Risk Factors Comparison 2024-02-29 to 2023-03-29 Form: 10-K

Legend: New Text ~~Removed Text~~ Unchanged Text Moved Text Section

Our business, financial condition, cash flows, results of operations and ability to pay dividends on our Class A common stock and Series A Preferred Stock could be materially and adversely affected by, and the price of our Class A common stock and Series A Preferred Stock could decline due to a number of factors, whether currently known or unknown, including but not limited to those described below. You should carefully consider these risk factors together with the other information contained in this Annual Report. Risks Related to Our Business and Our Industry We are subject to commodity price risk. Our financial results are largely dependent on the prices at which we can acquire the commodities we resell. The prevailing market prices for natural gas and electricity are unpredictable and tend to fluctuate substantially. Changes in market prices for natural gas and electricity may result from many factors that are outside of our control, including: • weather conditions; including extreme weather conditions, seasonal fluctuations, and the effects of climate change; • demand for energy commodities and general economic conditions; • disruption of natural gas or electricity transmission or transportation infrastructure or other constraints or inefficiencies; • reduction or unavailability of generating capacity, including temporary outages, mothballing, or retirements; • the level of prices and availability of natural gas and competing energy sources, including the impact of changes in environmental regulations impacting suppliers; • the creditworthiness or bankruptcy or other financial distress of market participants; • changes in market liquidity; • natural disasters, wars, embargoes, acts of terrorism and other catastrophic events; • significant changes in the pricing methods in the wholesale markets in which we operate; • changes in regulatory policies concerning how markets are structured, how compensation is provided for service, and the kinds of different services that can or must be offered; • federal, state, foreign and other governmental regulation and legislation; and • demand side management, conservation, alternative or renewable energy sources. For example, in February 2021, the U. S. experienced winter storm Uri, an unprecedented storm bringing extreme cold temperatures to the central U. S., including Texas. As a result of increased power demand for customers across the state of Texas and power generation disruptions during the weather event, power and ancillary costs in the Electric Reliability Counsel of Texas (“ ERCOT ”) service area experienced extreme volatility and price increases beyond the maximum allowed clearing prices. Less extreme price fluctuations can also occur as a result of routine winter weather fluctuations. In the event of price fluctuations, we may not be able to pass along changes to the prices we pay to acquire commodities to our customers as such pricing fluctuations can attract consumer class actions as well as state and federal regulatory actions. Our financial results may be adversely impacted by weather conditions and changes in consumer demand. Weather conditions directly influence the demand for and availability of natural gas and electricity and affect the prices of energy commodities. Generally, on most utility systems, demand for natural gas peaks in the winter and demand for electricity peaks in the summer. Typically, when winters are warmer or summers are cooler, demand for energy is lower than expected, resulting in less natural gas and electricity consumption than forecasted. When demand is below anticipated levels due to weather patterns, we may be forced to sell excess supply at prices below our acquisition cost, which could result in reduced margins or even losses. Conversely, when winters are colder or summers are warmer, consumption may outpace the volumes of natural gas and electricity against which we have hedged, and we may be unable to meet increased demand with storage or swing supply. In these circumstances, such as with winter storm Uri, we may experience reduced margins or even losses if we are required to purchase additional supply at higher prices. We may fail to accurately anticipate demand due to fluctuations in weather or to effectively manage our supply in response to a fluctuating commodity price environment. Further, extreme weather conditions such as hurricanes, droughts, heat waves, winter storms and severe weather associated with climate change could cause these seasonal fluctuations to be more pronounced. Destruction caused by severe weather events, such as hurricanes, tornadoes, severe thunderstorms, snow and ice storms, can result in lost operating revenues. Our risk management policies and hedging procedures may not mitigate risk as planned, and we may fail to fully or effectively hedge our commodity supply and price risk. To provide energy to our customers, we purchase commodities in the wholesale energy markets, which are often highly volatile. Our commodity risk management strategy is designed to hedge substantially all of our forecasted volumes on our fixed- price customer contracts, as well as a portion of the near- term volumes on our variable- price customer contracts. We use both physical and financial products to hedge our exposure. The efficacy of our risk management program may be adversely impacted by unanticipated events and costs that we are not able to effectively hedge, including abnormal customer attrition and consumption, certain variable costs associated with electricity grid reliability, pricing differences in the local markets for local delivery of commodities, unanticipated events that impact supply and demand, such as extreme weather, and abrupt changes in the markets for, or availability or cost of, financial instruments that help to hedge commodity price. We are exposed to basis risk in our operations when the commodities we hedge are sold at different delivery points from the exposure we are seeking to hedge. For example, if we hedge our natural gas commodity price with Chicago basis but physical supply must be delivered to the individual delivery points of specific utility systems around the Chicago metropolitan area, we are exposed to basis risk between the Chicago basis and the individual utility system delivery points. These differences can be significant from time to time, particularly during extreme, unforecasted cold weather conditions. Similarly, in certain of our electricity markets, customers pay the load zone price for electricity, so if we purchase supply to be delivered at a hub, we may have basis risk between the hub and the load zone electricity prices due to local congestion that is not reflected in the hub price. We attempt to hedge basis risk where possible, but hedging instruments are sometimes not economically feasible or available in the smaller quantities that we require. Additionally, assumptions that we use in establishing our hedges may reduce the effectiveness of our hedging instruments. Considerations that may affect our hedging policies include, but are not limited to, human error, assumptions about customer attrition, the relationship of prices at different trading or delivery points, assumptions about future weather, and our load forecasting models. Our derivative instruments are subject to mark- to- market accounting requirements and are recorded on the consolidated balance sheet at fair value with changes in fair value resulting from fluctuations in the underlying commodity prices immediately recognized in earnings. As a result, the Company' s quarterly and annuals results are subject to significant fluctuations caused by the changes in market price. In addition, we incur costs monthly for ancillary charges such as reserves and capacity in the electricity sector by ISOs. For example, the ISOs will charge all retail electricity providers for monthly reserves that the ISO determines are necessary to protect the integrity of the grid. We may be unable to fully pass the higher cost of ancillary reserves and reliability services through to our customers, and increases in the cost of these ancillary reserves and reliability services could negatively impact our results of operations. Many of the natural gas utilities we serve allocate a share of transportation and storage capacity to us as a part of their competitive market operations. We are required to fill our allocated storage capacity with natural gas, which creates commodity supply and price risk. Sometimes we cannot hedge the volumes associated with these assets because they are too small compared to the much larger bulk transaction volumes required for trades in the wholesale market or it is not economically feasible to do so. In some regulatory programs or under some contracts, this capacity may be subject to recall by the utilities, which could have the effect of us being required to access the spot market to cover such a recall. ESCOs face risks due to increased and rapidly changing regulations and increasing monetary fines by the state regulatory agencies. The retail energy industry is highly regulated. Regulations may be changed or reinterpreted and new laws and regulations applicable to our business could be implemented in the future. To the extent that the competitive restructuring of retail electricity and natural gas markets is reversed, altered or discontinued, such changes could have a detrimental impact on our business and overall financial condition. Some states are beginning to increase their regulation of their retail electricity and natural gas markets in an effort to increase consumer disclosures and ensure marketing practices are not misleading to consumers. In addition, the fines against ESCOs that regulators are seeking have increased dramatically