UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2021

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-36559

Via Renewables, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**46-5453215**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

12140 Wickchester Ln, Suite 100
Houston, Texas 77079

(Address of principal executive offices)

(713) 600-2600
(Registrant's telephone number, including area code)

Spark Energy, Inc.
(Former name, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbols(s)	Name of exchange on which registered
Class A common stock, par value $0.01 per share	VIA	The NASDAQ Global Select Market
8.75% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Stock, par value $0.01 per share	VIASP	The NASDAQ Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this Chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).
Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ Smaller reporting company ☐

Emerging Growth Company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes ☐ No ☒

There were 15,572,388 shares of Class A common stock, 20,000,000 shares of Class B common stock and 3,567,543 shares of Series A Preferred Stock outstanding as of November 2, 2021.

VIA RENEWABLES, INC.
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For the Quarter Ended September 30, 2021

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Cautionary Note Regarding Forward Looking Statements

This Quarterly Report on Form 10-Q (this "Report") contains forward-looking statements that are subject to a number of risks and uncertainties, many of which are beyond our control. These forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), can be identified by the use of forward-looking terminology including "may," "should," "could," "likely," "will," "believe," "expect," "anticipate," "estimate," "continue," "plan," "intend," "project," or other similar words. Forward-looking statements appear in a number of places in this Report. All statements, other than statements of historical fact, included in this Report are forward-looking statements. The forward-looking statements include statements regarding the impacts of COVID-19 and the 2021 severe weather event, cash flow generation and liquidity, business strategy, prospects for growth and acquisitions, outcomes of legal proceedings, ability to pay cash dividends, future operations, financial position, estimated revenues and losses, projected costs, prospects, plans, objectives, beliefs of management, availability and terms of capital, competition, governmental regulation and general economic conditions. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we cannot give any assurance that such expectations will prove correct.

The forward-looking statements in this Report are subject to risks and uncertainties. Important factors that could cause actual results to materially differ from those projected in the forward-looking statements include, but are not limited to:

- evolving risks, uncertainties and impacts relating to COVID-19, including the geographic spread, the severity of the disease, the scope and duration of the COVID-19 outbreak, actions that may be taken by governmental authorities to contain the COVID-19 outbreak or to treat its impact, and the potential for continuing negative impacts of COVID-19 on economies and financial markets;
- the ultimate impact of the 2021 severe weather event, including resolution of outstanding pricing and volume settlement data from ERCOT; the results of formal disputes regarding pricing and volume settlement data received to date; and any corrective action by the State of Texas, ERCOT, the Railroad Commission of Texas, or the Public Utility Commission of Texas;
- changes in commodity prices;
- the sufficiency of risk management and hedging policies and practices;
- the impact of extreme and unpredictable weather conditions, including hurricanes and other natural disasters;
- federal, state and local regulations, including the industry's ability to address or adapt to potentially restrictive new regulations that may be enacted by public utility commissions;
- our ability to borrow funds and access credit markets;
- restrictions in our debt agreements and collateral requirements;
- credit risk with respect to suppliers and customers;
- changes in costs to acquire customers as well as actual attrition rates;
- accuracy of billing systems;
- our ability to successfully identify, complete, and efficiently integrate acquisitions into our operations;
- significant changes in, or new changes by, the independent system operators ("ISOs") in the regions we operate;
- competition; and
- the "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2020, and in our other public filings and press releases.

You should review the risk factors and other factors noted throughout or incorporated by reference in this Report that could cause our actual results to differ materially from those contained in any forward-looking statement. All forward-looking statements speak only as of the date of this Report. Unless required by law, we disclaim any obligation to publicly update or revise these statements whether as a result of new information, future events or otherwise. It is not possible for us to predict all risks, nor can we assess the impact of all factors on the business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

PART I. — FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

VIA RENEWABLES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share counts)
(unaudited)

	September 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 89,422	$ 71,684
Restricted cash	8,697	—
Accounts receivable, net of allowance for doubtful accounts of $2,529 at September 30, 2021 and $3,942 at December 31, 2020	47,644	70,350
Accounts receivable—affiliates	3,406	5,053
Inventory	2,544	1,496
Fair value of derivative assets	44,218	311
Customer acquisition costs, net	1,200	5,764
Customer relationships, net	9,708	12,077
Deposits	5,438	5,655
Renewable energy credit asset	16,373	20,666
Other current assets	13,778	11,818
Total current assets	242,428	204,874
Property and equipment, net	4,518	3,354
Fair value of derivative assets	1,090	—
Customer acquisition costs, net	295	306
Customer relationships, net	3,505	5,691
Deferred tax assets	17,344	27,960
Goodwill	120,343	120,343
Other assets	2,959	4,139
Total assets	$ 392,482	$ 366,667
Liabilities, Series A Preferred Stock and Stockholders' Equity		
Current liabilities:		
Accounts payable	$ 27,422	$ 27,322
Accounts payable—affiliates	412	826
Accrued liabilities	25,057	34,164
Renewable energy credit liability	14,901	19,549
Fair value of derivative liabilities	1,092	7,505
Other current liabilities	2,258	1,295
Total current liabilities	71,142	90,661
Long-term liabilities:		
Fair value of derivative liabilities	77	227
Long-term portion of Senior Credit Facility	130,000	100,000
Subordinated debt—affiliates	10,000	—
Other long-term liabilities	231	30
Total liabilities	211,450	190,918
Commitments and contingencies (Note 12)		
Series A Preferred Stock, par value $0.01 per share, 20,000,000 shares authorized, 3,707,256 shares issued and 3,567,543 shares outstanding at September 30, 2021 and December 31, 2020	87,288	87,288
Stockholders' equity:		
Common Stock:		
Class A common stock, par value $0.01 per share, 120,000,000 shares authorized, 15,716,982 shares issued and 15,572,388 shares outstanding at September 30, 2021 and 14,771,878 shares issued and 14,627,284 shares outstanding at December 31, 2020	157	148
Class B common stock, par value $0.01 per share, 60,000,000 shares authorized, 20,000,000 shares issued and outstanding at September 30, 2021 and 20,800,000 shares issued and outstanding at December 31, 2020	201	209
Additional paid-in capital	53,551	55,222
Accumulated other comprehensive loss	(40)	(40)
Retained earnings	18,103	11,721
Treasury stock, at cost, 144,594 shares at September 30, 2021 and December 31, 2020	(2,406)	(2,406)
Total stockholders' equity	69,566	64,854
Non-controlling interest in Spark HoldCo, LLC	24,178	23,607
Total equity	93,744	88,461
Total liabilities, Series A Preferred Stock and Stockholders' equity	$ 392,482	$ 366,667

The accompanying notes are an integral part of the condensed consolidated financial statements.

VIA RENEWABLES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenues:				
Retail revenues	$ 98,267	$ 141,188	$ 293,721	$ 436,166
Net asset optimization (expense) revenue	(288)	(558)	(542)	(319)
Total Revenues	97,979	140,630	293,179	435,847
Operating Expenses:				
Retail cost of revenues	40,298	85,118	198,642	269,546
General and administrative	9,719	19,080	33,053	66,087
Depreciation and amortization	5,049	7,278	16,498	24,084
Total Operating Expenses	55,066	111,476	248,193	359,717
Operating income	42,913	29,154	44,986	76,130
Other (expense)/income:				
Interest expense	(1,298)	(1,487)	(4,161)	(4,233)
Interest and other income	63	80	228	293
Total other expenses	(1,235)	(1,407)	(3,933)	(3,940)
Income before income tax expense	41,678	27,747	41,053	72,190
Income tax expense	7,021	5,141	9,160	12,739
Net income	$ 34,657	$ 22,606	$ 31,893	$ 59,451
Less: Net income attributable to non-controlling interests	19,774	12,993	14,158	34,200
Net income attributable to Via Renewables, Inc. stockholders	$ 14,883	$ 9,613	$ 17,735	$ 25,251
Less: Dividend on Series A Preferred Stock	1,951	1,951	5,853	5,490
Net income attributable to stockholders of Class A common stock	$ 12,932	$ 7,662	$ 11,882	$ 19,761
Net income attributable to Via Renewables, Inc. per share of Class A common stock				
Basic	$ 0.83	$ 0.52	$ 0.79	$ 1.36
Diluted	$ 0.82	$ 0.52	$ 0.79	$ 1.35
Weighted average shares of Class A common stock outstanding				
Basic	15,572	14,653	14,965	14,531
Diluted	15,686	14,671	15,099	14,655

The accompanying notes are an integral part of the condensed consolidated financial statements.

VIA RENEWABLES, INC.
CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
(in thousands)
(unaudited)

Nine Months Ended September 30, 2021

	Issued Shares of Class A Common Stock	Issued Shares of Class B Common Stock	Treasury Stock	Class A Common Stock	Class B Common Stock	Treasury Stock	Accumulated Other Comprehensive Loss	Additional Paid-in Capital	Retained Earnings (Deficit)	Total Stockholders' Equity	Non-controlling Interest	Total Equity
Balance at December 31, 2020	14,772	20,800	(144)	$ 148	$ 209	$ (2,406)	$ (40)	$ 55,222	$ 11,721	$ 64,854	$ 23,607	$ 88,461
Stock based compensation	—	—	—	—	—	—	—	1,792	—	1,792	—	1,792
Restricted stock unit vesting	145		—	1	—	—	—	(588)	—	(587)	—	(587)
Consolidated net income	—	—	—	—	—	—	—	—	17,735	17,735	14,158	31,893
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(13,811)	(13,811)
Dividends paid to Class A common stockholders ($0.54375 per share)	—	—	—	—	—	—	—	(2,651)	(5,500)	(8,151)	—	(8,151)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(5,853)	(5,853)	—	(5,853)
Exchange of shares of Class B common stock to shares of Class A common stock	800	(800)	—	8	(8)	—	—	320	—	320	(320)	—
Changes in ownership interest	—	—	—	—	—	—	—	(544)	—	(544)	544	—
Balance at September 30, 2021	15,717	20,000	(144)	$ 157	$ 201	$ (2,406)	$ (40)	$ 53,551	$ 18,103	$ 69,566	$ 24,178	$ 93,744

The accompanying notes are an integral part of the condensed consolidated financial statements.

	Three Months Ended September 30, 2021											
	Issued Shares of Class A Common Stock	Issued Shares of Class B Common Stock	Treasury Stock	Class A Common Stock	Class B Common Stock	Treasury Stock	Accumulated Other Comprehensive Loss	Additional Paid-in Capital	Retained Earnings (Deficit)	Total Stockholders' Equity	Non-controlling Interest	Total Equity
Balance at June 30, 2021	14,917	20,800	(144)	$ 149	$ 209	$ (2,406)	$ (40)	$ 52,878	$ 7,994	$ 58,784	$ 8,312	$ 67,096
Stock based compensation	—	—	—	—	—	—	—	389	—	389	—	389
Restricted stock unit vesting	—	—	—	—	—	—	—	—	—	—	—	—
Consolidated net income	—	—	—	—	—	—	—	—	14,883	14,883	19,774	34,657
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(3,624)	(3,624)
Dividends paid to Class A common stockholders ($0.18125 per share)	—	—	—	—	—	—	—	—	(2,823)	(2,823)	—	(2,823)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(1,951)	(1,951)	—	(1,951)
Exchange of shares of Class B common stock to shares of Class A common stock	800	(800)	—	8	(8)	—	—	320	—	320	(320)	—
Changes in Ownership Interest	—	—	—	—	—	—	—	(36)	—	(36)	36	—
Balance at September 30, 2021	15,717	20,000	(144)	$ 157	$ 201	$ (2,406)	$ (40)	$ 53,551	$ 18,103	$ 69,566	$ 24,178	$ 93,744

The accompanying notes are an integral part of the condensed consolidated financial statements.

	Nine Months Ended September 30, 2020											
	Issued Shares of Class A Common Stock	**Issued Shares of Class B Common Stock**	**Treasury Stock**	**Class A Common Stock**	**Class B Common Stock**	**Treasury Stock**	**Accumulated Other Comprehensive Loss**	**Additional Paid-in Capital**	**Retained Earnings (Deficit)**	**Total Stockholders' Equity**	**Non-controlling Interest**	**Total Equity**
Balance at December 31, 2019	14,479	20,800	(99)	$ 145	$ 209	$ (2,011)	$ (40)	$ 51,842	$ 1,074	$ 51,219	$ 16,067	$ 67,286
Impact of adoption of ASC 326	—	—	—	—	—	—	—	—	(633)	(633)	—	(633)
Balance at January 1,2020	14,479	20,800	(99)	145	209	(2,011)	(40)	51,842	441	50,586	16,067	66,653
Stock based compensation	—	—	—	—	—	—	—	2,061	—	2,061	—	2,061
Restricted stock unit vesting	293	—	—	3	—	—	—	(915)	—	(912)	—	(912)
Consolidated net income	—	—	—	—	—	—	—	—	25,251	25,251	34,200	59,451
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(23,409)	(23,409)
Dividends paid to Class A common stockholders ($0.54375 per share)	—	—	—	—	—	—	—	—	(7,917)	(7,917)	—	(7,917)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(5,491)	(5,491)	—	(5,491)
Treasury Shares	—	—	(45)	—	—	(395)	—		—	(395)	—	(395)
Changes in ownership interest	—	—	—	—	—	—	—	1,181	—	1,181	(1,181)	—
Balance at September 30, 2020	14,772	20,800	(144)	$ 148	$ 209	$ (2,406)	$ (40)	$ 54,169	$ 12,284	$ 64,364	$ 25,677	$ 90,041

The accompanying notes are an integral part of the condensed consolidated financial statements.

	Three Months Ended September 30, 2020											
	Issued Shares of Class A Common Stock	Issued Shares of Class B Common Stock	Treasury Stock	Class A Common Stock	Class B Common Stock	Treasury Stock	Accumulated Other Comprehensive Loss	Additional Paid-in Capital	Retained Earnings (Deficit)	Total Stockholders' Equity	Non-controlling Interest	Total Equity
Balance at June 30, 2020	14,772	20,800	(99)	$ 148	$ 209	$ (2,011)	$ (40)	$ 53,409	$ 7,275	$ 58,990	$ 22,829	$ 81,819
Stock based compensation	—	—	—	—	—	—	—	289	—	289	—	289
Consolidated net income	—	—	—	—	—	—	—	—	9,613	9,613	12,993	22,606
Distributions paid to non-controlling unit holders	—	—	—	—	—	—	—	—	—	—	(9,674)	(9,674)
Dividends paid to Class A common stockholders ($0.18125 per share)	—	—	—	—	—	—	—	—	(2,652)	(2,652)	—	(2,652)
Dividends paid to Preferred Stockholders	—	—	—	—	—	—	—	—	(1,952)	(1,952)	—	(1,952)
Treasury Shares	—	—	(45)	—	—	(395)	—		—	(395)	—	(395)
Changes in ownership interest	—	—	—	—	—	—	—	471	—	471	(471)	—
Balance at September 30, 2020	14,772	20,800	(144)	$ 148	$ 209	$ (2,406)	$ (40)	$ 54,169	$ 12,284	$ 64,364	$ 25,677	$ 90,041

The accompanying notes are an integral part of the condensed consolidated financial statements.

VIA RENEWABLES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine Months Ended September 30,	
	2021	2020
Cash flows from operating activities:		
Net income	$ 31,893	$ 59,451
Adjustments to reconcile net income to net cash flows provided by operating activities:		
Depreciation and amortization expense	16,498	24,084
Deferred income taxes	10,616	3,366
Stock based compensation	2,012	2,134
Amortization of deferred financing costs	792	966
Bad debt expense	379	4,613
(Gain) loss on derivatives, net	(57,726)	14,015
Current period cash settlements on derivatives, net	6,050	(32,682)
Changes in assets and liabilities:		
Decrease in accounts receivable	22,327	44,579
Decrease (increase) in accounts receivable—affiliates	1,647	(2,546)
(Increase) decrease in inventory	(1,048)	1,158
Increase in customer acquisition costs	(765)	(1,763)
Decrease in prepaid and other current assets	1,331	6,268
Decrease in intangible assets—customer acquisition	27	—
Decrease (increase) in other assets	577	(316)
Decrease in accounts payable and accrued liabilities	(16,920)	(39,997)
Decrease in accounts payable—affiliates	(414)	(655)
Increase in other current liabilities	1,525	1,439
Decrease in other non-current liabilities	(29)	(166)
Net cash provided by operating activities	18,772	83,948
Cash flows from investing activities:		
Purchases of property and equipment	(2,170)	(1,219)
Acquisition of Customers	(1,519)	—
Net cash used in investing activities	(3,689)	(1,219)
Cash flows from financing activities:		
Buyback of Series A Preferred Stock	—	(2,282)
Borrowings on notes payable	575,000	420,000
Payments on notes payable	(545,000)	(443,000)
Net borrowings on subordinated debt facility	10,000	—
Purchase of Treasury Stock	—	(395)
Restricted stock vesting	(833)	(1,107)
Payment for acquired customers	—	(972)
Payment of dividends to Class A common stockholders	(8,151)	(7,917)
Payment of distributions to non-controlling unitholders	(13,811)	(23,409)
Payment of Preferred Stock dividends	(5,853)	(5,935)
Net cash provided (used) in financing activities	11,352	(65,017)
Increase in Cash, cash equivalents and Restricted cash	26,435	17,712
Cash, cash equivalents and Restricted cash—beginning of period	71,684	57,668
Cash, cash equivalents and Restricted cash—end of period	$ 98,119	$ 75,380
Supplemental Disclosure of Cash Flow Information:		
Non-cash items:		
Property and equipment purchase accrual	$ 287	$ 5
Cash paid (received) during the period for:		
Interest	$ 3,143	$ 3,198
Taxes	$ (5,076)	$ 13,074

The accompanying notes are an integral part of the condensed consolidated financial statements.

VIA RENEWABLES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. Formation and Organization

Company's Name Change

In August 2021, Spark Energy, Inc. changed its name from Spark Energy, Inc. to Via Renewables, Inc. (the "Company").

Organization

We are an independent retail energy services company that provides residential and commercial customers in competitive markets across the United States with an alternative choice for natural gas and electricity. The Company is a holding company whose sole material asset consists of units in Spark HoldCo, LLC (“Spark HoldCo”). The Company is the sole managing member of Spark HoldCo, is responsible for all operational, management and administrative decisions relating to Spark HoldCo’s business and consolidates the financial results of Spark HoldCo and its subsidiaries. Spark HoldCo is the direct and indirect owner of the subsidiaries through which we operate. We conduct our business through several brands across our service areas, including Electricity Maine, Electricity N.H., Major Energy, Provider Power Massachusetts, Spark Energy, and Verde Energy.

2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The accompanying interim unaudited condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) and pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) as it applies to interim financial statements. This information should be read along with our consolidated financial statements and notes contained in our annual report on Form 10-K for the year ended December 31, 2020 (the “2020 Form 10-K”). Our unaudited condensed consolidated financial statements are presented on a consolidated basis and include all wholly-owned and controlled subsidiaries. We account for investments over which we have significant influence but not a controlling financial interest using the equity method of accounting. All significant intercompany transactions and balances have been eliminated in the unaudited condensed consolidated financial statements.

In the opinion of the Company's management, the accompanying condensed consolidated financial statements reflect all adjustments that are necessary to fairly present the financial position, the results of operations, the changes in equity and the cash flows of the Company for the respective periods. Such adjustments are of a normal recurring nature, unless otherwise disclosed.

Use of Estimates and Assumptions

The preparation of our condensed consolidated financial statements requires estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the interim financial statements and the reported amounts of revenues and expenses during the period. Actual results could materially differ from those estimates.

