILITIES POWER, LLC and
COLUMBIA UTILITIES, LLC,

Defendants.

Index No. EF2022-1113

Hon. David M. Gandin

**SCHEDULING ORDER FOR
APPROVAL OF SETTLEMENT
OF CLASS ACTION**

WHEREAS, the Parties to the above-captioned class action (the "Action") have applied pursuant to Article 9 of New York Civil Practice Law and Rules ("CPLR") for an Order approving the proposed settlement of the Action in accordance with the terms of the Settlement Agreement and Release, dated as of _____, 2024 (the "Settlement Agreement"), including the dismissal the Action with prejudice upon the terms and conditions set forth in the Settlement Agreement (the "Settlement"); and

WHEREAS, the Court having read and considered the Settlement Agreement and accompanying documents and exhibits thereto, and all Parties having consented to the entry of this Order;

NOW THEREFORE, this ___ day of _____, 2024, upon the application of the Parties, **IT IS HEREBY ORDERED** as follows:

1. Except for terms defined herein, the Court adopts and incorporates the definitions set forth in the Settlement Agreement for purposes of this Order.

2. The Settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, provides substantial benefit to the Settlement Class and falls within the range of possible approval and, therefore, merits further consideration.

3. The Court preliminarily finds that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

4. The Court has scheduled a Fairness Hearing to be held on _____, 2024, at ___:___ a.m./p.m. at the Special Term of this Court, the Supreme Court of the State of New York, Ulster County, located at 285 Wall Street, Kingston, New York 12401, Room ___, to:

- a. Consider the Settlement pursuant to CPLR 901 *et. Seq.* as fair, reasonable, adequate and in the best interests of the Settlement Class;
- b. Consider an Order and Final Judgment dismissing the Released Claims as against the Released Parties with prejudice, with each Party to bear his, her, or its own costs (except as otherwise provided in the Order and Final Judgment or in the Settlement Agreement);
- c. Consider, for purposes of the Settlement only, the certification of the Action as a Class Action under CPLR Article 9; and
- d. Hear such other matters as the Court may deem necessary and appropriate.

5. The Court reserves the right to adjourn the Fairness Hearing or modify any of the dates or deadlines set forth herein without further notice to the Settlement Class.

6. The Court reserves the right to approve the Settlement at or after the Fairness Hearing with such modifications as may be consented to by the Parties to the Action and without further notice to the Settlement Class.

7. The Court approves as to form and content the Settlement Notice annexed as **Exhibit B** to the Settlement Agreement, and finds that the mailing and/or internet publication of the Settlement Notice, substantially in the manner and form set forth in the Settlement

Agreement, meets the requirements of CPLR 908 and due process under the United States Constitution and any other applicable laws, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice of all matters relating to the Settlement.

8. All reasonable costs incurred in identifying Settlement Class members and notifying them of the Settlement, including the distribution of the Settlement Notice, shall be paid by the *conditional* Settlement Administrator as defined and set forth in the Settlement Agreement. The *conditional* Settlement Administrator and Plaintiffs' Counsel shall undertake the administrative responsibility for providing the Settlement Notice to the Settlement Class within twenty (20) days of the entry of this Order.

9. Pursuant to CPLR 901 *et. seq.*, and for purposes of the Settlement only, the Court *conditionally* certifies the Action as a class action on behalf of the Settlement Class, defined as follows:

The putative class of all Persons or businesses who, as of July 18, 2022, still participated in the Hudson Valley Power Community Choice Aggregation Program administered by Joule and through which Columbia Utilities, Power, LLC contracted to supply renewable energy (the "CCA Program"), as a resident or small business located within a municipality participating in the CCA Program, as represented by the Individual Plaintiffs in the Action.³ Excluded from the Settlement Class are (1) those Persons who timely and validly Opt Out of the Settlement pursuant to the Settlement Notice; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; and (3) any heirs, assigns, or successors of any of the Persons or entities described in parts (1) and (2) of this paragraph.

10. SETTLEMENT CLASS MEMBERS SHALL HAVE THE RIGHT TO SEEK EXCLUSION ("OPT OUT") FROM THE SETTLEMENT ONLY AS TO THE RELEASED

³ The following municipalities participated in the CCA Program: TOWN OF SAUGERTIES, TOWN OF NEW PALTZ, VILLAGE OF NEW PALTZ, CITY OF BEACON, TOWN OF CLINTON, TOWN OF MARBLETOWN, CITY OF POUGHKEEPSIE, TOWN OF RED HOOK, TOWN OF PHILIPSTOWN, and VILLAGE OF COLD SPRING.