in recent years. For example, **in** late 2022 PURA and the Connecticut Office of Consumer Counsel issued to our subsidiary, Verde, a Notice of Violation and Assessment of Penalty proposing civil penalties, restitution payments to certain customers and a multi- year suspension from the Connecticut market in connection with violations of Connecticut' s marketing requirements for energy suppliers. The retail energy business is subject to a high level of federal, state and local regulations, which are subject to change. Many governmental bodies regulate aspects of our operations, and our failure to comply with these legal requirements can result in substantial penalties. In addition, new laws and regulations, including executive orders, or changes to or new interpretations of existing laws and regulations by courts or regulatory authorities occur regularly, but are difficult to predict. Changes under a new president, administration and Congress in the U. S. are also difficult to predict. Any such variation could negatively impact the retail energy business, including our business, could substantially increase costs to achieve compliance or otherwise could have a material adverse effect on our cash flow, results of operations and financial condition. For example, many electricity markets have rate caps, and changes to these rate caps by regulators can impact future price exposure. Similarly, regulatory changes can result in new fees or charges that may not have been anticipated when existing retail contracts were drafted, which can create financial exposure. Our ability to manage cost increases that result from regulatory changes will depend, in part, on how the " change in law provisions " of our contracts are interpreted and enforced, among other factors. **Additionally, regulations that do not directly relate to ESCOs could impact us. For example, we have historically used third- party lead generators to identify potential customers for our telemarketing sales channel. In December 2023, the FCC adopted rules that could limit the ability of third- party lead generators to identify large numbers of potential customers. If the number of potential customers is reduced, or if it becomes more difficult or costly to identify potential telemarketing targets, our ability to maintain our RCE count based on our telemarketing sales could be impacted. Please see " Regulatory Environment — Other Regulations. "** Liability under the TCPA has increased significantly in recent years, and we face risks if we fail to comply. Our outbound telemarketing efforts and use of mobile messaging to communicate with our customers, which has increased in recent years, subjects us to regulation under the TCPA. Over the last several years, companies have been subject to significant liabilities as a result of violations of the TCPA, including penalties, fines and damages under class action lawsuits. Our failure to effectively monitor and comply with our activities that are subject to the TCPA could result in significant penalties and the adverse effects of having to defend and ultimately suffer liability in a class action lawsuit related to such non- compliance. We are also subject to liability under the TCPA for actions of our third party vendors who are engaging in outbound telemarketing efforts on our behalf. The issue of vicarious liability for the actions of third parties in violation of the TCPA remains unclear and has been the subject of conflicting precedent in the federal appellate courts. There can be no assurance that we may be subject to significant damages as a result of a class action lawsuit for actions of our vendors that we may not be able to control. We are, and in the future may become, involved in legal and regulatory proceedings and, as a result, may incur substantial costs. We are subject to lawsuits, claims and regulatory proceedings arising in the ordinary course of our business from time to time, including several purported class action lawsuits involving sales practices, telemarketing and TCPA claims, as well as contract disclosure claims and breach of contract claims. These are in various stages and are subject to substantial uncertainties concerning the outcome. A negative outcome for any of these matters could result in significant costs, may divert management' s attention from other business issues or harm our reputation with customers. For additional information regarding the nature and status of certain proceedings, see Note 13" Commitments and Contingencies" to the audited consolidated financial statements. Our business is dependent on retaining licenses in the markets in which we operate. Our business model is dependent on continuing to be licensed in existing markets. We may have a license revoked or not be granted a renewal of a license, or our license could be adversely conditioned or modified (e. g., by increased bond posting obligations). For example, recently, an ESCO was banned by the Public Utilities Commission of Ohio from operating in Ohio for five years in response to allegations of misleading and deceptive marketing practices. We may be subject to risks in connection with acquisitions, which could cause us to fail to realize many of the anticipated benefits of such acquisitions. We have grown our business in part through strategic acquisition opportunities from third parties and from affiliates of our majority shareholder and may continue to do so in the future. Achieving the anticipated benefits of these transactions depends in part upon our ability to identify accretive acquisition targets, accurately assess the benefits and risks of the acquisition prior to undertaking it, and the ability to integrate the acquired businesses in an efficient and effective manner. When we identify an acquisition candidate, there is a risk that we may be unable to negotiate terms that are beneficial to us. Additionally, even if we identify an accretive acquisition target, the successful acquisition of that business requires estimating anticipated cash flow and accretive value, evaluating potential regulatory challenges, retaining customers and assuming liabilities. The accuracy of these estimates is inherently uncertain and our assumptions may be incorrect. Furthermore, when we make an acquisition, we may not be able to accomplish the integration process smoothly or successfully. The integration process could take longer than anticipated and could result in the loss of valuable employees, the disruption of our business, processes and systems or inconsistencies in standards, controls, procedures, practices, policies, compensation arrangements, distraction of management and significant costs, any of which could adversely affect our ability to achieve the anticipated benefits of the acquisitions. Further, we may have difficulty addressing possible differences in corporate cultures and management philosophies. In many of our acquisition agreements, we are entitled to indemnification from the counterparty for various matters, including breaches of representations, warranties and covenants, tax matters, and litigation proceedings. We generally obtain security to provide assurances that the counterparty could perform its indemnification obligations, which may be in the form of escrow accounts, payment withholding or other methods. However, to the extent that we do not obtain security, or the security turns out to be inadequate, there is a risk that the counterparty may fail to perform on its indemnification obligations, which could result in the losses being incurred by us. Our ability to grow at levels experienced historically may be constrained if the market for acquisition candidates is limited and we are unable to make acquisitions of portfolios of customers and retail energy companies on commercially reasonable terms. **We have historically** ~~Pursuant to our cash dividend policy, we distribute~~ **distributed** a significant portion of our cash through ~~regular quarterly~~ dividends, and our ability to grow and make acquisitions with cash on hand could be limited. **We** ~~Pursuant to our cash dividend policy, we~~ have historically distributed ~~and intend in the future to distribute,~~ a significant portion of our cash through ~~regular quarterly~~ dividends to holders of our Class A common stock and dividends on our Series A Preferred Stock **. In the future, we may also distribute a significant amount of cash through dividends** . As such, our growth may not be as fast as that of businesses that reinvest their available cash to expand ongoing operations, and we may have to rely upon external financing sources, including the issuance of debt, equity securities, convertible subordinated notes and borrowings under our Senior Credit Facility and Subordinated Facility. These sources may not be available, and our ability to grow and maintain our business may be limited. We may have liquidity needs that would prevent us from continuing our historical practice as it relates to the payment of dividends on our ~~Class A common stock and~~ Series A Preferred Stock. The primary factor that would lead to a change in the dividend policy would be decreased liquidity due to decreasing customer book. We may not be able to manage our growth successfully. The growth of our operations will depend upon our ability to expand our customer base in our existing markets and to enter new markets in a timely manner at reasonable costs, organically or through acquisitions. In order for us to recover expenses incurred in entering new markets and obtaining new customers, we must attract and retain customers on economic terms and for extended periods. Customer growth depends on several factors outside of our control, including economic and demographic conditions, such as population changes, job and income growth, housing starts, new business formation and the overall level of economic activity. We may experience