Relationship with our Founder and Majority Shareholder

W. Keith Maxwell, III (our "Founder") is the Company's Chief Executive Officer, a director, and the owner of a majority of the voting power of our common stock through his ownership of NuDevco Retail, LLC ("NuDevco Retail") and Retailco, LLC ("Retailco"). Retailco is a wholly owned subsidiary of TxEx Energy Investments, LLC ("TxEx"), which is wholly owned by Mr. Maxwell. NuDevco Retail is a wholly owned subsidiary of NuDevco

Retail Holdings LLC ("NuDevco Retail Holdings"), which is a wholly owned subsidiary of Electric HoldCo, LLC, which is also a wholly owned subsidiary of TxEx.

New Accounting Standards Recently Adopted

There have been no changes to our significant accounting policies as disclosed in our 2020 Form 10-K, except as follows:

In December 2019, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2019-12, Income Taxes (Topic 740), Simplifying the Accounting for Income Taxes ("ASU 2019-12"). These amendments simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. For public business entities, the amendments in ASU 2019-12 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. We adopted ASU 2019-12 effective January 1, 2021 and the adoption did not have a material impact on our consolidated financial statements.

Standards Being Evaluated/Standards Not Yet Adopted

Below are accounting standards that have been issued by the FASB but have not yet been adopted by the Company at September 30, 2021. The Company considers the applicability and impact of all ASUs. ASUs not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on our consolidated financial statements.

In March 2020, the FASB issued ASU No. 2020-04, Reference Rate Reform (Topic 848), Facilitation of the Effects of Reference Rate Reform on Financial Reporting ("ASU 2020-04"). The amendments in ASU 2020-04 provide optional expedients and exceptions for applying GAAP to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. In January 2021, the FASB issued ASU 2021-01, Reference Rate Reform ("ASU 2021-01"), which clarifies the scope and application of certain optional expedients and exceptions regarding the original guidance. The amendments in these ASUs were effective upon issuance and can be applied prospectively through December 31, 2022. The Company's Senior Credit Facility is the only agreement that makes reference to a LIBOR rate and the agreement outlines the specific procedures that will be undertaken once an appropriate alternative benchmark is identified. We do not expect adoption of the new standard to have a material impact to our consolidated financial statements.

3. Revenues

Our revenues are derived primarily from the sale of natural gas and electricity to customers, including affiliates. Revenue is measured based upon the quantity of gas or power delivered at prices contained or referenced in the customer's contract, and excludes any sales incentives (e.g. rebates) and amounts collected on behalf of third parties (e.g. sales tax).

Our revenues also include asset optimization activities. Asset optimization activities consist primarily of purchases and sales of gas that meet the definition of trading activities per FASB ASC Topic 815, Derivatives and Hedging. They are therefore excluded from the scope of FASB ASC Topic 606, Revenue from Contracts with Customers.

Revenues for electricity and natural gas sales are recognized under the accrual method when our performance obligation to a customer is satisfied, which is the point in time when the product is delivered and control of the product passes to the customer. Electricity and natural gas products may be sold as fixed-price or variable-price products. The typical length of a contract to provide electricity and/or natural gas is twelve months. Customers are billed and typically pay at least monthly, based on usage. Electricity and natural gas sales that have been delivered but not billed by period end are estimated and recorded as accrued unbilled revenues based on estimates of customer usage since the date of the last meter read provided by the utility. Volume estimates are based on forecasted volumes and estimated residential and commercial customer usage. Unbilled revenues are calculated by multiplying these volume estimates by the applicable rate by customer class (residential or commercial). Estimated amounts are adjusted when actual usage is known and billed.

The following table discloses revenue by primary geographical market, customer type, and customer credit risk profile (in thousands). The table also includes a reconciliation of the disaggregated revenue to revenue by reportable segment (in thousands).

	Reportable Segments					
	Three Months Ended September 30, 2021			Three Months Ended September 30, 2020		
	Retail Electricity	Retail Natural Gas	Total Reportable Segments	Retail Electricity	Retail Natural Gas	Total Reportable Segments
Primary markets (a)						
New England	$ 25,406	$ 748	$ 26,154	$ 46,464	$ 1,361	$ 47,825
Mid-Atlantic	30,122	1,354	31,476	46,878	2,243	49,121
Midwest	12,473	1,367	13,840	16,933	1,540	18,473
Southwest	24,103	2,694	26,797	22,683	3,086	25,769
	$ 92,104	$ 6,163	$ 98,267	$ 132,958	$ 8,230	$ 141,188
Customer type						
Commercial	$ 12,395	$ 2,076	$ 14,471	$ 34,180	$ 2,705	$ 36,885
Residential	82,778	3,781	86,559	103,092	5,082	108,174
Unbilled revenue (b)	(3,069)	306	(2,763)	(4,314)	443	(3,871)
	$ 92,104	$ 6,163	$ 98,267	$ 132,958	$ 8,230	$ 141,188
Customer credit risk						
POR	$ 53,670	$ 2,151	$ 55,821	$ 87,439	$ 3,010	$ 90,449
Non-POR	38,434	4,012	42,446	45,519	5,220	50,739
	$ 92,104	$ 6,163	$ 98,267	$ 132,958	$ 8,230	$ 141,188

	Reportable Segments					
	Nine Months Ended September 30, 2021			Nine Months Ended September 30, 2020		
	Retail Electricity	Retail Natural Gas	Total Reportable Segments	Retail Electricity	Retail Natural Gas	Total Reportable Segments
Primary markets (a)						
New England	$ 73,045	$ 6,527	$ 79,572	$ 133,218	$ 11,144	$ 144,362
Mid-Atlantic	81,981	18,032	100,013	131,463	23,976	155,439
Midwest	32,894	14,515	47,409	46,428	19,338	65,766
Southwest	54,628	12,099	66,727	55,872	14,727	70,599
	$ 242,548	$ 51,173	$ 293,721	$ 366,981	$ 69,185	$ 436,166
Customer type						
Commercial	$ 38,782	$ 18,574	$ 57,356	$ 103,603	$ 25,512	$ 129,115
Residential	213,440	39,911	253,351	275,229	53,410	328,639
Unbilled revenue (b)	(9,674)	(7,312)	(16,986)	(11,851)	(9,737)	(21,588)
	$ 242,548	$ 51,173	$ 293,721	$ 366,981	$ 69,185	$ 436,166
Customer credit risk						
POR	$ 145,924	$ 26,731	$ 172,655	$ 246,046	$ 34,423	$ 280,469
Non-POR	96,624	24,442	121,066	120,935	34,762	155,697
	$ 242,548	$ 51,173	$ 293,721	$ 366,981	$ 69,185	$ 436,166

(a) The primary markets include the following states:

- New England - Connecticut, Maine, Massachusetts, New Hampshire;
- Mid-Atlantic - Delaware, Maryland (including the District of Colombia), New Jersey, New York and Pennsylvania;
- Midwest - Illinois, Indiana, Michigan and Ohio; and
- Southwest - Arizona, California, Colorado, Florida, Nevada, and Texas.

(b) Unbilled revenue is recorded in total until it is actualized, at which time it is categorized between commercial and residential customers.

We record gross receipts taxes on a gross basis in retail revenues and retail cost of revenues. During the three months ended September 30, 2021 and 2020, our retail revenues included gross receipts taxes of $0.3 million and $0.3 million, respectively, and our retail cost of revenues included gross receipts taxes of $1.2 million and $1.6 million, respectively. During the nine months ended September 30, 2021 and 2020, our retail revenues included gross receipts taxes of $0.8 million and $1.0 million, respectively, and our retail cost of revenues included gross receipts taxes of $3.4 million and $4.7 million, respectively.

Accounts receivables and Allowance for Credit Losses

The Company conducts business in many utility service markets where the local regulated utility purchases our receivables, and then becomes responsible for billing the customer and collecting payment from the customer ("POR programs"). These POR programs result in substantially all of the Company's credit risk being linked to the applicable utility, which generally has an investment-grade rating, and not to the end-use customer. The Company monitors the financial condition of each utility and currently believes its receivables are collectible.

In markets that do not offer POR programs or when the Company chooses to directly bill its customers, certain receivables are billed and collected by the Company. The Company bears the credit risk on these accounts and records an appropriate allowance for doubtful accounts to reflect any losses due to non-payment by customers. The Company's customers are individually insignificant and geographically dispersed in these markets. The Company writes off customer balances when it believes that amounts are no longer collectible and when it has exhausted all means to collect these receivables.

For trade accounts receivables, the Company accrues an allowance for doubtful accounts by business segment by pooling customer accounts receivables based on similar risk characteristics, such as customer type, geography, aging analysis, payment terms, and related macro-economic factors. Expected credit loss exposure is evaluated for each of our accounts receivables pools. Expected credits losses are established using a model that considers historical collections experience, current information, and reasonable and supportable forecasts. The Company writes off accounts receivable balances against the allowance for doubtful accounts when the accounts receivable is deemed to be uncollectible.

A rollforward of our allowance for credit losses for the nine months ended September 30, 2021 are presented in the table below (in thousands):

Balance at December 31, 2020	**$**	**(3,942)**
Current period bad debt provision		(139)
Write-offs		1,907
Recovery of previous write offs		(355)
Balance at September 30, 2021	**$**	**(2,529)**

4. Equity

Non-controlling Interest

We hold an economic interest and are the sole managing member in Spark HoldCo, with affiliates of our Founder holding the remaining economic interests in Spark HoldCo. As a result, we consolidate the financial position and results of operations of Spark HoldCo, and reflect the economic interests owned by these affiliates as a non-controlling interest. The Company and affiliates owned the following economic interests in Spark HoldCo at September 30, 2021 and December 31, 2020, respectively.

	The Company	Affiliated Owners
September 30, 2021	44.00 %	56.00 %
December 31, 2020	41.53 %	58.47 %

The following table summarizes the portion of net income and income tax expense attributable to non-controlling interest (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net income allocated to non-controlling interest	$ 21,959	$ 14,909	$ 18,884	$ 38,717
Income tax expense allocated to non-controlling interest	2,185	1,916	4,726	4,517
Net income attributable to non-controlling interest	$ 19,774	$ 12,993	$ 14,158	$ 34,200

Class A Common Stock and Class B Common Stock
Holders of the Company's Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law or by our certificate of incorporation.

Conversion of Class B Common Stock to Class A Common Stock

In July 2021, holders of Class B common stock exchanged 800,000 of their Spark HoldCo units (together with a corresponding number of shares of Class B common stock) for shares of Class A common stock at an exchange ratio of one share of Class A common stock for each Spark HoldCo unit (and corresponding share of Class B common stock) exchanged.

Dividends on Class A Common Stock

Dividends declared for the Company's Class A common stock are reported as a reduction of retained earnings, or a reduction of additional paid in capital to the extent retained earnings are exhausted. During the nine months ended September 30, 2021, we paid $8.2 million in dividends to the holders of the Company's Class A common stock. This dividend represented a quarterly rate of $0.18125 per share on each share of Class A common stock.

In order to pay our stated dividends to holders of our Class A common stock, our subsidiary, Spark HoldCo is required to make corresponding distributions to holders of its units, including those holders that own our Class B common stock (our non-controlling interest holder). As a result, during the nine months ended September 30, 2021, Spark HoldCo made corresponding distributions of $11.2 million to our non-controlling interest holders.

Share Repurchase Program

On August 18, 2020, our Board of Directors authorized a share repurchase program of up to $20.0 million of Class A common stock through August 18, 2021. Purchases could be made with available cash balances, our Senior Credit Facility and operating cash flows.

The shares of Class A common stock could be repurchased from time to time in the open market at prevailing market prices or in privately negotiated transactions based on ongoing assessments of capital needs, the market price of the stock, and other factors, including general market conditions. The repurchase program did not obligate us to acquire any particular amount of Class A common stock, could be modified or suspended at any time, and could be terminated prior to completion.

During the nine months ended September 30, 2021, we did not repurchase our Class A common stock. The share repurchase program expired on August 18, 2021 pursuant to an agreement with lenders under our Senior Credit Facility, and our Senior Credit Facility was subsequently amended, terminating the provision for borrowings specific to Class A common stock repurchases. See Note 9 "Debt" for further discussion.

Earnings Per Share

Basic earnings per share (“EPS”) is computed by dividing net income attributable to stockholders (the numerator) by the weighted-average number of Class A common shares outstanding for the period (the denominator). Class B common shares are not included in the calculation of basic earnings per share because they are not participating securities and have no economic interests. Diluted earnings per share is similarly calculated except that the denominator is increased by potentially dilutive securities.

The following table presents the computation of basic and diluted income per share for the three and nine months ended September 30, 2021 and 2020 (in thousands, except per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Net income attributable to Via Renewables, Inc. stockholders	$ 14,883	$ 9,613	$ 17,735	$ 25,251
Less: Dividend on Series A Preferred Stock	1,951	1,951	5,853	5,490
Net income attributable to stockholders of Class A common stock	$ 12,932	$ 7,662	$ 11,882	$ 19,761
Basic weighted average Class A common shares outstanding	15,572	14,653	14,965	14,531
Basic income per share attributable to stockholders	**$ 0.83**	**$ 0.52**	**$ 0.79**	**$ 1.36**
Net income attributable to stockholders of Class A common stock	$ 12,932	$ 7,662	$ 11,882	$ 19,761
Effect of conversion of Class B common stock to shares of Class A common stock	—	—	—	—
Diluted net income attributable to stockholders of Class A common stock	$ 12,932	$ 7,662	$ 11,882	$ 19,761
Basic weighted average Class A common shares outstanding	15,572	14,653	14,965	14,531
Effect of dilutive Class B common stock	—	—	—	—
Effect of dilutive restricted stock units	114	18	134	124
Diluted weighted average shares outstanding	15,686	14,671	15,099	14,655
Diluted income per share attributable to stockholders	**$ 0.82**	**$ 0.52**	**$ 0.79**	**$ 1.35**

The computation of diluted earnings per share for the three and nine months ended September 30, 2021, respectively, excludes 20.0 million shares of Class B common stock because the effect of their conversion was antidilutive. The Company's outstanding shares of Series A Preferred Stock were not included in the calculation of diluted earnings per share because they contain only contingent redemption provisions that have not occurred.

Variable Interest Entity

Spark HoldCo is a variable interest entity due to its lack of rights to participate in significant financial and operating decisions and its inability to dissolve or otherwise remove its management. Spark HoldCo owns all of the outstanding membership interests in each of our operating subsidiaries. We are the sole managing member of Spark HoldCo, manage Spark HoldCo's operating subsidiaries through this managing membership interest, and are considered the primary beneficiary of Spark HoldCo. The assets of Spark HoldCo cannot be used to settle our obligations except through distributions to us, and the liabilities of Spark HoldCo cannot be settled by us except through contributions to Spark HoldCo. The following table includes the carrying amounts and classification of the assets and liabilities of Spark HoldCo that are included in our condensed consolidated balance sheet as of September 30, 2021 and December 31, 2020 (in thousands):

	September 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 89,276	$ 71,442
Accounts receivable	47,644	70,350
Other current assets	99,963	55,575
Total current assets	236,883	197,367
Non-current assets:		
Goodwill	120,343	120,343
Other assets	12,747	15,259
Total non-current assets	133,090	135,602
Total Assets	$ 369,973	$ 332,969
Liabilities		
Current liabilities:		
Accounts payable and accrued liabilities	$ 52,442	$ 61,436
Other current liabilities	46,818	43,676
Total current liabilities	99,260	105,112
Long-term liabilities:		
Long-term portion of Senior Credit Facility	130,000	100,000
Subordinated debt — affiliate	10,000	—
Other long-term liabilities	308	256
Total long-term liabilities	140,308	100,256
Total Liabilities	$ 239,568	$ 205,368

5. Preferred Stock

Holders of the Series A Preferred Stock have no voting rights, except in specific circumstances of delisting or in the case the dividends are in arrears as specified in the Series A Preferred Stock Certificate of Designations. The Series A Preferred Stock accrue dividends at an annual percentage rate of 8.75%, and the liquidation preference provisions of the Series A Preferred Stock are considered contingent redemption provisions because there are rights granted to the holders of the Series A Preferred Stock that are not solely within our control upon a change in control of the Company. Accordingly, the Series A Preferred Stock is presented between liabilities and the equity sections in the accompanying condensed consolidated balance sheet.

During the three and nine months ended September 30, 2021, we paid $1.9 million and $5.9 million in dividends to holders of the Series A Preferred Stock, respectively. As of September 30, 2021, we had accrued $2.0 million related to dividends to holders of the Series A Preferred Stock. This dividend was paid on October 15, 2021.

A summary of our preferred equity balance for the nine months ended September 30, 2021 is as follows:

	(in thousands)
Balance at December 31, 2020	**$ 87,288**
Repurchase of Series A Preferred Stock	—
Accumulated dividends on Series A Preferred Stock	—
Balance at September 30, 2021	**$ 87,288**

6. Derivative Instruments

We are exposed to the impact of market fluctuations in the price of electricity and natural gas, basis differences in the price of natural gas, storage charges, renewable energy credits ("RECs"), and capacity charges from independent system operators. We use derivative instruments in an effort to manage our cash flow exposure to these risks. These instruments are not designated as hedges for accounting purposes, and, accordingly, changes in the market value of these derivative instruments are recorded in the cost of revenues. As part of our strategy to optimize pricing in our natural gas related activities, we also manage a portfolio of commodity derivative instruments held for trading purposes. Our commodity trading activities are subject to limits within our Risk Management Policy. For these derivative instruments, changes in the fair value are recognized currently in earnings in net asset optimization revenues.

Derivative assets and liabilities are presented net in our condensed consolidated balance sheets when the derivative instruments are executed with the same counterparty under a master netting arrangement. Our derivative contracts include transactions that are executed both on an exchange and centrally cleared, as well as over-the-counter, bilateral contracts that are transacted directly with third parties. To the extent we have paid or received collateral related to the derivative assets or liabilities, such amounts would be presented net against the related derivative asset or liability’s fair value. As of September 30, 2021 and December 31, 2020, we offset $1.7 million and $0.1 million, respectively, in collateral to net against the related derivative asset and liability's fair value. The specific types of derivative instruments we may execute to manage the commodity price risk include the following:

- Forward contracts, which commit us to purchase or sell energy commodities in the future;
- Futures contracts, which are exchange-traded standardized commitments to purchase or sell a commodity or financial instrument;
- Swap agreements, which require payments to or from counterparties based upon the differential between two prices for a predetermined notional quantity; and
- Option contracts, which convey to the option holder the right but not the obligation to purchase or sell a commodity.

The Company has entered into other energy-related contracts that do not meet the definition of a derivative instrument or for which we made a normal purchase, normal sale election and are therefore not accounted for at fair value including the following:

- Forward electricity and natural gas purchase contracts for retail customer load;
- Renewable energy credits; and
- Natural gas transportation contracts and storage agreements.