CLAIMS FOR MONETARY DAMAGES arising out of the causes of action asserted against defendants Columbia Utilities Power, LLC and Columbia Utilities, LLC (collectively, “Defendants”) in the Complaint (NYSCEF Doc. No. 2).

11. Any Settlement Class Member who seeks to Opt Out from the Settlement as to the Released Claims for monetary damages must submit a request to do so, *in writing* to the Settlement Administrator as follows:

Simpluris
PO Box 25226
Santa Ana CA 92799-9874

Notice of any request to Opt Out of the Settlement must be provided no later than thirty (30) days from the Fairness Hearing, and must be postmarked by such deadline and include: the name, address, telephone number; email address and signature of the Settlement Class Member seeking to Opt Out of the Settlement.

12. No later than thirty (30) calendar days before the Fairness Hearing, in order to have their objections heard, any members of the Settlement Class who seek to object to the Settlement must file with the Court and deliver to the following counsel for Parties to these proceedings a written notice of objection, signed as authorized by the objecting person and setting ground(s) for the objection. Counsel to whom such objections must be sent are as follows:

Hodgson Russ LLP
Aaron M. Saykin, Esq.
Daniel A. Spitzer, Esq.
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040
dspitzer@hodgsonruss.com
asaykin@hodgsonruss.com

Counsel for Plaintiffs

Public Service Commission, State of New York
Dennis F. DiBari
Three Empire State Plaza
Albany, New York 12223-1350
dennis.dibari@dps.ny.gov

Counsel for Plaintiff-Intervenor

McDermott Will & Emery LLP
Warren Haskel
Timothy C. Cramton
One Vanderbilt Avenue
New York, New York 10017-3852
whaskel@mwe.com
tcramton@mwe.com

Counsel for Defendants

13. At least ten (10) business days prior to the Fairness Hearing, counsel for Plaintiffs shall file with the Court and serve on counsel for the other Parties proof, by affidavit or declaration, of the dissemination of the Settlement Notice to the Settlement Class by mail and/or internet publication, as ordered herein.

14. Pending final action by the Court relating to the Settlement and the receipt from Columbia of the full amount due to the Settlement Fund, all proceedings in the Action shall be stayed except for Settlement-related proceedings or as otherwise provided in the Settlement Agreement.

15. Any Settlement Class Member may appear and show cause, if he, she or it has any reason why the proposed Settlement should not be approved as fair, reasonable, adequate and in the best interest of the Settlement Class; provided, however, that Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or if approved, unless that Person files and serves his, her or its objection in accordance with the terms and conditions in the Settlement Notice.

16. If the Settlement is approved by the Court at or following the Fairness Hearing, an Order and Final Judgment shall be entered as described in the Settlement Agreement and attached thereto as **Exhibit C**.

17. The terms and conditions set forth in the Settlement Agreement:

- a. Shall not be offered or received against any of the Released Persons as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Released Persons with respect to the truth of any fact alleged in the Action by Plaintiffs or any Settlement Class Member or the validity of any claim or defense that has been or could have been asserted in the Action or in any action, or of any liability, negligence, fault, or wrongdoing of any of the Released Persons;
- b. Shall not be offered or received against any Plaintiff Party or any Settlement Class Member as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Plaintiff Party or any Settlement Class Member with respect to the truth, strength, or merit of any claim or defense that has been or could have been asserted in the Action or in any action, or with respect to any liability, negligence, fault, or wrongdoing of the Released Persons, or with respect to any alleged infirmity in the claims of Plaintiffs and the Settlement Class; nor
- c. Shall not be offered or received against any Party to the Action as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if the Settlement is approved by the Court, the parties hereto may refer to the Agreement to effectuate its terms or in any action to effectuate the Settlement.

18. If the Settlement provided for in the Settlement Agreement is not approved by this Court at or following the Fairness Hearing, or is cancelled, terminated otherwise fails to become effective, the Parties to the Settlement Agreement shall be restored to their respective positions prior to its execution date. In such event, the terms and provisions of Settlement Agreement, except as otherwise provided therein, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any

judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

19. Except as otherwise provided in the Settlement Agreement, the administration and consummation of the Settlement as set forth in the Settlement Agreement, and any suit, action, proceeding, case, controversy, or dispute relating to the Settlement shall be under the exclusive jurisdiction and venue of the New York Supreme Court of Ulster County.

IT IS SO ORDERED this ____ day of _____, 2024.

