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Case No. 2020-0357-MTZ

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE PATTERN ENERGY GROUP INC. STOCKHOLDERS LITIGATION	CONSOLIDATED C.A. NO. 2020-0357-MTZ **Corrected Public Redacted Version Filed on November 21, 2022**

VERIFIED AMENDED CONSOLIDATED STOCKHOLDER CLASS ACTION COMPLAINT

Plaintiff Jody Britt ("Plaintiff"), on behalf of herself and all other similarly situated former public stockholders of Pattern Energy Group, Inc. ("PEGI" or the "Company"), brings the following Verified Amended Consolidated Stockholder Class Action Complaint (the "Complaint") against the Defendants named herein. The allegations of the Complaint are based on the knowledge of Plaintiff as to herself, and on information and belief, including the investigation of counsel, the review of publicly available information, the review of books and records produced by the Company in response to Plaintiff's demand made under 8 *Del. C.* § 220 (the "Section 220 Demand"), and fact discovery, as to all other matters.

INTRODUCTION

1. This action challenges blatant wrongdoing in connection with the recent, related-party sale of PEGI to the Canada Pension Plan Investment Board ("CPPIB") (the "Merger"). The Merger was the product of a corrupt and conflicted sale process, in which private equity firm Riverstone (defined below) and PEGI management competed directly with public stockholders for merger consideration.

After controlling the entire sale process, Riverstone and management, with the cooperation of the PEGI Board's (the "Board") special committee (the "Special Committee" or "Committee"), blocked a third-party offer that was acknowledged as "***superior from a value perspective***" to the Merger, because it did not give Riverstone or management the same valuable side deal as the Merger.[1]

2. Prior to the Merger, PEGI was a publicly-traded energy company that operated renewable power projects. PEGI's sister company was Pattern [redacted], "Pattern Development 2"), a limited partnership that developed renewable energy projects for PEGI to acquire and operate. At all relevant times, Pattern Development 2 was controlled by Riverstone and managed day-to-day by PEGI's management team, whose members also held a substantial equity stake in the private partnership.

3. In 2018—despite repeatedly assuring investors that the Company was executing on its long-term strategic plan, dubbed "Project Vision 2020"—PEGI management (including the Officer Defendants, as defined below), Riverstone, and Goldman Sachs & Co. LLC ("Goldman") worked behind the scenes to pre-plan the Merger. This pre-planning included numerous meetings to discuss a take-private of

[1] Unless otherwise indicated, all emphasis is added.

PEGI in conjunction with a combination of PEGI and Pattern Development 2, including meetings with Pattern Development 2 investors such as [redacted] ("PSP Investments"). During this time, PEGI's executive management team, which included the Officer Defendants, engaged in extensive deliberations about the take-private at an April 2018 retreat. Raw meeting notes from the executive management retreat lay out the corrupt plan [redacted][2] In an attempt to conceal these plans, the author of the raw meeting notes recirculated a revised version of the notes to PEGI's executive management team that deleted any reference to the plan to undervalue the Company and pay a premium to Riverstone and its limited partners, and instructed the team to "please delete the prior version."[3]

4. Two months later in June 2018, the Board held its very first meeting related to the sale process. During the meeting, the Board recognized that Riverstone—and all members of PEGI management—were conflicted in any sale

[2] PEGI-00123238.

[3] PEGI-00463524.

process because of their roles with and/or substantial interests in Pattern Development 2.

5. The Board therefore delegated complete authority to the Special Committee comprised of purportedly independent PEGI directors. But almost as soon as the process began, Riverstone, assisted by PEGI management, began improperly influencing it. And the Special Committee, which utterly failed to manage obvious conflicts of interest, cooperated.

6. The Special Committee delegated substantial authority and responsibility for running the process to Defendant Garland, PEGI's CEO, despite his simultaneous service as an officer and director (and equity holder) of Pattern Development 2, and thus at the pleasure of and as a fiduciary for Riverstone. The Special Committee likewise permitted Defendant Browne—a PEGI director disqualified from serving on the Special Committee because of his close relationship with Riverstone—to attend virtually all of the Special Committee's meetings, enabling him to represent and protect Riverstone's interests throughout the process, all to the detriment of PEGI stockholders.

7. By early 2019, Brookfield Asset Management Inc. ("Brookfield") had emerged as PEGI's most likely suitor and was proposing a merger between PEGI

and publicly-traded TerraForm Power, Inc. ("TerraForm"), which was controlled by Brookfield.

8. After Brookfield submitted a term sheet contemplating a merger with PEGI that did not involve Pattern Development 2, Garland and other members of management pivoted to ensuring that Pattern Development 2 and Riverstone would not be left behind.

9. Garland and other conflicted members of PEGI management began insisting to the Special Committee that any transaction with Brookfield would trigger a consent right possessed by Riverstone through the Pattern Development 2 partnership agreement.

10. The Special Committee's advisors, Evercore Group L.L.C. ("Evercore") and Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"), recognized that Riverstone's purported consent right was narrow and applied only to a "merger or consolidation" of PEGI itself. Evercore and Paul Weiss therefore advised the Special Committee that PEGI could avoid Riverstone's limited consent right, including by utilizing a merger structure in which PEGI would be the technical acquirer and surviving parent entity post-merger.

11. Garland responded by betraying the Special Committee. After the Special Committee sent Brookfield a revised term sheet in March 2019

contemplating a merger with TerraForm through a PEGI subsidiary—*i.e.*, a transaction structure that would not implicate any Riverstone consent right—Garland leaked the developments to Riverstone, which thereafter began working with CPPIB on an acquisition of both PEGI and Pattern Development 2.

12. In clear violation of the Special Committee's instructions, Garland had an in-person meeting with CPPIB and Riverstone in April 2019 to discuss CPPIB's interest in acquiring the Company. The Proxy claims that Garland promptly informed the Special Committee of his meeting with CPPIB and Riverstone, but the Section 220 production clearly shows that the Special Committee did not learn of CPPIB's interest for at least another month, until mid-May 2019. Even then, the Section 220 production shows that Garland obfuscated that CPPIB and Riverstone were working together.

13. Meanwhile, the Special Committee gave Riverstone continued access to the sale process. Browne attended Special Committee meetings and the Committee even allowed Riverstone to meet directly with Brookfield (*i.e.*, CPPIB's competition).

14. In April 2019, the Special Committee also inexplicably retained Goldman as a second financial advisor, even though Goldman is a substantial investor in Riverstone, had substantial business dealings with both Riverstone and

other Merger participants, and had advised Riverstone on a potential take-private of PEGI shortly before the sale process began. As detailed further below, Goldman's role in the Merger included, among other things:

a. Planning with the Riverstone and Officer Defendants to take PEGI private and combine it with Pattern Development 2 in a manner that would benefit Riverstone at the expense of PEGI's public stockholders;

b. Securing, through the Officer Defendants, and over the objections of the Special Committee itself, its engagement as the Special Committee's second financial advisor;

c. Taking a leading role during the Merger negotiation process by negotiating directly with Brookfield, CPPIB, and others, in violation of the Special Committee's explicit direction that Evercore, not Goldman, would have that role in light of Goldman's substantial conflicts of interest; and

d. Serving the interests of the Riverstone and Officer Defendants, at the expense of PEGI's public stockholders, during the Merger negotiation process, including by misleading Brookfield concerning the PEGI Board's purported lack of interest in internalizing Pattern

Development 2, providing analyses to the Special Committee that were unfairly biased against Brookfield, preferentially providing information to CPPIB that advantaged CPPIB in comparison to Brookfield, and advising Garland [redacted]

15. The effect of Riverstone's and PEGI management's disloyal actions tilted the Merger process in favor of Riverstone. As Riverstone later noted to Pattern Development 2's limited partners, while a PEGI-TerraForm merger transaction would have had "strong industrial logic . . . in our view it would create substantial risks for [Pattern Development 2], particularly" because it did not "align[] with management and future exit prospects." Riverstone, with the assistance of the Officer Defendants, thus "pursued two interventions," including "[i]ntroduc[ing] an alternative transaction [*i.e.*, CPPIB's offer] which would create competitive tension in our favor and represent a solution for PEGI which [will] allow for our continued sponsorship of the Pattern franchise." Riverstone made its motives clear to CPPIB: "we don't want B[rookfield] to have all [the] fun for the [] next 20 years and not be

able to participate in upside."[4] CPPIB would later describe itself as a "White Knight (or Black Panther) for ***Management, [Riverstone],*** and ***maybe PSP [Investments]***."[5] PSP Investments was PEGI's largest stockholder and had an undisclosed 22% interest in Pattern Development 2.

16. By July 2019, Brookfield was proposing a merger between TerraForm and PEGI in which PEGI stockholders would receive: (i) a 20% premium for their shares if the transaction did not involve Pattern Development 2; or (ii) only a 15% premium for their shares if the transaction also included an acquisition of Pattern Development 2. In other words, Brookfield expressly proposed to pay a higher premium to PEGI stockholders if Brookfield was not required to carry out a side-deal that benefitted PEGI management and Riverstone. Thus, the Special Committee understood that including Pattern Development 2 in any merger transaction would mean that Riverstone and PEGI management, as Pattern Development 2 equity holders, would be competing with PEGI stockholders for merger consideration.

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[4] CPPIB_0024108.

[5] CPPIB_0057832.

17. By the fall of 2019, Brookfield and CPPIB were making competing bids for the Company. CPPIB was offering to cash out public stockholders of PEGI for less than $27 per share, but with a side-deal for Pattern Development 2, while Brookfield was offering a stock deal worth in excess of $33 per share that would not include a Pattern Development 2 side deal.

18. Riverstone therefore began taking additional steps to block Brookfield. Among other things, Riverstone invoked its purported consent right, expressed that it would not consent to any transaction with Brookfield/TerraForm, and threatened meritless litigation if PEGI circumvented the purported consent right and attempted to acquire TerraForm.

19. At the same time, the Special Committee and its financial advisors acknowledged that Brookfield/TerraForm's offer was "***superior from a value perspective***" to CPPIB's offer. And just days before they approved the Merger, the Special Committee's financial advisors provided a detailed analysis showing that the Brookfield/TerraForm proposal offered higher value. During a pivotal September 29, 2019 Special Committee meeting, the Special Committee even acknowledged that under these circumstances, "the duty of the Committee was to maximize value for shareholders."

20. The Special Committee had numerous options and substantial leverage to overcome Riverstone's wrongful interference with Brookfield's superior proposal and maximize stockholder value. The Special Committee could have demanded that Riverstone consent to a Brookfield/TerraForm transaction or that CPPIB at least match Brookfield's superior offer. The Special Committee also could have simply proceeded with a Brookfield/TerraForm transaction structured so as to not trigger the Riverstone consent right. And, of course, the Special Committee had the option to terminate the sale process and direct management to continue executing on the Company's long-term strategic plan. But the Special Committee took none of these actions.

21. Instead, on November 3, 2019, the Special Committee recommended that the Board approve the Merger, under which stockholders would receive $26.75 in cash for each of their shares of PEGI stock—a ***take under*** to PEGI's trading price. Pattern Development 2 would be merged with post-closing PEGI in an all-equity transaction, and Riverstone and PEGI management would continue to hold substantial equity interests in the combined company. The Special Committee made this recommendation even though Goldman and Defendant Garland had acknowledged that Brookfield's proposed transaction would have resulted in the

combined PEGI/TerraForm company easily trading within a range of $28 to $30, at minimum.

22. Having conducted an unreasonable and hopelessly conflicted sale process and having accepted a transaction that it knew did not offer stockholders the best value reasonably available to them, the Board proceeded to cover up its failures. The Board fully delegated to the Company's conflicted management team the authority to determine what information the Company would disclose to PEGI stockholders in advance of the vote on the Merger, without reserving any authority to review or reviewing the disclosures before dissemination—a knowing abdication of its duty to provide PEGI stockholders with all material information concerning the Merger.

23. The result was a Proxy Statement (the "Proxy") that solicited stockholder approval for the Merger based on a myriad of material omissions and false and misleading disclosures. Among other things, the Proxy:

- Failed to disclose that Riverstone used its purported consent right to block a more valuable deal with Brookfield/TerraForm.
- Failed to disclose that Garland had unauthorized discussions with potential bidders in violation of the Special Committee's instructions, including an unauthorized in-person meeting with CPPIB and representatives of Riverstone in April 2019.
- Failed to disclose Goldman's conflicts of interest, including that Goldman owns a substantial stake in Riverstone, had advised

Riverstone on a take-private of PEGI, and had earned fees totaling [redacted] from Riverstone and CPPIB in recent years.

- Failed to disclose that Defendant Browne, a representative of Riverstone, attended a majority of the Special Committee's meetings.

- Failed to disclose that the Company's largest stockholder, PSP Investments, held a 22% interest in Pattern Development 2, and therefore was interested in the Merger.

- Failed to disclose Goldman's true involvement in the Merger process, including that Goldman had pre-planned a take-private with Riverstone and PEGI management and that management had retained Goldman on the Special Committee's behalf and over the Committee's objections.

- [redacted]

24. The pending Merger received significant pushback from investors and proxy advisory firms. As the vote tallying became known internally, CPPIB and Riverstone became concerned that the Merger would not receive PEGI stockholder approval. As a result, CPPIB and Riverstone discussed increasing the price paid for the Company [redacted][6] Incredibly, the Special Committee knew that CPPIB and Riverstone were potentially willing to bump the deal price due to uncertainty over the stockholder vote. Instead of insisting

[6] CPPIB_0324176, RIV00056845.

on a higher payout, the Special Committee permitted Garland to conduct substantial outreach to stockholders to switch their votes. Garland would later brag about how he "flip[ped]" two key stockholders, Grantham and Dimensional, from voting no to voting yes.[7] None of this was disclosed in the Proxy.

25. Yet, even with the sanitized Proxy, a majority of the Company's disinterested stockholders did not vote in favor of the Merger. Worse still, less than a month before the Board approved the Merger, and at Garland's specific urging, the Board approved an unnecessary, inappropriate, and highly manipulative issuance of voting preferred shares representing approximately 10% of PEGI's outstanding voting power that were required to be voted in favor of the Merger. Affiliates of CBRE Caledon Capital Management Inc. ("CBRE"), which purchased the newly issued preferred shares in the thick of PEGI's sale process, agreed to vote in line with any PEGI board recommendation under certain circumstances (including the Merger), in exchange for improved economic terms, at the expense of PEGI's common stockholders. PEGI management proposed that voting requirement as a defensive measure in direct response to Brookfield's superior offer. But for the Board's approval of this dilutive preferred share issuance, the Merger would not

[7] PEGI-00155664.

even have garnered the support of a simple majority of the Company's outstanding shares. As alleged herein, the Board, the Officer Defendants, and Riverstone disloyally recommended, approved, and improperly influenced the preferred stock issuance and ultimately used it to buy votes in favor of the Merger.

26. As discovery has shown, the preferred issuance was also unfair to PEGI stockholders in an even more fundamental way. The purpose of the preferred issuance as set out by the Officer Defendants was to acquire certain assets from Pattern Development 1 (defined below) and Pattern Development 2. Yet the preferred issuance was an unnecessarily expensive means of financing those acquisitions. That is why bidders in the PEGI sale process opposed the preferred issuance, and why Brookfield even offered cheaper alternative financing, which PEGI management rejected without even presenting the proposal to the Special Committee or the Board. Acquiring these assets using preferred financing was expected to benefit PEGI's longer-term owners (*i.e.*, Riverstone, PEGI management, and CPPIB) as those assets were developed or the funds were otherwise used for the post-Merger company's own purposes, but made no sense from the perspective of PEGI stockholders who would shortly thereafter be cashed out in the Merger. For that reason, Evercore had only recommended that PEGI acquire certain Pattern Development 1 and Pattern Development 2 assets if the Company decided *against*

running a sale process (and even then, it recommended that PEGI acquire those assets from existing liquidity). Ignoring this advice, PEGI's Board issued preferred stock shortly before the Merger, benefitting PEGI's owners-to-be at the expense of its existing stockholders, as well as swinging the Merger vote itself.

27. Using corporate assets (preferred stock and the terms of its issuance) to lock up the critical swing votes in the Merger and as a defensive measure against Brookfield's bid constituted illegal vote buying, and all Defendants must prove that the preferred issuance was entirely fair. They cannot do so, however, given the facts set out *infra*, including that no *independent* committee approved the preferred issuance or its associated voting requirement, and no stockholders voted on them.

28. As a result of the actions of the Defendants named herein, PEGI's public stockholders were cashed out of their investment in a transaction that did not maximize stockholder value. Plaintiff therefore seeks damages (including rescissory damages) on behalf of herself and the putative class.

PARTIES

I. Plaintiff

29. Plaintiff Jody Britt ("Plaintiff") was a stockholder of PEGI at all relevant times.

II. The Director Defendants

30. Defendant Michael M. Garland ("Garland") was the CEO and a director of PEGI from the Company's founding in October 2012 to the closing of the Merger. Post-closing, Garland continues to run the combined entity. Garland also served as President and a director of both Pattern Development 1 and Pattern Development 2, as defined herein. Prior to the Merger, Garland held a substantial equity interest in Pattern Development 2 and continues to hold equity in the post-closing company, as discussed herein.

31. Defendant Alan R. Batkin ("Batkin") served as PEGI's Chairman from the time of the Company's IPO in October 2013 through the closing of the Merger.

32. Defendant John Browne ("Browne"), The Lord Browne of Madingley, served as a director of PEGI from the Company's IPO in October 2013 through the closing of the Merger. Browne joined Riverstone in 2007 and served as a partner and managing director of Riverstone until 2015. Prior to joining Riverstone, Browne served as Group Chief Executive of British Petroleum plc ("BP") from 1995 to 1997 and served as a non-executive director of Goldman from 1999 to 2007.

33. Defendant Richard A. Goodman ("Goodman") served as a director of PEGI from December 2018 through the closing of the Merger.

34. Defendant Douglas G. Hall ("Hall") served as a director of PEGI from the Company's IPO in October 2013 to the closing of the Merger.

35. Defendant Patricia M. Newson ("Newson") served as a director of PEGI from the Company's IPO in October 2013 through the closing of the Merger.

36. Defendant Mona K. Sutphen ("Sutphen") served as a director of PEGI from December 2018 through the closing of the Merger.

37. Defendants Garland, Batkin, Browne, Goodman, Hall, Newson, and Sutphen are collectively referred to herein as the "Director Defendants."

III. The Officer Defendants

38. Defendant Hunter H. Armistead ("Armistead") served as PEGI's Executive Vice President, Business Development since August 2013 and continues to serve as an executive for the post-closing entity. Armistead also served as an Executive Director of Pattern Development 1 since June 2009 and as the President of Pattern Development 2 since April 2019. Prior to the Merger, Armistead held a substantial equity interest in and was a director of Pattern Development 2 and continues to hold equity in the post-closing company as discussed herein.

39. Defendant Daniel M. Elkort ("Elkort") served as PEGI's Executive Vice President and Chief Legal Officer since May 2018 and continues to serve as an executive for the post-closing entity. He also served as PEGI's Chief Compliance

Officer. Previously, Elkort served as PEGI's Executive Vice President and General Counsel from August 2013 to May 2018. Elkort served as Director of Legal Services and Co-Head of Finance of Pattern Development 1 since June 2009 and also served as an officer of Pattern Development 2. Prior to the Merger, Elkort held a substantial equity interest in Pattern Development 2 and continues to hold equity in the post-closing company as discussed herein.

40. Defendant Michael L. Lyon ("Lyon") served as PEGI's President since April 2019 and continues to serve as an executive for the post-closing entity. Lyon served as PEGI's CFO from October 2012 through March 2019. Lyon served as the Head of Structured Finance of Pattern Development 1 since May 2010. Lyon received substantial equity interests in the post-closing company as discussed herein.

41. Defendant Esben W. Pedersen ("Pedersen") served as PEGI's CFO since April 2019 and continues to serve as an executive for the post-closing entity. Pedersen previously served as PEGI's Chief Investment Officer from August 2013 through March 2019. Pedersen also served as the CFO for Pattern Development 2 since May 2018 and the Co-Head of Finance of Pattern Development 1 since June 2009. Pedersen received substantial equity interests in the post-closing company as discussed herein.

42. Defendants Garland, Armistead, Elkort, Lyon, and Pedersen are collectively referred to herein as the "Officer Defendants."

IV. The Riverstone Defendants

43. Defendant Riverstone Holdings LLC (together with its partners, affiliates, managed funds, and portfolio companies ("Riverstone Holdings") is a private equity fund investing primarily in energy, power, and infrastructure. According to Riverstone Holdings' founders, David Leuschen and Pierre Lapeyre, Jr., in August 2007, Riverstone Holdings hired Defendant Browne as Managing Director and Partner to help expand its existing energy practice and identify new opportunities in the alternative and renewable energy markets. Browne immediately recruited three of his former colleagues from BP to assist with Riverstone Holdings' newly-formed renewable energy practice, including (1) Christopher Barton Hunt ("Hunt"), who previously served as an executive of BP; (2) Robin Duggan ("Duggan"), who served for over 17 years and held various positions with subsidiaries and affiliates of BP; and (3) Alfredo Marti ("Marti"), who held numerous positions at BP from 1997 to 2008.

44. Defendant Pattern Development 2 was a private company that developed renewable energy projects that PEGI then purchased and operated. Pattern Development 2's board of directors consisted of five directors, a majority of

whom were appointed by Riverstone – Hunt, Duggan, and Marti – to serve as Riverstone's representatives. PEGI owned an approximate 29% economic interest in Pattern Development 2 prior to the Merger. Pursuant to transfer restrictions contained in Pattern Development 2's organizational documents, the board of directors of Pattern Development 2, which was controlled by Riverstone, had the purported right to block a merger of PEGI with a third-party.

45. Defendant Riverstone Pattern Energy II Holdings, LP ("RPE II," and, together with Riverstone Holdings, "Riverstone") held approximately 71% of Pattern Development 2's equity prior to the Merger and 100% of Pattern Development 2's general partner. Riverstone Holdings controlled RPE II and, in turn, controlled Pattern Development 2, its general partner, and its board of directors. As a result, Riverstone had collective control over Pattern Development 2.

46. Riverstone Holdings, Pattern Development 2, and RPE II are collectively referred to herein as the "Riverstone Defendants."

47. The Officer Defendants and Riverstone Defendants are collectively referred to herein as the "Controller Defendants."

V. Defendant Goldman Sachs & Co. LLC

48. Defendant Goldman Sachs & Co. LLC is a New York limited liability company that served as a financial advisor to the Special Committee in connection

with the Merger and served as a financial advisor to Riverstone in connection with analyzing a PEGI take-private transaction.

49. Goldman held numerous conflicts of interest in connection with the Merger.

A. Goldman's Major Investment in Riverstone

50. Riverstone has a deep and longstanding relationship with Goldman.

51. Among the most significant links between the two entities is Goldman's role as a major investor in Riverstone pursuant to a May 2017 Equity Subscription and Investment Agreement (the "Subscription Agreement"), under which Goldman received over [redacted] in revenue sharing.[8]

52. Under the Subscription Agreement, certain Goldman affiliates (the "Subscribers") made a [redacted] initial investment and agreed to pay up to an additional [redacted] in contingent payments to Riverstone in the future, including an earnout payment of [redacted] to Riverstone in June 2018.[9] In exchange for those payments, the Goldman affiliates received interests which entitled them to share "in certain economic streams generated by current and future investment

[8] RIV00291897.

[9] *Id.* at RIV00291909-10 (Recitals), Responses and Objections of [Riverstone] to Plaintiff's Second Set of Interrogatories Directed to the Riverstone Defendants ("Riverstone Interrogatory Response") No. 1.

funds, listed strategies and other products comprising the investment advisory and investment businesses, activities and operations conducted under the 'Riverstone' name or managed by the Riverstone Companies[.]"[10]

53. Under the Subscription Agreement, Goldman received an Equity Ownership Percentage of [redacted], which could increase to [redacted], in revenue sharing with respect to Riverstone's fees and performance income.[11]

54. Through this arrangement, Goldman stood to make significant financial gains when Riverstone was profitable. In fact, Riverstone paid Goldman [redacted] for [redacted] revenue sharing from management fees, deal fees, and carried interest" between November 2017 and June 2022.[12]

55. The Subscription Agreement cemented a long-term and continuing relationship between Riverstone and Goldman by requiring Riverstone to reserve [redacted] of the total capital commitments for any future Riverstone private equity fund for investment by Goldman.[13] Riverstone is also required to establish any future

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[10] RIV00291897 at 924 (Section 2.1(a)).

[11] *Id.*; *see also id.* at 935 (Section 2.5(d)).

[12] Riverstone Interrogatory Response No. 1.

[13] RIV00291897 at 970 (Section 6.9).

fund in such a manner so as to ensure that Goldman is able to invest.[14] Under the Subscription Agreement, Goldman is responsible for funding [redacted] of new Riverstone investments (or at least [redacted] with respect to each new investment, up to an aggregate cap of [redacted]).[15]

56. Thus, the Subscription Agreement closely linked Riverstone's and Goldman's financial interests on an ongoing basis.

B. Goldman's Business Dealings with Riverstone Were Extensive and Continuing

57. Goldman's conflict disclosure letters to the Special Committee reveal pervasive links between Goldman and Riverstone.[16]

58. For example, Goldman acknowledged that, as described above, Goldman-affiliated funds held a substantial investment in Riverstone.[17]

59. Goldman's July 2, 2018 conflict disclosure letter to the Special Committee (the "July 2, 2018 letter") also described an "active coverage dialogue" between Goldman's Investment Banking Division, "including the team positioning

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[14] *Id.* at 979 (Section 6.17).

[15] *Id.* at 930 (Section 2.2(a), (b)).

[16] GS-0012993, PEGI-00001021.

[17] GS-0012993 at 002-003, PEGI-00001021 at 041-042.

to represent the potential Pattern Energy Special Committee," and Riverstone.[18] In particular, the letter disclosed that Brian Bolster ("Bolster"), who ultimately led Goldman's efforts with respect to the Merger, was "a member of the Investment Banking Division team ***serving Riverstone***."[19]

60. Riverstone also had a significant credit relationship with Goldman. [redacted].[21] According to Riverstone, the Pattern Development 2 credit facility not only provided liquidity, but also offered Riverstone [redacted] with respect to its relationship with Goldman.[22] Indeed, Riverstone recognized [redacted][23] Ultimately, shortly after the Merger closed, [redacted]

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[18] GS-0012993 at 002.

[19] *Id.*

[20] GS-0012993 at 996.

[21] RIV00039244, CPPIB_0180593.

[22] RIV00039244.

[23] RIV00135217.

[redacted][24]

61. Goldman's July 2018 letter further identified thirteen different engagements that it had performed for Riverstone over the course of the prior two years, including four engagements involving financial advisory services and nine involving underwriting services, for which it had received aggregate compensation of approximately [redacted].[25] Goldman's follow-up August 2019 conflict disclosure letter to the Special Committee identified three additional underwriting engagements Goldman had undertaken for Riverstone between August 2018 and May 2019, for an additional nearly [redacted] in aggregate compensation.[26] In total, Goldman's compensation as a result of these prior engagements for Riverstone was approximately [redacted].

62. Goldman's work for Riverstone included, for example, serving as bookrunner on two different Riverstone-affiliated Special Purpose Acquisition Companies ("SPACs") in 2016 and 2017.[27] Goldman and Riverstone also jointly

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[24] PEGI-00004260, SS_Pattern00027907.

[25] GS-0012993 at 999-001.

[26] PEGI-00001021 at 029-030.