difficulty managing our growth and implementing new product offerings, integrating new customers and employees, and complying with applicable market rules and the infrastructure for product delivery. State regulations may adversely impact customer acquisition and renewal revenue and profitability, and organic growth. For example, New York State limits the types of services energy retailer marketers may offer new customers or renewals, in terms of pricing for non-renewable commodities and renewable product offerings. Expanding our operations also may require continued development of our operating and financial controls and may place additional stress on our management and operational resources. We may be unable to manage our growth and development successfully. Our financial results fluctuate on a seasonal, quarterly and annual basis. Our overall operating results fluctuate substantially on a seasonal, quarterly and annual basis depending on: (1) the geographic mix of our customer base; (2) the relative concentration of our commodity mix; (3) weather conditions, which directly influence the demand for natural gas and electricity and affect the prices of energy commodities; and (4) variability in market prices for natural gas and electricity. These factors can have material short- term impacts on monthly and quarterly operating results, which may be misleading when considered outside of the context of our annual operating cycle. In addition, our accounts payable and accounts receivable are impacted by seasonality due to the timing differences between when we pay our suppliers for accounts payable versus when we collect from our customers on accounts receivable. We typically pay our suppliers for purchases of natural gas on a monthly basis and electricity on a weekly basis. However, it takes approximately two months from the time we deliver the electricity or natural gas to our customers before we collect from our customers on accounts receivable attributable to those product deliveries. This timing difference could affect our cash flows, especially during peak cycles in the winter and summer months. Furthermore, as a result of the seasonality of our business, we may reserve a portion of our excess cash available for distribution in the first and fourth quarters in order to fund our second and third quarter distributions. Additionally, we enter into a variety of financial derivative and physical contracts to manage commodity price risk, and we use mark- to- market accounting to account for this hedging activity. Under the mark- to- market accounting method, changes in the fair value of our hedging instruments that are not qualifying or not designated as hedges under accounting rules are recognized immediately in earnings. As a result of this accounting treatment, changes in the forward prices of natural gas and electricity cause volatility in our quarterly and annual earnings, which we are unable to fully anticipate. We could also incur volatility from quarter to quarter associated with gains and losses on settled hedges relating to natural gas held in inventory if we choose to hedge the summer- winter spread on our retail allocated storage capacity. We typically purchase natural gas inventory and store it from April to October for withdrawal from November through March. Since a portion of the inventory is used to satisfy delivery obligations to our fixed- price customers over the winter months, we hedge the associated price risk using derivative contracts. Any gains or losses associated with settled derivative contracts are reflected in the statement of operations as a component of retail cost of sales and net asset optimization. We may have difficulty retaining our existing customers or obtaining a sufficient number of new customers, due to competition and for other reasons. The markets in which we compete are highly competitive, and we may face difficulty retaining our existing customers or obtaining new customers due to competition. We encounter significant competition from local regulated utilities or their retail affiliates and traditional and new retail energy providers. Competitors may offer different products, lower prices, and other incentives, which may attract customers away from our business. Many of these competitors or potential competitors are larger than us, have access to more significant capital resources, have stronger vendor relationships, have more well- established brand names and have larger existing installed customer bases. Additionally, existing customers may switch to other retail energy service providers during their contract terms in the event of a significant decrease in the retail price of natural gas or electricity in order to obtain more favorable prices. Although we generally have a right to collect a termination fee from each customer on a fixed- price contract who terminates their contract early, we may not be able to collect the termination fees in full or at all. Our variable- price contracts can typically be terminated by our customers at any time without penalty. We may be unable to obtain new customers or maintain our existing customers due to competition or otherwise. Increased collateral requirements in connection with our supply activities may restrict our liquidity. Our contractual agreements with certain local regulated utilities and our supplier counterparties require us to maintain restricted cash balances or letters of credit as collateral for credit risk or the performance risk associated with the future delivery of natural gas or electricity. These collateral requirements may increase as we grow our customer base. Collateral requirements will increase based on the volume or cost of the commodity we purchase in any given month and the amount of capacity or service contracted for with the local regulated utility. Significant changes in market prices also can result in fluctuations in the collateral that local regulated utilities or suppliers require. The effectiveness of our operations and future growth depend in part on the amount of cash and letters of credit available to enter into or maintain these contracts. The cost of these arrangements may be affected by changes in credit markets, such as interest rate spreads in the cost of financing between different levels of credit ratings. These liquidity requirements may be greater than we anticipate or are able to meet. We face risks related to health epidemics, pandemics and other outbreaks ~~, including COVID- 19~~ . ~~The COVID- 19 pandemic continues to adversely impact economic activity and conditions worldwide. Pandemics, epidemics~~ **Epidemics** , widespread illness or other major health crises, such as COVID- 19, may adversely affect the United States' economic growth, demand for natural gas and electricity in our key markets as well as the ability of various employees, customers, contractors, suppliers and other business partners to fulfill their obligations, which could have a material adverse effect on our business, financial condition or results of operations. Actions taken by governmental authorities and third parties to contain and mitigate the risk of spread of any major public health crisis, including COVID- 19, may negatively impact our business, including a disruption of or change to our operating plans. We are subject to direct credit risk for certain customers who may fail to pay their bills as they become due. We bear direct credit risk related to customers located in markets that have not implemented POR programs as well as indirect credit risk in those POR markets that pass collection efforts along to us after a specified non- payment period. For the year ended December 31, ~~2022~~ **2023** , customers in non- POR markets represented approximately ~~41~~ **45** % of our retail revenues. We generally have the ability to terminate contracts with customers in the event of non- payment, but in most states in which we operate we cannot disconnect their natural gas or electricity service. In POR markets where the local regulated utility has the ability to return non- paying customers to us after specified periods, we may realize a loss for one to two billing periods until we can terminate these customers' contracts. We may also realize a loss on fixed- price customers in this scenario due to the fact that we will have already fully hedged the customer' s expected commodity usage for the life of the contract and we also remain liable to our suppliers of natural gas and electricity for the cost of our supply commodities. Furthermore, in the Texas market, we are responsible for billing the distribution charges for the local regulated utility and are at risk for these charges, in addition to the cost of the commodity, in the event customers fail to pay their bills. Changing economic factors, such as rising unemployment rates and energy prices also result in a higher risk of customers being unable to pay their bills when due. We depend on the accuracy of data in our information management systems, which subjects us to risks. We depend on the accuracy and timeliness of our information management systems for billing, collections, consumption and other important data. We rely on many internal and external sources for this information, including: • our marketing, pricing and customer operations functions; and • various local regulated utilities and ISOs for volume or meter read information, certain billing rates and billing types (e. g., budget billing) and other fees and expenses. Inaccurate or untimely information, which may be outside of our direct control, could result in: • inaccurate and / or untimely bills sent to customers; • incorrect tax remittances; • reduced effectiveness and efficiency of our operations; • inability to adequately hedge our portfolio; • increased overhead costs; • inaccurate accounting and reporting of customer revenues, gross margin and accounts