Volumes Underlying Derivative Transactions

The following table summarizes the net notional volumes of our open derivative financial instruments accounted for at fair value by commodity. Positive amounts represent net buys while bracketed amounts are net sell transactions (in thousands):

Non-trading

Commodity	Notional	September 30, 2021	December 31, 2020
Natural Gas	MMBtu	3,195	2,880
Electricity	MWh	1,804	1,845

Trading

Commodity	Notional	September 30, 2021	December 31, 2020
Natural Gas	MMBtu	1,202	102

Gains (Losses) on Derivative Instruments

Gains (losses) on derivative instruments, net and current period settlements on derivative instruments were as follows for the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Gain (Loss) on non-trading derivatives, net	$ 32,262	$ 2,550	$ 58,214	$ (14,019)
(Loss) Gain on trading derivatives, net	(464)	(99)	(488)	4
Gain (Loss) on derivatives, net	**31,798**	**2,451**	**57,726**	**(14,015)**
Current period settlements on non-trading derivatives [(1)]	$ (5,660)	$ 6,489	$ (6,054)	$ 33,153
Current period settlements on trading derivatives	—	(64)	4	(156)
Total current period settlements on derivatives	**$ (5,660)**	**$ 6,425**	**$ (6,050)**	**$ 32,997**

(1) Excludes settlements of $(0.3) million, for the nine months ended September 30, 2020 related to power call options.

Gains (losses) on trading derivative instruments are recorded in net asset optimization revenues and gains (losses) on non-trading derivative instruments are recorded in retail cost of revenues on the condensed consolidated statements of operations.

Fair Value of Derivative Instruments

The following tables summarize the fair value and offsetting amounts of our derivative instruments by counterparty and collateral received or paid (in thousands):

	September 30, 2021				
Description	Gross Assets	Gross Amounts Offset	Net Assets	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ 57,181	$ (11,972)	$ 45,209	$ (1,677)	$ 43,532
Trading commodity derivatives	1,303	(617)	686	—	686
Total Current Derivative Assets	58,484	(12,589)	45,895	(1,677)	44,218
Non-trading commodity derivatives	1,343	(253)	1,090	—	1,090
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Assets	1,343	(253)	1,090	—	1,090
Total Derivative Assets	**$ 59,827**	**$ (12,842)**	**$ 46,985**	**$ (1,677)**	**$ 45,308**

Description	Gross Liabilities	Gross Amounts Offset	Net Liabilities	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ —	$ —	$ —	$ —	$ —
Trading commodity derivatives	(1,405)	313	(1,092)	—	(1,092)
Total Current Derivative Liabilities	(1,405)	313	(1,092)	—	(1,092)
Non-trading commodity derivatives	(332)	255	(77)	—	(77)
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Liabilities	(332)	255	(77)	—	(77)
Total Derivative Liabilities	**$ (1,737)**	**$ 568**	**$ (1,169)**	**$ —**	**$ (1,169)**

	December 31, 2020				
Description	Gross Assets	Gross Amounts Offset	Net Assets	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ 308	$ (105)	$ 203	$ —	$ 203
Trading commodity derivatives	112	(4)	108	—	108
Total Current Derivative Assets	420	(109)	311	—	311
Non-trading commodity derivatives	—	—	—	—	—
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Assets	—	—	—	—	—
Total Derivative Assets	**$ 420**	**$ (109)**	**$ 311**	**$ —**	**$ 311**

Description	Gross Liabilities	Gross Amounts Offset	Net Liabilities	Cash Collateral Offset	Net Amount Presented
Non-trading commodity derivatives	$ (11,139)	$ 3,620	$ (7,519)	$ 86	$ (7,433)
Trading commodity derivatives	(74)	2	(72)	—	(72)
Total Current Derivative Liabilities	(11,213)	3,622	(7,591)	86	(7,505)
Non-trading commodity derivatives	(838)	611	(227)	—	(227)
Trading commodity derivatives	—	—	—	—	—
Total Non-current Derivative Liabilities	(838)	611	(227)	—	(227)
Total Derivative Liabilities	**$ (12,051)**	**$ 4,233**	**$ (7,818)**	**$ 86**	**$ (7,732)**

7. Property and Equipment

Property and equipment consist of the following (in thousands):

	Estimated useful lives (years)	September 30, 2021	December 31, 2020
Information technology	2 – 5	$ 6,405	$ 5,821
Furniture and fixtures	2 – 5	957	957
Total		7,362	6,778
Accumulated depreciation		(2,844)	(3,424)
Property and equipment—net		**$ 4,518**	**$ 3,354**

Information technology assets include software and consultant time used in the application, development and implementation of various systems including customer billing and resource management systems. As of September 30, 2021 and December 31, 2020, information technology includes $0.4 million and $0.7 million, respectively, of costs associated with assets not yet placed into service. Depreciation expense recorded in the condensed consolidated statements of operations was $0.4 million and $0.4 million, respectively, for the three months ended September 30, 2021 and 2020 and $1.3 million and $1.6 million for the nine months ended September 30, 2021 and 2020, respectively.

8. Intangible Assets

Goodwill, customer relationships and trademarks consist of the following amounts (in thousands):

	September 30, 2021		December 31, 2020	
Goodwill	**$**	**120,343**	**$**	**120,343**
Customer relationships—Acquired				
Cost	$	58,688	$	58,688
Accumulated amortization		(50,985)		(44,175)
Customer relationships—Acquired	**$**	**7,703**	**$**	**14,513**
Customer relationships—Other				
Cost	$	13,422	$	8,988
Accumulated amortization		(7,912)		(5,733)
Customer relationships—Other, net	**$**	**5,510**	**$**	**3,255**
Trademarks				
Cost	$	7,040	$	7,570
Accumulated amortization		(3,257)		(2,972)
Trademarks, net	**$**	**3,783**	**$**	**4,598**

Changes in goodwill, customer relationships (including non-compete agreements) and trademarks consisted of the following (in thousands):

	Goodwill		Customer Relationships— Acquired		Customer Relationships— Other		Trademarks	
Balance at December 31, 2020	**$**	**120,343**	**$**	**14,513**	**$**	**3,255**	**$**	**4,598**
Additions		—		—		4,524		—
Adjustments		—		—		(28)		—
Amortization		—		(6,810)		(2,241)		(815)
Balance at September 30, 2021	**$**	**120,343**	**$**	**7,703**	**$**	**5,510**	**$**	**3,783**

Estimated future amortization expense for customer relationships and trademarks at September 30, 2021 is as follows (in thousands):

Year ending December 31,		
2021 (remaining three months)	$	3,640
2022		7,702
2023		2,113
2024		1,521
2025		404
> 5 years		1,616
Total	**$**	**16,996**

9. Debt

Debt consists of the following amounts as of September 30, 2021 and December 31, 2020 (in thousands):

	September 30, 2021		December 31, 2020	
Long-term debt:				
Senior Credit Facility [1] [2]	$	130,000	$	100,000
Subordinated Debt		10,000		—
Total long-term debt		140,000		100,000
Total debt	**$**	**140,000**	**$**	**100,000**

(1) As of September 30, 2021 and December 31, 2020, the weighted average interest rate on the Senior Credit Facility was 3.75% and 3.75%, respectively.
(2) As of September 30, 2021 and December 31, 2020, we had $24.4 million and $31.0 million in letters of credit issued, respectively.

Capitalized financing costs associated with our Senior Credit Facility were $0.9 million and $1.6 million as of September 30, 2021 and December 31, 2020, respectively. Of these amounts, $0.9 million and $1.0 million are recorded in other current assets, and zero and $0.6 million are recorded in other non-current assets in the condensed consolidated balance sheets as of September 30, 2021 and December 31, 2020, respectively.

Interest expense consists of the following components for the periods indicated (in thousands):

	Three Months Ended September 30,				Nine Months Ended September 30,			
	2021		2020		2021		2020	
Senior Credit Facility	$	678	$	477	$	1,950	$	1,904
Letters of credit fees and commitment fees		351		244		1,088		1,073
Amortization of deferred financing costs		275		476		792		966
Other		(6)		290		331		290
Interest Expense	**$**	**1,298**	**$**	**1,487**	**$**	**4,161**	**$**	**4,233**

Senior Credit Facility

The Company, as guarantor, and Spark HoldCo (the “Borrower” and, together with each subsidiary of Spark HoldCo (“Co-Borrowers”)) maintain a senior secured borrowing base credit facility (as amended from time to time, “Senior Credit Facility”) that allows us to borrow on a revolving basis and has a maximum borrowing capacity of $227.5 million as of September 30, 2021. As further described below, on October 15, 2021, the Company entered into the Fifth Amendment to its Senior Credit Facility.

Prior to the Fifth Amendment and subject to applicable sub-limits and terms of the Senior Credit Facility, borrowings were available for the issuance of letters of credit (“Letters of Credit”), working capital and general purpose revolving credit loans (“Working Capital Loans”), and share buyback loans (“Share Buyback Loans”). Prior to the Fifth Amendment, the Senior Credit Facility matured in July 2022.

On October 15, 2021, the Company entered into the Fifth Amendment to its Senior Credit Facility, which, among other things extended the maturity date, added a provision for borrowings to fund acquisitions ("Acquisition Loans") subject to limits as defined in the agreement, and terminated the provision allowing for Share Buyback Loans. Pursuant to the Fifth Amendment, the Senior Credit Facility will mature on October 13, 2023, and all amounts outstanding thereunder will be payable on the maturity date. Borrowings under the Senior Credit Facility may be used to pay fees and expenses in connection with the Senior Credit Facility, finance ongoing working capital requirements and general corporate purpose requirements of the Co-Borrowers, and to provide partial funding for acquisitions, as allowed under terms of the Senior Credit Facility. The Fifth Amendment provides for Acquisition Loans not to exceed 75% of the adjusted purchase price of the acquisition, as defined in the agreement.

Pursuant to the Senior Credit Facility, the interest rate for Working Capital Loans and Letters of Credit under the Senior Credit Facility is generally determined by reference to the Eurodollar rate plus an applicable margin of up to 3.25% per annum (based on the prevailing utilization) or an alternate base rate plus an applicable margin of up to 2.25% per annum (based on the prevailing utilization). The alternate base rate is equal to the highest of (i) the prime rate (as published in the Wall Street Journal), (ii) the federal funds rate plus 0.50% per annum, or (iii) the reference Eurodollar rate plus 1.00%.

Prior to the Fifth Amendment, borrowings under the Senior Credit Facility for Share Buyback Loans, were generally determined by reference to the Eurodollar rate plus an applicable margin of 4.50% per annum or the alternate base rate plus an applicable margin of 3.50% per annum.

Pursuant to the Fifth Amendment, borrowings under the Senior Credit Facility for Acquisition Loans are generally determined by reference to the Eurodollar rate plus an applicable margin of 4.00% per annum or the alternate base rate plus an applicable margin of 3.00% per annum.

The Co-Borrowers pay a commitment fee of 0.50% quarterly in arrears on the unused portion of the Senior Credit Facility. In addition, the Co-Borrowers are subject to additional fees including an upfront fee, an annual agency fee, and letter of credit fees based on a percentage of the face amount of letters of credit payable to any syndicate member that issues a letter of credit.

The Senior Credit Facility contains covenants that, among other things, require the maintenance of specified ratios or conditions including:

- *Minimum Fixed Charge Coverage Ratio*. We must maintain a minimum fixed charge coverage ratio of not less than 1.25 to 1.00. The Minimum Fixed Charge Coverage Ratio is defined as the ratio of (a) Adjusted EBITDA to (b) the sum of consolidated (with respect to the Company and the Co-Borrowers) interest expense, letter of credit fees, commitment fees, acquisition earn-out payments (excluding earnout payments funded with proceeds from newly issued preferred or common equity), distributions, scheduled amortization payments, and payments made on or after the closing of the Fourth Amendment to the Senior Credit Facility (other than such payments made from escrow accounts which were funded in connection with a permitted acquisition) related to the settlement of civil and regulatory matters if not included in the calculation of Adjusted EBITDA. Our Minimum Fixed Charge Coverage Ratio as of September 30, 2021 was 1.95 to 1.00.

- *Maximum Total Leverage Ratio*. We must maintain a ratio of (x) the sum of total indebtedness (excluding eligible subordinated debt and letter of credit obligations), plus (y) gross amounts reserved for civil and regulatory liabilities identified in SEC filings, to Adjusted EBITDA of no more than 2.50 to 1.00. Our Maximum Total Leverage Ratio as of September 30, 2021 was 1.59 to 1.00.

- *Maximum Senior Secured Leverage Ratio*. We must maintain a Senior Secured Leverage Ratio of no more than 1.85 to 1.00. The Senior Secured Leverage Ratio is defined as the ratio of (a) all indebtedness of the loan parties on a consolidated basis that is secured by a lien on any property of any loan party (including the effective amount of all loans then outstanding under the Senior Credit Facility) to (b) Adjusted EBITDA. Our Maximum Senior Secured Leverage Ratio as of September 30, 2021 was 1.39 to 1.00.

The Senior Credit Facility contains various negative covenants that limit our ability to, among other things, incur certain additional indebtedness, grant certain liens, engage in certain asset dispositions, merge or consolidate, make certain payments, distributions, investments, acquisitions or loans, materially modify certain agreements, or enter into transactions with affiliates. The Senior Credit Facility also contains affirmative covenants that are customary for credit facilities of this type. As of September 30, 2021, we were in compliance with our various covenants under the Senior Credit Facility.

The Senior Credit Facility is secured by pledges of the equity of the portion of Spark HoldCo owned by us, the equity of Spark HoldCo's subsidiaries, the Co-Borrowers' present and future subsidiaries, and substantially all of

the Co-Borrowers' and their subsidiaries' present and future property and assets, including accounts receivable, inventory and liquid investments, and control agreements relating to bank accounts.

We are entitled to pay cash dividends to the holders of the Series A Preferred Stock and Class A common stock so long as: (a) no default exists or would result therefrom; (b) the Co-Borrowers are in pro forma compliance with all financial covenants before and after giving effect thereto; and (c) the outstanding amount of all loans and letters of credit does not exceed the borrowing base limits. Prior to the Fifth Amendment, which terminated Share Buyback Loans, we were entitled to repurchase up to an aggregate amount of 10,000,000 shares of our Class A common stock, and up to $92.7 million of Series A Preferred Stock through one or more normal course open market purchases through NASDAQ so long: (a) no default existed or would result therefrom; (b) the Co-Borrowers were in pro forma compliance with all financial covenants before and after giving effect thereto; and (c) the outstanding amount of all loans and letters of credit did not exceed the borrowing base limits.

The Senior Credit Facility contains certain customary representations and warranties and events of default. Events of default include, among other things, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults and cross-acceleration to certain indebtedness, certain events of bankruptcy, certain events under ERISA, material judgments in excess of $5.0 million, certain events with respect to material contracts, and actual or asserted failure of any guaranty or security document supporting the Senior Credit Facility to be in full force and effect. A default will also occur if at any time W. Keith Maxwell III ceases to, directly or indirectly, own at least 13,600,000 Class A and Class B shares on a combined basis (to be adjusted for any stock split, subdivisions or other stock reclassification or recapitalization), and a controlling percentage of the voting equity interest of the Company, and certain other changes in control. If such an event of default occurs, the lenders under the Senior Credit Facility would be entitled to take various actions, including the acceleration of amounts due under the facility and all actions permitted to be taken by a secured creditor.

Subordinated Debt Facility

In October 2021, the Company entered into an Amended and Restated Subordinated Promissory Note in the principal amount of up to $25.0 million (the "Subordinated Debt Facility"), by and among the Company, Spark HoldCo and Retailco. The Subordinated Debt Facility amended and restated the Subordinated Promissory Note dated June 2019, by and among the Company, Spark HoldCo and Retailco, solely to extend the maturity date from January 31, 2023 to January 31, 2025.

The Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to the maximum principal amount of the Subordinated Debt Facility. Advances thereunder accrue interest at 5% per annum from the date of the advance. We have the right to capitalize interest payments under the Subordinated Debt Facility. The Subordinated Debt Facility is subordinated in certain respects to our Senior Credit Facility pursuant to a subordination agreement. We may pay interest and prepay principal on the Subordinated Debt Facility so long as we are in compliance with the covenants under our Senior Credit Facility, are not in default under the Senior Credit Facility and have minimum availability of $5.0 million under the borrowing base under the Senior Credit Facility. Payment of principal and interest under the Subordinated Debt Facility is accelerated upon the occurrence of certain change of control or sale transactions.

As of September 30, 2021, and December 31, 2020, there were $10.0 million and zero outstanding borrowings under the Subordinated Debt Facility.

10. Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (exit price) in an orderly transaction between market participants at the measurement date. Fair values are based on assumptions that market participants would use when pricing an asset or liability, including assumptions about risk and the risks inherent in valuation techniques and the inputs to valuations. This includes the credit standing of counterparties involved and the impact of credit enhancements.

We apply fair value measurements to our commodity derivative instruments based on the following fair value hierarchy, which prioritizes the inputs to the valuation techniques used to measure fair value into three broad levels:

- Level 1—Quoted prices in active markets for identical assets and liabilities. Instruments categorized in Level 1 primarily consist of financial instruments such as exchange-traded derivative instruments.
- Level 2—Inputs other than quoted prices recorded in Level 1 that are either directly or indirectly observable for the asset or liability, including quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in inactive markets, inputs other than quoted prices that are observable for the asset or liability, and inputs that are derived from observable market data by correlation or other means. Instruments categorized in Level 2 primarily include non-exchange traded derivatives such as over-the-counter commodity forwards and swaps and options.
- Level 3—Unobservable inputs for the asset or liability, including situations where there is little, if any, observable market activity for the asset or liability.

As the fair value hierarchy gives the highest priority to quoted prices in active markets (Level 1) and the lowest priority to unobservable data (Level 3), the Company maximizes the use of observable inputs and minimizes the use of unobservable inputs when measuring fair value. These levels can change over time. In some cases, the inputs used to measure fair value might fall in different levels of the fair value hierarchy. In these cases, the lowest level input that is significant to a fair value measurement in its entirety determines the applicable level in the fair value hierarchy.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following tables present assets and liabilities measured and recorded at fair value in our condensed consolidated balance sheets on a recurring basis by and their level within the fair value hierarchy (in thousands):

	Level 1	Level 2	Level 3	Total
September 30, 2021				
Non-trading commodity derivative assets	$ 1,079	$ 43,543	$ —	$ 44,622
Trading commodity derivative assets	28	658	—	686
Total commodity derivative assets	**$ 1,107**	**$ 44,201**	**$ —**	**$ 45,308**
Non-trading commodity derivative liabilities	$ —	$ (77)	$ —	$ (77)
Trading commodity derivative liabilities	—	(1,092)	—	(1,092)
Total commodity derivative liabilities	**$ —**	**$ (1,169)**	**$ —**	**$ (1,169)**

	Level 1	Level 2	Level 3	Total
December 31, 2020				
Non-trading commodity derivative assets	$ 104	$ 99	$ —	$ 203
Trading commodity derivative assets	—	108	—	108
Total commodity derivative assets	**$ 104**	**$ 207**	**$ —**	**$ 311**
Non-trading commodity derivative liabilities	$ (5)	$ (7,655)	$ —	$ (7,660)
Trading commodity derivative liabilities	—	(72)	—	(72)
Total commodity derivative liabilities	**$ (5)**	**$ (7,727)**	**$ —**	**$ (7,732)**

We had no transfers of assets or liabilities between any of the above levels during the nine months ended September 30, 2021 and the year ended December 31, 2020.

Our derivative contracts include exchange-traded contracts valued utilizing readily available quoted market prices and non-exchange-traded contracts valued using market price quotations available through brokers or over-the-counter and on-line exchanges. In addition, in determining the fair value of our derivative contracts, we apply a

credit risk valuation adjustment to reflect credit risk, which is calculated based on our or the counterparty's historical credit risks. As of September 30, 2021 and December 31, 2020, the credit risk valuation adjustment was a reduction of derivative assets and liabilities, respectively, net of $0.4 million and $0.2 million.