[27] EVR_00148713.

acquired a midstream natural gas company called Lucid Energy Group II for $1.6 billion in 2018, with Goldman representing the Riverstone-Goldman joint venture that made the acquisition.[28] Goldman and Riverstone later sold that company for over $3.5 billion in 2022.[29]

63. Goldman's prior work extended beyond Riverstone to other participants in the Merger negotiation process, including 27 different engagements for CPPIB, PEGI's eventual purchaser, for aggregate compensation of approximately [redacted] between 2017 and 2019.[30] Goldman also undertook

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[28] *Id.*; *see also* Collin Eaton, "Lucid Energy sells Permian unit to Riverstone, Goldman for $1.6 billion," *Houston Chronicle*, Jan. 8, 2018, https://www.chron.com/business/energy/article/Lucid-Energy-sells-Permian-unit-to-Riverstone-12481417.php.

[29] Obey Martin Manayiti, "Riverstone, Goldman Sachs Asset Management exits Lucid to Targa Resource Corp for $3.55 billion," *PE Hub*, June 17, 2022, https://www.pehub.com/riverstone-goldman-sachs-asset-management-exits-lucid-to-targa-resource-corp-for-3-55-billion.

[30] For example, Goldman served as the exclusive financial advisor to CPPIB with respect to its acquisition of six Canadian operating wind and solar projects from NextEra Energy Partners, which was announced in April 2018. GS-0000004 (slide 27). Brian Bolster and Yoomin Hong of Goldman communicated regularly with Martin Laguerre and Bruce Hogg of CPPIB regarding the status of ongoing projects. GS-0122037, GS-0012991, GS-0123269. As such, Goldman's August 9, 2019 disclosure letter to the Special Committee indicated that Bolster served CPPIB. PEGI-00001021. Bolster then pitched CPPIB on additional business related to a request for proposal for wind or solar energy in December 2019. GS-0151447.

numerous engagements for PSP Investments, a major investor in both PEGI and Pattern Development 2, for aggregate compensation of approximately [redacted].

64. Further, as explained below, discovery in this case shows that Goldman was at all times working to advance the interests of Riverstone, PEGI management, and itself.

SUBSTANTIVE ALLEGATIONS

I. Company Overview: Riverstone's Long-Term Relationship with Pattern Development 1, the Officer Defendants, and PEGI

65. PEGI was a publicly-traded renewable energy company that owned and operated utility-scale wind and solar projects in the U.S., Canada, and Japan, as well as additional development projects in Mexico. Prior to the Merger, PEGI traded on both the NASDAQ Global Select Market and the Toronto Stock Exchange, which subjected the Company to both American and Canadian securities regulations.

66. In 2007, Riverstone formed a renewable energy practice led by Defendant Browne, who, in turn, recruited his former BP colleagues – Hunt, Duggan, and Marti – to assist with identifying new opportunities in the renewable market. PEGI was one of Riverstone's earliest investments in the renewable energy space.

67. PEGI's formation can be traced back to the North American wind energy group of Babcock & Brown LLP ("Babcock & Brown"), a now-defunct

Australian global investment and advisory firm. In 2009, Riverstone and the management team of Babcock & Brown's North American Energy Group, which included the Officer Defendants, acquired Babcock & Brown's wind development portfolio to form Pattern Energy Group LP (together with its subsidiaries, "Pattern Development 1"). Pattern Development 1 was at all times controlled by Riverstone.

68. The extent and significance of the relationship between the Officer Defendants and Riverstone cannot be overstated. For over a decade Riverstone has been their co-investor, partner, employer, sponsor, and financial patron. In a 2009 *Reuters* article, Officer Defendant Armistead noted that, by Riverstone acquiring the wind development portfolio and forming Pattern Development 1, the management team was "***free of Babcock***, which is a great thing[.]" Armistead stated "[i]t was clear we needed to find another party that was interested in investing in renewables and valued our team . . . . We found the perfect partner in Riverstone – we have a new backer." Riverstone has continued to back the Officer Defendants through the present day.

69. Pattern Development 1 developed and constructed renewable energy projects but did not operate those projects. Rather, Riverstone and the Officer Defendants created PEGI as a publicly-traded entity with rights to purchase

renewable energy projects from Pattern Development 1 for operation. To that end, in October 2012, Pattern Development 1 incorporated PEGI.[31]

70. Riverstone controlled PEGI through Pattern Development 1 from the outset. Pattern Development 1 took PEGI public in October 2013 and retained a 67.9% voting interest following the Company's IPO, excluding the exercise of underwriter overallotment options. Therefore, both prior to and immediately after the Company's IPO, Riverstone controlled PEGI and had the ability to select each of the Company's original seven directors. Two of the directors were Riverstone partners: Defendant Browne, who remained a PEGI director through the Merger and was included in the entire Special Committee process despite his conflicts; and Michael Hoffman, who had left the Board [redacted].[32] A third PEGI director, Patricia Bellinger ("Bellinger"), worked under Browne at BP from 2000-2007.[33] With Garland, who was affiliated with

[31] PEGI had a right of first offer ("ROFO") with respect to the projects that Pattern Development 1 developed for sale. In the event Pattern Development 1 did not accept PEGI's proposal under its ROFO, Pattern Development 1 was required to either sell the project to a third-party for at least 105% of PEGI's offer, or sell it to PEGI at a later date for 96% of PEGI's original offer.

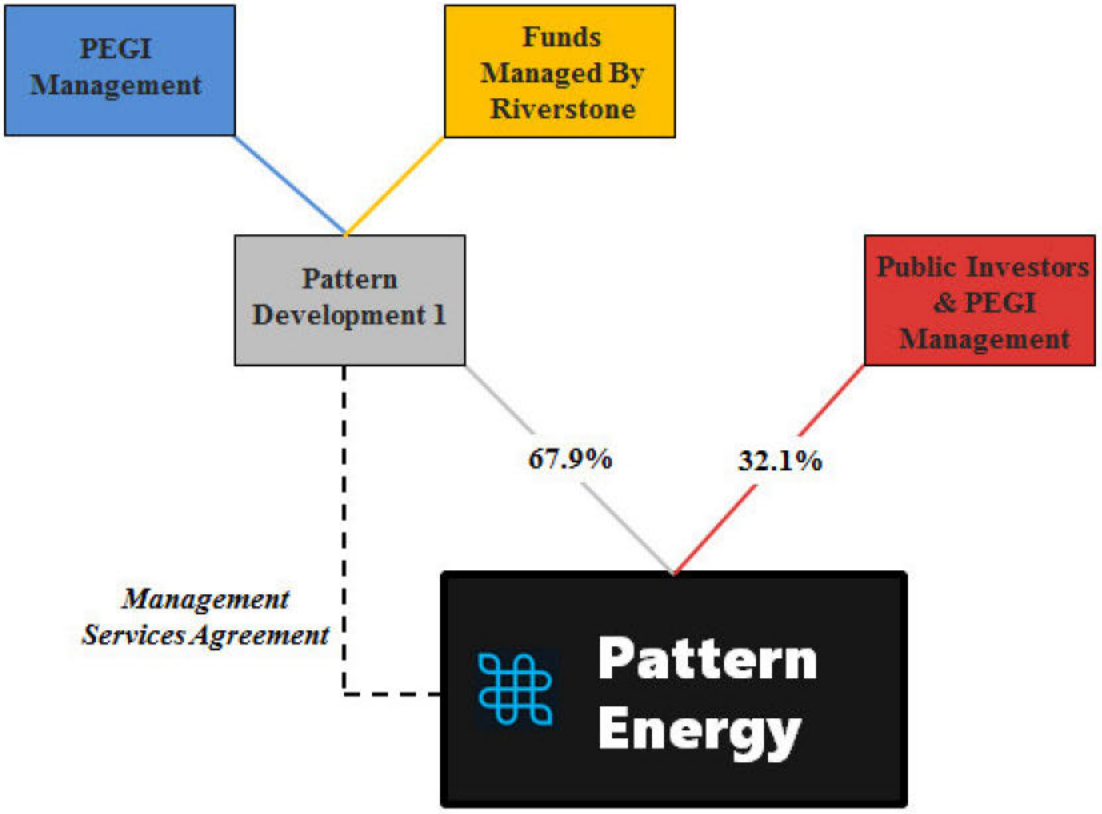
[32] Michael Hoffman resigned from the Board on August 6, 2018. [redacted]

[33] Bellinger resigned from the Board on December 28, 2018.

Riverstone, at least four out of the Company's initial seven directors were not independent of Riverstone.

71. Certain of the Officer Defendants also held a substantial ownership interest in Pattern Development 1.

72. An illustration of PEGI's then-corporate structure follows:



73. In connection with the IPO, Pattern Development 1 and PEGI entered into a "Shareholder Agreement" that, among other things, gave Pattern Development 1, and thus Riverstone, a consent right over numerous major corporate transactions so long as Pattern Development 1 owned at least one-third of the Company's

outstanding shares. Section 2.01(a) of the Shareholder Agreement provided Riverstone a consent right over mergers of PEGI and Section 2.01(b) provided Riverstone a consent right over any acquisition worth more than 10% of PEGI's market capitalization. As of February 2015, Pattern Development 1 no longer held at least one-third of PEGI's outstanding shares, and these consent rights lapsed at that time.

74. Each of the Officer Defendants also served as executive officers of Pattern Development 1 and the two companies were run as one entity from the same offices. Thus, through Pattern Development 1 and the Officer Defendants, Riverstone maintained control over all aspects of the Company's business and affairs and had ongoing access to all information concerning the Company.

75. In light of the corporate structure, both Riverstone and the Officer Defendants suffered from obvious and substantial potential conflicts of interest. The Officer Defendants were at least dual fiduciaries[34] and the Company repeatedly noted in public filings the potential for these conflicts to manifest:

> Certain of our executive officers provide services to Pattern Development pursuant to the terms of the Management Services

[34] Given management's long-standing relationship to Riverstone, and Riverstone's complete control over Pattern Development 1, it could be said that the Officer Defendants were, in effect, ***tri-fiduciaries*** – *i.e.*, fiduciaries to PEGI, Pattern Development 1, and Riverstone.

> Agreement between our company and Pattern Development and, as a result, in some instances, have fiduciary or other obligations to Pattern Development. Additionally, [the Officer Defendants, among others,] have economic interests in Pattern Development and, accordingly, the benefit to Pattern Development from a transaction between Pattern Development and our company will proportionately inure to their benefit as holders of economic interests in Pattern Development.… Those of our executive officers who have economic interests in Pattern Development may be conflicted when advising the conflicts committee or otherwise participating in the negotiation or approval of such transactions.

76. In the years following the IPO, PEGI paid steady dividends and attracted long-term investors with an interest in renewable energy. But the Company's share price remained flat. Starting in 2017, the Company took steps to vastly improve its performance by scaling its business model. The related-party, going-private Merger would occur just as the Company's transformative plan began to bear fruit.

II. Pattern Vision 2020: Defendants Create Pattern Development 2 and Grant Riverstone a Purported Consent Right

77. In 2017, as the general public began to view renewable energy as a viable and necessary alternative to fossil fuels, the demand for renewable energy sources reached record levels. For instance, by 2016, renewable energy projects had attracted double the capital investment of fossil fuels for five consecutive years, with global investment in renewables ($227 billion) far outpacing investment in fossil

fuel generation ($114 billion). Market commentators projected these trends would continue, or increase in the future, both of which happened.

78. While PEGI and Pattern Development 1 had proven a viable business model, Pattern Development 1 seemingly lacked the capital resources necessary to scale the Company's supply chain to meet global demand. The Company thus pivoted to a new growth phase.

79. In June 2017, with Pattern Development 1 and Riverstone still in control of over 19% of PEGI's outstanding stock, the Company announced a new strategic initiative to revamp its capital structure and optimize future growth, called "Pattern Vision 2020." The primary goal was simple: double the size of the Company within three years.

80. Pattern Vision 2020 contemplated winding down Pattern Development 1 and replacing it with Pattern Development 2, which the Company, Riverstone, and the Officer Defendants financed with significant new capital contributions designed to grow total development projects by 70%. The Company projected doubling its operations by 2020, with a pipeline allowing for another doubling in the following years. Just as with Pattern Development 1, PEGI's executive team worked for both PEGI and Pattern Development 2 as dual fiduciaries, and PEGI had rights of first offer on Pattern Development 2's projects.

81. Pattern Development 2 received total capital commitments of nearly $1 billion. Riverstone and management held an initial 49% interest in Pattern Development 2, which they increased to 71% within a year. PEGI's management committed $5 million such that, at the time of the Merger, they owned less than 1% of Pattern Development 2's Class A units and approximately 75% of Pattern Development 2's Class B units. Class A and Class B interests in Pattern Development 2 entitled holders, in the aggregate, to at least 85% and up to 15% of the cumulative profits of Pattern Development 2, respectively.

82. PEGI committed $60 million for an initial 20% interest, with the option to contribute an additional $260 million. At the time of the Merger, PEGI had invested a total of $190 million and owned 29% of Pattern Development 2.

83. PEGI became a limited partner of Pattern Development 2 under its Second Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). At the time, the Company portrayed the investment as fair and advantageous and touted the investment as aligning the interests of PEGI and its investors, on the one hand, and Pattern Development 2 and its investors, on the other. Among other things, the Company told stockholders that PEGI "will own partnership interest on [the] same basis as other investors" and that the partnership

would "[c]reate[] strong, lasting alignment between Pattern Development 2.0 and [PEGI] including 110% ROFO right."

84. In reality, however, the Partnership Agreement purported to hand significant control over PEGI to Riverstone with respect to future transformative transactions involving PEGI.

85. Specifically, Section 12.01 of the Partnership Agreement prohibited the "Transfer" of any interests in Pattern Development 2 by a limited partner, other than Riverstone, unless the board of directors of Pattern Development 2 consented to such transfer. Under the Partnership Agreement, "Transfer" was defined to include any "merger or consolidation" of any limited partner, including PEGI.

86. Pattern Development 2's board could withhold its consent in its "sole discretion," and the Pattern Development 2 board was "entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of, or factors affecting, the Partnership, any Partner or any Transferee." Further, the board could exercise its discretion without being "subject to any other or different standards imposed by this Agreement or any other agreement contemplated hereby or ***under the Act*** or any other law, rule or regulation." Riverstone controlled a majority (three of five) Pattern Development 2

board seats, with Hunt, Duggan, and Marti serving as directors. The other two board seats were occupied by Defendants Garland and Armistead.

87. In effect, Riverstone used its position of control and authority over the Company to obtain control rights that would remain in effect even if Riverstone liquidated its shareholdings in PEGI. Importantly, at the time the Company entered into the Partnership Agreement, Riverstone no longer had the right to block mergers of PEGI pursuant to the Shareholder Agreement because Pattern Development 1 owned less than one-third of PEGI's outstanding stock. Moreover, unlike the Shareholder Agreement, the Partnership Agreement did not contain any restrictions on PEGI's ability to make significant acquisitions.

88. Given that it purports to permit the board of Pattern Development 2—*i.e.,* Riverstone—to act in bad faith toward the limited partners of Pattern Development 2, there are serious questions about the transfer restriction's enforceability.[35] Regardless, the PEGI Board's decision to agree to the transfer restriction is inexplicable. By its terms, the transfer restriction gave Riverstone the ability to unreasonably withhold its consent to transactions that the Board of PEGI determined were in PEGI or its stockholders' best interests. Indeed, as explained

[35] *See, e.g., Skye Mineral Invs., LLC v. DXS Cap. (U.S) Ltd.*, 2020 WL 881544, at *26 (Del. Ch. Feb. 24, 2020).

below, Riverstone ultimately used Pattern Development 2's consent right in connection with the Merger to demand and secure highly valuable side-benefits at the expense of PEGI's public stockholders. And, although the Partnership Agreement was public, PEGI never disclosed the existence of the transfer restriction and did not even explain its existence or significance in the Proxy.

89. In any event, the transfer restriction meant that Riverstone, through Pattern Development 2, could claim control rights over PEGI, at least in connection with any sale of the Company. Indeed, PEGI and Pattern Development 2 themselves appear to have recognized this fact. *See* Amended and Restated Purchase Rights Agreement dated as of June 16, 2017 (the "Purchase Rights Agreement") (defining "PEG 2 LP Entities" to mean "PEG 2 LP [*i.e.,* Pattern Development 2] and its Subsidiaries, and any other Person ***Controlled***, ***directly or indirectly***, ***by PEG 2 LP***, in each case, ***other than the PEG Inc. Entities*** [*i.e.*, PEGI or any Person Controlled by PEGI]"); (defining "Controlled" to mean "the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, ***by contract*** or otherwise."). Thus, through the Purchase Rights Agreement, the parties themselves acknowledged that the consent right did, in fact, provide Pattern Development 2, and in turn Riverstone, with control over the Company in certain circumstances.

90. Although the Partnership Agreement limited PEGI's ability to undertake certain transformative transactions, any sophisticated deal planner would have been capable of structuring a transaction involving PEGI that did not implicate the consent right, as the Partnership Agreement defined "Transfer" to mean only the "the merger or consolidation of [PEGI] . . . with another Person"—i.e., the Partnership Agreement, unlike the Shareholder Agreement, placed no limitation on PEGI's ability to acquire another company.

91. For example, nothing in the Partnership Agreement prevented PEGI from acquiring another company through issuance of stock and using a wholly-owned subsidiary to accomplish the transaction. As explained below, the Special Committee's advisors recognized this very early in the transaction process.

92. Moreover, the Company had other protections that provided leverage over Riverstone and Pattern Development 2. For example, under Section 3.2 of the Purchase Rights Agreement, the Company had a right of first offer, whereby if Pattern Development 2 proposed to "Transfer any material portion of the Equity Interests or all or substantially all of the assets of [Pattern Development 2]," the Company had a right to receive notice and offer to purchase the equity interests or assets within 45 days. In the event the Company's offer was rejected, Pattern

Development 2 could only sell the equity interests or assets within six months for an amount greater than or equal to 110% of the Company's offer price.

93. Furthermore, Section 9.06(g) of the Partnership Agreement states that Pattern Development 2 needed to obtain ***PEGI's consent*** before "***initiating any litigation or other legal or administrative proceeding*** or entering into any settlement agreement or series of settlement agreements with respect to or otherwise resolving any such litigation or proceeding, in each case, in an amount greater than $10 million."

III. Pattern Vision 2020: Riverstone and PSP Investments Join Forces and Establish Interlocking Conflicts of Interests

94. Pattern Vision 2020 also involved selling a significant stake in PEGI to PSP Investments. But unbeknownst to investors, PSP Investments also acquired more than 20% of Pattern Development 2 through Riverstone. Thus, as a result of Pattern Vision 2020, PSP Investments became both the largest single stockholder of PEGI and a significant undisclosed stakeholder alongside Riverstone in Pattern Development 2. This conflicted circumstance remained undisclosed in the Merger Proxy.

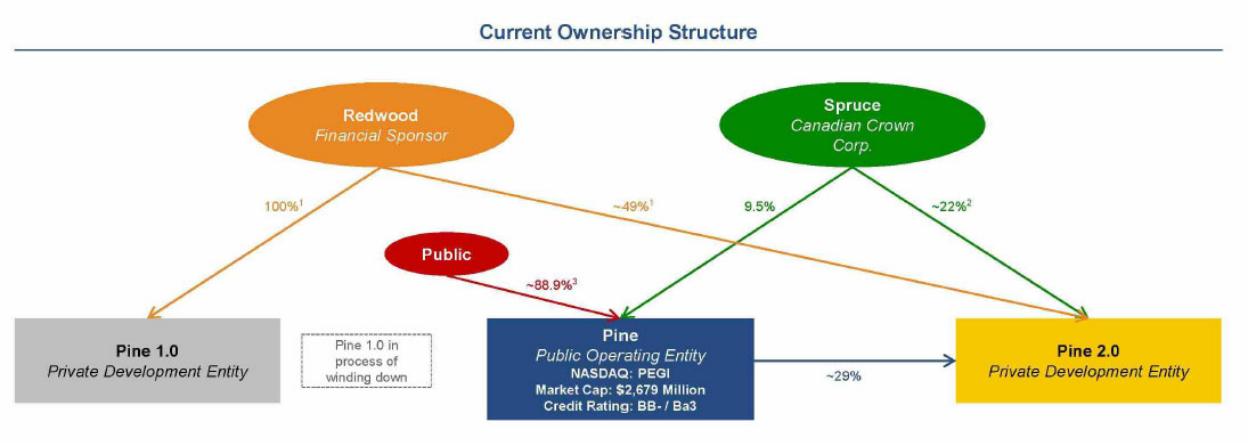
95. As part of Pattern Vision 2020, PSP Investments agreed to acquire a 9.9% stake in PEGI from Pattern Development 1. PEGI and PSP Investments also entered into a joint venture agreement that provided PSP Investments the right to co-

invest alongside PEGI, up to an aggregate amount of approximately $500 million, in energy projects the Company acquired from Pattern Development 2.

96. The joint venture agreement contained a 12-month standstill provision. Pursuant to that provision, PSP Investments could not "enter, agree to enter, propose, seek or offer to enter into or facilitate any merger . . . involving PEGI or any of its Subsidiaries," or "advise, assist or encourage or enter into any discussions, negotiations, agreements or arrangements with any other Persons in connection with the foregoing." Thus, despite the fact that the Company's strategic plan was a three-year plan and forecasted positive results beginning in 2020, PSP Investments was given the ability to facilitate a sale of PEGI within one year, or as soon as June 16, 2018. The Company would ultimately start a strategic review shortly before that exact date.

97. A slide reviewed by the Special Committee during the Merger process summarizes the ownership structure of Pattern Development 2 as follows:[36]

[36] The Legend below the slide was created by Plaintiff's counsel for ease of reference.



Legend

Redwood – Riverstone

Spruce – PSP Investments

Pine – PEGI

Pine 1.0 – Pattern Development 1

Pine 2.0 – Pattern Development 2

98. As the slide shows, PSP Investments held an indirect, 22% economic interest in Pattern Development 2 through a Riverstone investment vehicle.[37] As discussed below, none of the Company's public filings, including the Proxy, disclosed that PSP Investments—which was PEGI's single-largest stockholder at the time of the Merger—owned nearly one-quarter of Pattern Development 2 through an investment with Riverstone.

[37] The presentation uses Spruce as a code name for an entity that also owned 9.5% of PEGI and is a Canadian Crown Corporation. Only PSP Investments, a Canadian Crown Corporation, fits this criteria. Evercore calculated PSP Investments' 22% indirect interest in Pattern Development 2 assuming that PSP Investments contributed capital in the same proportion as PEGI since PSP Investments' initial investment in 2017, when it acquired 12% of Pattern Development 2.

IV. Pattern Vision 2020 Progresses As Planned, With Long-Term Investors Set to Reap the Benefits in 2020 and Beyond

99. From the announcement of Pattern Vision 2020 to the time of the Merger, the Company repeatedly assured investors that the strategic initiative was progressing as planned, with Riverstone having diminished influence over the Company.

100. As part of Pattern Vision 2020's wind-down of Pattern Development 1, Pattern Development 1 planned to sell its PEGI stock. That process began in late 2017, when Pattern Development 1 issued a Schedule 13D disclosing a 10b5-1 trading plan whereby it would sell its remaining investment in PEGI.

101. Then, in November 2017, Garland assured public investors that the Company had "a plan for creating ***long-term*** value for investors." He stated that the Pattern Development 2 investment in June 2017, along with an October 2017 equity raise, "allows us to begin the next phase of our growth strategy," with "excellent growth opportunities," including "the near-term iROFO [identified right of first refusal] assets . . ., our investment in Pattern Development 2.0, and the expanded development pipeline of more than 10 gigawatts at Pattern Development."

102. Throughout 2018, Garland repeatedly reassured investors that the Company continued to execute on Pattern Vision 2020, which would result in substantial benefits in 2020 and beyond:

- **Q1 2018 Earnings Call**: Garland notes that the Company had made and will continue to make "important investments in accretive project acquisitions and [] investments in Pattern Development 2.0," without any reduction to the dividend level or resorting to raising common equity.

- **Q2 2018 Earnings Call**: Garland again notes that the Company will maintain its dividend level and expressed confidence "that the operating portfolio can sustain the existing level without raising common equity any time soon."

- **Q3 2018 Earnings Call**: Garland reaffirms that the Company will maintain its dividend level without raising common equity. He also reiterates an optimistic outlook for future growth, noting that the Company's "material [] ownership interest in the new development business is a clear differentiator to other players in the market," which is expected to lead to "gains in distributions in the next few years from Pattern Development 2.0."

103. Also in 2018, Pattern Development 1 continued the process of winding down, creating the impression that Project Vision 2020 remained on track. By July 2018, Pattern Development 1's ownership interest in PEGI fell below the 5% reporting threshold, and Pattern Development 1 purportedly sold the rest of its PEGI stock by October 2018.

104. Throughout 2019, the Company continued to reassure investors that Pattern Vision 2020 was on track, with limited risk that the Company would need to access additional capital. From the perspective of investors, the Company had no exigent need to be acquired and, according to management's statements during the first half of 2019, had ample liquidity and financing options for future growth.

105. **March 1, 2019 Earnings Call:** Management provided guidance for the following two years for the first time in order to provide investors with a long-term outlook. Garland expressed excitement about the Company's "growth opportunity from Pattern Development [2]." He noted that with the Company expected to "begin to receive significant cash distributions from Pattern Development [2], which by 2020 should exceed the partner's need for new capital development expenditure." That is, the Company's investment in Pattern Development 2 would eventually pay for itself in future years, with limited need to make additional capital contributions to fund new development projects.[38]

106. Garland also assured public investors that the Company had no intention of raising common equity capital in 2019 or 2020. He noted that the existence of a multitude of means of raising capital meant the Company had access to ***$300 to $500 million*** in additional liquidity without issuing new common equity. Indeed, an accompanying slide disclosed that the Company had a total of $735 million in available liquidity as of the end of 2018, only $200 million of which was slated for acquisitions, investments, and debt repayment.

[38] In fact, the projections relied on by Evercore for its fairness opinion projected hundreds of millions of dollars in distributions from Pattern Development 2 and only $11 million of future investments from PEGI into Pattern Development 2.

107. Garland also provided an update on management changes that allowed him to dedicate "more … time to focus on strategic initiatives that will drive growth and generate substantial value in the long term for our shareholders."

108. **May 10, 2019 Earnings Call:** PEGI maintained its guidance for 2019 and 2020. Esben Pedersen, the Company's Chief Investment Officer, reiterated that the Company "can achieve these growth targets without issuing new common equity" and reported that the Company's available liquidity as of March 31, 2019 was $677 million. Pedersen also highlighted the Company's "conservative capital structure" and flexible balance sheet, which positioned the Company to maintain its commitment to the current dividend level and to fund near-term growth opportunities.

109. Finally, in response to a question about the availability of outside capital, Pedersen referenced a "very healthy appetite" and inbound interest from investors seeking to deploy capital in the renewable space at all levels, *i.e.*, from the individual project level up to the corporate level. He added that the "projects' debt [and] equity markets remain very robust and healthy, so we have . . . no issue continuing to find ways to optimize cost [of] capital along all of those lines."

110. **August 6, 2019 Earnings Call:** PEGI reported a strong quarter and again maintained its guidance and growth targets for 2019 and 2020. Garland and

Pedersen also reported on steps taken to enhance the Company's liquidity position via a $250 million bank loan to fund growth and the projected availability of another $300 to $500 million in additional new capital.