receivable activity; • inaccurate measurement of usage rates, throughput and imbalances; • customer complaints; and • increased regulatory scrutiny. We are also subject to disruptions in our information management systems arising out of events beyond our control, such as natural disasters, pandemics, epidemics, failures in hardware or software, power fluctuations, telecommunications and other similar disruptions. Cyberattacks and data security breaches could adversely affect our business. Cybersecurity risks have increased in recent years as a result of the proliferation of new technologies and the increased sophistication, magnitude and frequency of cyberattacks and data security breaches. A cyber- attack on our information management systems or those of our vendors could severely disrupt business operations, preventing us from billing and collecting revenues, and could result in significant expenses to investigate and repair security breaches or system damage, lead to litigation, fines, other remedial action, heightened regulatory scrutiny, diminished customer confidence and damage to our reputation. Although we maintain cyber- liability insurance that covers certain damage caused by cyber events, it may not be sufficient to cover us in all circumstances. Our success depends on key members of our management, the loss of whom could disrupt our business operations. We depend on the continued employment and performance of key management personnel. A number of our senior executives have substantial experience in consumer and energy markets that have undergone regulatory restructuring and have extensive risk management and hedging expertise. We believe their experience is important to our continued success. We do not maintain key life insurance policies for our executive officers. Our key executives may not continue in their present roles and may not be adequately replaced. We rely on third party vendors for our customer acquisition verification, billing and transactions platform that exposes us to third party performance risk and other risk. We have outsourced our back office customer billing and transactions platforms to third party vendors, and we rely heavily on the continued performance of the vendors under our current outsourcing agreement. Our vendors may fail to operate in accordance with the terms of the outsourcing agreement, be subject to cyber- security attacks, or a bankruptcy or other event may prevent them from performing under our outsourcing agreement. A large portion of our current customers are concentrated in a limited number of states, making us vulnerable to customer concentration risks. As of December 31, ~~2022~~ **2023** , approximately ~~58~~ **59** % of our RCEs were located in five states. Specifically, **21** ~~16 %, 14~~ %, 11 %, ~~9~~ **11** % ~~and~~ **,** 8 **% and 7** % of our customers on an RCE basis were located in **PA,** TX, ~~PA,~~ NY, NJ, and MA **,** respectively. If we are unable to increase our market share across other competitive markets or enter into new competitive markets effectively, we may be subject to continued or greater customer concentration risk. The states that contain a large percentage of our customers could reverse regulatory restructuring or change the regulatory environment in a manner that causes us to be unable to operate economically in that state. Increases in state renewable portfolio standards or an increase in the cost of renewable energy credit and carbon offsets may adversely impact the price, availability and marketability of our products. Pursuant to state renewable portfolio standards, we must purchase a specified amount of RECs based on the amount of electricity we sell in a state in a year. In addition, we have contracts with certain customers that require us to purchase RECs or carbon offsets and as part of sustainability efforts have made a corporate commitment to fully offset 100 % of customer volume beginning on April 1, 2021 with RECS or carbon offsets. If a state increases its renewable portfolio standards, the demand for RECs within that state will increase and therefore the market price for RECs could increase. We attempt to forecast the price for the required RECs and carbon offsets at the end of each month and incorporate this forecast into our customer pricing models, but the price paid for RECs and carbon offsets may be higher than forecasted. We may be unable to fully pass the higher cost of RECs through to our customers, and increases in the price of RECs may decrease our results of operations and affect our ability to compete with other energy retailers that have not contracted with customers to purchase RECs or carbon offsets. Further, a price increase for RECs or carbon offsets may require us to decrease the renewable portion of our energy products, which may result in a loss of customers. A further reduction in benefits received by local regulated utilities from production tax credits in respect of renewable energy may adversely impact the availability to us, and marketability by us, of renewable energy under our brands. Our access to marketing channels may be contingent upon the viability of our telemarketing and door- to- door agreements with our vendors. Our vendors are essential to our telemarketing and door- to- door sales activities. Our ability to increase revenues in the future will depend significantly on our access to high quality vendors. If we are unable to attract new vendors and retain existing vendors to achieve our marketing targets, our growth may be materially reduced. There can be no assurance that competitive conditions will allow these vendors and their independent contractors to continue to successfully sign up new customers. Further, if our products are not attractive to, or do not generate sufficient revenue for our vendors, we may lose our existing relationships. In addition, the decline in landlines reduces the number of potential customers that may be reached by our telemarketing efforts and, as a result, our telemarketing sales channel may become less viable and we may be required to use more door- to- door marketing. Door- to- door marketing is continually under scrutiny by state regulators and legislators, which may lead to new rules and regulations that impact our ability to use these channels. Our vendors may expose us to risks. We are subject to reputational risks that may arise from the actions of our vendors and their independent contractors that are wholly or partially beyond our control, such as violations of our marketing policies and procedures as well as any failure to comply with applicable laws and regulations. If our vendors engage in marketing practices that are not in compliance with local laws and regulations, we may be in breach of applicable laws and regulations that may result in regulatory proceedings, disadvantageous conditioning of our energy retailer license, or the revocation of our energy retailer license. Unauthorized activities in connection with sales efforts by agents of our vendors, including calling consumers in violation of the TCPA and predatory door- to- door sales tactics and fraudulent misrepresentation could subject us to class action lawsuits against which we will be required to defend. Such defense efforts will be costly and time consuming. In addition, the independent contractors of our vendors may consider us to be their employer and seek compensation. We rely on third party vendors for our customer billing and transactions platform that exposes us to third party performance risk and cyber- security risk. We have outsourced our back office customer verification, billing and transactions platforms to third party vendors, and we rely heavily on the continued performance of the vendors under our current outsourcing agreement. Our vendors may fail to operate in accordance with the terms of the outsourcing agreement or a bankruptcy or other event may prevent them from performing under our outsourcing agreement. Risks Related to Our Capital Structure and Capital Stock ~~We have identified a material weakness in our internal control over financial reporting which could, if not remediated, adversely affect our ability to report our financial condition and results of operations in a timely and accurate manner, decrease investor confidence in us, and reduce the value of our Class A common stock and Series A Preferred Stock. Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a- 15 (f) and 15d- 15 (f) under the Exchange Act and based upon the criteria established by the Committee of Sponsoring Organizations of the Treadway Commission' s Internal Control- Integrated Framework (2013). Management is also responsible for reporting on the effectiveness of internal control over financial reporting. In connection with the audit of our financial statements for the year ended December 31, 2022, we identified a material weakness in the design and operation of the controls over our calculation of income tax expense, deferred tax assets and liabilities. A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial~~