11. Income Taxes

Income Taxes

We and our subsidiaries, CenStar and Verde Energy USA, Inc. ("Verde Corp"), are each subject to U.S. federal income tax as corporations. CenStar and Verde Corp file consolidated tax returns in jurisdictions that allow combined reporting. Spark HoldCo and its subsidiaries, with the exception of CenStar and Verde Corp, are treated as flow-through entities for U.S. federal income tax purposes and, as such, are generally not subject to U.S. federal income tax at the entity level. Rather, the tax liability with respect to their taxable income is passed through to their members or partners. Accordingly, we are subject to U.S. federal income taxation on our allocable share of Spark HoldCo's net U.S. taxable income.

In our financial statements, we report federal and state income taxes for our share of the partnership income attributable to our ownership in Spark HoldCo and for the income taxes attributable to CenStar and Verde Corp. Net income attributable to non-controlling interest includes the provision for income taxes related to CenStar and Verde Corp.

We account for income taxes using the asset and liability method. Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the tax bases of the assets and liabilities. We apply existing tax law and the tax rate that we expect to apply to taxable income in the years in which those differences are expected to be recovered or settled in calculating the deferred tax assets and liabilities. Effects of changes in tax rates on deferred tax assets and liabilities are recognized in income in the period of the tax rate enactment. A valuation allowance is recorded when it is not more likely than not that some or all of the benefit from the deferred tax asset will be realized.

We periodically assess whether it is more likely than not that we will generate sufficient taxable income to realize our deferred income tax assets. In making this determination, we consider all available positive and negative evidence and make certain assumptions. We consider, among other things, our deferred tax liabilities, the overall business environment, our historical earnings and losses, current industry trends, and our outlook for future years. We believe it is more likely than not that our deferred tax assets will be utilized, and accordingly have not recorded a valuation allowance on these assets.

As of September 30, 2021, we had a net deferred tax asset of $17.3 million, of which approximately $15.6 million related to the original step up in tax basis resulting from the initial purchase of Spark HoldCo units from NuDevco Retail and NuDevco Retail Holdings (predecessor to Retailco) in connection with our initial public offering.

The effective U.S. federal and state income tax rate for the three months ended September 30, 2021 and 2020 was 16.8% and 18.5%, respectively. The effective U.S. federal and state income tax rate for the nine months ended September 30, 2021 and 2020 was 22.3% and 17.6%, respectively. The effective tax rate for the three and nine months ended September 30, 2021 differed from the U.S. federal statutory tax rate of 21% primarily due to state taxes and the benefit provided from Spark HoldCo operating as a limited liability company, which is treated as a partnership for federal and state income tax purposes and is not subject to federal and state income taxes. Accordingly, the portion of earnings attributable to non-controlling interest is subject to tax when reported as a component of the non-controlling interest holders' taxable income.

12. Commitments and Contingencies

From time to time, we may be involved in legal, tax, regulatory and other proceedings in the ordinary course of business. Liabilities for loss contingencies arising from claims, assessments, litigation or other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated.

Legal Proceedings

Below is a summary of our currently pending material legal proceedings. We are subject to lawsuits and claims arising in the ordinary course of our business. The following legal proceedings are in various stages and are subject to substantial uncertainties concerning the outcome of material factual and legal issues. Accordingly, unless otherwise specifically noted, we cannot currently predict the manner and timing of the resolutions of these legal proceedings or estimate a range of possible losses or a minimum loss that could result from an adverse verdict in a potential lawsuit. While the lawsuits and claims are asserted for amounts that may be material should an unfavorable outcome occur, management does not currently expect that any currently pending matters will have a material adverse effect on our financial position or results of operations.

Consumer Lawsuits

Similar to other energy service companies ("ESCOs") operating in the industry, from time-to-time, the Company is subject to class action lawsuits in various jurisdictions where the Company sells natural gas and electricity.

Variable Rate Cases

In the cases referred to as Variable Rate Cases, such actions involve consumers alleging they paid higher rates than they would have if they stayed with their default utility. The underlying claims of each case are similar; however, because numerous cases have been brought in several different jurisdictions, the varying applicable case law, the varying facts and stages of each case, the Company agreed to mediate to avoid duplicative defense costs in numerous jurisdictions. The Company continues to deny the allegations asserted by Plaintiffs and intends to vigorously defend these matters.

In August 2020, the Company participated in mediation which covered three Spark brand matters: (*1) Janet Rolland et al v. Spark Energy, LLC (D.N.J Apr. 2017); (2) Burger v. Spark Energy Gas, LLC (N.D. Ill. Dec. 2019); and (3) Local 901 v. Spark Energy, LLC (Sup. Ct. Allen County, Indiana Aug. 2019).* The Company is working with the mediator to find a resolution to these cases, but is also simultaneously continuing to defend the cases in the respective courts. Given the ongoing mediation, discovery, and current stage of these matters, we cannot predict the outcome of these cases at this time.

In December of 2020, the Company participated in mediation which covered several Verde brand matters: (*1) Marshall. Verde Energy USA, Inc. (D.N.J. Jan. 2018); (2) Mercado v. Verde Energy USA, Inc. (N.D. Ill. Mar. 2018); (3) Davis v. Verde Energy USA, Inc., et al. (D. Mass. Apr. 2019); (4) Panzer v. Verde Energy, USA Inc. and Oasis Power, LLC (E.D. Pa Aug. 2019); (5) LaQua v. Verde Energy USA New York, LLC (E.D.N Y. Jan. 2020); and (6) Abbate v. Verde Energy USA Ohio, LLC (S.D. Ohio Jun. 2020).*The parties agreed to a global settlement that would resolve all of these Verde cases on a nationwide basis. On August 18, 2021, the class action settlement agreement was granted preliminary approval in the United States District Court for the Northern District of Illinois Eastern Division, and the deadline for consumers to file a claim is March 31, 2022.

On January 14, 2021, *Glikin, et. all v. Major Energy Electric Services, LLC,* a purported variable rate class action was filed in the United States District Court, Southern District of New York, attempting to represent a class of all Major Energy customers (including customers of companies Major Energy acts as a successor to) in the United States charged a variable rate for electricity or gas by Major Energy during the applicable statute of limitations period up to and including the date of judgment. The Company believes there is no merit to this case and plans to vigorously defend this matter; however, given the current early stage of this matter, we cannot predict the outcome of this case at this time.

Corporate Matter Lawsuits

Saul Horowitz, as Sellers' Representative for the former owners of the Major Energy Companies v. National Gas & Electric, LLC ("NG&E") and Spark Energy, Inc., was a lawsuit filed on October 17, 2017 in the United States District Court for the Southern District of New York related to the Company's purchase of Major Energy and structure of the earn-out in connection therewith ("Major Earn-Out Case") asserting claims of fraudulent inducement against NG&E, breach of contract against NG&E and Spark, and tortious interference with contract against Spark related to a membership interest purchase agreement, subsequent dropdown, and associated earnout agreements with the Major Energy Companies' former owners. On September 30, 2021, the Court held in favor of the Company on all claims and entered judgment in favor of the Company to close this case. On October 29, 2021, plaintiffs filed a notice of appeal to the Second Circuit Court of Appeals. The Company will continue to aggressively defend this matter.

Several smaller, related cases to the Major Earn-Out Case involving the same facts are pending in the United States District Court for the Southern District of New York. These are regarding Major Energy executive compensation agreements. The Company believes there is no merit to these cases and is vigorously defending these matters; however, we cannot predict the outcome of these cases at this time.

In addition to the matters disclosed above, the Company may from time to time be subject to legal proceedings that arise in the ordinary course of business. Although there can be no assurance in this regard, the Company does not expect any of those legal proceedings to have a material adverse effect on the Company's results of operations, cash flows or financial condition.

Regulatory Matters

Many state regulators have increased scrutiny on retail energy providers, across all industry providers. We are subject to regular regulatory inquiries, license renewal reviews, and preliminary investigations in the ordinary course of our business. Below is a summary of our currently pending material state regulatory matters. The following state regulatory matters are in various stages and are subject to substantial uncertainties concerning the outcome of material factual and legal issues. Accordingly, we cannot currently predict the manner and timing of the resolution of these state regulatory matters or estimate a range of possible losses or a minimum loss that could result from an adverse action. Management does not currently expect that any currently pending state regulatory matters will have a material adverse effect on our financial position or results of operations.

Connecticut. In 2019, PURA initiated review of two of the Company's brands in Connecticut, Spark and Verde, focusing on marketing, billing and enrollment practices. The Company has and is cooperating with PURA's requests to review Spark and Verde practices in Connecticut.

New York. Prior to the purchase of Major Energy by the Company, in 2015, Major Energy Services, LLC and Major Energy Electric Services were contacted by the Attorney General, Bureau of Consumer Frauds & Protection for State of New York relating to their marketing practices. Major Energy has exchanged information in response to various requests from the Attorney General and recently agreed to respond to additional questions via remote proceedings in October of 2020. The parties are in settlement negotiations at this time; however, no agreement has been met by parties.

Pennsylvania. Verde Energy USA, Inc. ("Verde") was the subject of a formal investigation by the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement ("PPUC") initiated on January 30, 2020. The investigation asserted that Verde may have violated Pennsylvania retail energy supplier regulations. The Company met with the PPUC in February 2020 to discuss the matter and to work with the PPUC cooperatively. Verde reached a settlement, which included payment of a civil penalty of $1.0 million and a $0.1 million contribution to the PPL hardship fund. On June 30, 2020, Verde and PPUC Bureau of Investigation and Enforcement filed a Joint Petition for Approval of Settlement and Statements in Support of that Joint Petition with the Commission. Verde is currently awaiting final approval of this settlement.

In addition to the matters disclosed above, in the ordinary course of business, the Company may from time to time be subject to regulators initiating informal reviews or issuing subpoenas for information as means to evaluate the Company and its subsidiaries' compliance with applicable laws, rule, regulations and practices. Although there can be no assurance in this regard, the Company does not expect any of those regulatory reviews to have a material adverse effect on the Company's results of operations, cash flows or financial condition.

Indirect Tax Audits

We are undergoing various types of indirect tax audits spanning from years 2014 to 2021 for which additional liabilities may arise. At the time of filing these consolidated financial statements, these indirect tax audits are at an early stage and subject to substantial uncertainties concerning the outcome of audit findings and corresponding responses.

As of September 30, 2021 and December 31, 2020, we had accrued $19.3 million and $26.6 million, respectively, related to litigation and regulatory matters and $2.1 million and $1.2 million, respectively, related to indirect tax audits. The outcome of each of these may result in additional expense.

13. Transactions with Affiliates

Transactions with Affiliates

We enter into transactions with and pay certain costs on behalf of affiliates that are commonly controlled in order to reduce risk, reduce administrative expense, create economies of scale, create strategic alliances and supply goods and services to these related parties. We also sell and purchase natural gas and electricity with affiliates and pay an affiliate to perform telemarketing activities. We present receivables and payables with the same affiliate on a net basis in the condensed consolidated balance sheets as all affiliate activity is with parties under common control. Affiliated transactions include certain services to the affiliated companies associated with employee benefits provided through our benefit plans, insurance plans, leased office space, administrative salaries, due diligence work, recurring management consulting, and accounting, tax, legal, or technology services. Amounts billed are based on the services provided, departmental usage, or headcount, which are considered reasonable by management. As such, the accompanying condensed consolidated financial statements include costs that have been incurred by us and then directly billed or allocated to affiliates, as well as costs that have been incurred by our affiliates and then directly billed or allocated to us, and are recorded net in general and administrative expense on the condensed consolidated statements of operations with a corresponding accounts receivable—affiliates or accounts payable—affiliates, respectively, recorded in the condensed consolidated balance sheets. Transactions with affiliates for sales or purchases of natural gas and electricity are recorded in retail revenues, retail cost of revenues, and net asset optimization revenues in the condensed consolidated statements of operations with a corresponding accounts receivable—affiliate or accounts payable—affiliate are recorded in the condensed consolidated balance sheets.

The following tables presents asset and liability balances with affiliates (in thousands):

	September 30, 2021	December 31, 2020
Assets		
Accounts Receivable - affiliates	$ 3,406	$ 5,053
Total Assets - affiliates	**$ 3,406**	**$ 5,053**

	September 30, 2021	December 31, 2020
ıbilities		
counts Payable - affiliates	$ 412	$ 826
ɔordinated Debt - affiliates [(1)]	10,000	—
tal Liabilities - affiliates	**$ 10,412**	**$ 826**

(1) The Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to the maximum principal amount of the Subordinated Debt Facility. Advances thereunder accrue interest at 5% per annum from the date of the advance. See Note 9 "Debt" for a further description of terms and conditions of the Subordinated Debt Facility.

The following table presents revenues and cost of revenues recorded in net asset optimization revenue associated with affiliates for the periods indicated (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Revenue NAO - affiliates	$ 249	$ 125	$ 818	$ 843
Cost of Revenue NAO - affiliates	—	5	5	241
Net NAO - affiliates	**$ 249**	**$ 120**	**$ 813**	**$ 602**

Cost Allocations

Where costs incurred on behalf of the affiliate or us cannot be determined by specific identification for direct billing, the costs are allocated to the affiliated entities or us based on estimates of percentage of departmental usage, wages or headcount. The total net amount direct billed and allocated to/(from) affiliates was $(0.6) million and $0.5 million for the three months ended September 30, 2021 and 2020, respectively. The total net amount direct billed and allocated to/(from) affiliates was $(0.3) million and $0.5 million for the nine months ended September 30, 2021 and 2020, respectively.

General and administrative costs of zero and $0.1 million were recorded for the three months ended September 30, 2021 and 2020, respectively, and $0.1 million and $0.2 million for the nine months ended September 30, 2021 and 2020, respectively. The general and administrative costs relate to telemarketing activities performed by an affiliate.

Distributions to and Contributions from Affiliates

During three months ended September 30, 2021 and 2020, Spark HoldCo made distributions to affiliates of our Founder of $3.6 million and $3.8 million, respectively, for the payments of quarterly distribution on their respective Spark HoldCo units. During the three months ended September 30, 2021 and 2020, Spark HoldCo also made distributions to these affiliates for gross-up distributions of zero and $5.9 million, respectively, in connection with distributions made between Spark HoldCo and Via Renewables, Inc. for payment of income taxes incurred by us.

During each of the nine months ended September 30, 2021 and 2020, Spark HoldCo made distributions to affiliates of our Founder of $11.2 million and $11.3 million, for payments of quarterly distributions on their respective Spark HoldCo units. During the nine months ended September 30, 2021 and 2020, Spark HoldCo also made distributions to these affiliates for gross-up distributions of $2.6 million and $12.1 million, respectively, in connection with distributions made between Spark HoldCo and Via Renewables, Inc. for payment of income taxes incurred by us.

14. Segment Reporting

Our determination of reportable business segments considers the strategic operating units under which we make financial decisions, allocate resources and assess performance of our business. Our reportable business segments are retail electricity and retail natural gas. The retail electricity segment consists of electricity sales and transmission to residential and commercial customers. The retail natural gas segment consists of natural gas sales to, and natural gas

transportation and distribution for, residential and commercial customers. Corporate and other consists of expenses and assets of the retail electricity and natural gas segments that are managed at a consolidated level such as general and administrative expenses. Asset optimization activities are also included in Corporate and other.

For the three months ended September 30, 2021 and 2020, we recorded asset optimization revenues of $9.6 million and $6.2 million and asset optimization cost of revenues of $9.9 million and $6.8 million, respectively, and for the nine months ended September 30, 2021 and 2020, we recorded asset optimization revenues of $43.1 million and $16.5 million and asset optimization cost of revenues of $43.6 million and $16.8 million, respectively, which are presented on a net basis in asset optimization revenues.

We use retail gross margin to assess the performance of our operating segments. We have historically defined retail gross margin as operating (loss) income plus (i) depreciation and amortization expenses and (ii) general and administrative expenses, less (i) net asset optimization (expenses) revenues, (ii) net (losses) gains on non-trading derivative instruments, and (iii) net current period cash settlements on non-trading derivative instruments.

Based on the events described below related to the February 2021 North American winter storm referred to as Winter Storm Uri ("Winter Storm Uri"), and to ensure Retail Gross Margin reflects repeatable operating performance that is not distorted by non-recurring events or extreme market volatility, we have revised the definition of Retail Gross Margin in this Report to include gains (losses) from non-recurring events (including non-recurring market volatility).

We deduct net (losses) gains on non-trading derivative instruments, excluding current period cash settlements, from the retail gross margin calculation in order to remove the non-cash impact of net gains and losses on these derivative instruments. Retail gross margin should not be considered an alternative to, or more meaningful than, operating income, as determined in accordance with GAAP.

Below is a reconciliation of retail gross margin to income before income tax expense (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Reconciliation of Retail Gross Margin to income before taxes				
Income before income tax expense	$ 41,678	$ 27,747	$ 41,053	$ 72,190
Interest and other income	(63)	(80)	(228)	(293)
Interest expense	1,298	1,487	4,161	4,233
Operating income	42,913	29,154	44,986	76,130
Depreciation and amortization	5,049	7,278	16,498	24,084
General and administrative	9,719	19,080	33,053	66,087
Less:				
Net asset optimization (expense) revenue	(288)	(558)	(542)	(319)
Net, gain (loss) on non-trading derivative instruments	32,262	2,550	58,214	(14,019)
Net, Cash settlements on non-trading derivative instruments	(5,660)	6,489	(6,054)	33,153
Non-recurring event - Winter Storm Uri	497	—	(64,403)	—
Retail Gross Margin	**$ 30,870**	**$ 47,031**	**$ 107,322**	**$ 147,486**

Financial data for business segments are as follows (in thousands):

Three Months Ended September 30, 2021	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total Revenues	$ 92,104	$ 6,163	$ (288)	$ —	$ 97,979
Retail cost of revenues	41,035	(737)	—	—	40,298
Less:					
Net asset optimization expense	—	—	(288)	—	(288)
Net, gain on non-trading derivative instruments	27,558	4,704	—	—	32,262
Current period settlements on non-trading derivatives	(5,199)	(461)	—	—	(5,660)
Non-recurring event - Winter Storm Uri Credit	497	—	—	—	497
Retail Gross Margin	**$ 28,213**	**$ 2,657**	**$ —**	**$ —**	**$ 30,870**
Total Assets at September 30, 2021	**$ 3,130,077**	**$ 996,315**	**$ 332,666**	**$ (4,066,576)**	**$ 392,482**
Goodwill at September 30, 2021	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Three Months Ended September 30, 2020	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total revenues	$ 132,958	$ 8,230	$ (558)	$ —	$ 140,630
Retail cost of revenues	82,061	3,057	—	—	85,118
Less:					
Net asset optimization expense	—	—	(558)	—	(558)
Net, gain on non-trading derivative instruments	1,923	627	—	—	2,550
Current period settlements on non-trading derivatives	6,212	277	—	—	6,489
Retail Gross Margin	**$ 42,762**	**$ 4,269**	**$ —**	**$ —**	**$ 47,031**
Total Assets at December 31, 2020	**$ 2,906,139**	**$ 941,569**	**$ 318,865**	**$ (3,799,906)**	**$ 366,667**
Goodwill at December 31, 2020	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Nine Months Ended September 30, 2021	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total revenues	$ 242,548	$ 51,173	$ (542)	$ —	$ 293,179
Retail cost of revenues	179,762	18,880	—	—	198,642
Less:					
Net asset optimization expense	—	—	(542)	—	(542)
Net gain on non-trading derivatives	51,957	6,257	—	—	58,214
Current period settlements on non-trading derivatives	(5,246)	(808)	—	—	(6,054)
Non-recurring event - Winter Storm Uri	(64,403)	—	—	—	(64,403)
Retail Gross Margin	**$ 80,478**	**$ 26,844**	**$ —**	**$ —**	**$ 107,322**
Total Assets at September 30, 2021	**$ 3,130,077**	**$ 996,315**	**$ 332,666**	**$ (4,066,576)**	**$ 392,482**
Goodwill at September 30, 2021	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

Nine Months Ended September 30, 2020	Retail Electricity	Retail Natural Gas	Corporate and Other	Eliminations	Consolidated
Total revenues	$ 366,981	$ 69,185	$ (319)	$ —	$ 435,847
Retail cost of revenues	241,712	27,834	—	—	269,546
Less:					
Net asset optimization expense	—	—	(319)	—	(319)
Net (loss) gain on non-trading derivatives	(14,416)	397	—	—	(14,019)
Current period settlements on non-trading derivatives	30,544	2,609	—	—	33,153
Retail Gross Margin	**$ 109,141**	**$ 38,345**	**$ —**	**$ —**	**$ 147,486**
Total Assets at December 31, 2020	**$ 2,906,139**	**$ 941,569**	**$ 318,865**	**$ (3,799,906)**	**$ 366,667**
Goodwill at December 31, 2020	**$ 117,813**	**$ 2,530**	**$ —**	**$ —**	**$ 120,343**

15. Customer Acquisitions

Acquisition of Customer Books

In May 2021, we entered into a series of asset purchase agreements and agreed to acquire up to approximately 56,900 RCEs for a cash purchase price of up to a maximum of $11.5 million. These customers began transferring in August 2021, and are located in our existing markets. During the nine months ended September 30, 2021, a total of $1.5 million was paid for approximately 28,000 RCEs ($4.5 million for acquired customer contracts, net of $3.0 million related holdbacks under the terms of the purchase agreement). In addition, approximately $1.2 million was released back to us for a reduction in RCEs to be acquired.