Hon. David M. Gandin, J.S.C.

20.

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

TOWN OF SAUGERTIES, TOWN OF NEW
PALTZ, VILLAGE OF NEW PALTZ, CITY OF
BEACON, TOWN OF CLINTON, TOWN OF
MARBLETOWN, CITY OF POUGHKEEPSIE,
TOWN OF RED HOOK, TOWN OF
PHILIPSTOWN, VILLAGE OF COLD SPRING,
FRED COSTELLO, TIM ROGERS, and JOULE
ASSETS, INC.,

Plaintiffs,

-against-

COLUMBIA UTILITIES POWER, LLC and
COLUMBIA UTILITIES, LLC,

Defendants.

Index No. EF2022-1113

Hon. David M. Gandin

**NOTICE OF CLASS ACTION,
PROPOSED SETTLEMENT OF
CLASS ACTION, SETTLEMENT
HEARING AND RIGHT TO
APPEAR**

IMPORTANT NOTICE TO ANY AND ALL PERSONS OR BUSINESS WHO, AS OF JULY 18, 2022, STILL PARTICIPATED IN THE HUDSON VALLEY POWER COMMUNITY CHOICE AGGREGATION PROGRAM ADMINISTERED BY JOULE ASSETS, INC. AND THROUGH WHICH COLUMBIA UTILITIES, POWER, LLC CONTRACTED TO SUPPLY RENEWABLE ENERGY (THE “CCA PROGRAM”), AS A RESIDENT OR SMALL BUSINESS LOCATED WITHIN ANY OF THE FOLLOWING MUNICIPALITIES PARTICIPATING IN THE CCA PROGRAM: TOWN OF SAUGERTIES, TOWN OF NEW PALTZ, VILLAGE OF NEW PALTZ, CITY OF BEACON, TOWN OF CLINTON, TOWN OF MARBLETOWN, CITY OF POUGHKEEPSIE, TOWN OF RED HOOK, TOWN OF PHILIPSTOWN, AND VILLAGE OF COLD SPRING (“THE SETTLEMENT CLASS”).

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. THIS NOTICE PERTAINS TO THE PROPOSED SETTLEMENT OF A LAWSUIT. IF THE SETTLEMENT IS APPROVED BY THE COURT, MEMBERS OF THE SETTLEMENT CLASS WILL BE BARRED FROM CONTESTING THE FAIRNESS, REASONABLENESS AND ADEQUACY OF THE PROPOSED SETTLEMENT AND RELATED MATTERS AND FROM PURSUING CERTAIN RELEASED CLAIMS. THEREFORE, IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS (DEFINED ABOVE) YOUR LEGAL RIGHTS WILL BE AFFECTED BY PROCEEDINGS IN THE ACTION.

PLEASE TAKE NOTICE that the above-captioned class action lawsuit is being settled. The terms of the proposed settlement of the lawsuit (the “Settlement”) are set forth in a Settlement Agreement and Release, dated _____, 2024 (the “Settlement Agreement”). The Court has scheduled a Fairness Hearing to be held on _____, 2024, at ____:____ a.m./p.m. at the Special Term of this Court, the Supreme Court of the State of New York, Ulster County, located at 285 Wall Street, Kingston, New York 12401, Room ____, to:

- a. Consider the Settlement pursuant to CPLR 901 *et. seq.* as fair, reasonable, adequate and in the best interests of the Settlement Class;
- b. Consider an Order and Final Judgment dismissing the Released Claims as against the Released Parties with prejudice, with each Party to bear his, her, or its own costs (except as otherwise provided in the Order and Final Judgment or in the Settlement Agreement);
- c. Consider, for purposes of the Settlement only, the certification of the Action as a Class Action under CPLR Article 9; and
- d. Hear such other matters as the Court may deem necessary and appropriate.

This Notice of Class Action, Proposed Settlement of Class Action, Settlement Hearing and Right to Appear (“Settlement Notice”) should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Settlement Agreement, which has been filed with the Court. Unless stated otherwise, all capitalized terms used herein have the same meaning as set forth in the Settlement Agreement.

This Settlement Notice describes the rights you may have under the Settlement and what steps you may, but are not required to, take in relation to the Settlement. If the Court approves the Settlement, the Parties to the Settlement will ask the Court to enter an Order and Final Judgment dismissing the Released Claims as against the Released Persons with prejudice. If you are a Settlement Class Member, this Settlement Notice will inform you of how, if you so choose, you may enter your appearance in the Action or object to the proposed Settlement and have your

objection heard at the Fairness Hearing. This Settlement Notice will also inform you how to exclude yourself (or “Opt Out”) from the Settlement Class should you choose to do so.