~~reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. Although this material weakness did not result in a material misstatement to our consolidated financial statements for the year ended December 31, 2022 or any prior period, it did result in immaterial corrections for the years ended December 31, 2021 and 2020. Please see Note 2. Basis of Presentation in the Notes to the Consolidated Financial Statements appearing elsewhere in this Annual Report for a description of the immaterial corrections. If unremediated, this material weakness could result in a material misstatement for annual or interim consolidated financial statements for future periods. With oversight from the Audit Committee of the Board of Directors, we intend to take the necessary steps to remediate the material weakness by enhancing our internal controls to ensure proper review by and communication between our internal and external tax advisors and internal accounting personnel. Our efforts will consist primarily of strengthening our tax organization through continuing education and designing controls related to the components of our tax process to enhance our management review controls over taxes. We cannot assure you that any measures we may take will be sufficient to remediate the control deficiencies that led to the material weakness in our internal control over financial reporting described above or to avoid potential future material weaknesses. Failure to remediate the material weakness described above, or the identification of any new material weaknesses, could limit our ability to prevent or detect a misstatement of our financial results, lead to a loss of investor confidence and have a negative impact on the trading price of our Class A common stock and Series A Preferred Stock and could subject us to sanctions or investigations by Nasdaq, the SEC or other regulatory authorities.~~ Our indebtedness could adversely affect our ability to raise additional capital to fund our operations or pay dividends. It could also expose us to the risk of increased interest rates and limit our ability to react to changes in the economy or our industry as well as impact our cash available for distribution. We have $ ~~100~~ **97** . 0 million of indebtedness outstanding and $ ~~34~~ **24** . ~~4~~ **3** million in issued letters of credit under our Senior Credit Facility, and **no** ~~$ 20. 0 million of~~ indebtedness outstanding under our Subordinated Facility as of December 31, ~~2022~~ **2023** . Debt we incur under our Senior Credit Facility, Subordinated Facility or otherwise could have negative consequences, including: • increasing our vulnerability to general economic and industry conditions; • requiring cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing or eliminating our ability to pay dividends to holders of our Class A common stock and Series A Preferred Stock, or to use our cash flow to fund our operations, capital expenditures and future business opportunities; • limiting our ability to fund future acquisitions or engage in other activities that we view as in our long- term best interest; • restricting our ability to make certain distributions with respect to our capital stock and the ability of our subsidiaries to make certain distributions to us, in light of restricted payment and other financial covenants, including requirements to maintain certain financial ratios, in our credit facilities and other financing agreements; • exposing us to the risk of increased costs due to changes in interest rates because certain of our borrowings are at variable rates of interest; • limiting our ability to obtain additional financing for working capital including collateral postings, capital expenditures, debt service requirements, acquisitions and general corporate or other purposes; and • limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who have less debt. If we are unable to satisfy financial covenants in our debt instruments, it could result in an event of default that, if not cured or waived, may entitle the lenders to demand repayment or enforce their security interests. Our Senior Credit Facility will mature in June 30, 2025, and we cannot assure that we will be able to negotiate a new credit arrangement on commercially reasonable terms. In addition, our ability to arrange financing and the costs of such capital, are dependent on numerous factors, including: • general economic and capital market conditions; • credit availability from banks and other financial institutions; • investor confidence; • our financial performance and the financial performance of our subsidiaries; • our level of indebtedness and compliance with covenants in debt agreements; • maintenance of acceptable credit ratings; • cash flow; and • provisions of tax and securities laws that may impact raising capital. We may not be successful in obtaining additional capital for these or other reasons. The failure to obtain additional capital from time to time may have a material adverse effect on its business and operations. Our ability to pay dividends ~~in the future will depend~~ **depends** on many factors, including the performance of our business, cash flows, RCE counts and the margins we receive, as well as restrictions under our Senior Credit Facility. We cannot assure you that we will be able to continue paying ~~our targeted quarterly dividend to the holders of our Class A common stock or~~ dividends to the holders of our Series A Preferred Stock in the future. The amount of our cash available for distribution principally depends upon the amount of cash we generate from our operations, which fluctuates from quarter to quarter based on, among other things: • changes in commodity prices, which may be driven by a variety of factors, including, but not limited to, weather conditions, seasonality and demand for energy commodities and general economic conditions; • the level and timing of customer acquisition costs we incur; • the level of our operating and general and administrative expenses; • seasonal variations in revenues generated by our business; • our debt service requirements and other liabilities; • fluctuations in our working capital needs; • our ability to borrow funds and access capital markets; • restrictions contained in our debt agreements (including our Senior Credit Facility); • management of customer credit risk; • abrupt changes in regulatory policies; and ~~,~~ • other business risks affecting our cash flows. As a result of these and other factors, we cannot guarantee that we will have sufficient cash generated from operations to pay the dividends on our Series A Preferred Stock ~~or to pay a specific level of cash dividends to holders of our Class A common stock~~ . Further, we could be prevented from paying cash dividends under Delaware law if certain capital requirements are not met, and may be further restricted by covenants in our Senior Credit Facility. The amount of cash available for distribution depends primarily on our cash flow, and is not solely a function of profitability, which is affected by non- cash items. We may incur other expenses or liabilities during a period that could significantly reduce or eliminate our cash available for distribution and, in turn, impair our ability to pay dividends to holders of our ~~Class A common stock and~~ Series A Preferred Stock during the period. ~~Additionally, the dividends paid on Series A Preferred Stock reduce the amount of cash we have available to pay dividends on our Class A common stock.~~ Each new share of ~~Class A common stock and~~ Series A Preferred Stock issued increases the cash required to continue to pay cash dividends. Any ~~Class A common stock or~~ preferred stock (whether Series A Preferred Stock or a new series of preferred stock) that may in the future be issued to finance acquisitions, upon exercise of stock options or otherwise, would have a similar effect. Finally, ~~our~~ future ~~dividend~~ **dividends are** ~~policy is~~ within the discretion of our Board of Directors, and will depend upon our operations, our financial condition, capital requirements and investment opportunities, the performance of our business, cash flows, RCE counts and the margins we receive, as well as restrictions under our Senior Credit Facility. The Board of Directors may be required to reduce or eliminate quarterly cash distributions, including the ~~quarterly~~ dividends to the holders of the ~~Class A common stock and / or~~ Series A Preferred Stock. Even if we are permitted to pay such dividends on the ~~Class A common stock and~~ Series A Preferred Stock, our Board of Directors may elect to reduce or eliminate the dividends on the ~~Class A common stock and~~ Series A Preferred Stock to maintain cash balances for operations or for other reasons. ~~Similarly, even if our business generates cash in excess of our current annual dividend, we may reinvest such excess cash flows in our business and not increase the dividends payable to holders of our Class A common stock.~~ Any reduction or elimination of cash dividends on our ~~Class A common stock or~~ Series A Preferred Stock will likely materially and adversely affect the price of the ~~Class A common stock and~~ Series A Preferred Stock. We are a holding company. Our sole material asset is our equity interest in Spark HoldCo, LLC (" Spark HoldCo") and we are accordingly dependent upon distributions from Spark HoldCo to pay dividends on the ~~Class A common stock and~~ Series A Preferred Stock. We are a holding company and have no material assets other than our equity interest in Spark HoldCo, and have no independent means of generating revenue. Therefore, we depend on distributions from Spark HoldCo to meet our debt service and other payment obligations, and to pay dividends on our ~~Class A common stock and~~ Series A Preferred Stock. Spark HoldCo or its subsidiaries may be restricted from making distributions to us under applicable law or regulation or under the terms of their financing arrangements, or may otherwise be unable to provide such funds. The Class A common stock and Series A Preferred Stock are subordinated to our existing and future debt obligations. The Class A common stock and Series A Preferred Stock are subordinated to all of our existing and future indebtedness (including indebtedness outstanding under the Senior Credit Facility). Therefore, if we become bankrupt, liquidate our assets, reorganize or enter into certain other transactions, assets will be available to pay our obligations with respect to the Series A Preferred Stock only after we have paid all of our existing and future indebtedness in full. The Class A common stock will only receive assets to the extent all existing and future indebtedness