111. Garland then discussed the Company's limited ongoing funding obligations, which, coupled with increased liquidity and capital funding options, meant the Company could easily manage any maturing obligations. Pedersen added that the Company did not "envision issuing new common equity at the current level to fund growth" because it was positioned to maintain "the current dividend level, fund growth and reduce our payout ratio to approximately 80% in 2020."

112. Garland then noted a critical milestone for the "second phase" of Pattern Development 2's evolution. In July 2019, Pattern Development 2 closed its first third-party asset sale. According to Garland, gains realized on future third-party project sales would eventually subsidize future development projects, reducing future capital contributions to Pattern Development 2. He then concluded, the Company's strategic investment in Pattern Development 2 "secure[d] [PEGI] access to continued growth opportunities as well as material and durable returns that [the Company] anticipate[d] [would] begin next year."

* * *

113. In sum, years of consistent reports on the Company's liquidity situation and future outlook make clear that PEGI had no need to be acquired and could have flourished as a standalone entity in accordance with Pattern Vision 2020.

114. Instead, unbeknownst to public investors, just as this long-term strategy was beginning to produce results, in 2018, Riverstone and the Officer Defendants, with Goldman's assistance, would commence the Merger process to privatize those benefits for themselves with the full cooperation of the Company's Board.

V. The Merger Process

115. As explained below, the process that led to the Merger was wholly corrupted by Riverstone and its affiliated officers and directors in PEGI management. Riverstone, assisted by fiduciaries of PEGI and Goldman, prevented PEGI stockholders from receiving the best value reasonably available for their shares and instead steered the Company into a sale that served Riverstone's and PEGI management's own interests.

A. Riverstone and the Officer Defendants, with Goldman's Assistance, Plan a Take-Private of PEGI and Consolidation with Pattern Development 2 to Benefit Riverstone

116. The Proxy contains no discussion of any events prior to June 5, 2018. Those events, as described below, are critical to understanding the origins and purpose of the Merger.

117. Months before the PEGI Board created the Special Committee or engaged in the sale process, Riverstone, the Officer Defendants, and Goldman planned a transaction that would take PEGI private and consolidate it with Pattern Development 2 in order to benefit Riverstone. That plan included the option of bringing in a new investor, which matched the transaction structure that was ultimately selected. As set out below, Riverstone, the Officer Defendants, and Goldman recognized that the transaction structure that they were planning, and that materialized with the Merger, would involve substantially undervaluing PEGI in order to pay a premium for Riverstone's interest in Pattern Development 2.

118. In early 2018, Riverstone engaged Goldman to analyze potential transactions involving Riverstone's interest in Pattern Development 2, including a take-private of PEGI led by Riverstone that would merge PEGI and Pattern Development 2. Over the course of the next several months, Goldman gave multiple presentations to Riverstone aimed at assisting Riverstone in structuring a transaction to meet its profitability targets for its Pattern Development 2 investment. Bolster served as Goldman's point person for this engagement and would also serve as the lead banker for Goldman's engagement by the Special Committee.

119. In February 2018, Goldman gave a presentation to Riverstone that highlighted PEGI's strengths, summarized recent developments concerning its business model, and evaluated the landscape of potential acquirers.[39]

120. Goldman followed up with a March 6, 2018 presentation to Riverstone that addressed "next steps."[40] Early drafts of the Riverstone presentation demonstrate that the purpose of the meeting was to discuss a potential PEGI take-private,[41] but in the final draft, Goldman decided to "remove the take private pages as better as a conversation,"[42] *i.e.,* to discuss it in person without any documentary record. In the draft presentation, Goldman outlined the steps that a PEGI transaction would involve, along with the associated challenges and considerations. For example, Goldman highlighted "[p]otential restrictions on the involvement of management in process, particularly with respect to interactions with buyers."[43] As described below, management would later violate such restrictions in the course of the PEGI sale process.

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[39] RIV00000132.

[40] GS-0150784.

[41] GS-0150760.

[42] GS-0146225.

[43] GS-0150760 at 064.

121. Less than two weeks later, on March 18, 2018, Goldman and Riverstone entered into a Confidentiality Agreement concerning Goldman's "advisory services pertaining to the evaluation of strategic alternatives for [Riverstone] . . . with respect to [its] stake in [Pattern Development 2] and its related entities," including PEGI (the "Potential Transaction").[44] Under the terms of the Confidentiality Agreement, which had a term of one year, Riverstone agreed to provide Goldman with "Confidential Information" that is "non-public, confidential or proprietary in nature" that the Goldman team would use "solely for the purpose of evaluating, negotiating, and/or consummating the Potential Transaction." As it later acknowledged in its July 2, 2018 conflicts disclosure letter to the Special Committee, Goldman did in fact receive confidential information about PEGI from Riverstone in the course of advising Riverstone on a potential take-private transaction.[45] The Confidentiality Agreement restricted Goldman's communications about the Potential Transaction to a select group of people consisting of Defendant Garland and three Riverstone representatives.[46]

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[44] RIV00008479.

[45] GS-0012993.

[46] RIV00008479 at 481.

122. Following the execution of the Confidentially Agreement, Goldman continued to analyze a potential PEGI take-private and consolidation with Pattern Development 2 using PEGI's confidential information, including PEGI's financial projections, which Garland must have improperly provided to Goldman given the numerous calls between them and the terms of the Confidentiality Agreement. This work involved numerous presentations that included transaction modeling and structuring analyses,[47] such as an April 20, 2018 Goldman presentation discussing the potential acquisition of Pattern Development 1, creation of a new entity called Pattern Development 3 (defined below), and bringing in new investors,[48] all of which were features of the Merger.

123. At the same time that Goldman was engaged by Riverstone to analyze a take-private of PEGI and a consolidation with Pattern Development 2, the Officer Defendants were focused on planning the very same transaction. On or around April 24, 2018, all of the Officer Defendants met at an executive retreat to discuss the future of the Company. At the retreat, the Officer Defendants discussed Garland's

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[47] RIV00246391, RIV00246472, GS-0015546, RIV00246541.

[48] RIV00008439 at 448 and 450. Goldman's work for Riverstone continued even after the PEGI sales process began, as described further below. *See e.g., infra* ¶¶ 59, 61, and *supra* ¶ 172.

"disruptive ideas,"[49] which included the same take-private and consolidation strategy that Goldman had analyzed for Riverstone. It is clear that Garland, Riverstone, and Goldman were working in concert, as contemplated by the Confidentiality Agreement, to jointly develop a strategy to take PEGI private.

124. As notes taken at the executive retreat make clear, the "[p]referred path" that the Officer Defendants discussed was a private consolidation of PEGI and Pattern Development 2 in which Riverstone and the Pattern Development 2 investors would be "stepping" into a newly formed Patten Development 3, either on their own or together with new investors.[50] The notes refer to the option of bringing in new investors after a "formal strategic review" as hitting the "nuke button."[51] To accomplish their goal, the Officer Defendants contemplated a [redacted][52] ("LP2" refers to the Riverstone vehicle through which Riverstone's limited partners invested in Pattern Development 2.) [redacted]

[49] PEGI-00123237.

[50] PEGI-00123238.

[51] *Id.*

[52] *Id.*

[redacted]. The remaining portion of the PEGI undervaluation would benefit its new sponsor, which was ultimately CPPIB. As the notes indicate, this strategy would offer mutual benefits to Riverstone and the Officer Defendants, with the "[m]ost benefit" resulting from executing a transaction "when share price is down" to enable PEGI to "execute the recovery plan while private[.]"[53]

125. This structure, in which a "premium" to Pattern Development 2 subsidized an "undervalue of PEGI," would ultimately materialize in the Merger just as planned. Indeed, CPPIB would later explicitly tell Riverstone, in the midst of negotiations in August 2019, that it needed [redacted].[54]

126. [redacted] In a revised version of the raw meeting notes, Christopher Shugart (PEGI's then-SVP, Operations) deleted all references to the planned PEGI underpayment and directed the PEGI management

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[53] *Id.*

[54] CPPIB_0388338 at 374.

team to "please delete the prior version."[55] As instructed, Garland deleted the original notes. Indeed, the metadata from Garland's production shows the original notes were produced from his "deleted items" folder.[56]

127. On April 25, 2018, the same day that the notes from the executive retreat were circulated among the Officer Defendants, Riverstone and Goldman held another call in which Goldman presented an analysis concerning the structure and profitability of a PEGI take-private.[57] The next day, on April 26, 2018, Riverstone and Garland held a meeting with PSP Investments to discuss the take-private and consolidation plans, where Riverstone presented materials based on Goldman's analysis.[58] The outreach to PSP Investments coincides perfectly with the management retreat because PSP Investments had a large ownership stake in Pattern Development 2, and therefore could roll that interest into the post-close company. The attendees of the meeting corruptly agreed to limit communications to a "very small" working team until they had agreed upon numbers and a path forward.[59]

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[55] PEGI-00463524.

[56] PEGI-00123238.

[57] RIV00246391.

[58] PEGI-00093690, PEGI-00093961.

[59] PEGI-00093691.

128. Then, on April 27, 2018, Goldman reported internally that it had spoken to Riverstone about the meeting with Garland and PSP Investments, and both Garland and PSP Investments favored combining PEGI and Pattern Development 2.[60] Goldman used that knowledge to inform its ongoing modeling work on behalf of Riverstone and planned to "[g]et in regular dialogue" with key participants in a potential transaction.[61]

129. Goldman followed up and made additional presentations to Riverstone about a PEGI take-private and consolidation in May 2018.[62] Goldman's analysis was intended to help Riverstone structure a transaction to meet certain profitability targets for the post-Merger company, which Goldman understood were important to Riverstone. When Goldman's model indicated that certain assumptions resulted in an approximately 9% internal rate of return, Goldman's lead banker, Bolster, supported using more favorable assumptions to get to 10%, adding in a May 22, 2018, internal Goldman email: "I can't imagine [Riverstone] building for a 9."[63]

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[60] GS-0149861.

[61] *Id.*

[62] *See e.g.,* RIV00246470, RIV00246539.

[63] GS-0146194.

130. Also on May 22, 2018, Goldman and Riverstone had a call to discuss the new post-close Riverstone investment vehicle, Pattern Development 3, and potential investors in Pattern Development 3.[64]

131. That same day, Goldman sent an email noting that the Pattern Development 2 board was meeting that evening to discuss the future of the Pattern Energy business more broadly. A Goldman email sent before the Pattern Development 2 board meeting outlines topics to be discussed at "Board meeting of 2.0 tonight at 8pm."[65] The meeting topics include: "What does the business end up looking like?" and "Where do we go from here?"[66] The Pattern Development 2 Board package agenda lists "PEGI update" as a topic to discuss.[67]

132. The next day, on May 23, 2018, Riverstone met again with PSP Investments. At that meeting, PSP Investments responded positively to Riverstone's proposal to take PEGI private and consolidate it with Pattern Development 2, and PSP Investments expressed interest in rolling its shares in PEGI and Pattern

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[64] RIV00246539.

[65] GS-0146194.

[66] *Id*.

[67] PEGI-00169558. Riverstone has still not produced meeting minutes for the May 22, 2018 Pattern Development 2 Board meeting, which would provide evidence of the exact nature of the discussions.

Development 2 into the post-Merger company. Riverstone planned to ask other Pattern Development 2 investors about their interest in rolling their shares as well.[68] The meeting ended with two distinct action items: (1) [redacted] and (2) [redacted]

133. Having laid this extensive groundwork, Riverstone and the Officer Defendants, with Goldman's assistance, pushed forward with their plan to benefit Riverstone by taking PEGI private and combining it with Pattern Development 2, with a combination of new investor funds and rolled-over investments from Riverstone's limited partners in Pattern Development 2. The next stage of this plan was a strategic review by PEGI's Board and the creation of a Special Committee.

B. The Board Commences a Strategic Review and Allows Riverstone to Participate in the Board's Deliberations

134. From the outset of their strategic review, the Board and Special Committee permitted Riverstone and the Officer Defendants to control the process and protect and elevate Riverstone's interests over those of PEGI's public stockholders.

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[68] RIV00037902.

135. On June 5, 2018, the Board met to discuss potential strategic alternatives for the Company. Although not disclosed in the Merger Proxy, a representative of Riverstone (Chris Hunt who was neither an officer nor a director of PEGI but was a director of Pattern Development 2) attended the entire meeting.

136. PEGI CEO, Defendant Garland – who was also an officer, director, and equity owner of Riverstone-controlled Pattern Development 2 – led the meeting. Garland, on behalf of PEGI management, advocated that the Board "consider a potential sale of the business."

137. According to the minutes, a memo outlining management's views on the Company's strategic options was circulated prior to the meeting. The minutes also refer to a presentation prepared by Evercore (which would ultimately advise the Special Committee) that was circulated in advance of the meeting. The Evercore presentation "included preliminary potential ***valuations*** for various strategic options." The Company refused to produce both the management memo and the Evercore presentation in response to Plaintiff's Section 220 Demand.

138. With Riverstone's representative present for the entire meeting, the Board discussed, *inter alia*, "the value which investors and ***potential buyers*** ascribed to development activities" and "***the assumptions made in the Evercore valuation materials***[.]"

139. The Board then solicited the views of Riverstone, who the Board believed "may be interested in ***participating in a potential transaction***." In other words, despite the Board's duty to singularly focus on securing the best value reasonably available to stockholders, the Board had invited a potential bidder (*i.e.*, Riverstone) to participate in the Board's deliberations, and had given the potential bidder access to confidential information, including valuations, prepared on behalf the Company.

140. Garland and Hunt were both present at the meeting, yet neither disclosed to the Board their prior agreement to pursue a take-private of PEGI or the numerous meetings between the Officer Defendants, Riverstone, Goldman, and PSP Investments in April and May 2018.[69] In a July 2, 2018 disclosure letter, Goldman informed the Special Committee that it had advised Riverstone with respect to a potential take-private of PEGI using confidential information provided by Riverstone (in violation of Riverstone's confidentiality obligations). Yet the Board and Special Committee did nothing to prevent Riverstone from leveraging its access to the Company's confidential information. Even after learning that Riverstone had been working with Goldman, the Board never sought to investigate whether

[69] SCPEGI-0000898.

Riverstone had appropriated the Company's information for use in a potential take-private, including the information Riverstone learned at the June 5, 2018 meeting. Nor did the Board or Special Committee investigate the scope of communications among Riverstone, Goldman, Garland, and Pattern Development 2 investors such as PSP Investments on this topic. Further, the Board and Special Committee did not investigate the content of the take-private plan that Goldman prepared for Riverstone and that the Officer Defendants were also seeking to implement, including the plan to undervalue PEGI in order to pay a premium to Riverstone's limited partners in Pattern Development 2, as set out above. Moreover, none of this information was disclosed in the Proxy.

141. At the conclusion of the June 5, 2018 meeting, the Board determined to form a special committee to evaluate strategic alternatives for the Company in light of the potential conflicts faced by management and certain Board members in connection with a potential sale.

C. The Special Committee Begins its Work, But Fails to Adequately Address and Manage the Officer Defendants' and Riverstone's Influence Over the Process

142. The June 5, 2018 resolution creating the Special Committee named Bellinger and Defendants Batkin, Hall, and Newson as the Committee members, with Batkin as Chairperson. Bellinger resigned from the Board in December 2018,

after which Defendants Goodman and Sutphen became Board members and then joined the Special Committee in February 2019.[70]

143. Defendants Garland and Browne were disqualified from serving on the Special Committee because they harbored obvious conflicts arising out of their relationship with Riverstone. As explained above, Garland was an officer and director (and investor) of Pattern Development 2 and therefore served at the pleasure, and as a fiduciary of, Riverstone.

144. Browne was a longtime partner and managing director of Riverstone and was appointed to the Board by Riverstone. The Section 220 production also indicates that Browne attended Special Committee meetings as a representative of Riverstone.

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[70] Discovery is necessary to understand why Bellinger, a long-time associate of Defendant Browne at BP, decided to leave the Board after the Merger process was set in motion. Discovery has now shown that Hoffman, a former Riverstone managing partner, [redacted] Moreover, Defendants Sutphen and Goodman began serving as directors in December 2018, more than six months after Riverstone's long-time Board and management had already decided to review strategic alternatives. It strains credulity to believe that newly-appointed directors would voice credible or dissenting opinions about the future of PEGI, especially in a room filled with directors who had served at the pleasure of Riverstone for nearly seven years since the IPO. This is yet another set of opportune events that the Company failed to adequately disclose to stockholders.

145. Despite their conflicts, the Special Committee allowed both Garland and Browne, as well as the other Officer Defendants, to have substantial involvement in the Committee's process.

146. For example, the minutes produced by the Company show that Browne attended the vast majority of the Special Committee's meetings. The Special Committee also allowed Browne to participate in executive sessions of the Board where Company management was specifically excluded because of their conflicts of interest. The Proxy does not disclose Browne's attendance at any Special Committee meeting.

147. The Special Committee delegated to Garland primary responsibility for engaging with potential suitors of the Company, despite the fact that he was duty bound to Riverstone and could be expected to disclose to Riverstone any material information that he learned in the sale process. As noted above, the Board recognized at the outset of the process that Riverstone was conflicted with respect to any sale of the Company, including because Riverstone was a potential acquirer of PEGI.

148. On July 13, 2018, the Special Committee met for the first time. The Committee discussed the retention of financial advisors. The meeting minutes state that, prior to the meeting, Committee Chair Batkin and Committee member Hall

discussed potential advisors with Garland (CEO) and Lyon (CFO), who favored the Special Committee retaining Goldman.

149. These Officer Defendants' preference for Goldman is not surprising, as Goldman had a longstanding relationship with and owned part of Riverstone. Among other things, Riverstone was founded and operated by Goldman alumni. Goldman also owned at least a 12% stake in Riverstone that entitled certain Goldman funds to a proportional cut of management fees and profits. Moreover, as noted above, shortly before the start of the Special Committee's process, Goldman pre-planned the entire Merger process with Riverstone and Garland assisted Riverstone by providing it confidential Company information without Board knowledge. Goldman only disclosed that it had been working with Riverstone; not PSP Investments, Garland, and later on CPPIB. Instead, Goldman merely offered to provide the Special Committee with the materials it prepared for Riverstone upon request, but there is no indication the Special Committee requested such materials. Further, in the few years preceding the Merger, Goldman generated tens of millions of dollars in fees from Riverstone. A more detailed recitation of Goldman's conflicts (none of which were disclosed in the Proxy) is pleaded in Paragraphs 49-64, 205, 218, 299-300, and 385-93.

150. At the July 13 meeting, the Special Committee decided to retain only Evercore and to revisit the possibility of retaining Goldman at a later time.

151. The Officer Defendants resisted this decision from the outset and worked with Goldman to secure its engagement as a second financial advisor. In July 2018, Garland raised concerns with Batkin about Evercore and shared his views that "the most feasible outcome is for a group of pension funds to take PEGI private and merge it with [Pattern Development 2]" and that Goldman "has much more experience working with pension funds on this type of transaction."[71] Batkin countered that Evercore had the relationships and ability to "do a first rate job" without Goldman's participation.[72] Batkin also noted that Evercore, unlike Goldman, had not contacted Garland so as not to "jeopardize the firm's independence."[73]

152. Garland's comments, which Batkin relayed to the Special Committee, left Newson with the impression that "Pattern management has nearly reached conclusion on the feasible outcome, and that management does not see the need for the [Special Committee] to hire its own advisor that may provide insight and

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[71] SCPEGI0010041, SCPEGI0020133.

[72] SCPEGI0010041.

[73] *Id.*

information to the [Committee] that may result in a different action plan than what management currently thinks should happen."[74] Batkin shared a similar understanding that "management's instinct is that there is only one possible outcme [sic] that may be feasible."[75] Newson even raised the potential for "legal/securities law risk" if management were to effectively choose the Special Committee's advisors.[76]

153. During these discussions, Garland indicated that he wanted to check with Goldman to "see how much they really want the assignment from the special committee, ***or would they prefer to work with [Riverstone] and/or the buyers***."[77]

154. On July 22, 2018, Garland called Bolster to advise him that the "Board wants to go with Evercore [because] they feel it is the safe choice."[78] Garland also shared his expectation that Evercore would merely perform a "study" with management, and that Goldman would be brought in to "execute the market check."[79] While this arrangement made Bolster "nervous," Bolster reasoned that it

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[74] *Id.*

[75] *Id.* (in all caps in original).

[76] SCPEGI0020133.

[77] SCPEGI0010041.

[78] GS-0129895.

[79] *Id.*

"allow[ed] things to play out on the Riverstone side to see if they have real interest."[80] Of course, Garland and Bolster knew that Goldman's role would become essential in the event PEGI management had to hit the "nuke button" discussed at the executive management retreat.

155. On August 12, 2018, Batkin told Goldman that the Special Committee had decided to work in two phases. "Phase One would be the analytical one to consider and assess various alternatives that might be available to the Company. If the Board decides to pursue one of our options, Phase Two would be to implement the decision. For Phase One, the Committee decided to choose a firm other than Goldman, Sachs. If and when we proceed to Phase Two, we will make a separate decision as to which firm, or firms, to work with."[81]

156. Despite the Special Committee's rejection of Goldman, Garland and Bolster stayed in close contact with respect to strategic options concerning PEGI and Pattern Development 2, including numerous meetings and/or email conversations such as the following:

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[80] *Id.*

[81] GS-0152356.

- **September 10, 2018:** Bolster asks Garland "how things are going on your side." Garland explains "[t]he FA is working on their options review. Nothing yet. Happy to discuss."[82]

- **October 5, 2018:** Bolster and Garland meet to "Catch Up."[83]

- **October 13, 2018:** Bolster attempts to meet with Garland at his office in San Francisco. Garland is unavailable but explains: "We had the initial call last Tuesday."[84]

- **November 12, 2018**: Garland and Bolster planned to meet on this date.[85]

- **December 3, 2018**: Bolster contacts Garland regarding the status of negotiations. Garland replies in part: "Nothing on the [Brookfield] side but still talking to [Sachin Shah of Brookfield]. I am traveling the next couple days but will try calling you."[86]

- **January 29, 2019**: Garland and Bolster meet to "Catch up."[87]

- **February 8, 2019:** Garland and Bolster meet to discuss Brookfield. Following the meeting, Bolster sends Garland a presentation providing an overview of Brookfield.[88]

157. Later in February 2019, Goldman presented to PSP Investments an analysis of the renewables market that included a section on the "Potential

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[82] GS-0152406.

[83] GS-0151704.

[84] GS-0151700.

[85] GS-0151700, GS-0151692.

[86] GS-0151698.

[87] GS-0152369, GS-0152372.

[88] GS-0151674.

Alternatives for PEGI and Pattern Energy 2.0." The alternatives included a take-private of PEGI and a combination of PEGI and Pattern Development 2.[89] Throughout this period, Goldman was also offering financing options to both PEGI and Pattern Development 2.[90] As discussed below, PEGI management would ultimately hire Goldman on the Special Committee's behalf and over the Committee's explicit objections.

D. The Special Committee Gives Riverstone Direct Access to Its Process

158. The Special Committee met again on August 2, 2018. Despite Riverstone's divergent interests in a potential sale of the Company, Chairperson Batkin proposed to the Special Committee that "both Riverstone and [PSP Investments] should be approached at the outset, given their current investments in the Company and the Pattern Development Companies, . . . their knowledge of potential partners and their familiarity with management."

159. The Special Committee next met on October 29, 2018. In accordance with the Special Committee's discussions about approaching both Riverstone and PSP Investments at the outset, a representative of PSP Investments attended this

[89] GS-0088173 at 197.

[90] PEGI-00153243, RIV00071287-318, PEGI-00053039 at 042, GS-0128783.

meeting. Further, Defendant Browne, but no other Riverstone representative, attended the entire meeting, which indicates that Browne attended this meeting and future meetings as Riverstone's representative.

160. At the meeting, Garland explained that he had been approached by Brookfield and [redacted] about a potential transaction. The meeting attendees, including Browne, received a presentation from Evercore that reviewed the Company's projections and valuations for PEGI under different strategic alternatives. The meeting participants also discussed the "potential for a transaction with PSP [Investments], Riverstone, or another party."

161. The Special Committee met again the following day, on October 30, 2018. Browne was present for the entire meeting. Despite his conflicts, the Special Committee authorized Garland to meet with both Brookfield and [redacted] and solicit their interest in making a strategic proposal for the Company.

162. In November 2018, the Special Committee put in place extensive guidelines to limit the involvement of PEGI management, including the Officer Defendants, in the Merger process, in light of their conflicts of interest.[91] Those guidelines instructed PEGI management, among other things, as follows:

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[91] PEGI-00205058.

- "The Special Committee should be advised of any contact (including inquiries, questions, approaches and proposals) that has been made or is made in the future by or on behalf of any potential party to a potential strategic transaction or any other interested party (a 'Potential Transaction Party') or any other third parties . . . and no further engagement should occur without the consent of the Special Committee."

- "Neither Michael Garland nor any other member of management should reach out to or otherwise engage with (including entering into any discussions, negotiations, understandings or arrangements with) any Potential Transaction Party without the express consent of the Special Committee. Note: Michael Garland has been authorized to reach out to Brookfield and [redacted] to have preliminary discussions in connection with the strategic review of the Company, based on publicly available information."

- "The results of any authorized discussions with any Potential Transaction Party must be fully disclosed to the Special Committee."

- "Under no circumstances are any discussions to be had regarding (a) the participation of or compensation to be paid to management by any Potential Transaction Party or the Company or (b) the inclusion of Pattern Development 2.0 in any potential transaction."

- "In order for the Special Committee to remain effective, management must provide the Special Committee with up-to-date information, including financial projections, throughout the review process, so that the Special Committee may review such information and provide it to its advisors."

- "Non-Committee Directors and officers should not attend subsequent meetings of the Special Committee or receive Special Committee materials, without the express authorization of the Special Committee."

- "Management must remain neutral throughout the strategic review process."

163. Garland and the other Officer Defendants immediately violated these guidelines by failing to disclose their take-private planning activities alongside Riverstone and Goldman and continued violating these guidelines during the Merger process.

164. Less than two weeks later, on or about December 17, 2018, CPPIB had discussions with PSP Investments and Riverstone concerning a potential investment in PEGI.[92] With Brookfield showing greater interest in a transaction, Riverstone, Garland, and Goldman were all planning to hit the "nuke button" that would require bringing in other investors to help fund the PEGI take-private and consolidation with Pattern Development 2.

165. A December 21, 2018 Goldman internal email states that CPPIB "has requested to help assess other yieldco opportunities in addition to Atlantica. . . . As discussed separately, Pattern would be another sensible target (from sponsor point of view). . . . In addition to the slides, we would like to offer CPP[IB] team a call to go through Pattern and any other names you think are suitable."[93]

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[92] CPPIB_0259352.

[93] GS-0153889.

166. On January 11, 2019, Goldman met with CPPIB to discuss potential investment opportunities, including PEGI.[94] Notably, the day before the meeting, Goldman contacted Defendant Pedersen and Nelson Shim (PEGI's Senior Director of Finance) and set up a meeting on January 17, 2019 at PEGI's offices.[95] Days after that meeting, on January 21, 2019, Garland and Bolster arranged for a meeting on January 29, 2019 to discuss the sale process.[96]

E. Brookfield Proposes a Merger with PEGI; PEGI Management Protects Riverstone's Interests

167. Throughout January and February 2019, Garland and other members of PEGI management continued their discussions with Brookfield concerning a possible transaction. On January 25, 2019, the Special Committee met to receive an update concerning management's discussions with Brookfield, which discussions included a possible merger between PEGI and publicly-traded TerraForm, which Brookfield controlled.