As part of the acquisitions, we funded an escrow account, the balance of which is reflected as restricted cash in our consolidated balance sheet. As we acquire customers, we make payments to the sellers from the escrow account. As of September 30, 2021, the balance in the escrow account was $8.7 million, and these funds are expected to be released to the sellers as acquired customers transfer from the sellers to the Company in accordance with the asset purchase agreement, and any unallocated balance will be returned to the Company once the acquisition is complete.

In July 2021, we entered into an agreement to acquire up to approximately 50,000 RCEs and derivatives related to the customer load under a five-year contingent fee structure based on gas volume billed and collected for the acquired customer contracts. These customers will begin transferring in the fourth quarter of 2021, and are located in our existing markets. Due to the contingent fee structure, the cost of the RCEs will be recognized when probable and reasonably estimable.

16. Subsequent Events

Declaration of Dividends

On October 20, 2021, we declared a quarterly dividend of $0.18125 per share to holders of record of our Class A common stock on December 1, 2021, which will be paid on December 15, 2021.

On October 20, 2021, we also declared a quarterly cash dividend in the amount of $0.546875 per share to holders of record of the Series A Preferred Stock on January 3, 2022. The dividend will be paid on January 17, 2022.

Fifth Amendment to the Senior Credit Facility

On October 15, 2021, we entered into the Fifth Amendment to our Senior Credit Facility, which, among other things extended the maturity date to October 13, 2023, added a provision for Acquisition Loans (subject to limits as defined in the agreement), and terminated the provision allowing for Share Buyback Loans.

Amended and Restated Subordinated Promissory Note

In October 2021, we amended the Subordinated Debt Facility solely to extend the maturity date from January 31, 2023 to January 31, 2025.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the unaudited condensed consolidated financial statements and the related notes thereto included elsewhere in this Report and the audited consolidated financial statements and notes thereto and management's discussion and analysis of financial condition and results of operations included in our 2020 Form 10-K filed with the Securities and Exchange Commission ("SEC") on March 4, 2021. Results of operations and cash flows for the three and nine months ended September 30, 2021 are not necessarily indicative of results to be attained for any other period. See "Cautionary Note Regarding Forward-Looking Statements" and "Risk Factors."

Overview

We are an independent retail energy services company founded in 1999 that provides residential and commercial customers in competitive markets across the United States with an alternative choice for natural gas and electricity. We purchase our natural gas and electricity supply from a variety of wholesale providers and bill our customers monthly for the delivery of natural gas and electricity based on their consumption at either a fixed or variable price. Natural gas and electricity are then distributed to our customers by local regulated utility companies through their existing infrastructure. As of September 30, 2021, we operated in 100 utility service territories across 19 states and the District of Columbia.

Our business consists of two operating segments:

- *Retail Electricity Segment*. In this segment, we purchase electricity supply through physical and financial transactions with market counterparties and ISOs and supply electricity to residential and commercial consumers pursuant to fixed-price and variable-price contracts. For the three months ended September 30, 2021 and 2020, approximately 94% and 94%, respectively, of our retail revenues were derived from the sale of electricity.

- *Retail Natural Gas Segment*. In this segment, we purchase natural gas supply through physical and financial transactions with market counterparties and supply natural gas to residential and commercial consumers pursuant to fixed-price and variable-price contracts. For the three months ended September 30, 2021 and 2020, approximately 6% and 6%, respectively, of our retail revenues were derived from the sale of natural gas.

Recent Developments

Company's Name Change

In August 2021, we changed our name from Spark Energy, Inc. to Via Renewables, Inc.

Senior Credit Facility Amendment

In October 2021, we entered into the Fifth Amendment to our Senior Credit Facility, which, among other things extended the maturity date to October 13, 2023, and terminated the provision for Share Buyback Loans as well as added a provision for loans to fund acquisitions ("Acquisition Loans"), subject to limits as defined in the Fifth Amendment. Refer to Note 9 "Debt" for further discussion.

COVID-19

The outbreak of the novel coronavirus ("COVID-19") adversely impacted economic activity and conditions worldwide. In response to the COVID-19 pandemic, we deployed a remote working strategy in March 2020 that enabled our employees to work from home, provided timely communication to team members, implemented protocols for team members' safety, and initiated strategies for monitoring and responding to local COVID-19 impacts. Our preparedness efforts, coupled with quick and decisive plan implementation, resulted in minimal

impacts to our workforce. Our workforce resumed normal work schedules at our corporate headquarters in May 2021.

A slower than planned ramp-up of our door-to-door sales channels as COVID-19 restrictions have lifted has had the most significant adverse impact to our business, financial condition and results of operations during the quarter ended September 30, 2021. We are continuing to monitor developments involving customers and suppliers and the impact on our operations, business, financial condition, liquidity and results of operations for future periods.

Residential Customer Equivalents

We measure our number of customers using residential customer equivalents ("RCEs"). The following table shows our RCEs by segment during the three and nine months ended September 30, 2021:

RCEs:					
(In thousands)	**June 30, 2021**	**Additions**	**Attrition**	**September 30, 2021**	**% Increase (Decrease)**
Retail Electricity	270	45	(22)	293	9%
Retail Natural Gas	77	2	(4)	75	(3)%
Total Retail	**347**	**47**	**(26)**	**368**	**6%**

RCEs:					
(In thousands)	**December 31, 2020**	**Additions**	**Attrition**	**September 30, 2021**	**% Increase (Decrease)**
Retail Electricity	303	74	(84)	293	(3)%
Retail Natural Gas	97	4	(26)	75	(23)%
Total Retail	**400**	**78**	**(110)**	**368**	**(8)%**

The following table details our count of RCEs by geographical location as of September 30, 2021:

RCEs by Geographic Location:						
(In thousands)	**Electricity**	**% of Total**	**Natural Gas**	**% of Total**	**Total**	**% of Total**
New England	102	36%	14	19%	116	32%
Mid-Atlantic	89	30%	22	29%	111	30%
Midwest	29	10%	23	30%	52	14%
Southwest	73	24%	16	22%	89	24%
Total	**293**	**100%**	**75**	**100%**	**368**	**100%**

The geographical locations noted above include the following states:

- New England - Connecticut, Maine, Massachusetts and New Hampshire;
- Mid-Atlantic - Delaware, Maryland (including the District of Columbia), New Jersey, New York and Pennsylvania;
- Midwest - Illinois, Indiana, Michigan and Ohio; and
- Southwest - Arizona, California, Colorado, Florida, Nevada and Texas.

Across our market areas, we have operated under a number of different retail brands. We currently operate under six retail brands. During 2020 and 2019, we consolidated certain brands and billing systems in an effort to simplify our business operations where practical.

Drivers of Our Business

The success of our business and our profitability are impacted by a number of drivers, the most significant of which are discussed below.

Customer Growth

Customer growth is a key driver of our operations. Our ability to acquire customers organically or by acquisition is important to our success as we experience ongoing customer attrition. Our customer growth strategy includes growing organically through traditional sales channels complemented by customer portfolio and business acquisitions.

Our organic sales strategies are designed to offer competitive pricing, price certainty, and/or green product offerings to residential and commercial customers. We manage growth on a market-by-market basis by developing price curves in each of the markets we serve and comparing the market prices to the price offered by the local regulated utility. We then determine if there is an opportunity in a particular market based on our ability to create a competitive product on economic terms that provides customer value and satisfies our profitability objectives. We develop marketing campaigns using a combination of sales channels. Our marketing team continuously evaluates the effectiveness of each customer acquisition channel and makes adjustments in order to achieve desired targets.

Due to the COVID-19 pandemic, certain public utility commissions, regulatory agencies, and other governmental authorities in most of our markets maintained orders prohibiting energy services companies from door-to-door marketing and in some cases telemarketing during the pandemic, which restricted some of the sales channels we have historically used to market for organic sales. In response, we focused on development of products and channels, partners for web sales, as well as accelerating our telemarketing sales quality programs. In November 2020, we began active door-to-door marketing activities as COVID-19 restrictions were lifted.

During the three months ended September 30, 2021, we added approximately 19,000 RCEs primarily through our various organic sales channels. We expect to acquire customers organically in future periods but it will be slower in the near term, however we expect this number to increase on a monthly basis.

During the three months ended September 30, 2021, we added approximately 28,000 RCEs as a result of a series of asset purchase agreements entered in May 2021. Refer to Note 15 “Customer Acquisitions” for further discussion. Our ability to realize returns from acquisitions that are acceptable to us is dependent on our ability to successfully identify, negotiate, finance and integrate acquisitions. We will continue to evaluate potential acquisitions during the remainder of 2021.

Customer Acquisition Costs

Managing customer acquisition costs is a key component of our profitability. Customer acquisition costs are those costs related to obtaining customers organically and do not include the cost of acquiring customers through acquisitions, which are recorded as customer relationships.

We strive to maintain a disciplined approach to recovery of our customer acquisition costs within a 12-month period. We capitalize and amortize our customer acquisition costs over a two-year period, which is based on our estimate of the expected average length of a customer relationship. We factor in the recovery of customer acquisition costs in determining which markets we enter and the pricing of our products in those markets. Accordingly, our results are significantly influenced by our customer acquisition costs. Changes in customer acquisition costs from period to period reflect our focus on growing organically versus growth through acquisitions. We are currently focused on growing through organic sales channels; however, we continue to evaluate

opportunities to acquire customers through acquisitions and pursue such acquisitions when it makes sense economically or strategically.

As described above, during the COVID-19 pandemic certain public utility commissions, regulatory agencies, and other governmental authorities in all of our markets issued orders that impacted the way we have historically acquired customers prior to the COVID-19 pandemic, such as door to door marketing. Our gradual increase of marketing efforts as restrictions have been lifted resulted in increased marketing and customer acquisition costs during the three months ended September 30, 2021, when compared to the three months ended September 30, 2020, although still lower compared to historical amounts. We are incurring costs related to other manners of marketing, such as online marketing.

Customer Attrition

Customer attrition occurs primarily as a result of: (i) customer initiated switches; (ii) residential moves; (iii) disconnection resulting from customer payment defaults; and (iv) proactive non-renewal of contracts. Average monthly customer attrition for the three months ended September 30, 2021 and 2020 was 2.4% and 3.0%, respectively.

Our customer attrition was slightly lower than the prior year because of our pro-active non-renewal of some of the larger C&I customers in the prior year, which did not re-occur in 2021. Although customer attrition was slightly lower during the third quarter of 2021, we are unable to predict the ultimate impact on overall customer attrition over the next three months, at this time.

Customer Credit Risk

Our bad debt expense for the three months ended September 30, 2021 and 2020 was 0.8% and 0.9%, respectively, and our bad debt expense for the nine months ended September 30, 2021 and 2020 was 0.04% and 2.0% respectively, for non-purchase of receivable market ("non-POR") revenues. An increased focus on collection efforts, timely billing and credit monitoring for new enrollments in non-POR markets beginning in late 2020 have led to an improvement in the bad debt expense over the past several months, including the three months ended September 30, 2021. We have also been able to collect on debts that were previously written off, which has further reduced our bad debt expense during the three and nine months ended September 30, 2021.

Weather Conditions

Weather conditions directly influence the demand for natural gas and electricity and affect the prices of energy commodities. Our hedging strategy is based on forecasted customer energy usage, which can vary substantially as a result of weather patterns deviating from historical norms. We are particularly sensitive to this variability in our residential customer segment where energy usage is highly sensitive to weather conditions that impact heating and cooling demand.

Our risk management policies direct that we hedge substantially all of our forecasted demand, which is typically hedged to long-term normal weather patterns. We also attempt to add additional protection through hedging from time to time to protect us from potential volatility in markets where we have historically experienced higher exposure to extreme weather conditions. Because we attempt to match commodity purchases to anticipated demand, unanticipated changes in weather patterns can have a significant impact on our operating results and cash flows from period to period.

Winter Storm Uri

During the first quarter of 2021, the U.S. experienced Winter Storm Uri, an unprecedented storm bringing extreme cold temperatures to the central U.S., including Texas. As a result of increased power demand for customers across the state of Texas and power generation disruptions during the weather event, power and ancillary costs in the ERCOT service area reached or exceeded maximum allowed clearing prices. As of September 30, 2021, we

recorded a net loss of approximately $64.4 million as a direct result of Winter Storm Uri. Although our hedge position was 120% of our forecasted demand in Texas for the month of February, we were still required to purchase power at unprecedented prices for an extended period of time during the storm. These price caps imposed by ERCOT for the duration of the storm and beyond have never been experienced in any deregulated market in which we serve. The policies imposed on the electricity markets by ERCOT related to pricing resulted in overall negative impact on our electricity unit margin for 2021.

Asset Optimization

Our asset optimization opportunities primarily arise during the winter heating season when demand for natural gas is typically at its highest. Given the opportunistic nature of these activities and because we account for these activities using the mark to market method of accounting, we experience variability in our earnings from our asset optimization activities from year to year.

Net asset optimization resulted in a loss of $0.3 million and $0.6 million for the three months ended September 30, 2021 and 2020, respectively.

Non-GAAP Performance Measures

We use the Non-GAAP performance measures of Adjusted EBITDA and Retail Gross Margin to evaluate and measure our operating results as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2021	2020	2021	2020
Adjusted EBITDA [(1)]	$ 22,019	$ 27,749	$ 69,058	$ 81,897
Retail Gross Margin [(2)]	$ 30,870	$ 47,031	$ 107,322	$ 147,486

(1) Adjusted EBITDA for the nine months ended September 30, 2021 includes a $60.0 million add back related to Winter Storm Uri and includes a deduction of $2.2 million non-recurring legal settlement related to an add back in 2019. See discussion below.
(2) Retail Gross Margin for the three months ended September 30, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and nine months ended September 30, 2021 includes a $64.4 million add back related to Winter Storm Uri. See discussion below.

Adjusted EBITDA. We define "Adjusted EBITDA" as EBITDA less (i) customer acquisition costs incurred in the current period, plus or minus (ii) net (loss) gain on derivative instruments, and (iii) net current period cash settlements on derivative instruments, plus (iv) non-cash compensation expense, and (v) other non-cash and non-recurring operating items. EBITDA is defined as net income (loss) before the provision for income taxes, interest expense and depreciation and amortization. This conforms to the calculation of Adjusted EBITDA in our Senior Credit Facility.

We deduct all current period customer acquisition costs (representing spending for organic customer acquisitions) in the Adjusted EBITDA calculation because such costs reflect a cash outlay in the period in which they are incurred, even though we capitalize and amortize such costs over two years. We do not deduct the cost of customer acquisitions through acquisitions of businesses or portfolios of customers in calculating Adjusted EBITDA.

We deduct our net gains (losses) on derivative instruments, excluding current period cash settlements, from the Adjusted EBITDA calculation in order to remove the non-cash impact of net gains and losses on these instruments. We also deduct non-cash compensation expense that results from the issuance of restricted stock units under our long-term incentive plan due to the non-cash nature of the expense.

We adjust from time to time other non-cash or unusual and/or infrequent charges due to either their non-cash nature or their infrequency. We have historically included the financial impact of weather variability in the calculation of Adjusted EBITDA. We will continue this historical approach, but during the first quarter of 2021 we incurred a net pre-tax financial loss of $64.9 million due to Winter Storm Uri, as described above. This loss was incurred due to uncharacteristic extended sub-freezing temperatures across Texas combined with the impact of the pricing caps ordered by ERCOT. We believe this event is unusual, infrequent, and non-recurring in nature.

Our lenders under our Senior Credit Facility allowed $60.0 million of the $64.9 million pre-tax storm loss incurred in the first quarter of 2021 to be added back as a non-recurring item in the calculation of Adjusted EBITDA for our Debt Covenant Calculations. As our Senior Credit Facility is considered a material agreement and Adjusted EBITDA is a key component of our material covenants, we consider our covenant compliance to be material to the understanding of our financial condition and/or liquidity. We will present any credits received related to the storm exceeding $4.9 million as a reduction of the related $60.0 million non-recurring add back to Adjusted EBITDA for consistent presentation. There are no assurances credits will be received.

We believe that the presentation of Adjusted EBITDA provides information useful to investors in assessing our performance and results of operations and that Adjusted EBITDA is also useful for an understanding of our financial condition and/or liquidity due to its use in covenants in our Senior Credit Facility. Adjusted EBITDA is a supplemental financial measure that management and external users of our consolidated financial statements, such as industry analysts, investors, commercial banks and rating agencies, use to assess the following:

- our operating performance as compared to other publicly traded companies in the retail energy industry, without regard to financing methods, capital structure, historical cost basis and specific items not reflective of ongoing operations;
- the ability of our assets to generate earnings sufficient to support our proposed cash dividends;
- our ability to fund capital expenditures (including customer acquisition costs) and incur and service debt; and
- our compliance with financial debt covenants. (Refer to Note 9 "Debt" to Part I, Item 1 of this Report for discussion of the material terms of our Senior Credit Facility, including the covenant requirements for our Minimum Fixed Charge Coverage Ratio, Maximum Total Leverage Ratio, and Maximum Senior Secured Leverage Ratio.)

The GAAP measures most directly comparable to Adjusted EBITDA are net income (loss) and net cash provided by (used in) operating activities. The following table presents a reconciliation of Adjusted EBITDA to these GAAP measures for each of the periods indicated.