and obligations under the Series A Preferred Stock is paid in full. If any of these events were to occur, there may be insufficient assets remaining to make any payments to holders of the Series A Preferred Stock or Class A common stock. Additionally, none of our subsidiaries have guaranteed or otherwise become obligated with respect to the Class A common stock or Series A Preferred Stock. As a result, the Class A common stock and Series A Preferred Stock effectively rank junior to all existing and future indebtedness and other liabilities of our subsidiaries, including our operating subsidiaries, and any capital stock of our subsidiaries not held by us. Accordingly, our right to receive assets from any of our subsidiaries upon our bankruptcy, liquidation or reorganization, and the right of holders of shares of Class A common stock and Series A Preferred Stock to participate in those assets, is also structurally subordinated to claims of that subsidiary' s creditors, including trade creditors. Even if we were a creditor of any of our subsidiaries, our rights as a creditor would be subordinate to any security interest in the assets of that subsidiary and any indebtedness of that subsidiary senior to that held by us. Numerous factors may affect the trading price of the Class A common stock and Series A Preferred Stock. The trading price of the Class A common stock and Series A Preferred Stock may depend on many factors, some of which are beyond our control **. Additionally** , ~~including~~ **the market price of our Class A common stock and Series A Preferred Stock may be highly volatile and may fluctuate substantially as a result of a number of factors. The following factors are beyond our control and could affect our stock price** : **• the pending merger, and if it is completed; • the impact of our reverse stock split on our common stock; • the announcement of the elimination, suspension, reduction or reinstatement of dividends on Class A common stock and Series A Preferred Stock; • the public reaction to our press releases, our other public announcements and our filings with the SEC; • trading volumes of the Class A common stock and Series A Preferred Stock;** • prevailing interest rates; • the market for similar securities; • general economic and financial market conditions; • our issuance of debt or other preferred equity securities; and • our financial condition, results of operations and prospects **. These and other factors may cause the market price and demand for our Class A common stock and Series A Preferred Stock to fluctuate substantially, which may adversely affect the trading price of our Class A common stock and Series A Preferred Stock. In the past, when the market price of a stock has been volatile, holders of that stock have often instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial defense costs. Such a lawsuit could also divert the time and attention of our management from our business. Trading prices and corresponding market value of Class A common stock and Series A Preferred Stock may also impact our ability to satisfy continued listing standards of The Nasdaq Global Select Market, or a particular tier of The Nasdaq exchanges** . One of the factors that will influence the price of the Class A common stock and Series A Preferred Stock will be the distribution yield of the securities (as a percentage of the then market price of the securities) relative to market interest rates. Increases in market interest rates, which have been at low levels relative to historical rates, may lead prospective purchasers of shares of Class A common stock or Series A Preferred Stock to expect a higher distribution yield, and cause them to sell their Class A common stock or Series A Preferred Stock. Accordingly, higher market interest rates could cause the market price of the Class A common stock and Series A Preferred Stock to decrease. In addition, over the last several years, prices of equity securities in the U. S. trading markets have been experiencing extreme price fluctuations. As a result of these and other factors, investors holding our Class A common stock and Series A Preferred Stock may experience a decrease in the value of their securities, which could be substantial and rapid, and could be unrelated to our financial condition, performance or prospects. There may not be an active trading market for the Class A common stock or Series A Preferred Stock, which may in turn reduce the market value and your ability to transfer or sell your shares of Class A common stock or Series A Preferred Stock. There are no assurances that there will be an active trading market for our Class A common stock or Series A Preferred Stock. The liquidity of any market for the Class A common stock and

Series A Preferred Stock depends upon the number of stockholders, our results of operations and financial condition, the market for similar securities, the interest of securities dealers in making a market in the Class A common stock and Series A Preferred Stock, and other factors. To the extent that an active trading market is not maintained, the liquidity and trading prices for the Class A common stock and Series A Preferred Stock may be harmed. Furthermore, because the Series A Preferred Stock does not have any stated maturity and is not subject to any sinking fund or mandatory redemption, stockholders seeking liquidity will be limited to selling their respective shares of Series A Preferred Stock in the secondary market. Active trading markets for the Series A Preferred Stock may not exist at such times, in which case the trading price of your shares of our Series A Preferred Stock could be reduced and your ability to transfer such shares could be limited. ~~Our Founder~~ **Mr. Maxwell** holds a substantial majority of the voting power of our common stock. Holders of Class A and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law or our certificate of incorporation and bylaws. ~~Our Founder~~ **Mr. Maxwell** beneficially owns approximately ~~66~~ **65** . 0 % of the combined voting power (excluding treasury shares) of the Class A and Class B common stock as of December 31, ~~2022~~ **2023** through his direct and indirect ownership in us. Affiliated owners are entitled to act separately with respect to their investment in us, and they have the ability to elect all of the members of our board of directors, and thereby to control our management and affairs. In addition, affiliates are able to determine the outcome of all matters requiring Class A common stock and Class B common stock shareholder approval, including mergers and other material transactions, and ~~is~~ **are** able to cause or prevent a change in the composition of our board of directors or a change in control of our company that could deprive our stockholders of an opportunity to receive a premium for their Class A common stock as part of a sale of our company. The existence of a significant shareholder, such as ~~our Founder~~ **Mr. Maxwell** , may also have the effect of deterring hostile takeovers, delaying or preventing changes in control or changes in management, or limiting the ability of our other stockholders to approve transactions that they may deem to be in the best interests of our company. So long as affiliates continue to control a significant amount of our common stock, they will continue to be able to strongly influence all matters requiring shareholder approval, regardless of whether other stockholders believe that a potential transaction is in their own best interests. In any of these matters, the interests of affiliates may differ or conflict with the interests of our other stockholders. Moreover, this concentration of stock ownership may also adversely affect the trading price of our Class A common stock or Series A Preferred Stock to the extent investors perceive a disadvantage in owning stock of a company with a controlling shareholder. Holders of Series A Preferred Stock have extremely limited voting rights. Voting rights of holders of shares of Series A Preferred Stock are extremely limited. Our Class A common stock and our Class B common stock are the only classes of our securities carrying full voting rights. Holders of the Series A Preferred Stock generally have no voting rights. As of April 15, 2022, we have the option to redeem our Series A Preferred Stock. We have engaged in transactions with our affiliates in the past and expect to do so in the future. The terms of such transactions and the resolution of any conflicts that may arise may not always be in our or our stockholders' best interests. We have engaged in transactions and expect to continue to engage in transactions with affiliated companies. We have acquired companies and books of customers from our affiliates and may do so in the future. We will continue to enter into back- to- back transactions for purchases of commodities and derivatives on behalf of our affiliate. We will also continue to pay certain expenses on behalf of several of our affiliates for which we will seek reimbursement. We will also continue to share our corporate headquarters with certain affiliates. We cannot assure that our affiliates will reimburse us for the costs we have incurred on their behalf or perform their obligations under any of these contracts. Our amended and restated certificate of incorporation and amended and restated bylaws, as well as Delaware law, contain provisions that could discourage acquisition bids or merger proposals, which may adversely affect the market price of our Class A common stock. Our amended and restated certificate of incorporation authorizes our board of directors to issue preferred stock without shareholder approval. On August 5, 2022, we filed a registration statement under the Securities Act on Form S- 3 allowing us to offer and sell, from time to time, among other securities, shares of preferred stock. The registration statement was declared effective on August 16, 2022. The election by our board of directors to issue preferred stock with anti- takeover provisions could make it more difficult for a third party to acquire us. In addition, some provisions of our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult for a third party to acquire control of us, even if the change of control would be beneficial to our stockholders. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws: • provide for our board of directors to be divided into three classes of directors, with each class as nearly equal in number as possible, serving staggered three year terms. Our staggered board may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for shareholders to replace a majority of the directors; • provide that the authorized number of directors may be changed only by resolution of the board of directors; • provide that all vacancies in our board, including newly created directorships, may, except as otherwise required by law or, if applicable, the rights of holders of a series of preferred stock, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum; • provide our board of directors the ability to authorize undesignated preferred stock. This ability makes it possible for our board of directors to issue, without shareholder approval, preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company; • provide that at any time after the first date upon which ~~W~~ **Mr** . ~~Keith~~ Maxwell ~~III~~ no longer beneficially owns more than fifty percent of the outstanding Class A common stock and Class B common stock, any action required or permitted to be taken by the shareholders must be effected at a duly called annual or special meeting of shareholders and may not be effected by any consent in writing in lieu of a meeting of such shareholders, subject to the rights of the holders of any series of preferred stock with respect to such series (prior to such time, such actions may be taken without a meeting by written consent of holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting); • provide that at any time after the first date upon which ~~W~~ **Mr** . ~~Keith~~ Maxwell ~~III~~ no longer beneficially owns more than fifty percent of the outstanding Class A common stock and Class B common stock, special meetings of our shareholders may only be called by the board of directors, the chief executive officer or the chairman of the board (prior to such time, special meetings may also be called by our Secretary at the request of holders of record of fifty percent of the outstanding Class A common stock and Class B common stock); • provide that our amended and restated certificate of incorporation and amended and restated bylaws may be amended by the affirmative vote of the holders of at least two- thirds of our outstanding stock entitled to vote thereon; • provide that our amended and restated bylaws can be amended by the board of directors; and • establish advance notice procedures with regard to shareholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our shareholders. These procedures provide that notice of shareholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. These requirements may preclude shareholders from bringing matters before the shareholders at an annual or special meeting. In addition, in our amended and restated certificate of incorporation, we have elected not to be subject to the provisions of Section 203 of the Delaware General Corporation Law (the " DGCL ") regulating corporate takeovers until the date on which ~~W~~ **Mr** . ~~Keith~~ Maxwell ~~III~~ no longer beneficially owns in the aggregate more than fifteen percent of the outstanding Class A common stock and Class B common stock. On and after such date, we will be subject to the provisions of Section 203 of the DGCL. Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents. Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, employees or agents to us or our stockholders, (iii) any action asserting a claim against us or any director or officer or other employee of ours arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation or our bylaws, or (iv) any action asserting a claim against us or any director or officer or other employee of ours that is governed by the internal affairs doctrine, in each such case subject to such Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. This exclusive forum provision would not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. To the extent that any such claims may be based upon federal law claims, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. Furthermore, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of, and consented to, the provisions of our amended and restated certificate of incorporation described in the preceding sentence. This choice of forum provision may limit a stockholder' s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and such persons. Alternatively, if a court were to find these provisions of our amended and restated certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect our business, financial condition or results of operations. Future sales of our Class A common stock and Series A Preferred Stock in the public market could reduce the price of the Class A common stock and Series A Preferred Stock, and may dilute your ownership in us. On August 5, 2022, we filed a registration statement under the Securities Act on Form S- 3 registering the primary offer and sale, from time to time, of Class A common stock, preferred stock, depositary shares and warrants. The registration statement also registers the Class A common stock held by our affiliates, Retailco and NuDevco (including Class A common stock that may be obtained upon conversion of Class B common stock). All of the shares of Class A common stock held by Retailco and NuDevco and registered on the registration statement may be immediately resold. The registration statement was declared effective on August 16, 2022. We cannot predict the size of future issuances of our Class A common stock or securities convertible into Class A common stock or the effect, if any, that future issuances or sales of shares of our Class A common stock will have on the market price of our Class A common stock. Sales of substantial amounts of our Class A common stock (including shares issued in connection with an acquisition), or the perception that such sales could occur, may adversely affect prevailing market prices of our Class A common stock. We may also in the future sell additional shares of preferred stock, including shares of Series A Preferred Stock, on terms that may differ from those we have previously issued. Such shares could rank on parity with or, subject to the voting rights referred to above (with respect to issuances of new series of preferred stock), senior to the Series A Preferred Stock as to distribution rights or rights upon liquidation, winding up or dissolution. The subsequent issuance of additional shares of Series A Preferred Stock, or the creation and subsequent issuance of additional classes of preferred stock on parity with the Series A Preferred Stock, could dilute the interests of the holders of Series A Preferred Stock, and could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock. Any issuance of preferred stock that is senior to the Series A Preferred Stock would not only dilute the interests of the holders of Series A Preferred Stock, but also could affect our ability to pay distributions on, redeem or pay the liquidation preference on the Series A Preferred Stock. Furthermore, subject to compliance with the Securities Act or exemptions therefrom, employees who have received Class A common stock as equity awards may also sell their shares into the public market. We have issued preferred stock and may continue to do so, and the terms of such preferred stock could adversely affect the voting power or value of our Class A common stock. Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designations, preferences, limitations and relative rights, including preferences over our Class A common stock with respect to dividends and distributions, as our board of directors may determine. Through December 31, ~~2022~~ **2023** , we have issued an aggregate of 3, 567, 543 shares of Series A Preferred Stock. The terms of the preferred stock we offer or sell could adversely impact the voting power or value of our Class A common stock. For example, we might grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we might assign to holders of preferred stock, such as the Series A Preferred Stock, could affect the residual value of the Class A common stock. Our amended and restated certificate of incorporation limits the fiduciary duties of one of our directors and certain of our affiliates and restricts the remedies available to our stockholders for actions taken by ~~our Founder~~ **Mr. Maxwell** or certain of our affiliates that might otherwise constitute breaches of fiduciary duty. Our amended and restated certificate of incorporation contains provisions that we renounce any interest in existing and future investments in other entities by, or the business opportunities of, NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and ~~W~~ **Mr** . ~~Keith~~ Maxwell ~~III~~ , or any of their officers, directors, agents, shareholders, members, affiliates and subsidiaries (other than a director or officer who is presented an opportunity solely in his capacity as a director or officer). Because of this provision, these persons and entities have no obligation to offer us those investments or opportunities that are offered to them in any capacity other than solely as an officer or director. If one of these persons or entities pursues a business opportunity instead of presenting the opportunity to us, we will not have any recourse against such person or entity for a breach of fiduciary