168. On February 21, 2019, Brookfield/TerraForm transmitted a term sheet proposing that TerraForm acquire PEGI in an all-stock "merger of equals" with no

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[94] GS-0151945, GS-0151968, GS-0152197.

[95] GS-0153415, GS-0153417.

[96] GS-0152368, GS-0152369, GS-0152370.

premium to stockholders. Brookfield expressly indicated that an acquisition of Pattern Development 2.0 was not a condition to proceeding with a merger.

169. Recognizing that Brookfield was proposing a transaction that might not benefit Riverstone, members of PEGI management began seeking to ensure that Pattern Development 2 (*i.e.*, Riverstone) would not be left behind.

170. At a February 21, 2019 meeting of the Special Committee,[97] Garland began highlighting the transfer restriction in the Pattern Development 2 Partnership Agreement. Garland told the Special Committee the transaction proposed by Brookfield could "trigger existing consent rights held by" Riverstone.

171. That same day, February 21, 2019, Goldman met with and advised PSP Investments concerning a potential take-private of PEGI and combination with Pattern Development 2.[98]

172. Two days after the PSP Investments meeting, on February 23, 2019, Goldman met with representatives of Riverstone, including Hunt.[99] Following his

[97] The minutes state that Defendant Browne was invited to the February 21, 2019 Special Committee meeting, but was unable to attend and therefore "would be briefed following the meeting."

[98] GS-0152047, GS-0152051.

[99] GS-0150811, GS-0151354.

meeting with Riverstone, Bolster reported internally at Goldman that "[t]his is going to result in discussions next week about a potential take private."[100]

173. At the Special Committee's next meeting on March 9, 2019,[101] Garland again invoked Riverstone's purported consent right, telling the Special Committee that it would need to evaluate "consent rights [Riverstone] may have in connection with any transaction due to such transaction involving an indirect transfer of the Company's ownership interests in Pattern Development 2.0[.]"

174. PEGI's and Pattern Development 2's Chief Legal Officer, Defendant Elkort, was even more explicit. The meeting minutes state that Elkort "emphasized" to the Special Committee that "the need for [Riverstone's] support for any potential . . . transaction should not be underestimated because [Riverstone's] rights to consent that would likely be implicated by the proposed transaction appeared to be very broad." At the conclusion of the March 9 meeting, the Committee met in "Executive Session," with management "excused from the meeting," but with Browne inexplicably still in attendance.

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[100] GS-0150811.

[101] The meeting minutes show that Defendant Browne attended the entire March 9, 2019 Special Committee meeting.

175. Among other things, the Special Committee directed Paul Weiss and Evercore to revise Brookfield's term sheet.

176. The Special Committee also discussed "guidelines for management's discussions with the various parties[.]" The committee authorized Garland to "notify" Pattern Development 2.0 and Riverstone about the Company's discussions with Brookfield. Although the Committee stated that Garland was not to "divulge[e] any specific terms" to Pattern Development 2 or Riverstone, the committee could not have reasonably expected Garland to follow that instruction, given that Garland was a dual fiduciary of both Pattern Development 2 and Riverstone.

177. At the close of the executive session, the Special Committee instructed Paul Weiss to inform management of the following:

> The Committee noted that it shall continue to be informed of developments arising from any of the discussions that it had authorized, ***that management and the advisors shall refrain from taking any further steps or engaging in any further discussions without the express authorization of the Committee*** and that the Committee shall retain final decision-making authority with respect to Project Forest [*i.e.*, the code name for the PEGI sale process].

F. Paul Weiss and Evercore Prepare a Counterproposal to Brookfield that Avoids Riverstone's Consent Right; Management Forces Goldman on the Special Committee; Garland Betrays the Special Committee and Engages in Unauthorized Communications with Riverstone and CPPIB

178. On March 11, 2019, PEGI transmitted a revised term sheet to Brookfield that contemplated a merger of PEGI and TerraForm with a 15% premium for PEGI stockholders. The revised term sheet, which the minutes indicate was prepared by Paul Weiss and Evercore, rather than by management, recognized that Riverstone's consent right was readily circumvented. Specifically, the term sheet states that the parties would "***need to structure the transaction as a merger of [TerraForm] into a subsidiary of [PEGI] due to***" the transfer restriction in the Partnership Agreement and that the "structure" would "***not affect the economic terms of the transaction***[.]"

179. Meanwhile, the Officer Defendants maneuvered to force Goldman on the Special Committee as a second financial advisor. On March 13, 2019, Pedersen reported to Batkin on his outreach to Evercore and Goldman for financial advisor proposals. Pedersen asked Evercore to provide two separate proposals – one with Evercore serving as the sole financial advisor and one with Evercore serving as a

joint financial advisor – and asked Goldman to provide a joint financial advisor proposal.[102]

180. With the hiring of a second financial advisor in play, Evercore prepared an analysis of PEGI's and TerraForm's assets to combat management's "perception that we are not into the weeds as others might be," which Evercore believed was management's "***alleged*** reason to push for the hiring of a second advisor, probably Goldman."[103] Evercore was of the view that Pedersen in particular was "trying to line [Goldman] up" as a second financial advisor.[104] Evercore even planned to call Batkin to provide him with "ammo" concerning Goldman's conflicts "if [Batkin is] looking for reasons to not select Goldman . . . consistent with [Batkin's] private conversations with [Evercore]."[105]

181. After receiving proposals from Evercore and Goldman, on March 19, 2019, Pedersen shared his thoughts with Garland and Lyon "on how to structure a counterproposal for a joint mandate[.]" Pedersen noted Batkin's desire to retain only Evercore and observed that "Evercore's most natural role" was as an advisor to the

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[102] PEGI-00202154.

[103] EVR_00050811.

[104] EVR_00060886.

[105] EVR_00148713.

Special Committee. Pedersen further proposed that Goldman should advise the Company and "focus on transaction execution and diligence."[106] Pedersen added that the advisory structure he was proposing would "require us to flip the pay structure with Evercore getting a much smaller share[.]"[107]

182. On March 20, 2019, Pedersen followed up by presenting Garland and Lyon with three options concerning the retention of financial advisors: (1) Goldman as the financial advisor to the Company and Evercore as the financial advisor to the Special Committee; (2) Goldman and Evercore as joint financial advisors to the Company and Evercore as financial advisor to the Special Committee; and (3) Evercore as sole financial advisor to the Company and Special Committee, with Goldman potentially advising the management team. The first and second of these options provided for a "$5M increase in fees" if the process resulted in a transaction with "anyone other than" Brookfield,[108] thus demonstrating management's strong preference for a non-Brookfield transaction from the outset.

183. Just a few days later, Pedersen would advocate for an even more prominent role for Goldman. In a March 24, 2019 memorandum to the Special

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[106] PEGI-00068864.

[107] *Id.*

[108] *Id.*

Committee that Pedersen drafted, management recommended that the Company not only hire Goldman, in addition to Evercore, as a financial advisor, but that Goldman have the predominant role.[109] More specifically, management recommended that Goldman serve as either financial advisor with responsibility for structuring and negotiating the transaction (with Evercore issuing a fairness opinion and working on conflicts), or as *lead* financial advisor (with Evercore serving as a supporting financial advisor).[110]

184. On March 21, 2019, Goldman made plans to pitch a potential PEGI acquisition to CPPIB in April 2019 and drafted a presentation for their anticipated discussions.[111]

185. On March 30, 2019, Goldman had an internal discussion regarding its conflict check. The Goldman conflicts team concluded that "the only open workstream at this stage is PEGI/TERP, so [Goldman's] role is a true company role (not cmtee [sic] role)."[112] In other words, the conflict team's conclusion that Goldman could take this engagement was based on the incorrect understanding that

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[109] PEGI-00118255 (Pedersen draft of memorandum), SCPEGI0013421 (final version of memorandum).

[110] *Id.*

[111] GS-0152420.

[112] GS-0151744.

Goldman would be representing the Company itself rather than the Special Committee.

186. On April 4, 2019, without the Special Committee's authorization, Pedersen informed Evercore and Goldman that they would serve as joint advisors in connection with the PEGI sale process. Pedersen acknowledged that "[i]t is the intention of the Special Committee that Evercore takes the lead on the overall transaction," yet nonetheless instructed that "both advisors" should "participate in the key aspects of transaction, negotiations and internal deliberation[.]"[113] And even though, as Pedersen noted, the Special Committee had not yet approved the engagements, he instructed Evercore and Goldman to "start moving the work forward."[114]

187. The Special Committee eventually acceded to management's demand that it hire Goldman as a second financial advisor but did not agree to Goldman serving as the lead advisor. Ultimately, on April 12, 2019, Pedersen sent Batkin a memorandum proposing the joint engagement of Evercore as lead advisor and Goldman as a second advisor.[115] Batkin responded to Pedersen: "***I hope it is clear***

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[113] GS-0014562.

[114] *Id.*

[115] PEGI-00102812, PEGI-00102818.

to GS [Goldman] that EVR [Evercore] will be handling the negotiations with Birch [Brookfield] and they should not be contacting Birch [Brookfield] or RS [Riverstone] without clearing it with me first."[116] As described below, Goldman would disregard this clear instruction.

188. A little over a week later, on April 22, 2019, Batkin relented to management's pressure and recommended to the Special Committee that, because "[m]anagement felt very strongly ***that they wanted Goldman*** . . . to be involved as co-advisor," the Committee should engage Goldman as a second financial advisor.[117] Batkin did so despite telling management that he "did not feel this was necessary" and that the Special Committee was pleased with the "assistance and guidance" it was receiving from Evercore.[118] In a message to the other members of the Special Committee, Batkin said that he told management the following: "***If management was insistent about Goldman's involvement***, I would recommend it to the Special Committee. However, ***it had to be made explicitly clear that Evercore would be the lead banker and would handle all negotiations with Birch [Brookfield]***."[119]

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[116] SCPEGI0011460.

[117] SCPEGI0008428.

[118] *Id.*

[119] *Id.*

Goldman would go on to frequently violate this instruction. Batkin concluded: "As should be obvious from the above, the outcome was not my first choice, but that's where we are."[120]

189. With its engagement complete, Goldman set out to "kill [Evercore] with kindness and get their buy-in via [a] 'let's coordinate' tone."[121] At the same time, Goldman continued to look after its own interests and ensure that it could play multiple roles in any transaction by persuading PEGI that its non-disclosure agreement with PEGI should "carve[] out . . . a non-solicit, a standstill and a restriction on [Goldman's] ability to enter into any other agreements, arrangements or understandings concerning the underlying transaction."[122]

190. After sending the March 11, 2019 term sheet to Brookfield, the Special Committee did not meet again for nearly two months, or until May 2, 2019. As the Committee sat largely idle, Garland began engaging in unauthorized discussions with Brookfield, Riverstone, and CPPIB.

191. On March 12, 2019, Garland had an unauthorized communication with Brookfield and TerraForm. *Compare* Merger Proxy at 39 ("On March 12, 2019,

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[120] *Id.*

[121] GS-0135718.

[122] GS-0006819.

Mr. Garland spoke with representatives of [Brookfield] and [TerraForm] about a potential transaction involving Pattern, [Brookfield] and [TerraForm].") *with id*. ("On March 20, 2019, ***as authorized by the Special Committee***, Mr. Batkin, Pattern management and representatives of Evercore and Paul Weiss met with representatives of Party A to discuss the terms of a potential transaction involving Pattern and Company A.").

192. On April 8, 2019, Garland told Riverstone about an upcoming meeting with Brookfield, and Riverstone proposed a call with Garland to make a "good plan" to reach out to other bidders (*i.e.*, CPPIB).[123] The next day, CPPIB circulated a calendar invitation for a dinner meeting with Riverstone and Garland for April 15, 2019.[124] Also on April 9, 2019, in an email to Special Committee Chair Alan Batkin, Garland insisted that Riverstone attend the upcoming meeting with Brookfield to get a sense of Brookfield's "views" of Pattern Development 2.[125] Despite questioning whether Riverstone's attendance was premature, Batkin acquiesced to Garland's demand.[126]

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[123] PEGI-00056389.

[124] CPPIB_0042962.

[125] SCPEGI0011467.

[126] *Id.*

193. On April 11, 2019, Riverstone signed a confidentiality agreement with Brookfield that included a standstill provision.[127] By accepting that provision, Riverstone agreed that it would not have any discussions with any third-parties about a potential transaction involving PEGI. Riverstone knew that the standstill blocked discussions with CPPIB, but attended the April 15, 2019 meeting with CPPIB anyway. Goldman, which was working on behalf of Riverstone notwithstanding its engagement by the Special Committee, also had numerous communications with CPPIB in violation of the standstill, as set out below. *See infra* ¶¶ 218, 272, 273.

194. On April 15, 2019, Garland had an unauthorized meeting with "Riverstone Representatives"—which the Merger Proxy vaguely and bizarrely defines as "two representatives of Riverstone who are directors of Pattern Development [2] . . . acting in their capacity as unconflicted directors of Pattern Development [2]"—and CPPIB concerning CPPIB's "interest[] in acquiring Pattern[.]" CPPIB's sudden appearance is particularly notable because it (i) had previously spoken to Riverstone and PSP Investments about an investment in PEGI in December 2018, (ii) had already invested over $700 million in Riverstone investment funds, and (iii) viewed Brian Bolster as its designated banker at

[127] BROOKFIELD_TF-PATTERN_0010029.

Goldman.[128] The Merger Proxy implies that Garland promptly "informed Mr. Batkin and the Special Committee of his meeting and the substance of these discussions." But the 220 Production shows that the Merger Proxy is false and misleading.

195. Specifically, at the Special Committee's next meeting on May 2, 2019, although Garland gave a presentation, the minutes make no mention of CPPIB, let alone that Garland had met with Riverstone and CPPIB weeks earlier to discuss CPPIB potentially acquiring the Company. The Merger Proxy states that at the May 2, 2019 meeting Garland "informed the Special Committee of his recent meeting with Riverstone Representatives and CPPIB." But the meeting minutes contradict that statement.

196. The May 2, 2019 meeting minutes show that Garland deceived the Special Committee and reported that Riverstone had suggested to him that Riverstone take PEGI private in conjunction with an unidentified third-party institutional investor but had "dropped the suggestion following consideration of

128 [redacted]. CPPIB_0024807.

conflicts and certain contractual obligations of [Riverstone]." Of course, Riverstone had not dropped the suggestion. It was working behind the scenes to arrange its preferred deal where it would take the Company private along with CPPIB.

197. The Section 220 production shows that the Special Committee first learned (partially) of Garland's unauthorized discussion with CPPIB one full month after it occurred, on May 15, 2019, when Committee Chairperson Batkin sent a memo to the Committee stating that Garland had had discussions with Riverstone and CPPIB concerning a potential acquisition of PEGI by CPPIB. The memo states that Garland "spoke to" a CPPIB representative who Garland "knew when this person worked at General Electric." The memo does not state when Garland informed Batkin of his unauthorized discussions with CPPIB. The memo did not inform the Special Committee that Garland's unauthorized discussions had occurred a full month earlier. Nor did the memo actually inform the Special Committee that Garland had a ***meeting*** in April 2019 with representatives of CPPIB and Riverstone together, *i.e.*, that Garland had not merely spoken to CPPIB independently.

198. Notably, this appears to have been the only memo Batkin ever sent to the Special Committee during the nearly year-and-a-half long Merger process, and thus appears to reflect a recognition by Batkin that Garland's unauthorized interactions with CPPIB and Riverstone were highly problematic.

199. Indeed, the timing of Garland's unauthorized and belatedly-disclosed meeting with Riverstone and CPPIB could not have been any more suspicious. As explained above, in the weeks before the meeting with Riverstone and CPPIB, Brookfield had made clear that it was interested in proceeding with a transaction with PEGI regardless of whether the transaction included Pattern Development 2. Further, while Defendants Garland and Elkort had been suggesting to the Special Committee that Riverstone had "broad" consent rights such that Riverstone would have to approve of any merger transaction involving PEGI, the Committee's advisors at Paul, Weiss and Evercore were telling the Committee the exact opposite.

200. Garland's unauthorized discussions with Riverstone and CPPIB about a potential acquisition of PEGI suggest that: (i) Garland—***contrary to the express instructions of the Special Committee***—had communicated to Riverstone specifics of the transaction being discussed by Brookfield and PEGI; and (ii) Riverstone was now seeking to prevent a transaction between PEGI and Brookfield from ever occurring.

201. Batkin's May 15, 2019 memo to the Special Committee also shows that, without the knowledge of the Special Committee, Riverstone and CPPIB had already entered into a non-disclosure agreement concerning a potential acquisition of PEGI. In other words, while the Special Committee was supposed to be conducting the sale

process and directing all outreach to potential buyers, Riverstone was leading the merger discussions with Riverstone's preferred bidder, CPPIB. The Merger Proxy does not disclose these facts, which plainly show Riverstone's corruption of the sale process.

202. Worse, despite learning of these facts, the Special Committee took no steps to reestablish control of the merger process. The Special Committee also continued delegating substantial authority and responsibility to Garland, despite the fact that he had engaged in unauthorized communications and assisted Riverstone and CPPIB in tainting the process.

G. The Special Committee Begins Receiving Advice from Conflicted Goldman While Riverstone Fully Inserts Itself in the Transaction Process

203. Goldman attended its first Special Committee meeting on May 2, 2019.[129] Although there is no record in the Special Committee's minutes of the Committee's decision to retain Goldman, the Proxy claims that, in "early April 2019," the Special Committee determined to retain Goldman as its second financial advisor to the Committee.

[129] The minutes show that Browne attended the entire meeting, including the executive session where members of management were excused in light of their conflicts.

204. While internal documents obtained through discovery have now revealed why the Special Committee retained a second financial advisor (as discussed above), neither the Merger Proxy, nor the Section 220 production, provided an explanation for that decision or explained what, if any benefit the Special Committee gained from the addition of Goldman. Indeed, Evercore had already been advising the Committee for months and had been retained not only to advise the Special Committee on the strategic review process, but also to render a fairness opinion. Moreover, Goldman did not provide its own financial analysis or fairness opinion, and instead co-authored and influenced each and every Evercore presentation, despite suffering from irreconcilable conflicts of interest.

205. Further, as noted above and as explained in more detail below, Goldman had unwaivable and unmanageable conflicts, including because of its long-term and lucrative relationships with CPPIB and Riverstone, and because it had just advised Riverstone and PSP Investments on a potential take-private of PEGI. Neither discovery to date, nor the Proxy, reflect that the Special Committee discussed, recognized, or managed Goldman's conflicts. Indeed, as discussed above, the Special Committee previously tabled its decision to hire Goldman, yet it never again discussed Goldman's conflicts, requested more information about

Goldman's previous analyses of Riverstone's requested take-private of PEGI, or otherwise took any steps to actively manage Goldman's conflicts.

206. In preparing for the May 2, 2019 Special Committee meeting, Ray Strong of Evercore observed that Goldman's analysis was "very critical" and "too harsh" with respect to Brookfield and TerraForm.[130] Goldman's biased analysis disadvantaged Brookfield, whose bid was less favorable to Riverstone and more favorable to PEGI stockholders than a potential CPPIB bid would be.

207. Garland presented at the May 2 meeting but, contrary to the statements in the Merger Proxy, did not disclose his meeting or discussions with CPPIB and Riverstone.

208. The minutes also indicate that Brookfield remained interested in a merger with PEGI, regardless of whether the transaction included Pattern Development 2. Garland noted that, unsurprisingly, Riverstone preferred any merger to involve Pattern Development 2. The meeting concluded with a brief executive session in which the Special Committee, among other things, reiterated the "potential conflicts involving certain members of senior management."

[130] EVR_00026674, EVR_00017127.

209. The Special Committee's next meeting was on May 24, 2019.[131] Garland and Lyon both presented at the meeting concerning a potential transaction with Brookfield. A Goldman and Evercore presentation dated May 23, 2019, which appears to have been given at the May 24 meeting, noted that Brookfield had "indicated a desire to seek" Riverstone's consent to any transaction with PEGI. The presentation noted, however, that a "[PEGI]-on-top triangular merger may not trigger [Riverstone's] consent right[.]" The presentation also included a list of benefits to a deal with Brookfield, including the creation of a leading renewables platform with enhanced scale and diversification, a strong sponsor in Brookfield that would team with best in class management at PEGI, synergies that would drive cash flow and support dividend growth, an expanded project development portfolio, a reduced reliance on external financing with no need to raise common equity through 2023, a stronger credit profile, and a better governance structure that aligns the incentives of the sponsor and public stockholders.

210. The minutes indicate that Garland continued to obscure his interactions with CPPIB and Riverstone. The minutes state that Garland "noted that in addition to meeting with [Brookfield], there would also be meetings the following week with

[131] Former Riverstone partner Browne was present for the entire meeting, including the executive session.

[CPPIB] and [Riverstone], as [CPPIB] had expressed interest in potentially structuring a strategic transaction," and that CPPIB's "approach to the Company . . . had come about indirectly[.]" Garland did not tell the Special Committee that he had already met with CPPIB and Riverstone together, more than a month earlier, concerning CPPIB potentially acquiring the Company.

211. Following the May 24 meeting, the Special Committee permitted Garland to continue meeting alone with Brookfield, CPPIB, and Riverstone. Even though Riverstone had clearly begun working with CPPIB on a potential acquisition of the Company, representatives of Riverstone were permitted to attend Garland's May 29, 2019 meeting with Brookfield. Of course, as both the president and a director of Riverstone-controlled Pattern Development 2, Garland's involvement meant that Riverstone was always effectively "in the room" regardless of the presence of representatives of Riverstone and knew the details of Brookfield's offer.

212. On May 31, 2019, Brookfield submitted a revised term sheet to PEGI that reflected an all-stock acquisition of PEGI by TerraForm at a 15% premium. The term sheet now contemplated a concurrent acquisition of Pattern Development 2 for a cash price to be negotiated by PEGI and Riverstone such that Riverstone would no longer have any ownership interest in PEGI or Pattern Development 2 post-closing.

213. The Special Committee met the following day, on June 1, 2019.[132] Garland reported to the Special Committee that "[Riverstone] had indicated it would work with all parties potentially interested in [Pattern Development 2] to provide information," but that "it also appeared that [CPPIB and Riverstone] ***may*** be working with each other regarding a potential proposal." Garland, however, knew that CPPIB and Riverstone had been working together since at least mid-April 2019, but never fully disclosed that fact to the Special Committee.

214. The Special Committee met again on June 12, 2019.[133] The Special Committee discussed, among other things, its belief that CPPIB and Riverstone had been negotiating directly without the involvement of any Special Committee representative. The Special Committee took no steps to prevent these discussions. By allowing CPPIB to negotiate directly with Riverstone before the Special Committee agreed in principle with CPPIB on a valuation of PEGI, the Special Committee was allowing Riverstone to compete directly with public stockholders for merger consideration.

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[132] The minutes show that Defendant Browne attended the entire meeting.

[133] The minutes show that Defendant Browne attended the entire meeting.

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215. The Special Committee next met on June 18, 2019. Batkin reported to the Special Committee that Riverstone contacted Garland to inform him that CPPIB provided an offer for Pattern Development 2 for a 2.0x multiple of Riverstone's invested capital. At this point, CPPIB had not yet made an offer for PEGI.

216. The Special Committee did not even discuss the importance of CPPIB's offer to purchase Pattern Development 2, which gave the Special Committee additional leverage with respect to Riverstone. As noted above, the Company had a right of first offer in the event Pattern Development 2 proposed to Transfer its equity interests, or all or substantially all of its assets. The Special Committee could have leveraged its right of first refusal in any negotiations, as Brookfield had already expressed interest in buying Pattern Development 2 for cash. Alternatively, PEGI, either alone or with a third-party (like Brookfield or any other renewable energy investor) could have matched CPPIB's offer and acquired Pattern Development 2, removing Riverstone's influence.

217. During this period, Goldman was involved in negotiating with Brookfield on behalf of PEGI, despite the Special Committee's express instruction that Evercore, not Goldman, would have that role. In direct violation of that

instruction, Goldman participated in numerous calls with Brookfield.[134] When Batkin was made aware of this, he did nothing to reassert the Special Committee's instruction or to otherwise rein in Goldman.[135]

218. Contrary to the Special Committee's direction that Evercore would be the lead advisor, Goldman also took a leading role in negotiations with CPPIB. For example, on June 19, 2019, Bolster had a conversation with Martin Laguerre ("Laguerre") of CPPIB in which Laguerre indicated that he needed to understand Riverstone's and Pattern Development 2's "value expectations" before he could make an offer for PEGI.[136] In doing so, Laguerre conveyed the message that CPPIB's bid would involve a tradeoff between consideration for PEGI on the one hand, and for Pattern Development 2 and Riverstone on the other hand. Remarkably, CPPIB conveyed this message directly to Goldman, which worked for and was invested in Riverstone. This was precisely the kind of conflict that had led to the Special Committee's instruction that Evercore, not Goldman, would lead the negotiations on behalf of PEGI. Goldman ignored that instruction and negotiated

[134] GS-0002708, GS-0002569, GS-0012716, GS-0012647.

[135] GS-0002569.

[136] GS-0000521.

directly with CPPIB and its financial advisors at Bank of America Merrill Lynch on multiple occasions.[137]

219. Goldman also communicated directly with Riverstone about the negotiations, directly contrary to Batkin's instruction that Evercore would have that role.[138] In addition, Goldman also took a leading role in communicating with PSP Investments about the negotiations.[139] Bolster asked for and received permission from Garland, Lyon, and Pedersen – not Batkin or the Special Committee – to engage in those discussions with PSP Investments.[140] Likewise, when Goldman heard that other parties were potentially interested in pursuing a transaction with PEGI, Goldman informed PEGI management of that interest – not the Special Committee.[141]

220. On June 28, 2019, CPPIB provided its first offer for PEGI, which valued the Company at $25.50 per share, a 14% premium over the volume weighted average price of PEGI stock for the three-month period ending on June 27, 2019.

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[137] GS-0012877, GS-0002468, CPPIB_0374835.

[138] RIV00266396, GS-0012701, GS-0012982.

[139] GS-0000521, GS-0012702.

[140] GS-0000521.

[141] GS-0014426, GS-0000091.

CPPIB's offer specifically assumed that it would reach a separate agreement with Riverstone with respect to Pattern Development 2 and reach separate agreements with members of PEGI senior management. CPPIB also said it needed to continue its discussions with Riverstone and to discuss the matter with PSP Investments. As explained above, that CPPIB's offer mirrored Brookfield's economic terms is unsurprising. Garland and the Special Committee had allowed Riverstone direct access to the Special Committee's process, including allowing representatives of Riverstone to attend meetings with Brookfield. Thus, CPPIB had to have known the specifics of Brookfield's offers.

221. On July 1, 2019, Brookfield submitted an offer for TerraForm to acquire PEGI in an all stock merger representing a 15% premium based on trading prices leading up to the time of the announcement.[142] The offer contemplated that the combined TerraForm and PEGI would concurrently acquire Pattern Development 2 for cash at a 1.75x multiple of invested capital such that Riverstone would no longer have an equity interest in the combined company. The offer further stated that Brookfield needed to reach an agreement with PEGI on the valuation of

[142] Brookfield also said that it had completed its due diligence on PEGI and that it was open to providing PEGI stockholders a cash option

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Pattern Development 2 in addition to negotiating with Riverstone. Unlike CPPIB, Brookfield was not seeking to circumvent the Special Committee.