	Three Months Ended September 30,		**Nine Months Ended September 30,**	
(in thousands)	**2021**	**2020**	**2021**	**2020**
Reconciliation of Adjusted EBITDA to net income:				
Net income	$ 34,657	$ 22,606	$ 31,893	$ 59,451
Depreciation and amortization	5,049	7,278	16,498	24,084
Interest expense	1,298	1,487	4,161	4,233
Income tax expense	7,021	5,141	9,160	12,739
EBITDA	48,025	36,512	61,712	100,507
Less:				
Net, gain (loss) on derivative instruments	31,798	2,451	57,726	(14,015)
Net cash settlements on derivative instruments	(5,660)	6,425	(6,050)	32,997
Customer acquisition costs	309	207	765	1,762
Plus:				
Non-cash compensation expense	441	320	2,012	2,134
Non-recurring event - Winter Storm Uri	—	—	60,000	—
Non-recurring legal settlement	—	—	(2,225)	—
Adjusted EBITDA	**$ 22,019**	**$ 27,749**	**$ 69,058**	**$ 81,897**

The following table presents a reconciliation of Adjusted EBITDA to net cash provided by operating activities for each of the periods indicated.

	Three Months Ended September 30,		Nine Months Ended September 30,	
(in thousands)	2021	2020	2021	2020
Reconciliation of Adjusted EBITDA to net cash provided in operating activities:				
Net cash provided by operating activities	$ 9,604	$ 12,165	$ 18,772	$ 83,948
Amortization of deferred financing costs	(275)	(476)	(792)	(966)
Bad debt expense	(492)	(880)	(379)	(4,613)
Interest expense	1,298	1,487	4,161	4,233
Income tax expense	7,021	5,141	9,160	12,739
Non-recurring event - Winter Storm Uri	—	—	60,000	—
Non-recurring legal settlement	—	—	(2,225)	—
Changes in operating working capital				
Accounts receivable, prepaids, current assets	6,456	1,709	(25,305)	(48,301)
Inventory	1,448	823	1,048	(1,158)
Accounts payable and accrued liabilities	2,952	9,374	15,809	39,213
Other	(5,993)	(1,594)	(11,191)	(3,198)
Adjusted EBITDA	**$ 22,019**	**$ 27,749**	**$ 69,058**	**$ 81,897**
Cash Flow Data:				
Net cash provided by operating activities	$ 9,604	$ 12,165	$ 18,772	$ 83,948
Net cash used in investing activities	$ (2,626)	$ (640)	$ (3,689)	$ (1,219)
Net cash (used in) provided by financing activities	$ (13,399)	$ (15,769)	$ 11,352	$ (65,017)

Retail Gross Margin. We define retail gross margin as operating income (loss) plus (i) depreciation and amortization expenses and (ii) general and administrative expenses, less (iii) net asset optimization revenues (expenses), (iv) net gains (losses) on non-trading derivative instruments, (v) net current period cash settlements on non-trading derivative instruments and (vi) gains (losses) from non-recurring events (including non-recurring market volatility. Retail gross margin is included as a supplemental disclosure because it is a primary performance measure used by our management to determine the performance of our retail natural gas and electricity segments as a result of recurring operations. As an indicator of our retail energy business's operating performance, retail gross margin should not be considered an alternative to, or more meaningful than, operating income (loss), its most directly comparable financial measure calculated and presented in accordance with GAAP.

We believe retail gross margin provides information useful to investors as an indicator of our retail energy business's operating performance.

We have historically included the financial impact of weather variability in the calculation of Retail Gross Margin. We will continue this historical approach, but during the first quarter of 2021 we added back the $64.9 million net financial loss incurred related to Winter Storm Uri, as described above, in the calculation of Retail Gross Margin because the extremity of the Texas storm combined with the impact of unprecedented pricing mechanisms ordered by ERCOT is considered unusual, infrequent, and non-recurring in nature. We received credits totaling $0.5 million related to Winter Storm Uri costs in the third quarter of 2021, which is included in the calculation of retail gross margin for consistent presentation.

The GAAP measure most directly comparable to Retail Gross Margin is operating income (loss). The following table presents a reconciliation of Retail Gross Margin to operating income (loss) for each of the periods indicated.

(in thousands)	Three Months Ended September 30, 2021	Three Months Ended September 30, 2020	Nine Months Ended September 30, 2021	Nine Months Ended September 30, 2020
Reconciliation of Retail Gross Margin to Operating income:				
Operating income	$ 42,913	$ 29,154	$ 44,986	$ 76,130
Plus:				
Depreciation and amortization	5,049	7,278	16,498	24,084
General and administrative expense	9,719	19,080	33,053	66,087
Less:				
Net asset optimization (expense) revenue	(288)	(558)	(542)	(319)
Gain (loss) on non-trading derivative instruments	32,262	2,550	58,214	(14,019)
Cash settlements on non-trading derivative instruments	(5,660)	6,489	(6,054)	33,153
Non-recurring event - Winter Storm Uri	497	—	(64,403)	—
Retail Gross Margin	**$ 30,870**	**$ 47,031**	**$ 107,322**	**$ 147,486**
Retail Gross Margin - Retail Electricity Segment (1)	$ 28,213	$ 42,762	$ 80,478	$ 109,141
Retail Gross Margin - Retail Natural Gas Segment	$ 2,657	$ 4,269	$ 26,844	$ 38,345

(1) Retail Gross Margin for the three months ended September 30, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and nine months ended September 30, 2021 includes a $64.4 million add back related to Winter Storm Uri.

Our non-GAAP financial measures of Adjusted EBITDA and Retail Gross Margin should not be considered as alternatives to net income (loss), net cash provided by (used in) operating activities, or operating income (loss). Adjusted EBITDA and Retail Gross Margin are not presentations made in accordance with GAAP and have limitations as analytical tools. You should not consider Adjusted EBITDA or Retail Gross Margin in isolation or as a substitute for analysis of our results as reported under GAAP. Because Adjusted EBITDA and Retail Gross Margin exclude some, but not all, items that affect net income (loss), net cash provided by operating activities, and operating income (loss), and are defined differently by different companies in our industry, our definition of Adjusted EBITDA and Retail Gross Margin may not be comparable to similarly titled measures of other companies.

Management compensates for the limitations of Adjusted EBITDA and Retail Gross Margin as analytical tools by reviewing the comparable GAAP measures, understanding the differences between the measures and incorporating these data points into management's decision-making process.

Consolidated Results of Operations

Three and Nine Months Ended September 30, 2021 Compared to Three and Nine Months Ended September 30, 2020

(In Thousands)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	**2020**	**2021**	**2020**
Revenues:				
Retail revenues	$ 98,267	$ 141,188	$ 293,721	$ 436,166
Net asset optimization (expense) revenue	(288)	(558)	(542)	(319)
Total Revenues	97,979	140,630	293,179	435,847
Operating Expenses:				
Retail cost of revenues	40,298	85,118	198,642	269,546
General and administrative expense	9,719	19,080	33,053	66,087
Depreciation and amortization	5,049	7,278	16,498	24,084
Total Operating Expenses	55,066	111,476	248,193	359,717
Operating income	42,913	29,154	44,986	76,130
Other (expense)/income:				
Interest expense	(1,298)	(1,487)	(4,161)	(4,233)
Interest and other income	63	80	228	293
Total other expense	(1,235)	(1,407)	(3,933)	(3,940)
Income before income tax expense	41,678	27,747	41,053	72,190
Income tax expense	7,021	5,141	9,160	12,739
Net income	$ 34,657	$ 22,606	$ 31,893	$ 59,451
Other Performance Metrics:				
Adjusted EBITDA (1) (2)	$ 22,019	$ 27,749	$ 69,058	$ 81,897
Retail Gross Margin (1) (3)	$ 30,870	$ 47,031	$ 107,322	$ 147,486
Customer Acquisition Costs	$ 309	$ 207	$ 765	$ 1,762
Average Monthly RCE Attrition	2.4 %	3.0 %	3.3 %	4.1 %

(1) Adjusted EBITDA and Retail Gross Margin are non-GAAP financial measures. See " — Non-GAAP Performance Measures" for a reconciliation of Adjusted EBITDA and Retail Gross Margin to their most directly comparable GAAP financial measures.

(2) Adjusted EBITDA for the nine months ended September 30, 2021 includes a $60.0 million add back related to Winter Storm Uri and a deduction of $2.2 million non-recurring legal settlement related to an add back in 2019.

(3) Retail Gross Margin for the three months ended September 30, 2021 includes a $0.5 million reduction related to the Winter Storm Uri credit settlements received and nine months ended September 30, 2021 includes a $64.4 million add back related to Winter Storm Uri.

Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020

Total Revenues. Total revenues for the three months ended September 30, 2021 were approximately $98.0 million, a decrease of approximately $42.6 million, or 30%, from approximately $140.6 million for the three months ended September 30, 2020, as indicated in the table below (in millions). This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in the third quarter of 2021 as compared to the third quarter of 2020.

Change in electricity volumes sold	$ (44.3)
Change in natural gas volumes sold	(2.1)
Change in electricity unit revenue per MWh	3.4
Change in natural gas unit revenue per MMBtu	0.4
Change in total revenues	$ (42.6)

Retail Cost of Revenues. Total retail cost of revenues for the three months ended September 30, 2021 was approximately $40.3 million, a decrease of approximately $44.8 million, or 53%, from approximately $85.1 million for the three months ended September 30, 2020, as indicated in the table below (in millions). This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in 2021 and a change in the fair value of our retail derivative portfolio.

Change in electricity volumes sold	$	(30.0)
Change in natural gas volumes sold		(1.2)
Change in electricity unit cost per MWh		3.7
Change in electricity unit cost per MWh - Winter Storm Uri Credit		(0.5)
Change in natural gas unit cost per MMBtu		0.7
Change in value of retail derivative portfolio		(17.5)
Change in retail cost of revenues	$	(44.8)

General and Administrative Expense. General and administrative expense for the three months ended September 30, 2021 was approximately $9.7 million, a decrease of approximately $9.4 million, or 49%, as compared to $19.1 million for the three months ended September 30, 2020. This decrease was primarily attributable to lower employee costs, lower bad debt expense due to improved collection efforts and lower legal fees in the third quarter of 2021.

Depreciation and Amortization Expense. Depreciation and amortization expense for the three months ended September 30, 2021 was approximately $5.0 million, a decrease of approximately $2.3 million, or 32%, from approximately $7.3 million for the three months ended September 30, 2020. This decrease was primarily due to the decreased amortization expense associated with customer intangibles.

Customer Acquisition Cost. Customer acquisition cost for the three months ended September 30, 2021 was approximately $0.3 million, an increase of $0.1 million, or 49%, from approximately $0.2 million for the three months ended September 30, 2020 primarily due to increased sales activity in the third quarter of 2021 as compared to third quarter of 2020. The low customer acquisition cost in both periods was primarily due to limitation on our ability to use door-to-door marketing as a result of COVID-19 and a reduction in targeted organic customer acquisitions as we focus our efforts to improve our organic sales channels, including vendor selection and sales quality.

Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2020

Total Revenues. Total revenues for the nine months ended September 30, 2021 were approximately $293.2 million, a decrease of approximately $142.6 million, or 33%, from approximately $435.8 million for the nine months ended September 30, 2020, as indicated in the table below (in millions). This decrease was primarily due to a decrease in electricity and natural gas volumes due to a smaller customer book in 2021 as compared to 2020, partially offset by an increase in electricity unit revenue per MWh.

Change in electricity volumes sold	$	(138.6)
Change in natural gas volumes sold		(20.5)
Change in electricity unit revenue per MWh		13.2
Change in electricity unit revenue per MMBtu - Winter Storm Uri		0.9
Change in natural gas unit revenue per MMBtu		2.5
Change in net asset optimization revenue (expense)		(0.1)
Change in total revenues	$	(142.6)

Retail Cost of Revenues. Total retail cost of revenues for the nine months ended September 30, 2021 was approximately $198.6 million, a decrease of approximately $70.9 million, or 26%, from approximately $269.5 million for the nine months ended September 30, 2020, as indicated in the table below (in millions). This decrease was primarily due to a decrease in electricity and natural gas volumes as a result of a smaller customer book in 2021, a decrease due to change in fair value of our retail derivative portfolio, offset by an increase in electricity and natural gas unit cost, as well as an increase in electricity supply costs due to Winter Storm Uri in the first quarter of 2021.

Change in electricity volumes sold	$	(97.4)
Change in natural gas volumes sold		(9.2)
Change in electricity unit cost per MWh		0.8
Change in electricity unit cost per MWh - Winter Storm Uri		65.3
Change in natural gas unit cost per MMBtu		2.6
Change in value of retail derivative portfolio		(33.0)
Change in retail cost of revenues	$	(70.9)

General and Administrative Expense. General and administrative expense for the nine months ended September 30, 2021 was approximately $33.1 million, a decrease of approximately $33.0 million, or 50%, as compared to $66.1 million for the nine months ended September 30, 2020. This decrease was primarily attributable to lower employee costs, lower bad debt expense in 2021 due to improved collection efforts and lower legal costs.

Depreciation and Amortization Expense. Depreciation and amortization expense for the nine months ended September 30, 2021 was approximately $16.5 million, a decrease of approximately $7.6 million, or 32%, from approximately $24.1 million for the nine months ended September 30, 2020. This decrease was primarily due to the decreased amortization expense associated with customer relationship intangibles.

Customer Acquisition Cost. Customer acquisition cost for the nine months ended September 30, 2021 was approximately $0.8 million, a decrease of approximately $1.0 million, or 57%, from approximately $1.8 million for the nine months ended September 30, 2020. This decrease was primarily due to limitation on our ability to use door-to-door marketing as a result of COVID-19 during most of 2020 and 2021 and a reduction in targeted organic customer acquisitions as we focus our efforts to improve our organic sales channels, including vendor selection and sales quality.

Operating Segment Results

(in thousands, except volume and per unit operating data)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2021	2020	2021	2020
Retail Electricity Segment				
Total Revenues	$ 92,104	$ 132,958	$ 242,548	$ 366,981
Retail Cost of Revenues	41,035	82,061	179,762	241,712
Less: Net gain on non-trading derivatives, net of cash settlements	22,359	8,135	46,711	16,128
Non-recurring event - Winter Storm Uri	497	—	(64,403)	—
Retail Gross Margin [(1)] — Electricity	$ 28,213	$ 42,762	$ 80,478	$ 109,141
Volumes — Electricity (MWhs) [(3)]	777,340	1,165,500	2,013,468	3,235,222
Retail Gross Margin [(2)] [(4)] — Electricity per MWh	*$ 36.29*	*$ 36.69*	*$ 39.97*	*$ 33.74*
Retail Natural Gas Segment				
Total Revenues	$ 6,163	$ 8,230	$ 51,173	$ 69,185
Retail Cost of Revenues	(737)	3,057	18,880	27,834
Less: Net gain on non-trading derivatives, net of cash settlements	4,243	904	5,449	3,006
Retail Gross Margin [(1)] — Gas	$ 2,657	$ 4,269	$ 26,844	$ 38,345
Volumes — Gas (MMBtus)	668,063	949,088	5,765,588	8,198,827
Retail Gross Margin [(2)] — Gas per MMBtu	*$ 3.98*	*$ 4.50*	*$ 4.66*	*$ 4.68*

(1) Reflects the Retail Gross Margin attributable to our Retail Electricity Segment or Retail Natural Gas Segment, as applicable. Retail Gross Margin is a non-GAAP financial measure. See "Non-GAAP Performance Measures" for a reconciliation of Retail Gross Margin to most directly comparable financial measures presented in accordance with GAAP.
(2) Reflects the Retail Gross Margin for the Retail Electricity Segment or Retail Natural Gas Segment, as applicable, divided by the total volumes in MWh or MMBtu, respectively.
(3) Excludes volumes (8,402 MWhs) related to Winter Storm Uri impact for the nine months ended September 30, 2021.
(4) Retail Gross Margin - Electricity per MWh excludes Winter Storm Uri impact.

Three Months Ended September 30, 2021 Compared to Three Months Ended September 30, 2020

Retail Electricity Segment

Total revenues for the Retail Electricity Segment for the three months ended September 30, 2021 were approximately $92.1 million, a decrease of approximately $40.9 million, or 31%, from approximately $133.0 million for the three months ended September 30, 2020. This decrease was largely due to lower volumes sold, resulting in a decrease of $44.3 million as a result of a smaller customer book in 2021, offset by higher retail electricity prices which resulted in an increase of $3.4 million.

Retail cost of revenues for the Retail Electricity Segment for the three months ended September 30, 2021 were approximately $41.0 million, a decrease of approximately $41.1 million, or 50%, from approximately $82.1 million for the three months ended September 30, 2020. This decrease was primarily due to fewer customers, resulting in a decrease of $30.0 million, an increase in supply costs of $3.2 million, and a change in the value of our retail derivative portfolio used for hedging, which resulted in a decrease of $14.3 million.

Retail gross margin for the Retail Electricity Segment for the three months ended September 30, 2021 was approximately $28.2 million, a decrease of approximately $14.5 million, or 34%, from approximately $42.8 million for the three months ended September 30, 2020, as indicated in the table below (in millions).

Change in volumes sold	$	(14.3)
Change in unit margin per MWh		0.2
Change in electricity unit cost per MWh - Winter Storm Uri Credit		(0.5)
Change in retail electricity segment retail gross margin	$	(14.6)

Retail Natural Gas Segment

Total revenues for the Retail Natural Gas Segment for the three months ended September 30, 2021 were approximately $6.2 million, a decrease of approximately $2.0 million, or 25%, from approximately $8.2 million for the three months ended September 30, 2020. This decrease was primarily attributable to lower volumes sold, which decreased total revenues by $2.4 million offset by an increase of $0.4 million related to higher natural gas rates.

Retail cost of revenues for the Retail Natural Gas Segment for the three months ended September 30, 2021 were approximately $(0.7) million, a decrease of $3.8 million, or 124%, from approximately $3.1 million for the three months ended September 30, 2020. This decrease was primarily due to lower volumes resulting in a decrease of $1.2 million, higher natural gas costs, which resulted in an increase of $0.7 million, and a change in the value of our derivative portfolio used for hedging, which resulted in a decrease of $3.3 million.

Retail gross margin for the Retail Natural Gas Segment for the three months ended September 30, 2021 was approximately $2.7 million, a decrease of approximately $1.6 million, or 38%, from approximately $4.3 million for the three months ended September 30, 2020, as indicated in the table below (in millions).

Change in volumes sold	$	(1.3)
Change in unit margin per MMBtu		(0.3)
Change in retail natural gas segment retail gross margin	$	(1.6)

Nine Months Ended September 30, 2021 Compared to Nine Months Ended September 30, 2020

Retail Electricity Segment

Total revenues for the Retail Electricity Segment for the nine months ended September 30, 2021 were approximately $242.5 million, a decrease of approximately $124.5 million, or 34%, from approximately $367.0 million for the nine months ended September 30, 2020. This decrease was largely due to a decrease in volumes, resulting in a decrease of $138.6 million. This was partially offset by higher weighted average revenue rates, due to our customer mix shifting away from large commercial customers, which resulted in an increase of $13.2 million and an increase of $0.9 million related to electricity revenue due to Winter Storm Uri.

Retail cost of revenues for the Retail Electricity Segment for the nine months ended September 30, 2021 was approximately $179.8 million, a decrease of approximately $61.9 million, or 26%, from approximately $241.7 million for the nine months ended September 30, 2020. This decrease was primarily due to a decrease in volumes, resulting in a decrease of $97.4 million. This decrease was further impacted by increased electricity prices, which resulted in an increase in retail cost of revenues of $0.8 million and a decrease of $30.7 million due to a change in the value of our retail derivative portfolio used for hedging. This was offset by an increase in supply cost of $65.3 million related to Winter Storm Uri.

Retail gross margin for the Retail Electricity Segment for the nine months ended September 30, 2021 was approximately $80.5 million, a decrease of approximately $28.6 million, or 26%, from approximately $109.1 million for the nine months ended September 30, 2020, as indicated in the table below (in millions).