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

A. BACKGROUND ON THE LAWSUIT AND PROPOSED SETTLEMENT

The Municipal Plaintiffs⁴ each contracted with Columbia Utilities Power, LLC on or around April 30, 2021 to receive renewable electricity supplied through the CCA Program for which Columbia Utilities Power, LLC served as the Energy Service Company, thereby providing the option for individual residents and small businesses located within those municipalities to participate in the CCA Program.

On June 3, 2022, the Municipal Plaintiffs, along with Individual Plaintiffs⁵ and Joule Assets, Inc. (“Joule”) (together with the Municipal and Plaintiffs, “Plaintiffs”), filed a Verified Complaint (the “Complaint”) against Columbia Utilities Power, LLC and an affiliated entity⁶ (collectively, “Columbia” or “Defendants”) in New York State Supreme Court, captioned *Town of Saugerties et al., v. Columbia Utilities Power, LLC et al.*, Index No. EF2022-1113 (N.Y. Sup. Ct., Ulster Co.) (the “Action”), seeking injunctive relief and damages in connection with the CCA Program and Columbia’s purported intention to terminate its contracts with the Plaintiff Municipalities and transfer all of its CCA Program customers back to the local utility, Central

⁴ The Municipal Plaintiffs in the Action are comprised of: the Cities of Poughkeepsie and Beacon, the Towns of Saugerties, New Paltz, Clinton, Marbletown, and Philipstown, and the Villages of New Paltz and Cold Spring.

⁵ The Individual Plaintiffs are Fred Costello, the Supervisor of Municipal Plaintiff Town of Saugerties and a resident participant in the CCA Program, and Tim Rogers, the Mayor of Municipal Plaintiff Village of New Paltz and a resident participant in the CCA Program, on behalf of themselves and as representatives of the Settlement Class Members.

⁶ While Columbia Utilities, LLC is named as a defendant in in this Action, Defendants maintain that Columbia Utilities provides natural gas supply to customers in New York and is not involved with the provision of electricity to CCA Program customers and had no part in the acts or events at issue in the Action.

Hudson Gas & Electric Corp. (“Central Hudson”). Among other things, the Complaint included claims and causes of action asserted against Columbia by the Individual Plaintiffs on their own behalf and as representatives of the Settlement Class.

In conjunction with their Complaint, Plaintiffs also filed a proposed Order to Show Cause on June 3, 2022, seeking to preliminarily enjoin and restrain Columbia from, among other things, transferring all of its CCA Program customers (including all Settlement Class Members) back to Central Hudson, which the Court so-ordered and entered on June 7, 2022 (the “Order to Show Cause”), including the temporary restraining order Plaintiffs requested (the “TRO”).

On June 6, 2022, the New York State Public Service Commission, on its own behalf and on behalf of the People of the State of New York (the “PSC”) (together with Plaintiffs, the “Plaintiff Parties”), filed a Proposed Intervenor’s Complaint for Injunctive Relief and Penalties against Columbia in the Action (the “PSC Complaint”), based on the same or related facts and allegations and seeking similar relief as the Complaint filed by the Plaintiffs in the Action, pursuant to the PSC’s accompanying motion to intervene, which the Court granted on August 12, 2024 by Stipulation of the Parties to the Action.

On July 18, 2021, while the TRO was in effect, the New York State Independent Operator (“NYISO”) terminated Columbia’s rights to participate in NYISO-administered market in New York State, resulting in the unilateral transfer of all of Columbia’s CCA Program customers (including all Settlement Class Members) back to Central Hudson as the local utility, as a result of Columbia’s failure to post approximately \$3.5 million in collateral by July 12, 2022 as required to comply with NYISO’s creditworthiness requirements.

On August 12, 2022, in addition to granting the PSC’s Motion to Intervene, the Court in the Action adjourned the deadlines in the Order to Show Cause to allow the Parties to conduct discovery regarding NYISO’s collateral demand and whether Columbia was in fact unable to meet it.