222. On July 8, 2019, [redacted][143] and [redacted] both of which had previously expressed interest in the Company and were told to submit an offer, submitted an offer to acquire PEGI for $25 in cash and Pattern Development 2 at a multiple of 1.6x invested capital in either cash or equity. [redacted] and [redacted] submitted a revised offer on July 15, 2019 in response to feedback they had received. They left their offer for PEGI the same but raised their offer for Pattern Development 2 to 1.8x invested capital plus a potential earnout. Obviously, the only feedback they received was that they needed to pay more for Pattern Development 2.

223. On July 16 and 17, 2019, counsel for Brookfield and PEGI exchanged revised drafts of term sheets that reflected the same economic terms as set forth in Brookfield's July 1, 2019 offer letter.

224. On July 23, 2019, Brookfield submitted a new offer letter to PEGI following further conversations with management. Further illustrating the influence

[143] [redacted] had previously approached the Company with interest in making an acquisition proposal.

of Riverstone, Brookfield noted that "the Board and management wish to also internalize [Pattern Development 2] as part of this transaction." Brookfield reiterated that it was open to providing the necessary capital to acquire Pattern Development 2 for cash in a deal that provided a 15% premium to PEGI stockholders. However, Brookfield also stated that it would be willing to complete a simpler transaction that did not include the acquisition of Pattern Development 2 and that offered a 20% premium to PEGI stockholders. In other words, the Special Committee knew unequivocally that including Pattern Development 2 in a transaction would result in public stockholders of PEGI receiving materially less merger consideration.

225. During this period, despite serving as an advisor to the Special Committee, Goldman also advised PEGI senior management, including the Officer Defendants, on the impact that Brookfield's and CPPIB's bids would have on their own compensation, and that analysis informed management's discussions concerning compensation with bidders,[144] despite the fact that the Special Committee instructed management that "[u]nder no circumstances are ***any*** discussions to be had regarding . . . compensation to be paid to management by any

[144] *See, e.g.*, PEGI-00062412, RIV00047485.

Potential Transaction Party or the Company."[145] In particular, Goldman created a presentation that was intended to "level-set Garland's expectations" by compiling executive compensation figures for Brookfield-affiliated companies, including some figures that were "very very low."[146] Goldman also advised PEGI senior management about CPPIB's proposed compensation arrangements by running and vetting CPPIB's compensation model.[147] Bolster also attended an August 21, 2019 meeting between representatives of Riverstone and CPPIB concerning "Management Compensation" and other issues relating to a potential transaction.[148] All of this effectively put Goldman on both sides of the negotiating table, and meant that Goldman was assisting the Officer Defendants in violating the Special Committee's instructions to management.

H. Brookfield is Pushed Aside in Favor of Riverstone's Preferred Bidder, CPPIB

226. The Special Committee met on July 31 and August 1, 2019 to discuss the pending offers, including Brookfield's offer to pay more for PEGI if it did not also have to acquire Pattern Development 2. The July 31 meeting was unusual in

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[145] PEGI-00205058.

[146] GS-0010137, GS-0095338.

[147] PEGI-00063859, GS-0012809, GS-0013117, GS-0013326.

[148] CPPIB_0385008.

that Paul Weiss and Evercore did not attend the meeting, but Goldman, which faced egregious conflicts of interest did. As a result, the Special Committee only received only Goldman's tainted advice at this meeting.

227. At the July 31, 2019 meeting, one of the issues the Special Committee discussed was the conflicts of interests faced by PSP Investments in any transaction, which makes clear the Special Committee was aware they were not similarly situated as other public stockholders.

228. The Special Committee also discussed that Brookfield's and CPPIB's offers provided similar value to PEGI stockholders if paired with an internalization of Pattern Development 2, but a key difference between the two offers was that Brookfield would cash out Riverstone, while CPPIB would allow Riverstone to continue to own an equity interest.

229. The Special Committee purportedly discussed the offers further at the August 1, 2019 meeting, which Browne participated in. However, much of the August 1 meeting minutes concerning that discussion are almost identical to those from the July 31, 2019 meeting and appear to be copied.

230. At the August 1, 2019 meeting, the Special Committee decided to determine whether CPPIB would increase its offer, but to hold off further substantive engagement with Brookfield until CPPIB provided additional feedback.

231. The Special Committee also discussed that, when it did substantively engage with Brookfield, it would need to convey to Brookfield the importance of reaching an agreement with Riverstone about a deal that included Pattern Development 2 if it wanted to have a chance to acquire PEGI. In an accompanying presentation, Evercore noted that CPPIB was already in "advanced stages of negotiation" with Riverstone and that a combination of PEGI and Pattern Development 2 was "in line with management's vision."

232. In other words, from this point forward, the Special Committee was giving CPPIB preferential treatment over Brookfield in the process. This was so despite the Special Committee recognizing that Brookfield's offers exceeded CPPIB's current offer. Specifically, the Special Committee estimated Brookfield's current offer at even just a 15% premium equated to a 1.8413 exchange ratio, or approximately $28.25 per share, based on a 90-day VWAP.

233. On August 12, 2019, *Bloomberg* reported that Brookfield/TerraForm were in discussions with PEGI about a potential merger. Thereafter, certain parties considered PEGI's closing price on August 9, 2019, the last full trading day prior to these reports, as the appropriate unaffected price to be used to calculate the merger premium.

234. On August 15, 2019, [redacted] and [redacted] submitted a letter reaffirming their July 15, 2019 proposal whereby they would cash out PEGI's public stockholders and merge PEGI with Pattern Development 2 in an equity-based transaction. [redacted] and [redacted] noted that, "[a]s you are aware, we are engaged in productive discussions with [Riverstone] on the terms under which we would govern the new combined company."

235. On August 16, 2019, CPPIB submitted an updated offer letter to PEGI to acquire both PEGI and Pattern Development 2. In the letter, CPPIB offered a price range of $26.25 to $26.50 for PEGI, which incorporated "the assumption of [PEGI's] liability for the management profit share of $18.0 million that is payable concurrent with an acquisition of [Pattern Development 2]." CPPIB characterized its offer as a 15.8% premium based on the three-month volume weighted average price for PEGI—or substantially less than what Brookfield would offer if a transaction did not include Pattern Development 2. The letter also included an assumption that CPPIB would reach satisfactory agreements with certain members of management. However, like its previous offer letter, this letter did not include a valuation for CPPIB's offer for Pattern Development 2. The letter stated that CPPIB had productive discussions with Riverstone regarding Pattern Development 2 and was confident they could negotiate definitive documents. The Special Committee

was completely cut out of those discussions. As it had previously done, CPPIB reiterated its desire to also discuss the proposed transaction with PSP Investments.

236. The Special Committee next met on August 19, 2019. In accordance with the Special Committee's decision at the August 1, 2019 meeting, the Company had limited contact with Brookfield in the prior weeks. The Special Committee discussed [redacted] and [redacted] recently updated offer for both PEGI and Pattern Development 2. Garland and Batkin reported that [redacted] and [redacted] told them that its offer for the two companies was integrated such that any increase in the consideration for one company would need to correspond to a decrease in the consideration for the other, further illustrating that Riverstone and management were competing with PEGI's equity holders for merger consideration in any transaction that included Pattern Development 2.

237. The Special Committee was also informed that CPPIB had offered to acquire Pattern Development 2 at a price equal to 1.8x of Riverstone's invested capital subject to a contingent earnout provision that could increase the total purchase price to up to 2.25x Riverstone's invested capital, which the Special Committee believed was acceptable to Riverstone. The Special Committee noted that the proposed earnout for Pattern Development 2 meant it was less likely CPPIB would increase its offer for PEGI, again reiterating that public stockholders were

competing with the owners of Pattern Development 2 for merger consideration. Despite the fact that Brookfield's offer was worth more if the transaction excluded Pattern Development 2, the Special Committee decided to advance negotiations with CPPIB, including on a merger agreement, and to allow CPPIB to hold discussions with PSP Investments about the proposed transaction and management about post-closing arrangements.

238. Despite the Special Committee's decision to keep Brookfield at arm's-length and favor CPPIB, Brookfield was not deterred. On August 26, 2019, Brookfield submitted an updated offer letter based on feedback provided by Evercore and Goldman on August 20, 2019. In the letter, Brookfield stated that Evercore and Goldman informed it that:

- The Board of Directors of PEGI is no longer supportive of any transaction which includes the internalization of the 71% [of Pattern Development 2] that PEGI does not currently own.
- Riverstone has a consent right with respect to a merger of PEGI, and Riverstone will not provide such consent to a transaction in which [TerraForm] becomes the parent company of PEGI.
- The Board of Directors of PEGI prioritizes both deal certainty and price in evaluating its options for the Company.

239. Put differently, the Special Committee (or full Board) decided not to pursue Brookfield's higher premium proposal for a deal excluding Pattern Development 2 based on a flimsy and easily avoided Riverstone "consent" right.

Moreover, the Special Committee (or full Board) appears to have lied to Brookfield about no longer supporting any transaction that internalizes Pattern Development 2 as the final Merger agreed to with CPPIB includes such an internalization.

240. Nevertheless, Brookfield modified its offer such that PEGI would acquire TerraForm at a value that would reflect an exchange ratio of two TerraForm shares for each PEGI share and in a transaction that would not include Pattern Development 2 "so that no Riverstone consent is required in connection with the transaction."

241. Based on the immediately preceding closing prices, this deal valued PEGI at $33.38 per share, significantly above CPPIB's offer and the final deal price. As Brookfield noted, this structure would have allowed PEGI stockholders:

> the opportunity to continue to participate in the upside embedded in the shares of a world class renewable power leader that will have a dividend payout ratio sized to provided capacity for significant investment in the business, combined with an enhanced growth profile consisting of PEGI's right of first offer to acquire development projects from [Pattern Development 2], as well as the best-in-class acquisition capabilities of an experienced, well-capitalized and accomplished sponsor in Brookfield. ***This is more compelling opportunity than having their upside capped in a privatization transaction.***

242. Although the Proxy claims a representative of Brookfield said it would require concessions from Pattern Development 2, nothing in Brookfield's August 26 proposal required any amendments to PEGI's contracts with Pattern Development 2

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and the minutes from the Special Committee meeting held later that day, which Browne participated in, do not mention any such concessions.[149] Instead, the minutes say that Brookfield's updated proposal "***was not dependent upon any transaction with [Pattern Development 2***.]"

243. On August 27, 2019, PEGI received an offer to acquire the Company from [redacted] for $25.00 to $28.00 per share. [redacted] offer also stated it would acquire 100% of Pattern Development 2 at an unspecified price.

244. The Special Committee, including Browne, met again on August 28, 2019. It decided that it could not give competitively sensitive due diligence to [redacted] because [redacted].

245. The Special Committee also discussed how Brookfield's offer was worth $34 per share based on the then-current trading price, a 45% premium, as well as the risk that Riverstone would file litigation in an attempt to block a transaction that did not involve Pattern Development 2. Of course, any such litigation would be meritless as the proposed transaction structure did not implicate the consent right. Also, as discussed above, the Partnership Agreement states that PEGI's consent is

[149] At this meeting, Evercore also reported that [redacted] and [redacted] orally said they might be able to raise their offer for PEGI to $26.50.

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needed before Pattern Development 2, the entity that actually had the consent right over a limited subset of transaction, could initiate litigation or other administrative proceedings.

246. At the meeting, the Special Committee determined to continue "to progress the transaction" with CPPIB. The Special Committee also decided to ask Brookfield for more information, despite the fact that Brookfield later asserted "that we have largely already provided our views on each of the requested items for clarification in prior discussions, meetings or correspondence[.]"

247. After further discussions with Evercore and Goldman, Brookfield submitted an updated offer letter on August 30, 2019 to provide more information as the advisors requested. In the letter, Brookfield reiterated that:

> We had previously been notified by your advisors that Riverstone has a consent right with respect to a merger of PEGI, ***and Riverstone will not provide such consent to a transaction in which [TerraForm] becomes the parent company of PEGI.*** As you are aware, we, at your request, restructured the proposed transaction with PEGI as the surviving parent company ***so that no Riverstone consent is required in connection with this proposed transaction***.

248. Brookfield also stated that it had been told early in the process that PEGI believed it was desirable for PEGI's senior management to maintain their positions in the combined company, including their dual positions at Pattern Development 2. Although Brookfield had been operating under that basis for

months, that was also during a time when it was also told that it was a priority for PEGI to internalize Pattern Development 2 as part of a transaction. Now, Brookfield reiterated that it had been told on August 20, 2019 that the PEGI Board no longer supported a transaction that included the internalization of the rest of Pattern Development 2 that PEGI did not already own. Again, it appears that the Special Committee lied to Brookfield and/or never corrected Brookfield's misunderstanding. The Special Committee (and Riverstone) clearly supported an internalization of Pattern Development 2. They just did not support a deal that cashed out Riverstone.

249. Brookfield asserted that its due diligence was complete and that it could sign final deal documents in September. Again, nothing in Brookfield's letter indicated that it would require any amendments to PEGI's contracts with Pattern Development 2.

250. After receiving this letter from Brookfield, Batkin emailed Garland and representatives of Evercore and Goldman and asked where Brookfield had gotten the impression that the PEGI Board no longer supported internalizing the portion of Pattern Development 2 that it did not already own. Bolster responded that Goldman had told Brookfield that "a deal where [PEGI] acquires [Pattern Development 2] and

remains a public company was not competitive [with] other alternatives."[150] Bolster's self-serving account of this communication is not consistent with Brookfield's August 26 and 30, 2019 letters, which both specify that Brookfield had been told that "the Board of Directors of PEGI is no longer supportive of ***any transaction*** which includes the internalization of the 71% of [Pattern Development 2] that PEGI does not currently own."[151] In Brookfield's account, this message was not limited to a scenario in which PEGI "remains a public company."

251. Goldman's misleading message to Brookfield, which was contrary to the Special Committee's instruction that Evercore would handle all negotiations with Brookfield, thus led Brookfield to believe that the PEGI Board did not support the internalization of Pattern Development 2. Goldman never corrected this misunderstanding. Accordingly, Brookfield's updated bid for PEGI did not include Pattern Development 2.

252. On September 4, 2019, Sachin Shah ("Shah"), CEO of Brookfield, emailed Batkin following a meeting Shah held with a representative of Riverstone

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[150] GS-0002740.

[151] PEGI-00000872, PEGI-00000981 at 984.

and Garland. An email sent by Shah later that day indicates that the Riverstone representative was Hunt.

253. According to the Proxy, at the meeting, even though its consent would not be required if PEGI acquired TerraForm, Riverstone stated it believed any such transaction would require amendments to the agreements between PEGI and Pattern Development and that it would not support a transaction without such amendments. Thus, Riverstone, not Brookfield, first insisted that a PEGI-TerraForm merger would require contract amendments. It is likely that at this meeting, Riverstone threatened Brookfield with meritless litigation if Brookfield attempted to proceed without Riverstone's consent. The Proxy also says that, after Riverstone said amendments were necessary, Brookfield said it would not want to proceed without the amendments, but that they were willing to consider any of Riverstone's proposed amendments.

254. In an email sent by Shah to Batkin later that day, Shah noted that Riverstone needed to consider matters to see if there was a path forward on a potential deal. Shah indicated that the ball was in Riverstone's court on the issue, not Brookfield's, as Brookfield still believed in the merits of a transaction.

255. On September 10, 2019, Shah, on behalf of Brookfield, sent a letter to the full PEGI Board that illustrated the control Riverstone exercised with respect to any merger of PEGI. In the letter Brookfield stated:

> Our understanding is that the relationship between the PEGI Board and Riverstone is complex. ***The Board has a fiduciary duty to shareholders of PEGI but is not free to accept certain types of transactions without prior Riverstone consent or, as we understand, any transaction not supported by Riverstone without attracting Riverstone litigation risk.*** We also understand that Riverstone is not necessarily economically aligned with PEGI shareholders given that it holds no (or negligible) equity in PEGI. Further, given the inter-related nature of the arrangements between PEGI, its management, and Riverstone, there could be potential multiple competing interests. This is a unique and difficult scenario.

256. This letter makes clear that the impediment to a deal where PEGI would acquire TerraForm was Riverstone's threat of meritless litigation. Brookfield went on to say that "we do not believe it is in anyone's best interests to engage with Riverstone in a manner that creates animosity or material litigation risk." In other words, after meeting with Riverstone, Brookfield was now unwilling to proceed with a transaction structure that avoided Riverstone's consent right because of the likelihood that Riverstone would sue to block the transaction. As a result, no deal could be completed without the consent of Riverstone even though it had no legal right to block a properly structured transaction. Nonetheless, Brookfield reiterated its all-stock proposal based on a 2:1 exchange ratio if Riverstone consented to the

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deal and the parties agreed to certain amendments of the existing contractual arrangements as requested by Riverstone. According to the Proxy, on September 18, 2019, Riverstone provided Brookfield with proposed amendments to the PEGI/Pattern Development 2 contracts.

257. On September 20, 2019, [redacted] and [redacted] submitted an updated offer to acquire PEGI for $26.75 per share in cash in a deal that included the consolidation of Pattern Development 2 at a valuation of approximately $800 million plus an earnout for the 71% not owned by PEGI. [redacted] and [redacted] would have allowed Riverstone to hold equity in the combined company. The letter stated that they had reached an agreement on all key terms with Riverstone, which it described as one of "the three legs of the stool that are critical to accomplishing our objective of acquiring and combining PEGI and [Pattern Development] 2." However, [redacted] and [redacted] ultimately did not submit a final proposal.

I. The Special Committee Accepts the Unreasonable Merger and Spurns Brookfield's Higher Value Proposal

258. On September 23, 2019, Batkin met with the Special Committee's advisors and PEGI's management, without any of the other Special Committee members present, to discuss Riverstone's demanded contract amendments.

259. The Special Committee next met on September 29, 2019 with Browne in attendance and discussed the status of Brookfield/TerraForm's offer. In

particular, the Special Committee discussed Riverstone's demanded contract amendments if PEGI were to accept the offer. Batkin noted that Riverstone's demands were "fairly expansive." According to the minutes, these demands included a right to buy back PEGI's 29% interest in Pattern Development 2, a transaction with significant potential benefit for a combined PEGI/TerraForm entity.

260. If Riverstone or Pattern Development 2 purchased PEGI's interest, PEGI would no longer be bound by the Partnership Agreement, and the combined PEGI/TerraForm would be free of any transfer restrictions. As a result, PEGI could be sold to a third party at a premium in the future without any restrictions should it so desire. Moreover, PEGI would still retain its ROFO rights under the Purchase Rights Agreement as those rights were not tied to PEGI's equity interest in Pattern Development 2. Therefore, the combined PEGI/TerraForm would still have a ROFO over Pattern Development 2's project pipeline ***and*** a ROFO over any proposed sale of Pattern Development 2.

261. Also at the meeting, Batkin reported to the Special Committee that Shah told him that Brookfield "was generally comfortable with the proposed terms and thought that any potential issues were not insurmountable." Further, "Batkin informed the Committee that he asked Mr. Shah whether [Brookfield] would be

willing and able to sign onto the terms of [Riverstone's] letter as-is, to which Mr. Shah indicated that he thought he would be able to do so."

262. There were thus no legitimate impediments to an acquisition of TerraForm. Nonetheless, Garland threatened the Special Committee, warning that an acquisition of TerraForm would fundamentally alter its relationship with Pattern Development 2. Of course, such a transaction would have no negative impact on PEGI so long as Riverstone and PEGI's management complied with their fiduciary and contractual obligations.

263. Also at the meeting, Garland provided an update on the Company's efforts to raise financing from the issuance of preferred stock to acquire two new renewable energy projects – Henvey and Grady. During the discussion, Garland pressured the Board to move quickly, noting his "concern that the Preferred Issuance had already been delayed for months" due to the sales process "and indicated that it had reached a point where it could not be delayed any further without risk of the Company's counterparty walking away from the proposed deal." Garland then "reminded the Committee of the importance to the Company of consummating the Preferred Issuance."

264. The minutes of the September 29, 2019 meeting reflect "the possibility that [Brookfield/TerraForm's] proposal could be for a higher price than other

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proposals, ***noting that the duty of the Committee was to maximize value for shareholders.***"

265. The Special Committee discussed how to proceed in an executive session. During that session, the Special Committee decided not to grant Brookfield exclusivity despite the fact that it was offering stockholders the highest value by far. The Special Committee then agreed that Batkin should reach out to Brookfield "and inquire if [Brookfield] would proceed without exclusivity."

266. The next day, on September 30, 2019, the transaction committee of the Board (the "Transaction Committee") approved a resolution that included the Certificate of Designation for 10,400,000 shares of preferred stock. The Company did not produce any minutes reflecting this resolution, but the timing clearly shows that Garland's pressure at the prior day's meeting pushed the Board to act. As discussed in more detail below (*infra* ¶¶ 320-360, 365-368), the preferred stock issuance proved pivotal in the stockholder vote approving the Merger.

267. Thereafter, according to the Proxy: (i) between October 13 and 15, 2019, Batkin informed Brookfield that it needed to submit a proposal that was not conditioned on agreeing to any contract amendments with Riverstone or Brookfield needed to have already negotiated definitive contact amendments before submitting a proposal; and (ii) on October 17, 2019, Evercore contacted Brookfield and CPPIB

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to instruct them to submit "definitive documentation" by October 23, 2019 and to submit "best and final" offers by October 28, 2019. The Proxy claims both were done at the direction of the Special Committee, but there is no record in the Committee's minutes directing or authorizing these communications.

268. Brookfield reiterated its prior proposal in an October 28, 2019 letter, valuing PEGI shares as the equivalent of two TerraForm shares. According to the letter, the proposal valued PEGI at $33.38 per share and a 47% premium to the undisturbed 90-day VWAP based on the companies August 23, 2019 closing prices. Brookfield further stated: "We believe and ***we have been advised by you and your advisors that our proposal is superior from a value perspective to the others that you have received and that you will receive in this sales process***."

269. Brookfield also reaffirmed its willingness to structure the transaction with PEGI as the acquirer "***so that no Riverstone consent is legally required to effect this transaction***." Such a transaction would not have included Pattern Development 2.

270. Brookfield again reiterated the problem Riverstone posed, but said that it could agree to Riverstone's unreasonable and excessive demands:

> Our proposal has a clear path to execution. However, we understand that the situation vis-à-vis Riverstone continues to be problematic for the PEGI Board and that Riverstone's interests are likely not aligned

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with those of the PEGI shareholders. However, notwithstanding this, we believe that there is a clear path forward and a very bright future for PEGI's shareholders if our proposal, with all of it [sic] benefits, are accepted by you.

As requested, we have carefully reviewed Riverstone's list of demands to potentially support a merger of PEGI with [TerraForm]. Those demands effectively require a separation of the Riverstone business from PEGI. The list from Riverstone, as you know, requires that all of PEGI's development expertise, systems, people and the Pattern name itself revert back to Riverstone, in exchange for their support.

As we have stated, we could agree to these requests. Brookfield has over 3,000 professionals focused on power operations, marketing, investment, development, and finance around the world. Our bench strength in management is deep. We have people and operations globally with the capabilities to manage, operate, grow, fund and deliver value to PEGI's shareholders, with a public track record of over 20 years. We also have a demonstrated expertise in carve-out transactions. In fact, [TerraForm] itself is an example of [sic] successful carve out from a company that had no people, systems, operating structure or access to capital given the bankruptcy of SunEdison three years ago. Therefore, we believe it would be possible to successfully execute such a separation to achieve the proposed merger at the value we have ascribed.

Further, we believe executing on certain of the Riverstone demands may leave [PEGI] as a far better company in the future than it currently is. ***If we separate the inter-related management, systems and eliminate the conflicts that Riverstone brings to PEGI and merge the Company with [TerraForm], we will leave the merged entity with clear alignment between the Board, shareholders, management and its sponsor, Brookfield. All constituents will then have a singular focus on creating value for PEGI***.

We have reviewed the mark-up of the draft merger agreement your counsel provided to us and believe that there is a clear path to reaching

> mutually agreeable transaction documentation in the short term, particularly since our due diligence has been complete for some time.
>
> We appreciate that PEGI has now run a lengthy, thorough and publicly disclosed auction designed to maximize value for the benefit of its shareholders. We hope that we are well positioned to be selected as PEGI's preferred bidder given the Board's priorities of deal certainty and price in evaluating options for the Company.
>
> We note that over the past year, we have met numerous times with you, management, Riverstone and your various advisors and have attempted, in good faith, to work through multiple structures to accommodate the interests of the various parties and we wish to continue to underscore that we are prepared to continue to be flexible and practical in working with you, your advisors and PEGI management to capitalize on this unique opportunity to create meaningful value for the shareholders of PEGI.

271. Also on October 28, 2019, CPPIB submitted a final offer to acquire PEGI for $26.75 per share in cash and to simultaneously acquire Pattern Development 2 in a transaction that would allow the owners of Pattern Development 2 to own equity in the combined company.

272. CPPIB's offer followed multiple backchannel communications between Goldman and CPPIB. CPPIB believed that Goldman would give it a "steer" if there was a "serious interloper,"[152] and that is exactly what happened. For example, on or about October 3, 2019, Bolster told CPPIB that it needed to "hurry"

[152] CPPIB_0010534.

to reach an agreement so that it did not lose its "advantage."[153] Bolster added that CPPIB's offer was "***less attractive*** but more certain" than Brookfield's offer (which would, however, become "more certain" over time); that the Special Committee was "reluctant" to accept Brookfield's offer; and that the Special Committee had directed Brookfield to ask Riverstone for "consent" in order to avoid "litigation risk."[154] CPPIB even learned on or about October 7, 2019 – apparently from Bolster – that Brookfield "had a $4 buffer" against CPPIB, such that a decline in TerraForm's stock price "shouldn't be an issue" for Brookfield.[155] CPPIB internally expressed confidence that Bolster was giving them accurate information about Brookfield's bid,[156] and had numerous calls with Bolster to assess CPPIB's positioning.[157] All of this information, including the details of Brookfield's bid and the Special Committee's specific views about it, gave CPPIB a significant advantage over Brookfield, which did not learn the elements of CPPIB's bid until the Merger was announced.[158]

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[153] CPPIB_0009776.

[154] CPPIB_0211791.

[155] CPPIB_0021155.

[156] CPPIB_0374470.

[157] CPPIB_0388208, CPPIB_0374571.

[158] BROOKFIELD_TF-PATTERN_0000196.

273. Bolster later told CPPIB that it needed to sign the Merger Agreement over a weekend and announce the Merger on Monday, November 4, 2019, in order to forestall a final effort by Brookfield that was "freaking out" Riverstone.[159] CPPIB followed Goldman's guidance, all of which was contrary to the Special Committee's instruction that Evercore, not Goldman, would serve as its lead advisor.

274. The Special Committee met on October 30, 2019 and October 31, 2019 to consider the two offers. The minutes from the October 30, 2019 meeting state that counsel "reminded" the Committee that Evercore had sent final bid instruction letters, including to Brookfield and CPPIB. As noted above, there is no meeting minute or other evidence in the Section 220 production reflecting an earlier meeting or discussion concerning these bid instruction letters. Thus, according to the minutes, counsel "reminded" the Committee of an event about which they had no apparent prior knowledge and to which they had given no formal consent or authorization.

