



GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LEAF INVENERGY COMPANY, a)
Cayman Islands exempt limited liability)
company,)

Plaintiff,)

v.)

INVENERGY WIND LLC, a Delaware)
limited liability company,)

Defendant.)

C.A. No. 11830-VCL

[PROPOSED] FINAL ORDER AND JUDGMENT

WHEREAS, Leaf Invenergy Company (“Leaf”) holds Series B member interests in Invenergy Renewables LLC (formerly known as Invenergy Wind LLC (“Invenergy”));

WHEREAS, on December 15, 2015, Invenergy entered into an amended and restated agreement to sell certain assets to TerraForm Power, Inc. and consummated the sale of assets (the “TerraForm Transaction”);

WHEREAS, Leaf filed this lawsuit on December 21, 2015 alleging, *inter alia*, (i) that Invenergy violated Leaf’s rights under Section 8.04(b) of the Third Amended and Restated Limited Liability Company Agreement of Invenergy (the “LLC Agreement”) (Count I); (ii) that Invenergy breached the Second Amended and Restated Series B Senior Subordinated Convertible Note Purchase

Agreement dated July 1, 2013, and subsequently amended on July 10, 2014 by failing to convert Leaf's Note interests into LLC interests in time for Leaf to exercise rights as a member of Invenergy with respect to the TerraForm Transaction (Count II); and (iii) that Leaf was entitled to declaratory and equitable relief such that Leaf should have had and been able to exercise "all rights appurtenant to being a member [of Invenergy] as of June 21, 2015" (Count III);

WHEREAS, on December 28, 2015, Invenergy exercised its right pursuant to Section 11.09 of the LLC Agreement to call Leaf's membership interests and pay Leaf Fair Market Value as defined in the LLC Agreement;

WHEREAS, on December 28, 2015, Leaf exercised its right pursuant to Section 11.09 of the LLC Agreement to put its membership interests to Invenergy and receive Fair Market Value as defined in the LLC Agreement;

WHEREAS, on June 30, 2016, the Court granted Leaf's Motion for Partial Judgment on the Pleadings on Count I of the Complaint, finding that Invenergy had breached Section 8.04(b) of the LLC Agreement, but holding that its "ruling does not determine the amount of damages to which Leaf is entitled for the Company's breach of the Series B Consent Provision [*i.e.*, Section 8.04(b)]";

WHEREAS, on July 18, 2016, Leaf filed a Motion for Entry of an Order and Final Judgment asserting that as a result of the breach of Section 8.04(b) of the LLC Agreement previously found by the Court, Leaf was entitled to an order

awarding it damages on Count I of its Complaint in the amount of \$126,110,576 (equal to the Target Multiple), plus prejudgment interest, and dismissing Counts II and III of its Complaint without prejudice;

WHEREAS, on October 7, 2016, the Court entered its Order Denying [Leaf's] Motion for Entry of an Order and Final Judgment, which Order also rejected certain arguments advanced by Invenergy against a damage award;

WHEREAS, on March 9, 2017, the Court stayed Counts II and III of the Complaint and scheduled trial on Plaintiff's claim for damages based on Count I of the Complaint and Defendant's counterclaim asserting that Leaf acted in bad faith and manipulated the determination of Fair Market Value;

WHEREAS, on October 25-27, 2017, the Court tried Plaintiff's claim for damages based on Count I of the Complaint, and Defendant's counterclaim asserting that Leaf acted in bad faith and manipulated the determination of Fair Market Value;

WHEREAS, on April 19, 2018, the Court issued its Memorandum Opinion after trial awarding Leaf nominal damages of \$1 with respect to Count I of the Complaint, finding in favor of Leaf on Invenergy's counterclaim, and directing the parties to complete the put-call process in accordance with the governing provisions in the LLC Agreement;

WHEREAS, on April 26, 2018, Leaf filed a Motion for Reargument concerning the Memorandum Opinion;

WHEREAS, on May 21, 2018 the Court denied Leaf's Motion for Reargument;

WHEREAS, Plaintiff has stated that it intends to appeal the decision on its claims set forth in the Memorandum Opinion, and Defendant has stated that, if Leaf appeals, it intends to file a cross-appeal concerning the denial of its counterclaims; and

WHEREAS, Leaf and Invenergy have agreed upon a form of Redemption Agreement for purposes of the put-call process;

IT IS HEREBY ORDERED, this ___ day of June, 2018 as follows:

1. On Leaf's previously-adjudicated claim in Count I of the Complaint that Invenergy breached Section 8.04(b) of the LLC Agreement, the Court awards Leaf nominal damages in the amount of \$1.

2. The Court dismisses Counts II and III of the Complaint as moot; however, these claims will no longer be moot, and may be asserted by Leaf in the future, if a court of competent jurisdiction holds that Invenergy did not breach Section 8.04(b) of the LLC Agreement.

3. The Court enters judgment in favor of Leaf on Invenergy's counterclaims, thereby establishing the redemption price for Leaf's Series B member interests in Invenergy at \$50,669,000 (the "Redemption Price").

4. Closing under the Redemption Agreement shall occur upon the earlier of (i) 35 calendar days after the entry of this Final Order and Judgment and (ii) five business days after Plaintiff files a Notice of Appeal from this Final Order and Judgment.

5. At the Closing under the Redemption Agreement, Invenergy shall pay the Redemption Price as follows: (i) \$36,432,000 shall be paid immediately to Leaf at Closing, representing the amount that would be due to Leaf if Invenergy were to prevail on its cross-appeal, and (ii) \$15,260,057, representing the balance of the Redemption Price (\$14,237,000) (the "Balance") plus one year of interest at 7% per annum, compounded quarterly on the Balance, as security for payment of the Balance, shall be paid to a bank account established by Leaf and Invenergy and subject to the control of the Court (the "Court Account") as soon as reasonably practical after the Court Account is established but no more than ten business days after Closing. When paid to Leaf, the \$36,432,000 referenced herein shall be the "Paid Amount."

6. Upon a final determination of the amount of the Redemption Price that is no longer subject to appeal (the “Final Redemption Amount”) the Court Account shall be distributed as follows:

- a) The difference (if any) between the Final Redemption Amount and the Paid Amount (the “Unpaid Balance”) shall be distributed to Leaf, together with interest on the Unpaid Balance payable from Closing under the Redemption Agreement until the date of payment of the Unpaid Balance at a rate of 7% per annum, compounded quarterly;
- b) Any balance of the Court Account not payable to Leaf pursuant to subparagraph 6(a) hereof shall be paid to Invenergy;
- c) Distribution of any amount in the Court Account shall be made pursuant to a written directive signed by counsel for both Leaf and Invenergy, or by Order of the Court.

Vice Chancellor Laster

Approved as to form:

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& ROSATI, P.C.

/s/ Bradley D. Sorrels

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This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 62137612

Current Date: Jun 14, 2018

Case Number: 11830-VCL

Case Name: CONF ORD Leaf Invenergy Company v. Invenergy Wind LLC

Court Authorizer: Laster, J Travis

/s/ **Judge Laster, J Travis**