Change in volumes sold	$	(41.2)
Change in gross margin - Winter Storm Uri		64.4
Change in unit margin per MWh		(51.8)
Change in retail electricity segment retail gross margin	$	(28.6)

Retail Natural Gas Segment

Total revenues for the Retail Natural Gas Segment for the nine months ended September 30, 2021 were approximately $51.2 million, a decrease of approximately $18.0 million, or 26%, from approximately $69.2 million for the nine months ended September 30, 2020. This decrease was primarily attributable to a decrease in volumes of $20.5 million, partially offset by higher rates, which resulted in an increase in total revenues of $2.5 million.

Retail cost of revenues for the Retail Natural Gas Segment for the nine months ended September 30, 2021 was approximately $18.9 million, a decrease of approximately $8.9 million, or 32%, from approximately $27.8 million for the nine months ended September 30, 2020. The decrease of $9.2 million was related to lower volumes and a decrease of $2.3 million due to a change in the value of our derivative portfolio used for hedging, offset by increased supply costs of $2.6 million.

Retail gross margin for the Retail Natural Gas Segment for the nine months ended September 30, 2021 was approximately $26.8 million, a decrease of approximately $11.5 million, or 30%, from approximately $38.3 million for the nine months ended September 30, 2020, as indicated in the table below (in millions).

Change in volumes sold	$	(11.5)
Change in unit margin per MMBtu		—
Change in retail natural gas segment retail gross margin	$	(11.5)

Liquidity and Capital Resources

Overview

Our primary sources of liquidity are cash generated from operations and borrowings under our Senior Credit Facility. Our principal liquidity requirements are to meet our financial commitments, finance current operations, fund organic growth and/or acquisitions, service debt and pay dividends. Our liquidity requirements fluctuate with our level of customer acquisition costs, acquisitions, collateral posting requirements on our derivative instruments portfolio, distributions, the effects of the timing between the settlement of payables and receivables, including the effect of bad debts, weather conditions, and our general working capital needs for ongoing operations. We believe that cash generated from operations and our available liquidity sources will be sufficient to sustain current operations and to pay required taxes and quarterly cash distributions, including the quarterly dividends to the holders of the Class A common stock and the Series A Preferred Stock, for the next twelve months. Estimating our liquidity requirements is highly dependent on then-current market conditions, including impacts of the COVID-19 pandemic, Winter Storm Uri, forward prices for natural gas and electricity, market volatility and our then existing capital structure and requirements.

Liquidity Position

The following table details our available liquidity as of September 30, 2021:

($ in thousands)		September 30, 2021
Cash and cash equivalents	$	89,422
Senior Credit Facility Availability (1)		30,121
Subordinated Debt Facility Availability (2)		15,000
Total Liquidity	**$**	**134,543**

(1) Reflects amount of Letters of Credit that could be issued based on existing covenants as of September 30, 2021.
(2) The availability of the Subordinated Facility is dependent on our Founder's willingness and ability to lend. See "—Sources of Liquidity —Subordinated Debt Facility."

Borrowings and related posting of letters of credit under our Senior Credit Facility are subject to material variations on a seasonal basis due to the timing of commodity purchases to satisfy natural gas inventory requirements and to meet customer demands during periods of peak usage. Additionally, borrowings are subject to borrowing base and covenant restrictions.

Cash Flows

Our cash flows were as follows for the respective periods (in thousands):

	Nine Months Ended September 30,			
	2021		2020	
Net cash provided by operating activities	$	18,772	$	83,948
Net cash used in investing activities	$	(3,689)	$	(1,219)
Net cash provided (used) in financing activities	$	11,352	$	(65,017)

Nine Months Ended September 30, 2021 Compared to the Nine Months Ended September 30, 2020

Cash Flows Provided by Operating Activities. Cash flows provided by operating activities for the nine months ended September 30, 2021 decreased by $65.2 million compared to the nine months ended September 30, 2020. The decrease was primarily the result of the non-recurring Winter Storm Uri related costs of $64.4 million for the nine months ended September 30, 2021.

Cash Flows Used in Investing Activities. Cash flows used in investing activities increased by $2.5 million for the nine months ended September 30, 2021. The increase was primarily the result of increased capital spending and increases relating to customer acquisitions during the nine months ended September 30, 2021.

Cash Flows Provided by Financing Activities. Cash flows provided by financing activities increased by $76.4 million for the nine months ended September 30, 2021, primarily due to an increase in net borrowings under our Senior Credit Facility of $53.0 million and an increase in sub-debt borrowing of $10.0 million during the nine months ended September 30, 2021.

Sources of Liquidity and Capital Resources

Senior Credit Facility

As of September 30, 2021, we had total commitments of $227.5 million under the Senior Credit Facility, of which $154.4 million was outstanding, including $24.4 million of outstanding letters of credit, with a maturity date of July 31, 2022. On October 15, 2021, we entered into the Fifth Amendment to the Senior Credit Facility, which, among other things extended the maturity date to October 2023, added a provision for Acquisition Loans (subject to limits as defined in the agreement), and terminated the provision allowing for Share Buyback Loans. See Note 9 "Debt" for further discussion.

For a description of the terms and conditions of our Senior Credit Facility, including descriptions of the interest rate, commitment fee, covenants and terms of default, please see Note 9 "Debt" in the notes to our condensed consolidated financial statements.

As of September 30, 2021, we were in compliance with the covenants under our Senior Credit Facility. Based upon existing covenants as of September 30, 2021, we had availability to borrow up to $30.1 million under the Senior Credit Facility.

Amended and Restated Subordinated Debt Facility

Our Subordinated Debt Facility allows us to draw advances in increments of no less than $1.0 million per advance up to $25.0 million. Although we may use the Subordinated Debt Facility from time to time to enhance short term liquidity, we do not view the Subordinated Debt Facility as a material source of liquidity. As of September 30, 2021, there was $10.0 million outstanding borrowings under the Subordinated Debt Facility, and availability to borrow up to $15.0 million under the Subordinated Debt Facility. In October 2021, we amended the Subordinated Debt Facility solely to extend the maturity date from January 31, 2023 to January 31, 2025. See Note 9 "Debt" for further information regarding the extension of the Subordinated Debt Facility.

Uses of Liquidity and Capital Resources

Repayment of Current Portion of Senior Credit Facility

Our Senior Credit Facility, as amended by the Fifth Amendment, matures in October 2023, and thus, no amounts are due currently. However, due to the revolving nature of the facility, excess cash available is generally used to reduce the balance outstanding, which at September 30, 2021 was $130.0 million. The current variable interest rate on the facility at September 30, 2021 was 3.75%.

Customer Acquisitions

Our customer acquisition strategy consists of customer growth obtained through organic customer additions as well as opportunistic acquisitions. During the three months ended September 30, 2021 and 2020, we spent a total of $0.3 million and $0.2 million, respectively, on organic customer acquisitions.

Capital Expenditures

Our capital requirements each year are relatively low and generally consist of minor purchases of equipment or information system upgrades and improvements. Capital expenditures for the nine months ended September 30, 2021 and 2020 included $2.2 million and $1.2 million, respectively, related to information systems improvements.

Dividends and Distributions

During the nine months ended September 30, 2021, we paid dividends to holders of our Class A common stock for the quarter ended December 31, 2020 of $0.18125 per share or $8.2 million in the aggregate. In order to pay our stated dividends to holders of our Class A common stock, our subsidiary, Spark HoldCo is required to make corresponding distributions to holders of Class B common stock (our non-controlling interest holders). As a result, during the nine months ended September 30, 2021, Spark HoldCo made distributions of $11.2 million to our non-controlling interest holders related to the dividend payments to holders of our Class A common stock.

For the nine months ended September 30, 2021, we paid $1.9 million of dividends to holders of our Series A Preferred Stock, and as of September 30, 2021, we had accrued $2.0 million related to dividends to holders of our Series A Preferred Stock, which we paid on October 15, 2021. For the full year ended December 31, 2021, at the stated dividend rate of the Series A Preferred Stock of $2.1875 per share, we would be required to pay dividends of $7.9 million in the aggregate based on the Series A Preferred Stock outstanding as of September 30, 2021.

On October 20, 2021, our Board of Directors declared a quarterly cash dividend in the amount of $0.18125 per share to holders of our Class A common stock and $0.546875 per share for the Series A Preferred Stock for the third quarter of 2021. Dividends on Class A common stock will be paid on December 15, 2021 to holders of record on December 1, 2021, and Series A Preferred Stock dividends will be paid on January 17, 2022 to holders of record on January 3, 2022.

Our ability to pay dividends in the future will depend on many factors, including the performance of our business and restrictions under our Senior Credit Facility. If our business does not generate sufficient cash for Spark HoldCo to make distributions to us to fund our Class A common stock and Series A Preferred Stock dividends, we may have to borrow to pay such amounts. Further, even if our business generates cash in excess of our current annual dividend (of $0.725 per share on our Class A common stock), we may reinvest such excess cash flows in our business and not increase the dividends payable to holders of our Class A common stock. Our future dividend policy is within the discretion of our Board of Directors and will depend upon the results of our operations, our financial condition, capital requirements and investment opportunities.

Share Repurchase Program

On August 18, 2020, our Board of Directors authorized a share repurchase program of up to $20.0 million of Class A common stock through August 18, 2021. The share repurchase program was suspended in March 2021 pursuant to an agreement with lenders under our Senior Credit Facility and the provision providing for share repurchases in our Senior Credit Facility was removed as part of the October 2021 amendment to the facility (see discussion in Note 9 "Debt"). During the nine months ended September 30, 2021, we did not repurchase our Class A common stock. We do not expect share repurchases to be a use of liquidity and capital resources for the near term future.

Collateral Posting Requirements

Our contractual agreements with certain local regulated utilities and our supplier counterparties require us to maintain restricted cash balances or letters of credit as collateral for credit risk or the performance risk associated with the future delivery of natural gas or electricity. Due to the COVID-19 pandemic, certain local regulated utilities and our supplier counterparties have contacted us inquiring about our financial condition and the impact the pandemic is having on our operations. These inquiries may lead to additional requests for cash or letters of credit in an effort to mitigate the risk of default in paying our obligations related to the future delivery of natural gas or

electricity. As of September 30, 2021, we had not been required to post additional collateral as a result of COVID-19.

As discussed above, during the Winter Storm Uri event, we were required to post a significant amount of collateral with ERCOT. Despite these posting requirements, we consistently maintained, and continue to maintain, sufficient liquidity to conduct our operations in the ordinary course. As of September 30, 2021, we had not been required to post additional collateral as a result of the Winter Storm Uri.

Off-Balance Sheet Arrangements

As of September 30, 2021, we had no material "off-balance sheet arrangements."

Related Party Transactions

For a discussion of related party transactions, see Note 13 "Transactions with Affiliates" to Part I, Item 1 of this Report.

Critical Accounting Policies and Estimates

Our critical accounting policies and estimates are described in “Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates” in our 2020 Form 10-K. There have been no changes to these policies and estimates since the date of our 2020 Form 10-K.

Refer to Note 2 "Basis of Presentation and Summary of Significant Accounting Policies" to Part I, Item 1 of this Report for a discussion on recent accounting pronouncements.

Contingencies

In the ordinary course of business, we may become party to lawsuits, administrative proceedings and governmental investigations, including regulatory and other matters. Except as described in Note 12 "Commitments and Contingencies" to Part I, Item 1 of this Report, as of September 30, 2021, management did not believe that any of our outstanding lawsuits, administrative proceedings or investigations could result in a material adverse effect. Liabilities for loss contingencies arising from claims, assessments, litigation, fines, penalties and other sources are recorded when it is probable that a liability has been incurred and the amount can be reasonably estimated. For a discussion of the status of current legal and regulatory matters, see Note 12 "Commitments and Contingencies" to Part I, Item 1 of this Report.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risks relating to our operations result primarily from changes in commodity prices and interest rates, as well as counterparty credit risk. We employ established risk management policies and procedures to manage, measure, and limit our exposure to these risks.

Commodity Price Risk

We hedge and procure our energy requirements from various wholesale energy markets, including both physical and financial markets and through short and long-term contracts. Our financial results are largely dependent on the margin we realize between the wholesale purchase price of natural gas and electricity plus related costs and the retail sales price we charge our customers for these commodities. We actively manage our commodity price risk by entering into various derivative or non-derivative instruments to hedge the variability in future cash flows from fixed-price forecasted sales and purchases of natural gas and electricity in connection with our retail energy operations. These instruments include forwards, futures, swaps, and option contracts traded on various exchanges, such as NYMEX and Intercontinental Exchange, or ICE, as well as over-the-counter markets. These contracts have varying terms and durations, which range from a few days to several years, depending on the instrument. We also utilize similar derivative contracts in connection with our asset optimization activities to attempt to generate incremental gross margin by effecting transactions in markets where we have a retail presence. Generally, any such instruments that are entered into to support our retail electricity and natural gas business are categorized as having been entered into for non-trading purposes, and instruments entered into for any other purpose are categorized as having been entered into for trading purposes.

Our net gain on our non-trading derivative instruments, net of cash settlements, was $26.6 million and $9.0 million for the three months ended September 30, 2021 and $52.2 million and $19.1 million for the nine months ended September 30, 2021 and 2020, respectively.

We have adopted risk management policies to measure and limit market risk associated with our fixed-price portfolio and our hedging activities. For additional information regarding our commodity price risk and our risk management policies, see “Item 1A—Risk Factors” in our 2020 Form 10-K.

We measure the commodity risk of our non-trading energy derivatives using a sensitivity analysis on our net open position. As of September 30, 2021, our Gas Non-Trading Fixed Price Open Position (hedges net of retail load) was a long position of 236,616 MMBtu. An increase of 10% in the market prices (NYMEX) from their September 30, 2021 levels would have increased the fair market value of our net non-trading energy portfolio by less than $0.2 million. Likewise, a decrease of 10% in the market prices (NYMEX) from their September 30, 2021 levels would have decreased the fair market value of our non-trading energy derivatives by less than $0.2 million. As of September 30, 2021, our Electricity Non-Trading Fixed Price Open Position (hedges net of retail load) was a short position of 5,386 MWhs. An increase of 10% in the forward market prices from their September 30, 2021 levels would have decreased the fair market value of our net non-trading energy portfolio by $0.1 million. Likewise, a decrease of 10% in the forward market prices from their September 30, 2021 levels would have increased the fair market value of our non-trading energy derivatives by $0.1 million.

Credit Risk

In many of the utility services territories where we conduct business, Purchase of Receivables ("POR programs") have been established, whereby the local regulated utility purchases our receivables, and becomes responsible for billing the customer and collecting payment from the customer. These POR programs result in substantially all of our credit risk being with the utility and not to our end-use customers in these territories. Approximately 57% and 64% of our retail revenues were derived from territories in which substantially all of our credit risk was with local regulated utility companies for the three months ended September 30, 2021 and 2020 and 59% and 64% for the nine months ended September 30, 2021 and 2020, respectively, all of which had investment grade ratings as of such date. We paid these local regulated utilities a weighted average discount of 0.8% and 1.4%, for the three months ended

September 30, 2021 and 2020, respectively, and 0.8% and 1.1% for the nine months ended September 30, 2021 and 2020, respectively, of total revenues for customer credit risk protection. In certain of the POR markets in which we operate, the utilities limit their collections exposure by retaining the ability to transfer a delinquent account back to us for collection when collections are past due for a specified period.

If our collection efforts are unsuccessful, we return the account to the local regulated utility for termination of service to the extent the ability to terminate service has not been limited as a result of COVID-19. Under these service programs, we are exposed to credit risk related to payment for services rendered during the time between when the customer is transferred to us by the local regulated utility and the time we return the customer to the utility for termination of service, which is generally one to two billing periods. We may also realize a loss on fixed-price customers in this scenario as we will have already fully hedged the customer's expected commodity usage for the life of the contract.

In non-POR markets (and in POR markets where we may choose to direct bill our customers), we manage customer credit risk through formal credit review in the case of commercial customers, and credit score screening, deposits and disconnection for non-payment, in the case of residential customers. Economic conditions (including impacts from COVID-19) may affect our customers' ability to pay bills in a timely manner, which could increase customer delinquencies and may lead to an increase in bad debt expense. Our bad debt expense for the three months ended September 30, 2021 and 2020 was approximately 0.8% and 0.9% of non-POR market retail revenues, respectively, and our bad debt expense for the nine months ended September 30, 2021 and 2020 was approximately 0.04% and 2.0% of non-POR market retail revenues, respectively. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Drivers of Our Business—Customer Credit Risk" for an analysis of our bad debt expense related to non-POR markets during the nine months ended September 30, 2021.

The current COVID-19 pandemic has caused regulatory agencies and other governmental authorities to take, and potentially continue to take, emergency or other actions in light of the pandemic that may impact our customer credit risk, including prohibiting the termination of service for non-payment during the current COVID-19 pandemic, requiring deferred payment plans for certain customers unable to pay their bill, and utilities increasing POR fees they charge us in an effort to recoup their bad debts losses. Please see "Item 1A—Risk Factors" in our 2020 Form 10-K.

We are exposed to wholesale counterparty credit risk in our retail and asset optimization activities. We manage this risk at a counterparty level and secure our exposure with collateral or guarantees when needed. At September 30, 2021, approximately $5.8 million of our total exposure of $34.5 million was either with a non-investment grade counterparty or otherwise not secured with collateral or a guarantee. The credit worthiness of the remaining exposure with other customers was evaluated with no material allowance recorded at September 30, 2021.

Interest Rate Risk

We are exposed to fluctuations in interest rates under our variable-price debt obligations. At September 30, 2021, we were co-borrowers under the Senior Credit Facility, under which $130.0 million of variable rate indebtedness was outstanding. Based on the average amount of our variable rate indebtedness outstanding during the three months ended September 30, 2021, a 1% increase in interest rates would have resulted in additional annual interest expense of approximately $1.3 million.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives, and management necessarily applies its judgment in evaluating the cost benefit relationship of possible controls and procedures. Based on this evaluation, management concluded that our disclosure controls and procedures were effective as of September 30, 2021 at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the three months ended September 30, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

See Note 12 "Commitments and Contingencies" to Part I, Item 1 of this Report, which is incorporated by reference into this Part II, Item 1, for a description of certain ligation, legal proceedings, and regulatory matters.

Item 1A. Risk Factors.

Security holders and potential investors in our securities should carefully consider the risk factors under "Item 1A— Risk Factors" in our 2020 Form 10-K. There has been no material change in our risk factors from those described in the 2020 Form 10-K. Our description of risks are not the sole risks for investors. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or results of operations.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

There were no unregistered sales of equity securities during the three months ended September 30, 2021.

Item 5. Other Information.

Vendor Cybersecurity Incident

On November 1, 2021, we were informed by one of our vendors that we use for third party verification services that it was the target of a ransomware attack. We use third party verification services to review and confirm a customer's non-financial information for accuracy at the time of enrollment. Upon learning of this event, we immediately worked with the vendor to confirm the nature and scope of the attack and the data at issue, including how it relates to our customers and operations. We are continuing to work with the third party vendor to gather facts and information about the incident. At this time and based on our investigation to date, (i) there has been no unauthorized access or data breach on our servers or information technology systems, and (ii) we have been informed by the vendor that its data has been encrypted by the third-party, but not removed. Therefore, we do not presently believe we will incur a material loss or impact to our operations associated with this cybersecurity incident. However, due to the evolving, ongoing and sensitive nature of this incident, we cannot provide any assurances to the ultimate outcome, and the incident may ultimately lead to litigation, fines, other remedial action, heightened regulatory scrutiny and regulatory proceedings, diminished customer confidence and damage to our reputation.