Columbia denies the material allegations in the Complaint and the PSC’s Complaint, denies that it engaged in in any wrongdoing whatsoever—including, without limitation, in connection with the collateral demand and the transfer of Columbia’s CCA Program customers (including all Settlement Class Members) as a result of Columbia’s termination from the NYISO-administered market—and denies that any of the Plaintiff Parties are or were entitled to the injunctive relief, damages, and any other remedies they seek or have sought by and through the Action; and

The Parties have completed document discovery into the collateral demand and Columbia’s ability to comply with the TRO, including the production of documents and information by Columbia in connection with Plaintiffs’ and the PSC’s allegations against Columbia, as well as third-party discovery from Central Hudson, and have engaged in settlement discussions, culminating in a mediation on April 3, 2024. As a result of the mediation, the Plaintiff Parties have concluded that settlement of all of the claims and causes of brought by or that could have been brought by the Plaintiff Parties against Columbia in the Action, including, without limitation, the claims and causes of action asserted on behalf of the Settlement Class by the Individual Plaintiffs, is fair, reasonable, adequate and in the best interests of all Settlement Class Members.

On _____, 2024, the Parties entered into the Settlement Agreement, and, on _____, 2024, filed a proposed Scheduling Order for Approval of

Settlement of Class Action (the "Fairness Hearing Order"). On _____, 2024, the Court entered and so-ordered the Fairness Hearing Order to consider, among other things, whether to approve the terms of the Settlement as set forth in the Settlement Agreement.

B. KEY TERMS OF THE SETTLEMENT

If the Settlement is approved by the Court, the claims and causes of action asserted against Columbia by the Plaintiff Parties, including those brought on behalf of the Settlement Class, will be DISMISSED WITH PREJUDICE pursuant to an Order and Final Judgment to be entered by the Court, and Columbia will receive releases from the Plaintiff Parties, including all Settlement Class Members who do not Opt Out of the Settlement, for any and all claims that have or could be asserted against Columbia in connection with the Action. In exchange, Columbia will pay a total of \$1,500,000.00 into a Settlement Fund that, after the deduction of expenses, will be used for the benefit of the Settlement Class Members, and provide corresponding releases to the Plaintiff Parties, including all Settlement Class Members who do not Opt Out of the Settlement. These terms are discussed in further detail below.

Settlement Fund

In exchange for the dismissal of the Action and the releases it will receive (discussed further below), Columbia will pay a total of \$1,500,000.00 into a settlement fund (the "Settlement Fund") by June 1, 2025 as follows: (a) payment of \$1,000,000.00 by August 1, 2024 ; and (b) payment of the remaining \$500,000.00 by June 1, 2025 through monthly installment payments of \$50,000 per month beginning on September 1, 2024. Columbia may elect to pay more than the minimum amount for any monthly installment payment, in which case any additional amount paid over the minimum monthly payment amount will be credited to future monthly installment payments, with the understanding that Columbia remains obligated to pay a

total of \$1,000,000.00 to the Settlement Fund by August 1, 2024 and to pay the remaining \$500,000.00 to the Settlement Fund by June 1, 2025, for an aggregate amount of \$1,500,000.00 by June 1, 2025.

The Settlement Fund will be paid into and held in an interest-bearing Escrow Account administered by Simpluris as the Escrow Agent and Settlement Administrator in accordance with the terms of the Settlement and as provided in the Settlement Agreement. Specifically, the Settlement Fund will be used to disburse refunds in equal amounts to the members of the Settlement Class who have not opted out. In addition, all expenses, fees, taxes, and other costs associated with providing notice and administering the Settlement Fund, as well as reasonable actual attorneys' fees and costs not to exceed twenty percent of the Settlement Funds, shall be paid out of the Settlement Fund (together with any interest accrued thereon). Once Columbia has satisfied its payment obligations with respect to the Settlement Fund, Columbia shall not have any liability or responsibility whatsoever with respect to the Settlement Fund, including with respect to any costs, fees, expenses, taxes incurred or imposed thereon, or the actions of the Escrow Agent/Settlement Administrator in the administration, management, allocation, and/or disbursement of the Settlement Fund.

Releases

The Plaintiff Parties, including all Settlement Class Members who do not Opt Out of the Settlement (the "Releasing Parties"), in exchange for Columbia's payment of the Settlement Fund, will release Columbia Utilities Power, LLC and Columbia Utilities, LLC and any of their former, present, and future assigns, predecessors, successors, affiliates, parent companies, subsidiaries, controller companies, employees, officers, directors, principals, and agents (collectively, the "Released Parties") from any and all claims, including any and all claims,

rights, and liabilities of any nature, including, but not limited to, actions, claims, demands, causes of action, obligations, damages, debts, charges, attorneys' fees, costs, arbitrations, forfeitures, judgments, indebtedness, liens and losses of any kind, source or character whether arising out of federal or state law, whether known, suspected to exist or unknown, whether asserted or unasserted, whether asserted by any Releasing Party either on its own behalf or on behalf of any other Person, whether in contract, express or implied, tort, at law or in equity or arising under or by virtue of any statute or regulation, by reason of, arising out of, that are related to any of the facts, acts, events, transactions, occurrences, courses of conduct, business practice or relationship, representations, omissions, circumstances or other matters related in any way to the Action, addressed in this Agreement, and/or that could have been brought in the Action against any of the Released Parties, including any claims related to the Released Parties' conduct in connection with the CCA Program (the "Released Claims"), excluding only claims the Releasing Parties could assert to enforce the Settlement under the Settlement Agreement.