275. At this critical juncture, Garland planned to coerce the Special Committee into approving the inferior CPPIB transaction. Shockingly, on October 30, 2019, Garland sent an email to PEGI management's counsel at Skadden

[159] CPPIB_0009431.

attaching a draft resignation letter, dated the following day, and a memo explaining why he "strongly support[ed] awarding the transaction to [CPPIB]."[160] The draft resignation letter stated: "I am happy to work out an effective date that is mutually agreeable, however, I do not think it appropriate that I work on the [Brookfield] transaction."[161]

276. The October 31, 2019 meeting was the final Special Committee meeting before they approved the Merger on November 3, 2019. Browne participated in the October 31, 2019 meeting. At the October 31 meeting, Goldman advocated for Riverstone, describing Riverstone's communications with the conflicted investment bank that expressed confidence in the proposed transaction among PEGI, CPPIB, and Pattern Development 2.

277. At the October 31, 2019 meeting, Evercore gave a presentation on the two pending offers for the Company. Evercore analyzed the value of Brookfield's/TerraForm's all-stock offer by conducting an analysis of the combined company's likely trading price based on various yields of two of the combined company's potential dividend policies. In such an analysis, the lower the dividend

[160] PEGI-00221579.

[161] PEGI-00221584.

yield, the higher the stock price. According to Evercore, if the combined company maintained PEGI's dividend and traded at TerraForm's dividend yield in 2020, the combined company's stock would be worth $29.71. If the combined company maintained TerraForm's dividend policy and traded at TerraForm's dividend yield in 2020, the combined company's stock would be worth $32.94. This analysis is in line with Brookfield's assertion in its October 28, 2019 letter that PEGI's advisors told Brookfield they believed Brookfield's offer was financially superior to CPPIB's offer. Both of these valuations exceeded CPPIB's alternative $26.75 per share offer.

278. Yet, even these values were artificially depressed. For instance, the dividend yield analysis used 5.72% as TerraForm's dividend yield, but another slide in the presentation reported TerraForm's estimated 2020 dividend yield as only 5.2%. If Evercore had used a consistent 5.2% yield in its dividend analysis, the value of the combined company would be $32.69 if PEGI's dividend was maintained and $36.15 if TerraForm's dividend was maintained.

279. Similarly, Evercore also conducted a dividend yield analysis that assumed the combined company would trade at PEGI's dividend yield. Evercore, however, assumed a dividend yield for PEGI of 7.3% based on the Company's trading price ***before*** Bloomberg reported on a potential TerraForm merger. But a different slide shows that PEGI's dividend yield at the time of the presentation was

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only 6.2%, which incorporated the market's collective view on the value of a combined PEGI/TerraForm. If Evercore had properly used this lower yield, value of the combined company would be $27.42 if PEGI's dividend was maintained and $30.32 if TerraForm's dividend was maintained. Again, these values are all well in excess of CPPIB's $26.75 offer.

280. Goldman likewise conducted a dividend yield analysis in which it reached the unavoidable conclusion that the value of a combined PEGI/TerraForm would be well above CPPIB's offer of $26.75 per share.[162] In response, Garland acknowledged that Goldman's presentation "certainly gets across the idea that the stock should trade [at] $28-30 without complications."[163]

281. To overcome the obvious reality that CPPIB's offer was inferior, Evercore's October 31, 2019 presentation resorted to fear-mongering that echoed many of management's previous half-truths concerning the risks of pursuing a deal with Brookfield and TerraForm. For example, Evercore told the Special Committee that a merger of PEGI and TerraForm would put Pattern Development 2's "purpose

[162] GS-0128650.

[163] GS-0115170.

and commercial viability at risk." Further, the presentation quotes four different analysts that discuss the value and importance of Pattern Development 2 to PEGI.

282. However, Evercore's argumentative tone had no basis in fact. Specifically, Evercore incorrectly assumed that the Company's acquisition of TerraForm would require PEGI's ROFO on Pattern Development 2 projects "to be substantially altered or terminated."

283. In truth, as described above, the minutes of the Special Committee's September 29, 2019 meeting and Brookfield's October 28, 2019 letter explain that the amendments to Pattern Development 2's agreements would simply require the two entities to operate as independent companies with their own systems, management teams, and names. Nothing in these amendments would have put PEGI's ROFOs at risk, which is likely why Brookfield assured the Special Committee it could agree to Riverstone's demanded contract amendments.

284. Thus, contrary to Evercore's hollow scare tactics, PEGI could have acquired TerraForm, freed itself of the Partnership Agreement's transfer restrictions, and maintained its ROFOs over Pattern Development 2 and the commensurate benefits to PEGI. The Special Committee, however, did nothing to intervene and manage the process, including Riverstone's conflicts. Rather, the Committee opted for a laissez-faire approach that left Brookfield, who was neither a party to the

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Partnership Agreement nor the proposed acquiror in the transaction, on its own to assert the Company's contractual rights and fend against Riverstone's bad faith intransigence. This inaction is inexplicable given the Special Committee's previously acknowledged duty to maximize stockholder value.

285. Instead of intervening and actively managing Riverstone's conflicts, the Special Committee decided to rush the process and push Brookfield aside for good. To that end, on November 1, 2019, Brookfield informed Paul Weiss that it believed it could negotiate any necessary amendments with Riverstone within thirty days. Inexplicably, Paul Weiss demanded that Brookfield submit definitive documents the next day, which Brookfield obviously could not do without the good faith cooperation of Riverstone. As a result of Riverstone's intransigence and the Special Committee's laissez-faire attitude, Brookfield finally threw in the towel and walked away.

286. Shortly thereafter, on November 3, 2019, the Special Committee, with Browne in attendance, voted to recommend that the Board approve the Merger with CPPIB at $26.75 per share. The Board did so later that same day.

VI. The Merger and Related Agreements

287. Pursuant to the Merger Agreement, affiliates of CPPIB agreed to acquire PEGI for $26.75 per share in cash, a 14.8% premium to PEGI's closing price

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on August 9, 2019, the last trading day prior to market rumors of a potential PEGI acquisition. Each share of the Company's preferred stock remained outstanding following the consummation of the Merger. The Merger implied an enterprise value for PEGI of $6.1 billion, including debt.

288. At the time of the Merger, CPPIB, Riverstone, members of management, and Pattern Development 2 also entered into a Contribution and Exchange Agreement (the "Contribution Agreement"), pursuant to which PEGI and Pattern Development 2 were united under common ownership post-closing. The Contribution Agreement purportedly valued Pattern Development 2 at $1.06 billion, or 1.63x the value of its invested capital.

289. In connection with the post-closing combination of PEGI and Pattern Development 2, the Officer Defendants received the right to convert their equity interests in Pattern Development 2 and/or certain equity awards in PEGI into equity interests in the new combined entity. The Officer Defendants were also eligible to earn up to $51 million in earnout payments in connection with their Profit Interest Units and Capital Units in Pattern Development 2.

290. The tables below summarize the value of these benefits for each Officer Defendant:[164]

Name	PEGI Restricted and Performance Shares Contributed and Exchanged (Unvested)				Pattern Development 2 Units (Capital) Contributed and Exchanged (Vested)			
	Restricted Shares Contributed (#)	Performance Shares Contributed (#)	Newco Units Received (#)	Estimated Value of Newco Units Received ($)	Units (Capital) Contributed (#)	Newco Units Received (#)	Estimated Value of Newco Units Received ($)	Estimated Potential Future Earnout ($)
Garland	27,923	85,115	3,023,767	3,023,767	1,403,784	2,157,719	2,157,719	321,191
Lyon	13,036	39,714	1,411,063	1,411,063	—	—	—	—
Armistead	14,321	43,493	1,546,525	1,546,525	1,332,074	2,047,494	2,047,494	304,784
Elkort	10,994	33,482	1,189,733	1,189,733	304,567	468,142	468,142	69,686
Pedersen	13,036	39,714	1,411,063	1,411,063	—	—	—	—

Name	Pattern Development 2 Units (Profits Interest) - Contributed and Exchanged					
	Vested Units (Profits Interest)			Unvested Units (Profits Interest)		
	Newco Units Received (#)	Estimated Value of Newco Units ($)	Estimated Future Earnout ($)	Newco Units Received (#)	Estimated Value of Newco Units ($)	Estimated Future Earnout ($)
Garland	8,227,214	8,227,214	6,765,514	8,227,114	8,227,114	6,765,432
Lyon	1,214,884	1,214,884	999,040	1,214,883	1,214,883	999,039
Armistead	7,803,324	7,803,324	6,416,934	7,803,257	7,803,257	6,416,879
Elkort	2,826,957	2,826,957	2,324,702	2,826,924	2,826,924	2,324,674
Pedersen	1,672,134	1,672,134	1,375,052	1,672,133	1,672,133	1,375,051

291. As a result, while PEGI's public stockholders were cashed out and left with no interest in either PEGI or Pattern Development 2, Riverstone, PSP Investments, and the Officer Defendants continue to hold equity in the new combined company.

[164] These figures assumed a closing date of January 31, 2020 and an aggregate value of the combined company post-closing based on an agreed upon valuation of the combined company by the parties to the Contribution Agreement.

292. The Officer Defendants also maintained their positions and continue to run the Company post-closing. In connection with the Merger, the Officer Defendants entered into amended and restated employment agreements on November 3, 2019 (the "New Employment Agreements"). The New Employment Agreement for each Officer Defendant (i) provides for a three-year term with automatic renewals for successive one-year periods, (ii) preserves their pre-Merger base salary and cash severance benefits, and (iii) provides for accelerated vesting of equity incentive awards upon a change of control and qualifying termination of employment. Defendant Garland also received an extended COBRA continuation period.

293. The estimated value of these benefits at the time of the Merger is set forth in the table below:

Officer Defendant	Cash ($)	Equity Awards ($)	Other Benefits ($)	Total ($)
Garland	3,010,241	3,023,767	43,089	6,077,097
Lyon	1,159,197	1,411,063	41,736	2,611,996
Armistead	1,275,501	1,546,525	41,736	2,863,762
Elkort	1,053,775	1,189,733	41,736	2,285,244
Pedersen	1,159,197	1,411,063	41,736	2,611,996

294. PEGI also entered into "Bonus Acknowledgements" pursuant to which the Officer Defendants received the following payments: Garland, $712,000; Armistead, $590,000; Elkort $485,000; Lyon, $532,000; and Pedersen, $532,000.

295. Additionally, in connection with the Contribution Agreement, CPPIB and Riverstone will establish a management long-term incentive plan pursuant to which the Officer Defendants can further profit from the post-closing entity.

296. Moreover, [redacted] which was not disclosed in the Proxy.[165] [redacted] that the Officer Defendants discussed at the April 2018 executive management retreat.

297. The Contribution Agreement also granted Riverstone the right to invest up to [redacted] in the post-closing entity via a new investment vehicle called Riverstone Pattern Energy III, L.P. ("Pattern Development 3").[166] Riverstone had contemplated this structure since at least May 2018, when Goldman presented its analysis of alternatives to Riverstone. This analysis included the option of Riverstone taking PEGI private, combining it with Pattern Development 2, and investing in the combined entity alongside a new sponsor.[167]

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[165] RIV00287170 at 184.

[166] RIV00163356.

[167] RIV00008454.

298. Due to its substantial investment in Riverstone, Goldman stood to gain from Pattern Development 3. Pursuant to the Subscription Agreement, Goldman affiliates held "direct and indirect financial interests in the general partner of Pattern Development 3 that ultimately entitle Goldman affiliated funds to [redacted] of the fees generated by Pattern Development 3's general partner."[168]

299. Furthermore, before the Merger closed, Riverstone reached out to Goldman to solicit an additional limited partnership investment by Goldman affiliates in Pattern Development 3. Goldman responded that it was interested in making such an investment in the range of [redacted].[169]

300. These discussions triggered Goldman's internal conflict policies, which do not permit Goldman's asset management division to invest in a deal on the buy side where Goldman's investment banking division had advised on the sell side.[170] However, Goldman evaded its own policies in two ways. *First*, Goldman simply waited until the Merger closed, and then received materials concerning Pattern Development 3 from Riverstone and resumed discussions concerning a limited

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[168] Riverstone Interrogatory Response No. 3 (Supplementary Response).

[169] RIV00030661.

[170] RIV00096388.

partnership investment.[171] *Second*, as discussed above, Goldman was invested in the general partner of Pattern Development 3 due to its substantial investment in Riverstone. Goldman thus stood to profit handsomely from the Merger, in tandem with its client Riverstone.

301. The Merger Agreement also provided PEGI with a thirty-five day go-shop period (the "Go-Shop") that expired on December 8, 2019. The Go-Shop, however, was illusory under the circumstances. Because of the Contribution Agreement, the inclusion of Pattern Development 2 in the Merger, and Riverstone's consent right to any other acquisition of PEGI, any bidder knew (or would learn after contacting the company) it would have to acquire both PEGI and Pattern Development 2. Moreover, the Merger Agreement provided information rights and recurring match rights to CPPIB with respect to any potential superior proposals. The Merger Agreement also required the Company to pay a termination fee of $52.7 million if it accepted a competing proposal during the Go-Shop and $79 million if it accepted a competing proposal provided after the Go-Shop. As a result, any reasonable bidder would be highly unlikely to invest the time and resources necessary to even consider submitting a superior offer.

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[171] Riverstone has represented that Goldman did not ultimately become a limited partner of Pattern Development 3.

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302. Of course, for the most suitable potential bidder, Brookfield, the Go-Shop did nothing to allow the Company to acquire TerraForm, and therefore Brookfield knew a bid to acquire the combined companies would result in Riverstone once again blocking the transaction and favoring the interests of its preferred acquirer, CPPIB.

VII. The Special Committee and Board Failed to Maximize Stockholder Value in Connection with the Merger

303. As explained above, the Special Committee and full Board completely failed to attain the best value reasonably available to PEGI stockholders.

304. *First*, the Special Committee knew that PEGI stockholders would receive materially less value for their shares if a merger agreement included Pattern Development 2. Indeed, Brookfield was explicit that it would pay a 20% premium for PEGI shares *unless* the merger contemplated an acquisition of Pattern Development 2, in which case Brookfield would pay PEGI stockholders only a 15% premium. Nonetheless, by no later than May 2019, the Special Committee focused solely on transactions involving Pattern Development 2.

305. *Second*, and regardless, the Special Committee unreasonably allowed Riverstone to drive away Brookfield, which was offering PEGI stockholders superior value for their shares.

306. At all times throughout the process, Brookfield's final offer far exceed the value of the Merger consideration. Brookfield's economic offer was valued at: (i) $33.38 based on the August 23, 2019 closing prices, before Brookfield first submitted its 2:1 offer; and (ii) as much as $36.15 based on Evercore's October 31, 2019 presentation when using corrected dividend yields. These values are significantly higher than the Merger Consideration. Indeed, the Special Committee and its advisors ***admitted*** that Brookfield's offer was "***superior from a value perspective to the others [the Special Committee] ha[d] received and that [it would] receive in th[e] sales process***."

307. By contrast, the Merger represented a "takeunder" of PEGI. On the last trading day before the Merger Agreement was signed, PEGI's share price closed at $27.80 per share—$1.05 (or 3.9%) ***above*** the Merger consideration. Indeed, the market was not alone in its valuation of PEGI. In August 2019, after Bloomberg reported on rumors of a sales process, a Wells Fargo analyst predicted a sale transaction could value PEGI at $27.00 to $29.00 and a RBC Capital Markets analyst judged a takeout price of $28.00 to $30.00 was achievable. Of course, as shown above, but for the misconduct of Riverstone and the Officer Defendants, and the do-nothing attitude of the Special Committee, a merger value well in excess of $30 per share was achievable.

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308. Even after the announcement of the Merger, numerous analysts criticized the Merger as being unfair, including:

a. RBC (February 19, 2020) – "We estimate that since August 9, 2019, the last trading day prior to unconfirmed media reports regarding a potential transaction, PEGI's total return lagged the [peer] group by roughly ~16%. If PEGI's total return performed in-line with the peer group over this timeframe, it would imply a current share price of ~$32/share."

b. National Bank Financial (February 19, 2020) – "We believe that the $26.75/sh offer represents a ~7.25% discount rate on future life cycle cash flows (from our model) for PEGI, which is 0.75% higher than the 6.5% discount rate we use for its closest peers. If we were to use the same discount rate on PEGI that we use on the peer group today, we could see the addition of ~$2.50/sh to PEGI's equity value."

c. Morgan Stanley (February 19, 2020) – "Many renewable sale announcements do not provide the buyer's FCF/equity yield, though we would note that recent sales to utility buyers likely were at equity yields only somewhat above their earnings yield

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(the inverse of the relatively high P/E multiple for these buyers, which is in the 5-6% level)." A corresponding table in Morgan Stanley's analyst report estimated PEGI's fair value to range from ***$31.87 to $40.01***.

309. Water Island Capital, LLC ("Water Island"), which owned an approximately 4% of the Company's outstanding shares prior to the Merger, publicly rebuked the Merger as patently unfair and urged stockholders to vote against it. According to Water Island, the trading prices of the eight comparable companies Evercore used in its financial analysis for the Special Committee had increased by an average of 32.7% since August 9, 2019, the last trading day prior to news reports of a potential transaction. The Merger only provided a 14.8% premium to PEGI's closing price on August 9, 2019. If PEGI's trading price appreciated in a manner similar to its peers, it would have traded above $30 per share by February 2020.

310. Following Water Island's public opposition, both Institutional Shareholder Services ("ISS") and Glass Lewis recommended that stockholders reject the Merger. Glass Lewis expressed concern that the Board and Special Committee did not run a sufficiently independent process and believed the Company was worth more as a standalone entity. ISS agreed that there was insufficient evidence to conclude the Merger maximized stockholder value. Only after the

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COVID-19 pandemic threw the markets into turmoil did ISS recognize that some stockholders might prefer to accept the certainty of cash at the time.

311. Further, the Special Committee's own advisor, Evercore, valued the Company well in excess of the Merger consideration. For example, Evercore's discounted cash flow analysis projected a value as high as $32.89, even after applying an unreasonably low perpetuity growth rate of -1.00% to 1.00% to the Company's projected after-tax cash flow to equity in 2023 (excluding a onetime revolver paydown in 2023).

312. Finally, the Board itself appears to have recognized that the Merger consideration did not fairly value PEGI. Following the announcement of the Merger, the Company's stock traded at prices far in excess of the Merger Price, reaching as high as $28.30 on February 25. The Company's 10-K, filed with the SEC on March 2, 2020, discloses that the Company repurchased 40,209 shares at an average purchase price of ***$27.22*** per share in December 2019. There is no better indication of unfairness than a board causing a company to repurchase its own shares ***after*** a merger announcement at a price ***exceeding*** the merger consideration.

313. Goldman struggled to justify the Merger price in light of these developments. In February 2020, Goldman internally acknowledged that "the

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comps have rallied meaningfully post announcement,"[172] and that if PEGI stock had tracked the median of its peer set (rather than being influenced by the announced Merger price) it would have been trading at $30.37.[173] Goldman further expressed concern that disclosing the implied price that CPPIB was paying for Pattern Development 2 would reveal that CPPIB was paying an inadequate price for PEGI, resulting in opponents of the Merger raising "math arguments that we can't win" that the "PEGI deal subsidizes" Pattern Development 2.[174] Indeed, after the Merger closed and as Goldman continued to advise Riverstone, Goldman prepared materials for Riverstone to use in marketing Pattern Development 3 showing that [redacted][175]

314. Nothing prohibited the Special Committee from obtaining the best price for PEGI stockholders. The Special Committee could have undertaken a transaction with Brookfield, irrespective of Riverstone's limited consent right. The Special Committee also could have demanded that CPPIB match the value of Brookfield's

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[172] GS-0003645.

[173] GS-0130878.

[174] GS-0130567, JFWBK_0008339.

[175] RIV00003229, RIV00002540.

offer or threatened to terminate the sale process and continue running the Company as a standalone entity. Indeed, as explained above, the Board did not need to sell the Company, and could have continued executing on Project Vision 2020.

315. The Special Committee's process failures are legion. The Special Committee failed to neutralize Riverstone's influence and instead gave Riverstone (including through Browne and management) direct access to the sale process. The Special Committee failed to properly address and manage management's conflicts. The Special Committee failed to remove Garland from the sale process even after he violated the Committee's instructions by engaging in unauthorized communications with Riverstone and CPPIB. The Special Committee also relied on a conflicted advisor, *i.e.,* Goldman (and Evercore).

316. Further, the Special Committee and Board also subverted the stockholder vote concerning the Merger.

317. *First*, the Special Committee knowingly abdicated its duty to provide stockholders with all material information concerning the Merger by delegating to the conflicted management team the responsibility for the Proxy disclosures. On November 3, 2019, when the Board approved the Merger, it also approved a resolution delegating to conflicted management the responsibility of determining

what information should be disclosed in the Proxy. Specifically, the resolution authorized the officers to:

> prepare and execute . . . all necessary, advisable or appropriate filings with the SEC under the Exchange Act and Securities Act with respect to the Merger to be sent . . . to the stockholders of the Company . . . in such form ***and containing such information deemed necessary, appropriate or advisable by the officer preparing and executing the same***, upon the advice of counsel to the Company, the execution of such SEC filings to be deemed conclusive evidence that the Board and Company have authorized such action[.]

318. The resolution also authorized and directed the officers to file the Proxy prepared by the conflicted officers with the SEC, ***without reserving any authority to review, discuss, or alter such disclosures before filing***.

319. In other words, the Special Committee and the Board knowingly and willfully failed to ensure that the Proxy was accurate and materially complete. As explained below (*see* Section VIII.B *infra*), the Proxy was materially incomplete and misleading.

320. *Second*, as alleged in the initial Complaint, on the eve of the Merger Agreement, and following pressure from Garland, the Special Committee approved an unnecessary preferred issuance to acquire certain dropdown assets from Pattern Development 1 and Pattern Development 2 that locked up the critical swing votes in the Merger. Indeed, but for the preferred issuance, the Merger would not have even received the bare majority approval required under 8 *Del. C.* § 251.

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321. Discovery has shown the full story: PEGI undertook the preferred issuance for the benefit of management and Riverstone, full stop. PEGI issued the preferred stock to CBRE to fund a suite of acquisitions—specifically, "drop-downs" of development assets from Pattern Development 1 and 2—that Evercore had advised the Board that the Company should *not* undertake if PEGI were being sold. Worse, management ultimately used the preferred issuance to buy votes, inserting a voting provision in the Securities Purchase and Rights Agreement that required CBRE to cast its votes in favor of the Merger.

A. Evercore Recommends that PEGI Not Acquire Certain Pattern Development 1 and Pattern Development 2 Assets in the Event of a PEGI Sale Process

322. On June 5, 2018, Evercore made a presentation to the Board on strategic alternatives.[176] The presentation highlighted for the Board that "Riverstone's preference is likely to monetize [Pattern Development 1] as part of any transaction[.]"[177] Evercore advised that if the Company planned to continue to operate without undertaking a sale process, it should consider certain Pattern Development 1 and Pattern Development 2 "drop-down" acquisitions from existing liquidity, but that it should not undertake those same acquisitions if the Board

[176] SCPEGI0020236.

[177] *Id.* at 251.

decided to move forward with a sale of the Company.[178] This advice made sense because, while such acquisitions had the potential to benefit PEGI's longer-term owners, they would not benefit PEGI stockholders in the context of a sale process—particularly if those acquisitions were funded using expensive preferred financing.

323. Evercore made a similar presentation to the Special Committee a month later on July 3, 2018.[179] Evercore's presentation again advised of Riverstone's "potential influence on a transaction" because "Riverstone's preference is likely to monetize [Pattern Development 1] as part of any transaction."[180] Evercore would repeat this point again in its October 9 and 29, 2018 presentations.[181]

B. Riverstone and Management's Interests Override Evercore's Advice

324. On December 17, 2018, Riverstone and PSP Investments began merger discussions with CPPIB.[182] The very next day, PEGI and CBRE entered into a non-disclosure agreement to discuss a potential preferred issuance.[183]

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[178] *Id*. at 247 and 253.

[179] SCPEGI0005810.

[180] *Id*.

[181] PEGI-00059256 at 340; PEGI-00117244 at 321.

[182] CPPIB_0259352.

[183] PEGI-00118149.

325. Despite Evercore's advice, on December 26, 2018, Pedersen and the management team moved forward with their plans to acquire the very same drop-down assets Evercore had excluded from the sale process.[184] Also against Evercore's advice, management proposed funding these acquisitions with preferred equity instead of existing liquidity.[185]

326. Pedersen explained that PEGI management had structured the asset purchases "to provide [Riverstone and management owned Pattern Development 1] certainty of its liquidation plan in 2019 and to ensure overall profit in excess of the $1.175BN presented in [Pattern Development 1] 2019 Plan (2019 Plan)."[186] Pederson did not identify any benefits PEGI stockholders would receive directly or indirectly from the proposed acquisitions or preferred issuance *in the ongoing sale process or the near term*. Rather, management planned to "hold the interest long-term" to benefit itself and Riverstone through the post-Merger entity.[187]

327. Between December 2018 and August 25, 2019, PEGI management and CBRE negotiated draft term sheets for the preferred stock issuance, some of which

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[184] PEGI-00303771.

[185] *Id.*

[186] *Id*.

[187] *Id*.

included voting rights on an as-converted basis, but none of which required CBRE to vote in favor of any transaction recommended by the PEGI Board.[188] As discussed below, that voting requirement was only added later in response to an improved offer from Brookfield.

328. On June 12, 2019, the Special Committee met and discussed its belief that Riverstone had negotiated directly with CPPIB without the involvement of the Special Committee.[189] During the same meeting, the Special Committee discussed the preferred stock offering, but there is no evidence that the Special Committee discussed the voting requirement.[190]

329. That same day, management provided an acquisition capital approval request (the "June 2019 ACAR") to the Board's conflicts committee (the "Conflicts Committee") for review. The June 2019 ACAR sought approval to: (1) acquire the same Pattern Development 1 and Pattern Development 2 projects Evercore had excluded from the sale process plus the Grady project from Pattern Development 2;

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[188] *See e.g.*, PEGI-00103033.

[189] PEGI-00000415.

[190] *Id.*

(2) issue up to $350 million in preferred equity; and (3) issue a $250 million term loan.[191] The June 2019 ACAR contains no discussion of the voting requirement.

C. Brookfield and CPPIB Oppose the Preferred Issuance

330. The preferred issuance not only failed to benefit PEGI stockholders in the sale process, but both CPPIB and Brookfield affirmatively opposed it. In July 2019, CPPIB and Brookfield "expressed [a] preference for waiting to close[]" before financing the dropdowns.[192] CPPIB would later reiterate this point: [redacted] It's not the most efficient financing we could raise."[193]

331. Indeed, on June 21, 2019, Brookfield had made a more favorable financing proposal to Pedersen and included the below chart to highlight Brookfield's more favorable terms.[194]

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[191] PEGI-00325882.

[192] PEGI-00170802.

[193] CPPIB_0001628.

[194] BROOKFIELD_TF-PATTERN_0012401.

	Current Term Sheet	Brookfield Proposal
Notional Amount	$300M	$300M+
Rating Agency Treatment	Equity	Equity
5Y Cash Yield (exc. PD 2.0)	6.0%	3.0%
Share of / Maximum PD 2.0 Distributions	12% / $36M	
5Y IRR to PEGI	8.9%	8.2%

332. Based on the record to date, management never shared Brookfield's more favorable financing offer with the Board or Special Committee.

333. On July 23, 2019, the Transaction Committee met to discuss the preferred issuance.[195] The meeting minutes make no reference to Brookfield's financing proposal.

334. On July 29, 2019, Brookfield's counsel emailed counsel for the Special Committee: "We should strip the investors of the right to vote on the consummation of our proposed transaction. We assume that the investors are investing in the preferred stock with knowledge of our transaction given the Permitted Holder carve-outs in the definition of Change of Control and they shouldn't get a second bite at the apple."[196] Brookfield's suggestion was not followed.