duty. The Series A Preferred Stock represent perpetual equity interests in us, and investors should not expect us to redeem the Series A Preferred Stock on the date the Series A Preferred Stock becomes redeemable by us or on any particular date afterwards. The Series A Preferred Stock represents a perpetual equity interest in us, and the securities have no maturity or mandatory redemption date and are not redeemable at the option of investors under any circumstances. As a result, unlike our indebtedness, the Series A Preferred Stock will not give rise to a claim for payment of a principal amount at a particular date. As a result, holders of the Series A Preferred Stock may be required to bear the financial risks of an investment in the Series A Preferred Stock for an indefinite period of time. In addition, the Series A Preferred Stock will rank junior to all our current and future indebtedness (including indebtedness outstanding under the Senior Credit Facility) and other liabilities. The Series A Preferred Stock will also rank junior to any other preferred stock ranking senior to the Series A Preferred Stock we may issue in the future with respect to assets available to satisfy claims against us. The Series A Preferred Stock is not rated. We have not sought to obtain a rating for the Series A Preferred Stock, and the Series A Preferred Stock may never be rated. It is possible, however, that one or more rating agencies might independently determine to assign a rating to the Series A Preferred Stock or that we may elect to obtain a rating of the Series A Preferred Stock in the future. In addition, we may elect to issue other securities for which we may seek to obtain a rating. If any ratings are assigned to the Series A Preferred Stock in the future or if we issue other securities with a rating, such ratings, if they are lower than market expectations or are subsequently lowered or withdrawn, could adversely affect the market for or the market value of the Series A Preferred Stock. Ratings only reflect the views of the issuing rating agency or agencies and such ratings could at any time be revised downward or withdrawn entirely at the discretion of the issuing rating agency. A rating is not a recommendation to purchase, sell or hold any particular security, including the Series A Preferred Stock. Ratings do not reflect market prices or suitability of a security for a particular investor and any future rating of the Series A Preferred Stock may not reflect all risks related to us and our business, or the structure or market value of the Series A Preferred Stock. The Change of Control Conversion Right may make it more difficult for a party to acquire us or discourage a party from acquiring us. The Change of Control Conversion Right of the Series A Preferred Stock provided in the Certificate of Designation may have the effect of discouraging a third party from making an acquisition proposal for us or of delaying, deferring or preventing certain of our change of control transactions under circumstances that otherwise could provide the holders of our Series A Preferred Stock with the opportunity to realize a premium over the then- current market price of such equity securities or that stockholders may otherwise believe is in their best interests. Changes in the method of determining the **Three- Month CME Term SOFR** ~~London Interbank Offered Rate (" LIBOR ")~~ , or the replacement of ~~LIBOR~~ **Three- Month CME Term SOFR** with an alternative reference rate, may adversely affect interest rates under the floating dividend rate of our Series A Preferred Stock. **Under** ~~LIBOR is a basic rate of interest widely used as a global reference for setting interest rates on loans and payment rates on other~~ -- **the** ~~financial instruments.~~ **Certificate of Designation of the Series A Preferred Stock,** ~~Dividends~~ **dividends** on the Series A Preferred Stock accrue at a floating rate equal to the sum of: (a) Three- Month LIBOR Rate as calculated on each applicable determination date, plus (b) 6. 578 %. **LIBOR was a basic rate of interest widely used as a global reference for setting interest rates on loans and payment rates on other financial instruments, and ceased publication on June 30, 2023.** In ~~2017,~~ **accordance with** the ~~United Kingdom~~ **Adjustable Interest Rate (LIBOR) Act (the " LIBOR Act ") and the final regulations promulgated pursuant thereto by the Board of Governors of the Federal Reserve System (" Board "), the LIBOR Act specifies that the replacement benchmark rate on the Series A Preferred Stock following Three- Month LIBOR** ' s ~~Financial Conduct Authority~~ **end of publication on June 30** , ~~which regulates LIBOR~~ **2023 is Three- Month CME Term SOFR** , **as administered** ~~announced that it intended to phase out LIBOR~~ by **CME Group Benchmark Administration** ~~the end of 2021. It is unclear if LIBOR will cease to exist at that time~~ , ~~if new~~ **Ltd. (or any successor administrator), plus a tenor spread adjustment of 0. 26161 %. New** methods of calculating **Three- Month CME Term SOFR** ~~LIBOR will be established such that it continues to exist after 2021 or whether different reference rates will develop. It is impossible to predict the effect these developments, any discontinuance, modification or other reforms to LIBOR or the establishment of alternative reference rates may have on LIBOR, other benchmark rates or floating rate debt instruments. Although our Series A Preferred Stock contain LIBOR alternative provisions and the use of alternative reference rates, new methods of calculating LIBOR~~ or other reforms could cause the dividend rate on our Series A Preferred Stock to be materially different than expected, which could have an adverse effect on our business, financial position, and results of operations, and our ability to pay dividends on the Series A Preferred Stock ~~and Class A common stock~~ . A substantial increase in the Three-

Month ~~LIBOR~~ **CME Term SOFR** Rate or an alternative rate could negatively impact our ability to pay dividends on the Series A Preferred Stock ~~and Class A common stock~~. ~~If we do not repurchase or redeem our Series~~ A ~~Preferred Stock on or after April 15, 2022, a~~ substantial increase in the Three- Month ~~LIBOR~~ **CME Term SOFR** Rate ~~(if it then exists)~~, or a substantial increase in the alternative reference rate, could negatively impact our ability to pay dividends on the Series A Preferred Stock ~~. An increase in the dividends payable on our Series A Preferred Stock would negatively impact dividends on our Class A common stock. We cannot assure you that we will have adequate sources of capital to repurchase or redeem the Series A Preferred Stock on or after April 15, 2022~~. If we are unable to ~~repurchase or redeem the Series A Preferred Stock and our ability to~~ pay dividends on the Series A Preferred Stock ~~and Class A common stock is negatively impacted~~, the market value of the Series A Preferred Stock ~~and Class A common stock~~ could be materially adversely impacted. We may not have sufficient earnings and profits in order for dividends on the Series A Preferred Stock to be treated as dividends for U. S. federal income tax purposes. The dividends payable by us on the Series A Preferred Stock may exceed our current and accumulated earnings and profits, as calculated for U. S. federal income tax purposes. If this occurs, it will result in the amount of the dividends that exceed such earnings and profits being treated for U. S. federal income tax purposes first as a return of capital to the extent of the beneficial owner' s adjusted tax basis in the Series A Preferred Stock, and the excess, if any, over such adjusted tax basis as gain from the sale or exchange of property, which generally results in capital gain. Such treatment will generally be unfavorable for corporate beneficial owners and may also be unfavorable to certain other beneficial owners. You may be subject to tax if we make or fail to make certain adjustments to the conversion rate of the Series A Preferred Stock even though you do not receive a corresponding cash distribution. The Conversion Rate as defined in the Certificate of Designation for the Series A Preferred Stock is subject to adjustment in certain circumstances. A failure to adjust (or to adjust adequately) the Conversion Rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. If you are a non- U. S. holder, any deemed dividend may be subject to U. S. federal withholding tax at a 30 % rate, or such lower rate as may be specified by an applicable treaty, which may be set off against subsequent payments on the Series A Preferred Stock. We are a " controlled company " under NASDAQ Global Select Market rules, and as such we are entitled to an exemption from certain corporate governance standards of the NASDAQ Global Select Market, and you may not have the same protections afforded to shareholders of companies that are subject to all of the NASDAQ Global Market corporate governance requirements. We qualify as a " controlled company " within the meaning of NASDAQ Global Select Market corporate governance standards because an affiliated holder controls more than 50 % of our voting power. Under NASDAQ Global Select Market rules, a company of which more than 50 % of the voting power is held by an individual, a group or another company is a " controlled company " and may elect not to comply with certain corporate governance requirements. Although our board of directors has established a nominating and corporate governance committee and a compensation committee of independent directors, it may determine to eliminate these committees at any time. If these committees were eliminated, you may not have the same protections afforded to shareholders of companies that are subject to all of NASDAQ Global Select Market corporate governance requirements.