The PSC will also agree and acknowledge that (i) the Settlement resolves all investigative and other regulatory enforcement actions related to Columbia's participating in and conduct relating to the CCA Program; and (ii) upon satisfying its payment obligations with respect to the Settlement Fund, nothing related to this Action shall prohibit Columbia from being eligible to supply electricity and/or natural gas to customers using the transmission or distribution system of a utility as an ESCO in New York State. The PSC will further agree and acknowledge that the PSC will not challenge Columbia's ability to re-enter the NYISO-administered market as an ESCO based on any conduct or allegations relating to the Action.

In addition to the releases they will receive, the Releasing Parties (as defined above), will fully, finally, and forever release, relinquish, and discharge any and all claims against the

Releasing Parties and any of their former, present, and future assigns, predecessors, successors, affiliates, parent companies, subsidiaries, controller companies, employees, officers, directors, principals, and agents, from any and all claims arising out of or relating to their filing, prosecution, and settlement of the Action and the Released Claims, again, similarly excluding only claims the Releasing Parties could assert to enforce the Settlement under the Settlement Agreement.

C. REASONS FOR THE SETTLEMENT

The Plaintiff Parties contend that they brought the Action against Defendants in good faith and that the claims asserted against Defendants in the Action have legal merit, but nevertheless acknowledge that Defendants would continue to assert legal and factual defenses to such claims. With the informed understanding—based on representations from Columbia—and recognition that further litigation in the Action would only deplete any potential recovery for the Plaintiff Parties, and thereby reduce the amount of funds that could be used for the benefit of the Settlement Class, and considering that the Settlement would eliminate the burden, expense, and risk of further litigation, the Plaintiff Parties believe that the terms of the Settlement are fair, reasonable, adequate and in the best interest of the Settlement Class.

Defendants have denied, and continue to deny, that they committed any violation of law or of their contractual obligations or engaged in any of the wrongful acts alleged against them in the Action. Defendants are entering into this Agreement solely because the proposed Settlement would eliminate the burden, expense and risk of further litigation.

D. CLASS ACTION DETERMINATION

Pursuant to CPLR 901 *et. seq.*, and for purposes of the Settlement only, the Court has *conditionally* certified the Action as a class action on behalf of the Settlement Class, defined as follows:

The putative class of all Persons or businesses who, as of July 18, 2022, still participated in the Hudson Valley Power Community Choice Aggregation Program administered by Joule and through which Columbia Utilities, Power, LLC contracted to supply renewable energy (the “CCA Program”), as a resident or small business located within a municipality participating in the CCA Program, as represented by the Individual Plaintiffs in the Action.⁷ Excluded from the Settlement Class are (1) those Persons who timely and validly Opt Out of the Settlement pursuant to the Settlement Notice; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; and (3) any heirs, assigns, or successors of any of the Persons or entities described in parts (1) and (2) of this paragraph.

SETTLEMENT CLASS MEMBERS SHALL HAVE THE RIGHT TO SEEK EXCLUSION (“OPT OUT”) FROM THE SETTLEMENT ONLY AS TO THE RELEASED CLAIMS FOR MONETARY DAMAGES arising out of the causes of action asserted against Defendants, as provided further below.

E. FAIRNESS HEARING

The Court has scheduled a Fairness Hearing to be held on _____, 2024, at ___:___ a.m./p.m. at the Special Term of this Court, the Supreme Court of the State of New York, Ulster County, located at 285 Wall Street, Kingston, New York 12401, Room ___, to:

- a. Consider the Settlement pursuant to CPLR 901 *et. Seq.* as fair, reasonable, adequate and in the best interests of the Settlement Class;
- b. Consider an Order and Final Judgment dismissing the Released Claims as against the Released Parties with prejudice, with each Party to bear his, her, or its own costs (except as otherwise provided in the Order and Final Judgment or in the Settlement Agreement);

⁷ The following municipalities participated in the CCA Program: TOWN OF SAUGERTIES, TOWN OF NEW PALTZ, VILLAGE OF NEW PALTZ, CITY OF BEACON, TOWN OF CLINTON, TOWN OF MARBLETOWN, CITY OF POUGHKEEPSIE, TOWN OF RED HOOK, TOWN OF PHILIPSTOWN, and VILLAGE OF COLD SPRING.