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[195] PEGI-00459599.

[196] PEGI-00144774.

335. On August 1, 2019, PEGI's inside counsel provided a privileged update to the Special Committee about a "Potential Preferred Stock Offering."[197] The minutes also make no reference to Brookfield's financing proposal whatsoever.

336. Thereafter, on August 2, 2019, management acquired the projects from Pattern Development 1 that Evercore specifically excluded from the PEGI sale process for $44 million.[198] The Pattern Development 2 projects remained outstanding, however, and their acquisition became PEGI management's stated reason for pursuing the preferred issuance.

D. Management Inserts the Voting Requirement on the Same Day Brookfield Submits its Superior Proposal

337. PEGI management pressed for the preferred stock to include voting rights that had to be voted in favor of a Board-recommended merger the very same day as Brookfield's August 26, 2019 proposal to acquire PEGI for $33.38 per share. In reaction to Brookfield's proposal, Garland emailed Lyon, Armistead, Pedersen and Elkort: "***The shit has hit the fan. $33/share***."[199] Later that day, PEGI's counsel

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[197] PEGI-00000426.

[198] https://www.sec.gov/ix?doc=/Archives/edgar/data/0001561660/000156166020000027/pegi2019123110k.htm.

[199] PEGI-00157109.

circulated to CBRE a new draft of the Securities Purchase and Rights Agreement that included a new requirement that CBRE vote its preferred shares in favor of a Board-recommended merger.[200]

338. Specifically, the voting requirement that PEGI management added to the draft agreement provided that "[f]or a period of 18 months from the date of this Agreement, each Purchaser hereby agrees that, in connection with any proposed Permitted Private Change of Control, Permitted Ratings Downgrade Change of Control or Change of Control submitted for approval to the holders of Voting Stock, such Purchaser shall vote its Preferred Shares in a manner consistent with the recommendation of the Board."[201] This mirrors the final voting requirement in the executed version of the Securities Purchase and Rights Agreement, which provides: "For a period of 18 months from the date of this Agreement, each Purchaser hereby agrees that, in connection with any proposed merger with, or Change of Control to, a Permitted Holder (including, without limitation, any Permitted Holder identified on Schedule 2) and which is submitted for approval to the holders of Voting Stock,

[200] DPW-PE-000011864.

[201] DPW-PE-000011986, Section 6.09(f).

such Purchaser shall vote its Preferred Shares in a manner consistent with the recommendation of the Board."[202]

339. Following PEGI management's insertion of the voting provision, PEGI and CBRE worked to resolve three key economic terms related to a change of control in exchange for that voting provision: (1) the contingent dividend cap; (2) whether the dividend would increase upon a permitted private change of control; and (3) the change of control premium schedule. At the time it added the voting provision, PEGI management proposed a contingent dividend cap of $3.15 per share, proposed no increased dividend in the event of a permitted private change of control, and flagged the change in control premium schedule as an area for discussion.[203]

340. Following discussions with CBRE, on August 29, 2019, management sweetened PEGI's offer. Management proposed to increase the contingent dividend cap from $3.15 to $3.25 per share (a $1.04 million benefit for CBRE); increase the dividend by 75 basis points (as opposed to no increase) if PEGI, but not Pattern Development 2, were sold; and proposed a change in control premium schedule.[204]

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[202] TORYS-PEGI00000201_0001, Section 6.09(g). "Permitted Holders" included CPPIB and TerraForm. *Id.*, Schedule 2.

[203] PEGI-00100843.

[204] PEGI-00100843; PEGI-00322646.

341. In response, CBRE agreed to the increased contingent dividend cap and the change of control premium schedule, but insisted on an increased dividend term if a PEGI sale occurred even if Pattern Development 2 had already been sold.[205] CBRE and management resolved that issue on September 1, 2019 by further improving the terms for CBRE: PEGI agreed to increase the dividend by 25 basis points in the event of a PEGI sale if Pattern Development 2 were already sold.[206] Both CBRE and PEGI management confirmed their agreement.[207]

342. Despite confirming its agreement, CBRE subsequently used the voting provision to extract additional terms. Hours after confirming its agreement, CBRE's counsel circulated a new draft that again removed the voting provision.[208] The next day CBRE sent an email to PEGI management demanding several additional modifications to the agreement.[209] Following further concessions to address CBRE's concerns, on September 6, 2019, PEGI's counsel added the voting requirement back in.[210] It was not removed in subsequent drafts.

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[205] PEGI-00322646.

[206] *Id*.

[207] *Id.*

[208] TORYS-PEGI00000065_0001.

[209] PEGI-00192788.

[210] TORYS-PEGI00000068_0001.

E. Neither Independent Committee nor PEGI Stockholders Approve the Preferred Issuance and Voting Requirement

343. No evidence exists that the Board, the Special Committee, the Conflicts Committee, or the Transaction Committee ever formally reviewed or approved the preferred stock agreements, including the voting requirement, either before or after the voting requirement was first proposed August 26, 2022.

344. On September 28, 2019, PEGI inside counsel provided a detailed memo to the Special Committee regarding the preferred issuance.[211] Notably, while the memo does contain a detailed discussion of the economic impact a merger would have on the preferred shares, it makes no mention whatsoever of the voting requirement, nor does it attach a copy of that provision.

345. As alleged herein, at the September 29, 2019 Special Committee meeting, Garland pressured the Special Committee concerning the purported "importance to the Company of consummating the Preferred Issuance," yet there is no indication that the Special Committee discussed the voting provision at that meeting or received a copy of it.[212] Following that meeting, only two Board committee meetings included any discussion about the preferred issuance.

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[211] PEGI-00224379.

[212] PEGI-00001288.

346. ***First***, on September 30, 2019, the Conflicts Committee met, yet only Defendant Hall (one of five members of the committee) attended.[213] Defendant Hall did not receive or review any of the agreements associated with the preferred issuance and the minutes do not reflect any discussion of the voting requirement whatsoever. Thus, there is no indication that the Conflicts Committee reviewed or approved the voting requirement as part of the preferred issuance at any time.

347. ***Second***, the same day, the Transaction Committee held a meeting discussing the preferred issuance. Defendants Batkin, Garland, and Goodman attended the meeting, along with Company inside and outside counsel and Defendants Lyon and Pedersen. Given Garland's pressuring of the Special Committee (which included Batkin and Goodman) and his clear conflicts of interest, the Transaction Committee lacked independence, especially given the absence of independent advisors.

348. Worse yet, the Transaction Committee was not informed about the voting requirement. Prior to the meeting, PEGI inside counsel circulated to the Transaction Committee the same memo previously sent to the Special Committee,

[213] PEGI-00119620.

which did not include any discussion of the voting requirement.[214] Furthermore, while the minutes of that meeting purport to annex the Securities Purchase and Rights Agreement (which contained the voting requirement), that agreement is not in fact attached to the final minutes, nor was it provided prior to the meeting.[215]

349. Nothing in the record suggests that the Transaction Committee reviewed or even received the terms of the Securities Rights and Purchase Agreement, including the voting provision, before approving the preferred issuance. Instead, in its September 30, 2019 meeting, the Transaction Committee met for only ten or fifteen minutes, without any discussion of the voting provision.[216] The meeting's brevity surprised Defendant Elkort whose comments included in the draft minutes state: "10 minutes? Seems pretty brief for such a discussion noted above, is this time right?"[217] In response, the minutes were amended to indicate that this meeting lasted for a mere five additional minutes (*i.e.*, fifteen minutes total).[218]

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[214] PEGI-00224412.

[215] *Id.*

[216] PEGI-00119624.

[217] *Id*.

[218] PEGI-00459602.

350. On October 10, 2019, PEGI formally agreed to sell 10,400,000 shares of preferred stock with a par value of $260 million for $256.1 million, or $24.625 per share, to CBRE affiliates in a private placement pursuant to a "Securities Purchase and Rights Agreement," $2.125 below the Merger transaction price. The sale closed on October 25, 2019. PEGI then acquired a Pattern Development 2 project Evercore had excluded from the sale process (Henvey) for $172 million and another project (Grady) for $84 million.

351. The preferred shares entitled holders to one vote per share and voted together as a single class with common stockholders on most issues, including the Merger. The preferred shares were subject to a voting cap such that they represented 9.99% of the voting shares in any given vote.

352. The Securities Purchase and Rights Agreement required the shares to be voted in accordance with the recommendation of the Board so long as the special meeting took place on or before May 10, 2021. As discussed below, without the votes of preferred shares, the Merger would not have received the requisite stockholder approval.

353. The preferred stock issuance makes no commercial sense in the context of a PEGI sale process and can only be explained as an effort to sway the stockholder vote in favor of the Merger.

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354. The Company stated that it would use the proceeds of the preferred stock sale to finance the purchase of the Henvey Inlet project that Evercore had explicitly excluded from the sale process, as well as to fund the purchase of the Grady project and to partially repay certain debt. The preferred issuance, however, was not needed to fund the Grady project, as Evercore explicitly recognized: "For [the] Grady acquisition, PEGI has capacity under revolver and will close that even without the preferred financing."[219] As discussed above, throughout 2019, Company management reiterated the myriad ways the Company could raise capital. And, in August 2019, management reported that PEGI had $825 million in available liquidity.

355. As of September 30, 2019, the Company had $347 million (out of $440 million) available to draw down on its revolving credit facility to finance the acquisition. Loans under that facility accrued interest in accordance with the base rate plus an applicable margin ranging from 0.625% to 0.875%. That rate was (and is) significantly lower than what the Company agreed to pay the preferred investors.[220]

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[219] EVR_00061590.

[220] The base rate is the greater of: (i) the U.S. prime rate, (ii) 0.5% above the federal funds rate, and (iii) 1.0% above the Eurodollar rate for a Eurodollar loan with a one-

356. Indeed, the preferred shares accrue quarterly dividends equal to an annual rate of: (i) 5.625% in 2019 through 2021; (ii) 6.125% in 2022; (iii) 6.625% in 2023; (iv) 7.125% in 2024; and (v) 7.625% thereafter. The preferred shares were also entitled to receive 12.6% of any distribution PEGI received from Pattern Development 2 subject to an aggregate cap of $3.25 per preferred share. The certificate of designation anticipated the merger of the Company and Pattern Development 2 and ensured that preferred stockholders would receive the $3.25 per share in the years following the merger of the two entities.

357. Moreover, in August 2019, management boasted that it took out a $250 million term loan because the low interest rate was too attractive to pass up. Interest accrues on the term loan at a fluctuating per annum rate equal to the base rate plus an applicable margin ranging from 0.175% to 0.5%. Again, that rate was (and is) significantly lower than the rate the Company agreed to pay the preferred investors and shows the Company had significantly cheaper financing options, in addition to the one presented by Brookfield that management hid from the Board.

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month interest period. Although the base rate is variable, the rate was equal to approximately 5% at the time of the preferred stock issuance and 3.25% as of May 22, 2020.

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358. In addition to having no need to sell any preferred shares, the Company also raised $74 million more than it needed to finance the Henvey Inlet project, unnecessarily issuing approximately 3 million additional preferred shares. As noted above, the Company claimed to use some of the excess capital to pay down the Company's revolver. In other words, the Company raised capital at a higher interest rate to pay down a lower interest rate loan that was not due for another three years during a sale process where the two primary potential purchasers did not support it and believed PEGI had less expensive financing options available.

359. As discussed below, the preferred stock constituted the swing votes in the Merger vote. But for the preferred stock and the associated voting requirement, the Merger would not have been approved.

360. At bottom, the preferred issuance made no commercial sense to PEGI stockholders in the context of a sale process. CPPIB recognized this fact stating that the [redacted][221]

[221] CPPIB_0200311.

361. That the preferred stock was provided with voting rights, at the expense of PEGI's common stockholders, for the specific purpose of swinging the Merger vote is further demonstrated by the fact that CBRE had no pressing interest in having voting rights in the post-close company. After the Merger vote, but prior to the close of the Merger, CBRE agreed to remove the voting rights in connection with negotiations over the structure of the post-close company, and offered little, if any, pushback.[222] Thus, the preferred stockholders had voting rights for a total of five months, voted once to approve the Merger as mandated by the voting requirement, then quickly consented to the removal of their voting rights.

VIII. The Stockholder Vote is Not Entitled to Any Deference

362. PEGI stockholders voted to approve the Merger at a special stockholder meeting on March 10, 2020. The Merger closed on March 16, 2020.

363. As explained below, the stockholder vote on the Merger is not entitled to any deference because: (i) a majority of the Company's disinterested shares were *not* voted in favor of the Merger; and (ii) the Proxy was materially incomplete and misleading.

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[222] TORYS-PEGI00000426_0001, TORYS-PEGI00000530_0001.

A. The Merger Was Not Approved by a Majority of Disinterested Stockholders

364. As of the close of business on the record date for the Merger, PEGI had 98,218,625 shares of common stock outstanding and 10,400,000 shares of preferred stock outstanding. The common and preferred shares voted together as a single class on the Merger, with each common and preferred share receiving one vote for a total of 108,618,625 potential votes.

365. Overall, 56,856,604 of these shares—or approximately 52%—were voted in favor of the Merger.

366. At least 20,951,074 shares were held by those who had different interests than public stockholders and were voted in favor of the Merger: (i) the 10,400,000 preferred shares that rolled over into the post-closing company at a premium and which had to be voted in accordance with the Board's recommendation; (ii) the 9,341,025 shares held by PSP Investments, which owned 22% of the economic interests of Pattern Development 2 and was a co-investor in a number of PEGI projects; and (iii) 1,210,049 shares held by insider members of management that received equity and jobs in the post-closing Company.[223]

[223] An additional 50,872 shares were held by other PEGI insiders. Moreover, according to Form 13F filings: (i) Goldman owned had sole voting power over

367. If one removes these shares from the vote total, then only 35,905,530—or only 41%—of the 87,667,551 shares held by disinterested stockholders were voted in favor of the Merger.[224] As a result, the stockholder vote should have no cleansing effect.[225]

866,550 PEGI shares as of December 31, 2019; (ii) Bank of Montreal and BMO Capital Markets Corp. owned and had sole voting power over 646,156 PEGI shares as of December 31, 2019; and (iii) Citigroup and Citigroup Global Markets Inc. owned and had sole voting power over 792,108 PEGI shares as of December 31, 2019. Goldman's conflicts are discussed at length herein. Pursuant to a November 3, 2019 commitment letter, Bank of Montreal, BMO Capital Markets Corp., Citigroup Capital Markets (along with Royal Bank of Canada) provided CPPIB affiliates with a $650 million bridge loan facility and a $300 million revolving facility, which could be increased to $600 million) to facilitate the Merger. For providing these facilities, the banks earned significant fees, the exact rate of which varied. To the extent these institutions voted their shares in connection with the Merger, they should not be considered disinterested votes.

[224] The Proxy informed stockholders if "you abstain from voting or fail to cast your vote, in person or by proxy, **it will have the same effect as a vote "AGAINST" the proposal to adopt the Merger Agreement and approve the Merger.**" (emphasis in original").

[225] The Merger Agreement did not affirmatively require a vote of disinterested stockholders. Instead, it stated that if Canadian Multilateral Instrument 61-101 ("MI 61-101") applied to the Merger, the Merger also required the approval of a majority of the votes cast other than those who are deemed an "interested party" of the Company and a "related party" or an interested party of the Company, each as defined by MI 61-101. The Proxy states that the Merger was subject to MI-61-101, which suggests that Canadian regulators made that determination and ordered PEGI to hold such a vote under MI-61-101, the Company only needed to exclude those votes held by the preferred stockholders and conflicted management members. Since the vote standard under MI 61-101 is measured by the number of votes cast,

368. Furthermore, the issuance of the preferred shares in the midst of the sale process was an improper and manipulative act that served to dilute the votes of common stockholders and lock the vote in favor of the Merger. The ostensible purpose of the preferred offering was to finance the Company's acquisition of an energy project. But the Company's principal business involves just these sorts of acquisitions, and it has never before financed one with a preferred share issuance—let alone one that gave the purchasers nearly 10% of the voting power on the Merger and required them to vote in favor. By authorizing this issuance of preferred shares, the Board acted to manipulate the vote in favor of the Merger and against the interests of PEGI of stockholders.

369. The preferred share issuance had precisely the intended impact. If one removes just the preferred votes, which were unnecessarily created by the Board less than a month before the approval of the Merger, only 46,456,604 or 47.3% of the overall outstanding 98,218,625 shares were voted in favor of the Merger. In other words, if the Board had not issued the preferred shares and ensured they would be

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not the total number of outstanding votes, and the votes of PSP Investments were allowed to count, this vote passed with 45,246,014 votes in favor and 23,840,566 against.

voted in accordance with the Board's recommendation, the stockholder vote to approve the Merger would have failed as a matter of Delaware law.

B. The Proxy was Materially Incomplete and Misleading

370. On February 4, 2020, the Company filed the Proxy with the SEC. As explained above, the Board abdicated its duty to ensure the accuracy and completeness of the Proxy. As a result, conflicted members of management were able to omit numerous material facts from the Proxy and otherwise mislead stockholders.

371. *First*, the Proxy does not disclose that the Officer Defendants had discussed [redacted]

372. *Second*, the Proxy does not disclose that [redacted] In addition, on March 4, 2020, the Company issued a supplement to the Proxy that discussed the effective value of Pattern Development 2 in the Merger, but omitted any discussion of Riverstone's earnout. That portion of the supplement to the Proxy was formulated in significant part by Goldman, which made a proposal to Garland concerning the contents of this disclosure that the Company adopted. In that proposal, Goldman excluded

Riverstone's earnout, which had been alluded to in an earlier draft, despite acknowledging that the disclosure it was proposing implied a per-share price of Pattern Development 2 that did not take Riverstone's earnout into account.[226]

373. *Third*, the Proxy never explains or fully discloses the consent right possessed by Riverstone, let alone how Riverstone utilized the consent right to manipulate the Merger process. The Proxy contains only an oblique reference to "contractual arrangements with Pattern Development [2]" that purportedly "limit" PEGI's "ability to merge with, or to transfer its interest in Pattern Development [2], to any third party without Pattern Development [2]'s consent." The Proxy does not explain that the only consent right possessed by Riverstone at the time of the Merger was the transfer restriction in the Partnership Agreement. Because this information was not disclosed, a reasonable stockholder voting on the Merger could not determine whether, or to what extent, Riverstone could or did actually prevent a sale of control of PEGI.

374. At the same time, the Proxy does not disclose that the Special Committee and its advisors confirmed that the consent right, by its terms, did ***not***

[226] PEGI-00062558.

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prevent PEGI from acquiring another company (such as TerraForm) through a reverse triangular merger, with PEGI being the surviving parent corporation.

375. In any event, a reasonable stockholder reading the Proxy would not have any understanding of the role Riverstone's consent right played in the Merger process. As illustrated in the chart below, the Proxy repeatedly fails to disclose material facts concerning how the consent right hovered over the entire process and how Riverstone *specifically* used the consent right to prevent a transaction with Brookfield and secure a transaction with CPPIB.

Proxy Disclosure	**Omitted Facts From Brookfield Letters**
"On August 26, 2019, representatives of Party A sent representatives of the Special Committee a revised non-binding proposal in which Party A offered to acquire Pattern in an all-stock transaction involving the combination of Pattern and Company A, with Pattern Development remaining a separate entity, which did not include a cash option. The proposal included an effective fixed exchange ratio of two shares of Company A common stock per share of Company Common Stock."	"We have carefully considered the specific feedback received on August 20th, in particular . . .Riverstone has a consent right with respect to a merger of PEGI, ***and Riverstone will not provide such consent to a transaction in which [TerraForm] becomes the parent company of PEGI.***"

Proxy Disclosure	Omitted Facts From Brookfield Letters
"On August 30, 2019, Party A sent a revised proposal, indicating that Party A's offer would expire unless Pattern granted exclusivity prior to the end of the day on September 4, 2019."	"We had previously been notified by your advisors that Riverstone has a consent right with respect to a merger of PEGI, ***and Riverstone will not provide such consent to a transaction in which [TerraForm] becomes the parent company of PEGI.*** As you are aware, we, at your request, restructured the proposed transaction with PEGI as the surviving parent company ***so that no Riverstone consent is required in connection with this proposed transaction***."
"On September 10, 2019, representatives of Party A sent a revised proposal to Mr. Batkin. In its proposal, Party A offered to resume discussions with Pattern and commence negotiations among Pattern, Party A, Riverstone and Pattern Development if it was granted exclusivity by each of Pattern Development and Pattern."	"Our understanding is that the relationship between the PEGI Board and Riverstone is complex. ***The Board has a fiduciary duty to shareholders of PEGI but is not free to accept certain types of transaction without prior Riverstone consent or, as we understand, any transaction not supported by Riverstone without attracting Riverstone litigation risk.*** We also understand that Riverstone is not necessarily economically aligned with PEGI shareholders given that it holds no (or negligible) equity in PEGI. Further, given the inter-related nature of the arrangements between PEGI, its management, and Riverstone, there could be potential multiple competing interests. This is a unique and difficult scenario."

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Proxy Disclosure	Omitted Facts From Brookfield Letters
"Also on October 28, 2019, representatives of Party A submitted an acknowledgment reaffirming its prior offer, originally made in August of 2019, without providing any transaction documentation."	"We also reaffirm that we are prepared to structure the transaction as a reverse triangular merger, with PEGI as the surviving parent company, ***so that no Riverstone consent is legally required to effect this transaction.*** … [W]e understand that the situation vis-à-vis Riverstone continues to be problematic for the PEGI Board and that Riverstone's interests are likely not aligned with those of the PEGI shareholders. However, notwithstanding this, we believe that there is a clear path forward and a very bright future for PEGI's shareholders if our proposal, with all of it [sic] benefits, are accepted by you. As requested, we have carefully reviewed Riverstone's list of demands to potentially support a merger of PEGI with [TerraForm]. Those demands effectively require a separation of the Riverstone business from PEGI. ***The list from Riverstone, as you know, requires that all of PEGI's development expertise, systems, people and the Pattern name itself revert back to Riverstone, in exchange for their support***. ***As we have stated, we could agree to these requests.***

376. Beyond the Proxy, even after ISS advised stockholders to vote "AGAINST" the Merger, the Company continued to mislead stockholders concerning Riverstone's use of the consent right as a way to influence the vote. Specifically, the Company issued a press release that stated, "Pattern Development

did not block any bids pursuant to any consent right." This is patently false. Indeed, as one example, Riverstone communicated to Brookfield that it possessed "a consent right with respect to a merger of PEGI, and [would] ***not provide such consent to a transaction***" involving Brookfield/TerraForm.

377. The Proxy also omits material facts that would have allowed stockholders to understand Riverstone's motivations for wielding the consent right to block certain bidders. For instance, the Proxy does not disclose anything concerning offers for Pattern Development 2, including that Brookfield proposed to acquire Pattern Development 2 for cash, whereas CPPIB proposed to acquire it for equity in a combined company. The distinction is critically important because it would provide an explanation for why Riverstone favored a transaction with CPPIB as opposed to Brookfield/TerraForm.

378. The Proxy also fails to disclose how Riverstone's consent right infected the Special Committee's dealings with Brookfield/TerraForm. For instance, the Proxy does not disclose that the Special Committee initially informed Brookfield that it supported a transaction that internalized Pattern Development 2, but then, in August 2019, falsely told Brookfield that it no longer supported a transaction that internalized Pattern Development 2. This is clearly material, as it shows the Special Committee had created an uneven playing field to favor Riverstone's interests, as

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evidenced by the Company simultaneously pursuing the Merger with CPPIB that internalized Pattern Development 2.

379. The Proxy also makes no mention of Brookfield's repeated attempts, throughout the Merger process, to overcome the barriers erected by Riverstone's consent right, including: (i) that Riverstone demanded, ***and Brookfield agreed***, that all of PEGI's development expertise, systems, people, and the Pattern name itself revert back to Riverstone in return for its consent, and (ii) that Brookfield ultimately offered to structure the transaction as a reverse triangular merger to avoid Riverstone's continued wrongful interference. Perhaps more importantly, the Proxy fails to disclose that after Brookfield's dogged fight to acquire PEGI, Riverstone ultimately resorted to threatening Brookfield with vexatious and meritless litigation in the event a transaction with PEGI was consummated.

380. *Fourth*, the Proxy does not contain critical facts regarding the value of Brookfield's offer and the Special Committee's knowing disregard of its duty to maximize shareholder value.

381. The Proxy does not disclose any facts or analysis showing that Brookfield's all-stock offer, which Riverstone blocked, exceeded the Merger consideration by over $6.

382. Rather, the Proxy states that the Special Committee believed CPPIB's final offer "represented the best value reasonably available to our stockholders." This is patently false. As discussed above, in October 2019, Brookfield wrote to the Special Committee, "***we have been advised by you and your advisors*** that ***our proposal is superior from a value perspective to the others you have received and that you will receive in this sales process***." Even Evercore's October 31, 2019 presentation makes clear that Brookfield's offer was worth more than CPPIB's.

383. Of course, Brookfield's offer "represented the best value reasonably available to stockholders," but the Proxy fails to disclose that the Special Committee refused to bring Riverstone to the table and broker a deal with Brookfield. In fact, the Proxy wholly omits the critically material fact that at the September 29, 2019 the directors acknowledged that Brookfield's offer could, in fact, be superior and in such a situation they had a duty to maximize value.

384. Without such a disclosure, and in context of all the other falsities and omissions, the Board pulled the wool over investors' eyes and created the impression that Brookfield might not have been all that interested in PEGI. The exact opposite is the truth: the Special Committee knowingly and consciously ignored its duty to

maximize value in deference to Riverstone's and management's insatiable desire to alone profit from PEGI's execution of Project Vision 2020

385. *Fifth*, the Proxy failed to disclose that CPPIB only entered the Merger process because Garland scheduled an unauthorized meeting among himself, CPPIB, and Riverstone. The Proxy fails to disclose that the April 15, 2019 meeting between Garland, CPPIB, and Riverstone, was not authorized by the Special Committee. Worse yet, the Proxy falsely claims that Garland promptly informed the Special Committee of his unauthorized meeting and the substance of the discussion. In truth, however, Garland withheld this information from the Special Committee for at least a month, until May 15, 2019. And while the Proxy claims that Garland also disclosed his unauthorized meeting with CPPIB and Riverstone during the May 2, 2019 Special Committee meeting, the minutes for that meeting actually show that Garland never so much as mentioned CPPIB.

386. *Sixth*, the Proxy does not disclose ***any*** of Goldman's conflicts of interest, which are so pervasive that the only explanation for their omission is utter bad faith.

387. The Proxy omits any mention of the fact that in July 2018, Goldman informed the Special Committee that it had recently advised Riverstone on a potential take-private of PEGI:

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> As part of marketing and client service matters, the Team Members recently reviewed with Riverstone various potential combinations with, and financial analysis of, the Company, and that review included ***a potential Company take-private, all based on confidential information about the Company provided to us by Riverstone***.

388. The Proxy does not disclose Goldman's substantial work for Riverstone in evaluating a potential take-private of PEGI or the fact that this work was led by Brian Bolster, the same Goldman banker who led Goldman's engagement on behalf of the Special Committee. In other words, the Proxy does not disclose the highly important fact that Bolster, on behalf of Goldman, was serving Riverstone while he was supposed to be serving the Special Committee.

389. The Proxy also does not disclose the scope of Goldman's conflicts of interest (*see supra* ¶¶ 49-64, 205, 218, 299-300). For example, Goldman informed the Special Committee that "[c]ertain funds managed by Goldman Sachs Asset Management's (GSAM) Petershill business . . . hold a passive minority [redacted] investment in Riverstone general partner, the parent company of Riverstone Holdings LLC, and certain of its affiliates" and that Goldman has an existing lending relationship with Riverstone Credit Partners.[227] At the time of Goldman's initial 2017 investment in Riverstone, the *Wall Street Journal* called the investment "a vote

[227] PEGI-00001224.

of confidence in Riverstone, which suffered when oil prices collapsed in late 2014," and noted that Riverstone's founders were Goldman employees before founding Riverstone and that Riverstone's investment committee at the time included fourteen Goldman alumni.

390. Goldman also informed the Special Committee that it received enormous fees in recent years for services provided to each interested party in the Merger, including: (i) approximately [redacted] in fees from CPPIB and its affiliates in connection with at least six instances where Goldman provided financial advisory services and twenty-seven instances where Goldman provided underwriting services; (ii) approximately [redacted] in fees from Riverstone and its affiliates in connection with at least four instances where Goldman provided financial advisory services and fourteen instances where Goldman provided underwriting services; and (iii) approximately [redacted] from PSP Investments and its affiliates in connection with at least one instance of financial advisory services and thirteen instances of providing underwriting services.[228]

[228] Goldman concealed from the Special Committee many other transactions and co-investments it had with Riverstone and PSP Investments, including: (i) in January 2018, Goldman and Riverstone jointly agreed to buy Lucid Energy Group II from EnCap Flatrock Midstream for approximately $1.6 billion, (ii) in February 2018, PSP Investments agreed to invest $20 million into D-Wave Systems Inc., in which

391. Nor does the Proxy disclose Goldman's significant credit relationship with Riverstone, including [redacted]. Further, the Proxy does not disclose that the Company planned to use some of the proceeds of the preferred issuance to pay off certain Goldman loans.[229]

392. The Proxy also fails to disclose that Goldman's engagement created perverse incentives with respect to the Merger. Pursuant to its engagement letter, Goldman was entitled to receive [redacted] upon the announcement of the Merger and an additional [redacted] upon consummation of the Merger. This fee structure incentivized Goldman to ensure that its advice and analyses supported entry into a merger agreement. Further, the Company had the discretion to – and did[230] – pay Goldman an additional discretionary fee of up to [redacted] in cash upon or promptly ***following the consummation of the Merger***. Thus, CPPIB, Riverstone, and PEGI

Goldman already was a private investor; (iii) in May 2018, Goldman and PSP Investments led a $250 million Series E investment in Tradeshift; (iv) in December 2018, Goldman advised Antelliq Group, one of PSP Investments' portfolio companies on its $2.1 billon euro sale to Merck; and (v) in September 2019, Goldman acted as an underwriter for PSP Investments and its joint venture partners on an $847 million loan for the development of the Washington, D.C. wharf development project.

[229] *See* EVR_00129144.

[230] GS-0151429, GS-0151430, SCPEGI0008430 at 432.

management had the ability to pay or withhold nearly [redacted] of Goldman's total fee based on their assessment of Goldman's loyalty. This is highly inappropriate. To the extent Riverstone's consent right did not already do so, Goldman's compensation structure virtually ensured any Go-Shop process was a sham.

393. Moreover, as part of the engagement, the Company granted Goldman a right of first offer to act as joint book-runner or agent in the case of any offering of securities and a right of first offer as a joint arranger and book-runner for any bank or bridge loan related to the Merger. Of course, this gave Goldman a further incentive to favor CPPIB's offer over that of Brookfield because a transaction with Brookfield/TerraForm would not require raising capital through any debt or security offering.

394. The Proxy also fails to disclose Goldman's stake in Pattern Development 3, in which Goldman was entitled to earn [redacted] of the fees generated by Riverstone, as well as Goldman's negotiations to make an additional investment of tens of millions of dollars in Pattern Development 3.

395. *Seventh*, the Proxy does not disclose that the Special Committee opposed engaging Goldman as a second financial advisor, and only did so under strong pressure from the Officer Defendants. The Officer Defendants' decision to impose their own choice of financial advisor on the Special Committee despite

Goldman's many conflicts, and the Special Committee's acquiescence against its better judgment, were concealed from PEGI stockholders.

396. *Eighth*, although the Proxy discloses the fees Evercore earned in connection with the Merger and its recent work for CPPIB and PEGI, it fails to disclose the material fees paid to Evercore for services recently provided to Riverstone and its affiliates. According to its conflicts disclosure form, from July 1, 2016 to July 4, 2018: Evercore earned ***$46.9 million*** in investment banking advisory fees and $500,000 in capital markets fees and commissions from Riverstone and its portfolio companies. These fees constituted 1.51% of Evercore's aggregate investment banking revenues for the two-year period ending March 31, 2018.

397. *Ninth*, the Proxy does not disclose that Defendant Browne attended and participated in the vast majority of the Special Committee's deliberations.[231] As noted above, Browne is hopelessly conflicted. He is a former managing director of Riverstone and has close ties to the Riverstone representatives on the board of Pattern Development 2. Together, Goldman's and Browne's participation, along

[231] According to minutes produced by the Company, Defendant Browne attended 12 out of the 22 Special Committee meetings. Further, although not in attendance at the February 21, 2019 Special Committee meeting, the members announced that Defendant Browne would receive an update regarding the substance of the discussions.

with that of management, allowed Riverstone to remain fully apprised of and improperly influence the Special Committee's deliberations.

398. *Tenth*, the Proxy does not disclose that, as of September 30, 2019, CPPIB had invested a total of $707 million in two of Riverstone's private equity funds—a 2012 investment in Riverstone Global Energy and Power Fund V and a 2007 investment in Riverstone/Carlyle Global Energy and Power Fund IV. Given the timing of the investments, it is possible, if not likely, at least one of these funds had investments in PEGI, Pattern Development 1, and/or Pattern Development 2.

399. These investments, along with Garland's undisclosed relationship with a representative of CPPIB, may partly explain Riverstone's preference for a deal with CPPIB as opposed to Brookfield and why Riverstone and CPPIB were able to begin negotiating with each other without the Special Committee's knowledge. They show that Riverstone, Garland, and CPPIB had a significant preexisting business relationship. They also further suggest that Riverstone and/or Garland brought CPPIB into the process once they learned that Brookfield had made a compelling offer to acquire PEGI specifically to block Brookfield from doing so.

400. *Eleventh*, the Proxy does not disclose that PSP Investments, the Company's largest common stockholder, owned a 22% economic interest in Pattern Development 2 and was not disinterested with respect to the Merger. Instead, it

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strongly implied that PSP Investments was disinterested because it did not include its shares in the list of shares and owners excluded from participating in the purported disinterested vote under MI 61-101. By falsely implying that the Company's largest common stockholder was disinterested and did not oppose the Merger, PEGI falsely implied to stockholders that the Merger was in their best interests.

401. *Twelfth*, the Proxy did not fully disclose the facts related to CBRE's preferred stock investment in October 2019, a mere one month before the Merger was announced. The Proxy does not disclose why the Company decided to issue more preferred stock than necessary to fund its acquisition. Nor does the Proxy disclose whether the Company considered other available funding sources, such as the $347 million available under the Company's revolving credit facility. The Proxy also does not disclose the reasons why the Special Committee decided to grant an unknown investor with ties to Canadian pension funds the opportunity to possess nearly 9.5% of the overall outstanding vote on the eve of the Merger being announced. The Proxy also does not disclose the fact that the economic terms of the preferred issuance were improved for CBRE, at the expense of PEGI's common stockholders, in exchange for CBRE's commitment to vote the preferred shares in favor of the Merger. This information was clearly material to stockholders.

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402. *Thirteenth*, the Proxy fails to disclose all material information with respect to the Company's projections, which the Special Committee and Board relied on in approving the Merger.

403. The Proxy purports to disclose the Company's projected "Cash Available for Distribution" ("CAFD") for the years 2020-2023. These figures included projected distributions PEGI would receive from Pattern Development 2. However, according to Evercore's final fairness presentation on November 3, 2019, these figures also included [redacted] The Proxy only discloses the lower numbers and does not disclose their intentional manipulation.

404. Since management of PEGI also ran Pattern Development 2 and created Pattern Development 2's projections in the first place, this means that management intentionally and materially lowered its own projections, which had the effect of

making PEGI appear less valuable. Importantly, CAFD was the Company's critical accounting metric for investors and was the metric management used when issuing guidance to the market, making its undisclosed manipulation all the more offensive.[232]

405. Each of these ten disclosure deficiencies deprived stockholders of adequate information regarding the circumstances by which Riverstone was able to dominate the Merger process and steer the Company into a less than value-maximizing Merger, and thereby prevented the casting of a fully informed vote in connection with the Merger.

CLASS ACTION ALLEGATIONS

406. Plaintiff brings this Action pursuant to Rule 23 of the Rules of the Court of Chancery, individually and on behalf of all other holders of PEGI common stock (except Defendants named herein and any person, firm, trust, corporation, or other entity related to or affiliated with them and their successors in interest) who have been or will be injured by Defendants' wrongful actions, as more fully described herein (the "Class").

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[232] The Proxy also fails to disclose the Company's after-tax free cash flows. Instead it only discloses something called "After-Tax Equity Cash Flow." Further, the Proxy fails to provide: (i) all line items used to calculate Adjusted EBITDA and Corporate EBITDA, and (ii) a reconciliation of all non-GAAP to GAAP metrics.

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407. This Action is properly maintainable as a class action.

408. The Class is so numerous that joinder of all members is impracticable. As of the record date for the vote on the Merger, January 31, 2020, there were 98,218,625 shares of common stock issued and outstanding. Thus, upon information and belief, there were thousands of PEGI stockholders scattered throughout the world.

409. There are questions of law and fact common to the Class, including, *inter alia*, whether:

a. The Director Defendants breached their fiduciary duties;

b. The Officer Defendants breached their fiduciary duties;

c. The Controller Defendants breached their fiduciary duties as controllers of PEGI, or, in the alternative, that the Riverstone Defendants aided and abetted breaches of fiduciary duty;

d. The Riverstone Defendants and Goldman are liable for tortious interference;

e. The Riverstone Defendants, the Officer Defendants, Browne, and Goldman are liable for civil conspiracy;

f. Goldman aided and abetted breaches of fiduciary duty; and

g. Plaintiff and the other members of the Class were injured by the conduct alleged herein and, if so, what is the proper measure of damages.

410. Plaintiff is committed to prosecuting this Action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Plaintiff is an adequate representative of the Class.

411. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of the Class that would, as a practical matter, be disjunctive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests.

COUNT I

Breach of Fiduciary Duty Against the Director Defendants

412. Plaintiff repeats and realleges each and every allegation set forth above herein.

413. The Director Defendants owed the Class the utmost fiduciary duties of care and loyalty. By virtue of their positions as directors and/or officers of PEGI and their exercise of control and ownership over the business and corporate affairs of the Company, the Director Defendants have, and at all relevant times had, the power to control and influence and did control and influence and cause the Company to engage in the practices complained of herein.

414. The Director Defendants were required to act in the best interests of and to maximize value for PEGI's public stockholders in connection with the Merger.

415. The Director Defendants acknowledged they had a fiduciary duty to maximize value and their own advisors acknowledged that Brookfield/TerraForm's offer was "superior from a value perspective" to CPPIB's offer. Nonetheless, the Director Defendants consciously disregarded their fiduciary duties by, among other things, agreeing to the unfair Merger, which failed to maximize stockholder value, but was the preferred transaction for Riverstone and a conflicted management team. The Director Defendants knew that the Brookfield/TerraForm transaction provided more value to PEGI stockholders than the Merger and could be structured to avoid Riverstone's consent right, but chose to advance the interests of CPPIB and Riverstone anyway.

416. The Director Defendants also breached their fiduciary duties by knowingly and willfully allowing numerous conflicted individuals/entities to participate in its deliberations, including Browne, Garland, Goldman, and other members of management. Any independent director acting in good faith would not have allowed those faced with such conflicts of interests to participate in the process in such a material way. The Special Committee's conscious disregard of these conflicts effectively allowed Riverstone to participate in and influence the Special Committee's deliberations despite the fact that Riverstone, as the primary owner of Pattern Development 2, was competing with PEGI public stockholders for merger consideration.

417. The Director Defendants also had a fiduciary duty to disclose all material information to PEGI's stockholders in connection with the stockholder vote on the Merger. The Director Defendants knowingly and intentionally failed to disclose all material information to PEGI's stockholders. In fact, the Director Defendants consciously abdicated their duties by granting conflicted management sole authority to exercise its discretion to determine what material information should be included (or excluded) from the Proxy and distribute the Proxy to stockholders without prior Board and/or Special Committee review and approval.

418. Further, Director Defendants Garland, Batkin, and Goodman, in their roles on the Transaction Committee, approved the preferred stock issuance that swung the vote in favor of the Merger and constituted illegal vote buying.

419. By reason of the foregoing acts, practices, and courses of conduct, the Director Defendants have failed to lawfully discharge their fiduciary obligations toward Plaintiff and the other members of the Class.

420. As a result of the Director Defendants' breaches of their fiduciary duties, Plaintiff and the Class have been harmed.

COUNT II

Breach of Fiduciary Duty Against the Officer Defendants

421. Plaintiff repeats and realleges each and every allegation set forth above herein.

422. The Officer Defendants owed the Class the utmost fiduciary duties of care and loyalty. Among other obligations, the Officer Defendants were required to advance the interests of PEGI's public stockholders in connection with the Merger.

423. The Officer Defendants were interested in the Merger as a result of their employment with and/or substantial equity holdings in Pattern Development 2 and their continued employment with and equity interests in the post-closing combined entity as discussed herein.

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424. The Officer Defendants breached their fiduciary duties by advancing their own self-interest and the interests of Riverstone to the detriment of PEGI stockholders. By way of example, the Officer Defendants acted to advance interests other than those of PEGI stockholders by: (i) repeatedly asserting and misrepresenting Riverstone's narrow consent right in order to improperly influence the Special Committee, (ii) manipulating their own projections of CAFD, (iii) causing and influencing the Board to approve the preferred stock issuance and the associated voting requirement that swung the vote in favor of the Merger and constituted illegal vote buying; and (iv) knowingly and intentionally disseminating a materially false and misleading Proxy.

425. Defendant Garland also breached his duties by intentionally disobeying clear instructions given by the Special Committee's at the March 9, 2019 meeting. In direct violation of those instructions, Garland scheduled and attended a meeting with CPPIB and Riverstone without Special Committee authorization and subsequently concealed that meeting from the Special Committee. Garland's unauthorized and wrongful actions allowed Riverstone's preferred bidder, CPPIB, to enter the sales process and propose a transaction that benefited management and Riverstone at the expense of PEGI stockholders.

426. Any purported exculpation provision in PEGI's Certificate of Incorporation is inapplicable to the Officer Defendants.

427. As a result of the Officer Defendants' breaches of their fiduciary duties, Plaintiff and the Class have been harmed.

COUNT III

Aiding and Abetting Breaches of Fiduciary Duty Against the Riverstone Defendants

428. Plaintiff repeats and realleges each and every allegation set forth above herein.

429. The Riverstone Defendants knew that the Director Defendants and Officer Defendants owed fiduciary duties to the Company and its stockholders. Those duties included an obligation to act in the interests of PEGI's public stockholders, to maximize stockholder value in connection with the Merger, and to disclose all material information in connection with the Merger. As alleged herein, the Director Defendants and Officer Defendants breached their fiduciary duties.

430. The Riverstone Defendants knowingly participated in such breaches of fiduciary duty by, among other things, (i) clandestinely, and without Special Committee approval, having unauthorized conversations with Goldman, Garland, and CPPIB about the take-private transaction, (ii) infecting the process with conflicted individuals and entities (such as Browne, Garland, and Goldman), (iii)

wrongfully exploiting the Partnership Agreement's narrow consent right to influence the Special Committee to favor the Merger, which the Riverstone Defendants were interested in, despite the fact that it did not maximize stockholder value, (iv) causing and influencing the approval of the preferred stock issuance and the associated voting requirement that swung the vote in favor of the Merger and constituted illegal vote buying to benefit Riverstone; and (v) threatening meritless litigation against Brookfield, without any factual or legal basis to do so, for the purpose of blocking a value maximizing transaction for PEGI's stockholders.

431. As a result of the actions of the Riverstone Defendants, Plaintiff and the Class have been harmed.

COUNT IV

Tortious Interference With Prospective Economic Advantage Against the Riverstone Defendants and Goldman

432. Plaintiff repeats and realleges each and every allegation set forth above herein.

433. As stockholders of PEGI, Plaintiff and the Class had a bona fide expectancy to receive the highest value reasonably available in any corporate sale. Here, Brookfield/TerraForm offered and were willing to consummate a more attractive merger for Plaintiff and the Class, including a higher premium offer for PEGI stock and the ability for Plaintiff and the Class to remain owners of the

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Company and benefit from Project Vision 2020. Brookfield/TerraForm's proposed merger transaction was structured in a contractually valid manner to avoid the Riverstone Defendants' consent right under the Transfer restriction.

434. Through the Board, the Special Committee, and the Officer Defendants, the Riverstone Defendants and Goldman became aware of the proposed transaction structure that would have validly and lawfully circumvented the Riverstone Defendants' consent right.

435. In response, the Riverstone Defendants and Goldman wrongfully and intentionally interfered with Plaintiff's and the Class's expectations to receive fair value for their interests in PEGI. Among other things, the Riverstone Defendants' wrongful and intentional interference included:

a. Unethically and unlawfully colluding with Goldman regarding a potential take-private and disclosing confidential information to Goldman in furtherance of such discussions, including concealing this activity from the Board;

b. Colluding with Garland and CPPIB, without authorization, about a take-private transaction and disclosing confidential information to CPPIB in violation of the Partnership Agreement;

c. Wielding the Partnership Agreement's consent right in bad faith and in violation of public policy for its personal benefit at the expense of Plaintiff and the Class; and

d. Threatening Brookfield/TerraForm with vexatious and meritless litigation to intentionally sabotage a merger transaction that would have complied with the Partnership Agreement.

436. Among other things, Goldman's wrongful and intentional interference included: (a) unethically and unlawfully colluding with the Riverstone Defendants regarding a potential take-private, receiving confidential information from the Riverstone Defendants in furtherance of such discussions, and concealing this activity from the Board; (b) colluding with Garland and CPPIB, without authorization, about a take-private transaction and disclosing confidential information to CPPIB; (c) misleading Brookfield concerning the PEGI Board's purported lack of interest in internalizing Pattern Development 2; and (d) providing analyses to the Special Committee that were unfairly biased against Brookfield.

437. As a direct and proximate result of the Riverstone Defendants' and Goldman's wrongful and intentional interference, Brookfield/TerraForm jettisoned a potential transaction that would have provided more favorable terms to PEGI stockholders.

438. As a result of the above, Plaintiff and the Class have been harmed.

COUNT V

Civil Conspiracy Against the Riverstone Defendants, the Officer Defendants, Browne, and Goldman

439. Plaintiff repeats and realleges each and every allegation set forth above herein.

440. The Riverstone Defendants, the Officer Defendants, Browne, and Goldman entered into a confederation or combination for purposes of defeating a transaction with Brookfield/TerraForm in favor of the Merger, which cashed out PEGI public stockholders at an unfair price. There was a meeting of the minds between the Riverstone Defendants, the Officer Defendants, Browne, and Goldman to accomplish the improper purpose of depriving PEGI public stockholders of their shares for an unfair price. In fact, Goldman and Riverstone had an agreement in the form of a non-disclosure agreement that explicitly contemplated discussions concerning a potential transaction between themselves and Defendant Garland. They agreed on a course of conduct to accomplish their improper purpose through deception, coercion, illegal vote buying and other means of tortious interference with the Special Committee's process.

441. To further the conspiracy, the Riverstone Defendants, the Officer Defendants, Browne, and Goldman used PEGI's confidential information, their

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improper access to the Special Committee's process, and their overstated specter of the consent right to frustrate the ability of PEGI to complete a transaction with Brookfield/TerraForm.

442. Their wrongful conduct included violating the Special Committee's instructions, securing the participation of CPPIB as a bidder and then threatening meritless litigation if the Special Committee pursued a value maximizing transaction, and illegal vote buying.

443. Further, they conspired to ensure PEGI did not disclose all material information to PEGI's stockholders and fraudulently induced them to approve the Merger.

444. Goldman's role in the conspiracy included, among other things: (i) planning with the Riverstone and Officer Defendants to take PEGI private and combine it with Pattern Development 2 in a manner that would benefit Riverstone at the expense of PEGI's public stockholders; (ii) securing its own engagement as a second financial advisor to the Special Committee, contrary to the Special Committee's preference; (iii) taking a leading role during the Merger negotiation process by negotiating directly with Brookfield, CPPIB, and others, in violation of the Special Committee's direction that Evercore, not Goldman, would have that role in light of Goldman's substantial conflicts of interest; and (iv) serving the interests

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of the Riverstone and Officer Defendants, at the expense of PEGI's public stockholders, during the Merger negotiation process, including by misleading Brookfield concerning the PEGI Board's purported lack of interest in internalizing Pattern Development 2, providing analyses to the Special Committee that were unfairly biased against Brookfield, preferentially providing information to CPPIB that advantaged CPPIB in comparison to Brookfield, and advising Garland to [redacted]

445. As a result of the conspiracy, Plaintiff and the Class suffered actual damages from the wrongful sale of PEGI for less than fair value. The conspiracy also damaged Plaintiff and the Class by depriving them of their right to cast a fully-informed vote on the Merger.

COUNT VI

Breach of Fiduciary Duty Against the Controller Defendants

446. Plaintiff repeats and realleges each and every allegation set forth above herein.

447. Plaintiff brings this count against the Riverstone Defendants, including Pattern Development 2, to the extent they are deemed to have owed fiduciary duties to PEGI's public stockholders as controllers.

448. Collectively, the Controller Defendants, consisting of the Officer Defendants and the Riverstone Defendants, dominated and controlled PEGI, the Board, and the Special Committee with respect to the Merger.

449. At the time PEGI entered into the Partnership Agreement, Riverstone controlled approximately 19% of the Company's outstanding stock. The Company's directors who approved entry into the Partnership Agreement had been hand-selected by Riverstone, with a Board majority being beholden to Riverstone. Of the seven directors serving at the time, Hoffman and Browne were both Riverstone partners; Bellinger was a long-time associate of Browne; and Garland was beholden to Riverstone as a long-time executive of the Company.

450. At the time the Special Committee was formed and the process that led to the Merger began, Riverstone controlled more than 5% of the Company's outstanding stock and a majority of the directors lacked independence from Riverstone.

451. Riverstone was the largest equity holder and controller of Pattern Development 2, with unfettered control over the consent right. At the time of the Merger, the owners of Pattern Development 2, including the Officer Defendants, owned more than 10% of the Company's outstanding common stock.

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452. The Partnership Agreement prohibited transfers of ownership interests in Pattern Development 2 without the consent of its board of directors, which was controlled by Riverstone. A transfer was defined to include mergers of limited partners, including PEGI. As a result, Riverstone had a consent right over any merger of PEGI. The Purchase Rights Agreement governing PEGI's purchase of Pattern Development 2 units impliedly admits that Pattern Development 2 controlled PEGI.

453. As discussed above, the Controller Defendants used their positions as officers or controllers of the consent right to prevent PEGI from pursuing a value maximizing deal and force the Company to enter into their preferred deal—the Merger. By leveraging the consent right to facilitate the acquisition of PEGI, the Controller Defendants effectively stood on both sides of the transaction.

454. As further discussed above, the Controller Defendants used their positions as officers or controllers to cause and influence the approval of the preferred stock issuance and the associated voting requirement that swung the vote in favor of the Merger and constituted illegal vote buying to benefit themselves.

455. Because they were able to exercise control with respect to the Merger, the Controller Defendants owed fiduciary duties to PEGI's public stockholders. The Controller Defendants breached these duties by causing the Company to enter into

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the Merger, through which they competed with public stockholders for consideration and through which they received different consideration than public stockholders.

456. As a result of the Controller Defendants' breaches of their fiduciary duties, Plaintiff and the Class have been harmed.

COUNT VII

Aiding and Abetting Breaches of Fiduciary Duty Against Goldman

457. Plaintiff repeats and realleges each and every allegation set forth above herein.

458. Plaintiff brings this count against Goldman for aiding and abetting the breaches of fiduciary duty of the Director Defendants, the Officer Defendants, and the Riverstone Defendants.

459. Goldman knew that the Director Defendants and Officer Defendants owed fiduciary duties to the Company and its stockholders. Those duties included an obligation to act in the interests of PEGI's public stockholders, to maximize stockholder value in connection with the Merger, and to disclose all material information in connection with the Merger. Goldman also knew that the Controller Defendants (*i.e.*, the Officer Defendants and the Riverstone Defendants) dominated and controlled PEGI, the Board, and the Special Committee with respect to the Merger, and owed fiduciary duties to PEGI's public stockholders. As alleged herein,

the Director Defendants, Officer Defendants, and Riverstone Defendants breached their fiduciary duties.

460. Goldman knowingly participated in such breaches of fiduciary duty by, among other things: (i) planning with the Riverstone and Officer Defendants to take PEGI private and combine it with Pattern Development 2 in a manner that would benefit Riverstone at the expense of PEGI's public stockholders; (ii) securing its own engagement as a second financial advisor to the Special Committee, contrary to the Special Committee's preference; (iii) taking a leading role during the Merger negotiation process by negotiating directly with Brookfield, CPPIB, and others, in violation of the Special Committee's direction that Evercore, not Goldman, would have that role in light of Goldman's substantial conflicts of interest; and (iv) serving the interests of the Riverstone and Officer Defendants, at the expense of PEGI's public stockholders, during the Merger negotiation process, including by misleading Brookfield concerning the PEGI Board's purported lack of interest in internalizing Pattern Development 2, providing analyses to the Special Committee that were unfairly biased against Brookfield, preferentially providing information to CPPIB that advantaged CPPIB in comparison to Brookfield, and advising Garland to [redacted].

461. As a result of the actions of Goldman, Plaintiff and the Class have been harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and relief in her favor and in favor of the Class, and against Defendants, as follows:

a. Declaring that this Action is properly maintainable as a class action and certifying the proposed Class;

b. Finding the Director Defendants liable for breaching their fiduciary duties;

c. Finding that the Officer Defendants breached their fiduciary duties as officers;

d. Finding that the Controller Defendants breached their fiduciary duties as controllers of PEGI;

e. If they are not deemed to owe fiduciary duties as controllers, finding that the Riverstone Defendants aided and abetted breaches of fiduciary duties by the Director and Officer Defendants;

f. Finding that the Riverstone Defendants and Goldman are liable for tortious interference;

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g. Finding that the Riverstone Defendants, the Officer Defendants, Browne, and Goldman are liable for civil conspiracy;

h. Finding that Goldman aided and abetted breaches of fiduciary duties by the Director, Officer, and Riverstone Defendants;

i. Awarding Plaintiff and the other members of the Class damages in an amount which may be proven at trial, including rescissory damages, together with interest thereon;

j. Awarding Plaintiff costs, including reasonable attorneys' and expert witness fess and other costs; and

k. Awarding Plaintiff and the Class such other relief as this Court deems just and equitable.

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CERTIFICATE OF SERVICE

I, Ned Weinberger, hereby certify that, on November 21, 2022, I caused a true and correct copy of the foregoing to be served on the following counsel by File and ServeXpress:

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