- c. Consider, for purposes of the Settlement only, the certification of the Action as a Class Action under CPLR Article 9; and
- d. Hear such other matters as the Court may deem necessary and appropriate.

The Court has reserved the right to adjourn the Fairness Hearing or modify any of the dates or deadlines set forth herein without further notice to the Settlement Class.

The Court has reserved the right to approve the Settlement at or after the Fairness Hearing with such modifications as may be consented to by the Parties to the Action and without further notice to the Settlement Class.

F. RIGHT TO APPEAR, OBJECT, AND/OR OPT OUT OF THE SETTLEMENT

Any Settlement Class Member may appear and show cause at the Fairness Hearing if he, she or it has any reason why the proposed Settlement of the Action should not be approved as fair, reasonable, adequate and in the best interest of the Settlement Class. However, in order to have their objections heard, any member of the Settlement Class who seeks to object to the Settlement must file with the Court and deliver to the following counsel for Parties to these proceedings a written notice of objection, signed as authorized by the objecting shareholder and setting ground(s) for the objection, by no later than thirty (30) days before the Fairness Hearing. Counsel to whom such objections must be sent are as follows:

Hodgson Russ LLP
Aaron M. Saykin, Esq.
Daniel A. Spitzer, Esq.
140 Pearl Street, Suite 100
Buffalo, New York 14202-4040
dspitzer@hodgsonruss.com
asaykin@hodgsonruss.com

Counsel for Plaintiffs

Public Service Commission, State of New York
Dennis F. DiBari
Three Empire State Plaza
Albany, New York 12223-1350

dennis.dibari@dps.ny.gov

Counsel for Plaintiff-Intervenor

McDermott Will & Emery LLP
Warren Haskel
Timothy C. Cramton
One Vanderbilt Avenue
New York, New York 10017-3852
whaskel@mwe.com
tcramton@mwe.com

Counsel for Defendants

Only those Settlement Class Members who have filed and delivered such valid and timely written notice of objections will be entitled to be heard at the Fairness Hearing unless the Court orders otherwise.

Any Settlement Class Member who seeks to Opt Out from the Settlement as to the Released Claims for monetary damages must submit a request to do so, *in writing* to the Settlement Administrator as follows:

Simpluris
PO Box 25226
Santa Ana CA 92799-9874

Notice of any request to Opt Out of the Settlement must be provided no later than thirty (30) days from the Fairness Hearing, and must be postmarked no later than such deadline (the "Opt Out Deadline") and include: the name, address, telephone number; email address and signature of the Settlement Class Member seeking to Opt Out of the Settlement.

Only those members of the Settlement Class who have filed and delivered a valid and timely request to Opt Out by the Opt Out Deadline will be excluded from the Settlement Class, unless the Court orders otherwise.

FOR FURTHER INFORMATION

PLEASE DO NOT WRITE OR CALL THE COURT WITH INQUIRIES ABOUT THIS SETTLEMENT NOTICE. INQUIRIES OR COMMENTS ABOUT THE SETTLEMENT MAY DIRECTED TO THE SETTLEMENT ADMINISTRATOR:

Simpluris
PO Box 25226
Santa Ana CA 92799-9874

Counsel for Plaintiffs

Further information is also available at [insert website address]

SO ORDERED this ___ day of _____, 2024, **BY ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, ULSTER COUNTY.**

Hon. David M. Gandin, J.S.C.

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

TOWN OF SAUGERTIES, TOWN OF NEW
PALTZ, VILLAGE OF NEW PALTZ, CITY OF
BEACON, TOWN OF CLINTON, TOWN OF
MARBLETOWN, CITY OF POUGHKEEPSIE,
TOWN OF RED HOOK, TOWN OF
PHILIPSTOWN, VILLAGE OF COLD SPRING,
FRED COSTELLO, TIM ROGERS, and JOULE
ASSETS, INC.,

Plaintiffs,

-against-

COLUMBIA UTILITIES POWER, LLC and
COLUMBIA UTILITIES, LLC,

Defendants.

Index No. EF2022-1113

Hon. David M. Gandin

**ORDER AND FINAL
JUDGMENT**

WHEREAS, the Parties to the above-captioned class action (the "Action") applied pursuant to Article 9 of New York Civil Practice Law and Rules ("CPLR") for an Order (the "Scheduling Order") approving the proposed settlement of the Action in accordance with the terms of the Settlement Agreement and Release, dated as of _____, 2024 (the "Settlement Agreement") (attached hereto as **Exhibit A**) including the dismissal the Action with prejudice upon the terms and conditions set forth in the Settlement Agreement (the "Settlement");

WHEREAS, the Court entered and so-ordered the Scheduling Order on _____, 2024, with the consent of all Parties and the Court having read and considered the Settlement Agreement and accompanying documents and exhibits filed thereto with the Court; and

WHEREAS, the Court held a hearing as noticed on _____, 2024, pursuant to the Scheduling Order (the "Fairness Hearing") to consider and determine the matters set forth in the Scheduling Order; and due and sufficient notice having been given as provided in

the Scheduling Order and accompanying notice approved and so-ordered by the Court (the “Settlement Notice”); and all persons having any objection to the proposed Settlement described in the Settlement Notice having been given an opportunity to present such objections to the Court at the Fairness Hearing; and all persons seeking exclusion from the Settlement Class as set forth in the Settlement Agreement and described in the Settlement Notice having been given an opportunity to submit any request for exclusion; the Court having heard and considered the matter at the Fairness Hearing, including all papers filed in connection therewith, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order and Final Judgment incorporates by reference the definitions in the Settlement Agreement executed by the parties on and filed with the Court and all terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of the Action and over the Parties who have appeared in the Action.

3. The Settlement Notice and the method of its dissemination is hereby determined to have been fair, reasonable, and adequate notice under the circumstances and in full compliance with CPLR 901 *et seq* and the requirements of due process under the United States Constitution and other applicable laws.

4. Pursuant to CPLR 901 *et. seq.*, and for the purposes of the Settlement only, the Court certifies the Action as a class action on behalf of the Settlement Class, defined as follows:

The putative class of all Persons or businesses who, as of July 18, 2022, still participated in the Hudson Valley Power Community Choice Aggregation Program administered by Joule and through which Columbia Utilities, Power, LLC contracted to supply renewable energy (the “CCA Program”), as a resident or small business located within a municipality

participating in the CCA Program, as represented by the Individual Plaintiffs in the Action.⁸

5. Excluded from the Settlement Class are (1) those Persons who timely and validly Opt Out of the Settlement pursuant to the Settlement Notice, and the Court notes and approves that all SETTLEMENT CLASS MEMBERS HAD THE RIGHT TO SEEK SUCH EXCLUSION FROM THE SETTLEMENT ONLY AS TO RELEASED CLAIMS (AS DEFINED IN THE SETTLEMENT AGREEMENT AND IN THE SETTLEMENT NOTICE) FOR MONETARY DAMAGES; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; and (3) any heirs, assigns, or successors of any of the Persons or entities described in parts (1) and (2) of this paragraph.

6. The Court hereby approves the Settlement set forth in the Settlement Agreement and finds that the Settlement is in all respects fair, reasonable, adequate and in the best interests of the Settlement Class.

7. The Released Claims as against the Released Parties are hereby DISMISSED WITH PREJUDICE, with each party to bear his, her, or its own costs and attorneys' fees (except as otherwise provided in this Order and Final Judgment or the Settlement Agreement), and all other terms and releases set forth in the Settlement Agreement and as provided by therein are now hereby effective.

8. Without in any way affecting the finality of this Order and Final Judgment, this Court shall retain jurisdiction for the purpose of enforcing the Settlement and the terms of the Settlement Agreement, and shall retain exclusive jurisdiction and authority to consider, rule upon, and issue a final order with respect to suits, whether judicial, administrative or otherwise,

⁸ The following municipalities participated in the CCA Program: TOWN OF SAUGERTIES, TOWN OF NEW PALTZ, VILLAGE OF NEW PALTZ, CITY OF BEACON, TOWN OF CLINTON, TOWN OF MARBLETOWN, CITY OF POUGHKEEPSIE, TOWN OF RED HOOK, TOWN OF PHILIPSTOWN, and VILLAGE OF COLD SPRING.

which may be instituted by any person, individually or derivatively, with respect to the Settlement and the Settlement Agreement.

9. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

10. The Clerk of the Court shall enter this Order and Final Judgment.

IT IS SO ORDERED this ___ day of _____, 2024.

Hon. David M. Gandin, J.S.C.