Management Changes

On November 2, 2021, the Company was notified by James G. Jones II of his intent to retire as Chief Financial Officer, effective as of November 4, 2021.

In connection with Mr. Jones retirement, the Company and Mr. Jones entered into a Transition and Resignation Agreement and Mutual Release of Claims (the "Transition Agreement"). Subject to the terms and conditions of the Transition Agreement, Mr. Jones will receive separation payments in the amount of $300,000.00, less ordinary withholding for federal income, Social Security, and Medicare taxes (the "Separation Payment"). The Separation Payment will be paid in twenty-six substantially equal bi-weekly installments, less applicable withholdings, in accordance with the Company's normal payroll practices. The Transition Agreement also provides for the accelerated vesting 107,971 restricted stock units ("RSUs") granted to Mr. Jones under the Company's Amended and Restated Long-Term Incentive Plan, subject to the terms and conditions of the Transition Agreement and withholding of 42,487 shares of common stock to satisfy tax obligations.

The Transition Agreement also provides for a release by Mr. Jones of any claims against the Company, its affiliates and its agents, and affirmation of existing confidentiality, non-competition, non-solicitation and non-disparagement obligations, and other restrictive covenants, as set forth in Mr. Jones's employment agreement with the Company.

Within twenty-one days following the date of the Transition Agreement, and no later than November 25, 2021, Mr. Jones is required to execute a confirming release of claims (the "Confirming Release"). The Confirming Release may be revoked by Mr. Jones during the seven-day period beginning on the date Mr. Jones executes the Confirming Release.

The foregoing description of the Transition Agreement does not purport to be complete and is qualified in its entirety to the full text of the Transition Agreement, which is filed herewith as Exhibit 10.4 and is incorporated herein by reference.

On November 2, 2021, but effective November 4, 2021, the Company appointed Mike Barajas as Chief Financial Officer. Mr. Barajas, age 38, presently serves as our Vice President of Finance and Investor Relations. Prior to joining Via Renewables, Mr. Barajas served as director of accounting and reporting for NuDevco from April 2017 to September 2019, and as assistant controller from July 2015 to April 2017. Mr. Barajas holds a Master of Science in Accounting and a Bachelor of Business Administration in Accounting from the University of Houston. There are no understandings or arrangements between Mr. Barajas and any other person pursuant to which Mr. Barajas was selected to serve as Chief Financial Officer. There are no existing relationships between Mr. Barajas and any person that would require disclosure pursuant to Item 404(a) of Regulation S-K or any familial relationships that would require disclosure under Item 401(d) of Regulation S-K.

In connection with his appointment, the Company entered into an employment agreement, effective as of November 4, 2021 (the "Employment Agreement"), with Mr. Barajas. Pursuant to the Employment Agreement, Mr. Barajas will serve as Chief Financial Officer, and will receive an annual base salary of $250,000, as adjusted from time to time by the Company. The Employment Agreement provides for an initial term ending on December 31, 2022, and provides for subsequent one-year renewals unless either party gives at least 30 days prior notice to the end of the then existing term.

The Employment Agreement provides that, in the event Mr. Barajas is terminated by the Company other than for "Cause" or Mr. Barajas's employment terminates due to either the Company's election not to renew the term of the Employment Agreement or Mr. Barajas's resignation for "Good Reason," Mr. Barajas will, subject to execution of a release of claims, be entitled to receive the following payments and benefits:

- twelve months' base salary plus an additional amount equal to Mr. Barajas's target annual bonus for the year of termination pro-rated based upon the number of days Mr. Barajas was employed in the calendar year of termination and based upon the Company's relative performance through such date of termination, payable in twelve substantially equal installments (the "Severance Payment");
- any bonus earned for the calendar year prior to the year the termination occurs that is unpaid as of the date of termination (the "Post-Termination Bonus Payment"); and
- full vesting of any outstanding unvested awards held by Mr. Barajas under the Company's Long Term Incentive Plan.

"Cause" under the Employment Agreement is generally defined to include: (a) a material uncured breach by Mr. Barajas of the Employment Agreement or any other material obligation owed to the Company, (b) commission of an act of gross negligence, willful misconduct, breach of fiduciary duty, fraud, theft or embezzlement, which has or can reasonably be expected to have an adverse effect on the Company, (c) any conviction, indictment or plea of nolo contendere with respect to any felony or any crime involving moral turpitude, (d) uncured willful failure or refusal to perform obligations pursuant to the Employment Agreement or uncured willful failure or refusal to follow the lawful instructions of the Company's Board of Directors, and (e) any conduct which is materially injurious to the Company.

"Good Reason" under the Employment Agreement is generally defined to include (a) a material diminution in base salary, (b) a material diminution in title, duties, authority or responsibilities, (c) relocation of corporate offices by more than fifty miles, or (d) material and uncured breach of the Employment Agreement by the Company.

A non-renewal of the term of the Employment Agreement by Mr. Barajas, a termination by reason of Mr. Barajas's death or disability, a termination by the Company for "Cause," a termination of employment by Mr. Barajas without

“Good Reason,” or a separation in connection with a “Change in Control” described below, does not give rise to a right to the Severance Payment or Post-Termination Bonus Payment.

If within 120 days prior to execution of a definitive agreement for a “Change in Control” transaction and 365 days after consummation or final closing of such transaction, Mr. Barajas’s employment is terminated by the Company other than for “Cause” or Mr. Barajas’s employment terminates due to either the Company’s election not to renew the term of the Employment Agreement or Mr. Barajas’s resignation for “Good Reason,” subject to execution of a release of claims and other conditions, Mr. Barajas is entitled to receive the following payments and benefits:

- a lump sum payment equal to 1.0 times Mr. Barajas’s base salary then in effect, and the full target annual bonus for the year the termination occurs, and payable within 15 days following the date the employment is terminated;
- any bonus earned for the calendar year prior to the year the termination occurs that is unpaid as of the date of termination, payable within 15 days following the date the employment is terminated;
- a pro rata target annual bonus for the year of termination, calculated based upon relative achievement through such date and payable within 15 days following the date in which employment is terminated;
- full vesting of any outstanding awards held by Mr. Barajas under the Company’s Long Term Incentive Plan; and
- reimbursement or payment of certain continuing health benefits, if elected by Mr. Barajas.

The Employment Agreement generally defines “Change in Control” to mean:

- the consummation of an agreement to acquire or a tender offer for beneficial ownership by any person, of 50% or more of the combined voting power of the Company’s outstanding voting securities entitled to vote generally in the election of directors, or by any person of 90% or more of the then total outstanding shares of Class A common stock;
- individuals who constitute the incumbent board cease for any reason to constitute at least a majority of the Board;
- consummation of certain reorganizations, mergers or consolidations or a sale or other disposition of all or substantially all of the Company’s assets;
- approval by the Company’s shareholders of a complete liquidation or dissolution;
- a public offering or series of public offerings by Retailco and its affiliates, as a selling shareholder group, in which their total interest drops below 10 million of the Company’s total outstanding voting securities;
- a disposition by Retailco and its affiliates in which their total interest drops below 10 million of the Company’s total outstanding voting securities; or
- any other business combination, liquidation event of Retailco and its affiliates or restructuring of the Company that the Compensation Committee deems in its discretion to achieve the principles of a Change in Control.

The Employment Agreement also provides for noncompetition and nonsolicitation covenants that are in effect during the period of Mr. Barajas’s employment and for a period of 12 months thereafter, and customary provisions regarding the return of property.

In connection with his appointment and pursuant to the Employment Agreement, the Board approved a grant of 10,000 RSUs with dividend equivalent rights to Mr. Barajas. The RSUs vest as follows: (1) 25% on May 18, 2022, (2) 25% on May 18, 2023, (3) 25% on May 18, 2024 and (4) 25% on May 18, 2025. The grant of RSUs will be made pursuant to the Company’s Form of Restricted Stock Unit Agreement and Form of Notice of Grant of Restricted Stock Unit.

The foregoing description of the Employment Agreement does not purport to be complete and is qualified in its entirety to the full text of the Employment Agreement, which is filed herewith as Exhibit 10.5 and is incorporated herein by reference.

Item 6. Exhibits

The exhibits required to be filed by Item 6 are set forth in the Exhibit Index included below.

INDEX TO EXHIBITS

		Incorporated by Reference			
Exhibit	Exhibit Description	Form	Exhibit Number	Filing Date	SEC File No.
2.1#	Membership Interest Purchase Agreement, by and among Spark Energy, Inc., Spark HoldCo, LLC, Provider Power, LLC, Kevin B. Dean and Emile L. Clavet, dated as of May 3, 2016.	10-Q	2.1	5/5/2016	001-36559
2.2#	Membership Interest Purchase Agreement, by and among Spark Energy, Inc., Spark HoldCo, LLC, Retailco, LLC and National Gas & Electric, LLC, dated as of May 3, 2016.	10-Q	2.2	5/5/2016	001-36559
2.3#	Amendment No. 1 to the Membership Interest Purchase Agreement, dated as of July 26, 2016, by and among Spark Energy, Inc., Spark HoldCo, LLC, Provider Power, LLC, Kevin B. Dean and Emile L. Clavet.	8-K	2.1	8/1/2016	001-36559
2.4#	Membership Interest and Stock Purchase Agreement, by and among Spark Energy, Inc., CenStar Energy Corp. and Verde Energy USA Holdings, LLC, dated as of May 5, 2017.	10-Q	2.4	5/8/2017	001-36559
2.5	First Amendment to the Membership Interest and Stock Purchase Agreement, dated July 1, 2017, by and among Spark Energy, Inc., CenStar Energy Corp., and Verde Energy USA Holdings, LLC.	8-K	2.1	7/6/2017	001-36559
2.6#	Agreement to Terminate Earnout Payments, effective January 12, 2018, by and among Spark Energy, Inc., CenStar Energy Corp., Woden Holdings, LLC (fka Verde Energy USA Holdings, LLC), Verde Energy USA, Inc., Thomas FitzGerald, and Anthony Menchaca.	8-K	2.1	1/16/2018	001-36559
2.7#	Asset Purchase Agreement, dated March 7, 2018, by and between Spark HoldCo, LLC and National Gas & Electric, LLC.	10-K	2.7	3/9/2018	001-36559
2.8#	Asset Purchase Agreement, by and between Spark HoldCo, LLC, Starion Energy Inc., Starion Energy NY Inc., and Starion Energy PA Inc., dated October 19, 2018.	8-K	2.1	10/25/2018	001-36559
2.9	First Amendment to Asset Purchase Agreement, by and between Spark HoldCo, LLC, Starion Energy Inc., Starion Energy NY Inc., and Starion Energy PA, Inc., effective May 1, 2020.	10-Q	2.9	8/5/2020	001-36559
3.1*	Amended and Restated Certificate of Incorporation of Via Renewables, Inc., as amended through August 6, 2021				
3.2	Second Amended and Restated Bylaws of Via Renewables, Inc	8-K	3.1	8/9/2021	001-36559
3.3	Certificate of Designations of Rights and Preferences of 8.75% Series A Fixed-to-Floating Rate Cumulative Redeemable Perpetual Preferred Stock	8-A	5	3/14/2017	001-36559
4.2	Class A Common Stock Certificate	S-1	4.1	6/30/2014	333-196375
10.1#	Amendment No. 5 to the Credit Agreement, dated as of October 15, 2021, by and among Via Renewables, Inc., the Co-Borrowers, the Issuing Banks party thereto, Coöperatieve Rabobank U.A., New York Branch, as agent, and the Banks Party thereto.	8-K	10.1	10/21/2021	001-36559
10.2	Amended and Restated Subordinated Promissory Note of Spark HoldCo, LLC and Via Renewables, Inc., dated October 13, 2021.	8-K	10.2	10/21/2021	001-36559
10.3*†	Amendment to Engagement Letter Agreement, dated August 1, 2021, by and between Good Counsel Legal Services, LLC and Spark Energy, LLC.				

10.4*†	Transition and Resignation Agreement and Mutual Release of Claims, dated November 4, 2021, by and between Via Renewables, Inc. and James Jones
10.5*†	Employment Agreement, dated November 4, 2021, by and between Via Renewables, Inc. and Miguel "Mike" Barajas
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934.
32**	Certifications pursuant to 18 U.S.C. Section 1350.
101.INS*	XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101.INS)

* Filed herewith
** Furnished herewith
# Certain schedules, exhibits and annexes have been omitted in reliance on Item 601 (a)(5) of Regulation S-K, the registrant agrees to furnish supplementally a copy of any omitted schedule, exhibit or annex to the Commission upon request
† Compensatory plan or arrangement

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Via Renewables, Inc.

November 4, 2021

/s/ James G. Jones II

James G. Jones II
Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)

Exhibit 3.1

COMPOSITE

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

VIA RENEWABLES, INC.

Via Renewables, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL"), hereby certifies as follows:

1. The original Certificate of Incorporation of the Corporation (the "Original Certificate of Incorporation") was filed with the Secretary of State of the State of Delaware on April 22, 2014.

2. This Amended and Restated Certificate of Incorporation (this "Amended and Restated Certificate of Incorporation"), which restates and amends the Original Certificate of Incorporation, has been declared advisable by the board of directors of the Corporation (the "Board"), duly adopted by the stockholders of the Corporation and duly executed and acknowledged by the officers of the Corporation in accordance with Sections 103, 228, 242 and 245 of the DGCL.

3. The Original Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

FIRST: The name of the Corporation is Via Renewables, Inc.

SECOND: The address of its registered office in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 in New Castle County, Delaware. The name of its registered agent at such address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL as it currently exists or may hereafter be amended.

FOURTH: The total number of shares of stock that the Corporation shall have the authority to issue is 200,000,000 shares of stock, classified as (i) 20,000,000 shares of preferred stock, par value $0.01 per share ("Preferred Stock"), (ii) 120,000,000 shares of Class A common stock, par value $0.01 per share ("Class A Common Stock"), and (iii) 60,000,000 shares of Class B common stock, par value $0.01 per share ("Class B Common Stock" and, together with the Class A Common Stock, the "Common Stock").

1. Provisions Relating to Preferred Stock.

(a) Preferred Stock may be issued from time to time in one or more classes or series, the shares of each series to have such designations and powers, preferences and rights, and qualifications, limitations and restrictions thereof, as are stated and expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board as hereafter prescribed (a "Preferred Stock Designation").

(b) Authority is hereby expressly granted to and vested in the Board to authorize the issuance of Preferred Stock from time to time in one or more classes or series, and with respect to each series of Preferred Stock, to fix and state by the resolution or resolutions from time to time adopted by the Board providing for the issuance thereof the designation and the powers, preferences, rights, qualifications, limitations and restrictions relating to each series of Preferred Stock, including, but not limited to, the following:

(i) whether or not the series is to have voting rights, full, special or limited, or is to be without voting rights, and whether or not such series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;

(ii) the number of shares to constitute the series and the designations thereof;

(iii) the preferences, and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to any series;

(iv) whether or not the shares of any series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;

(v) whether or not the shares of a series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the annual amount thereof, and the terms and provisions relative to the operation thereof;

(vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;

(vii) the preferences, if any, and the amounts thereof which the holders of any series thereof shall be entitled to receive upon the voluntary or involuntary liquidation, dissolution or winding up of, or upon any distribution of the assets of, the Corporation;

(viii) whether or not the shares of any series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable for, the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities or other property of the Corporation and the conversion price or prices or ratio or ratios or the rate or rates at which such exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

(ix) such other powers, preferences, rights, qualifications, limitations and restrictions with respect to any series as may to the Board seem advisable.

(c) The shares of each series of Preferred Stock may vary from the shares of any other series thereof in any or all of the foregoing respects.

2. Provisions Relating to Common Stock.

(a) Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, each share of Common Stock shall have identical rights and privileges in every respect. Common Stock shall be subject to the express terms of Preferred Stock and any series thereof. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, in a Preferred Stock Designation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, and the holders of Preferred Stock shall not be entitled to vote at or receive notice of any meeting of stockholders. Each holder of Common Stock shall be entitled to notice of any stockholders’ meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law on all matters put to a vote of the stockholders of the Corporation. Except as otherwise required in this Amended and Restated Certificate of Incorporation or by applicable law, the holders of Common Stock shall vote together as a

single class on all matters (or, if any holders of Preferred Stock are entitled to vote together with the holders of Common Stock, the holders of Common Stock and the Preferred Stock shall vote together as a single class).

(b) Notwithstanding the foregoing, except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(c) Subject to the prior rights and preferences, if any, applicable to shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive ratably in proportion to the number of shares of Class A Common Stock held by them such dividends and distributions (payable in cash, stock or otherwise), if any, as may be declared thereon by the Board at any time and from time to time out of any funds of the Corporation legally available therefor. Dividends and other distributions shall not be declared or paid on the Class B Common Stock unless (i) the dividend consists of shares of Class B Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class B Common Stock paid proportionally with respect to each outstanding share of Class B Common Stock and (ii) a dividend consisting of shares of Class A Common Stock or of rights, options, warrants or other securities convertible or exercisable into or exchangeable for shares of Class A Common Stock on equivalent terms is simultaneously paid to the holders of Class A Common Stock. If dividends are declared on the Class A Common Stock or the Class B Common Stock that are payable in shares of Common Stock, or securities convertible into, or exercisable or exchangeable for Common Stock, the dividends payable to the holders of Class A Common Stock shall be paid only in shares of Class A Common Stock (or securities convertible into, or exercisable or exchangeable for Class A Common Stock), the dividends payable to the holders of Class B Common Stock shall be paid only in shares of Class B Common Stock (or securities convertible into, or exercisable or exchangeable for Class B Common Stock), and such dividends shall be paid in the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively (or securities convertible into, or exercisable or exchangeable for the same number of shares (or fraction thereof) on a per share basis of the Class A Common Stock and Class B Common Stock, respectively). In no event shall the shares of either Class A Common Stock or Class B Common Stock be split, divided, or combined unless the outstanding shares of the other class shall be proportionately split, divided or combined.

(d) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock or any series thereof, the holders of shares of Class A Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Class A Common Stock held by them. The holders of shares of Class B Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation. A dissolution, liquidation or winding-up of the Corporation, as such terms are used in this paragraph (d), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange or conveyance of all or a part of the assets of the Corporation

(e) Shares of Class B Common Stock shall be exchangeable for shares of Class A Common Stock on the terms and subject to the conditions set forth in the Second Amended and Restated Limited Liability Agreement of Spark HoldCo, LLC dated as of August 1, 2014, (the "LLC Agreement"). The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of issuance upon exchange of the outstanding shares of Class B Common Stock for Class A Common Stock pursuant to the LLC Agreement, such number of shares of Class A Common Stock that shall be issuable upon any such exchange pursuant to the LLC Agreement; provided that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of any such exchange of shares of Class B Common Stock pursuant to the LLC Agreement by delivering to the holder of shares of Class B Common Stock upon such exchange, cash in lieu of shares of Class A Common Stock in the amount permitted by and provided in the LLC Agreement or shares of Class A Common Stock which are held in the treasury of the Corporation. All shares of

Class A Common Stock that shall be issued upon any such exchange will, upon issuance in accordance with the LLC Agreement, be validly issued, fully paid and non-assessable. All shares of Class B Common Stock exchanged shall be cancelled.

(f) The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of either Common Stock or Preferred Stock voting separately as a class shall be required therefor.

(g) No stockholder shall, by reason of the holding of shares of any class or series of capital stock of the Corporation, have any preemptive or preferential right to acquire or subscribe for any shares or securities of any class, whether now or hereafter authorized, which may at any time be issued, sold or offered for sale by the Corporation, unless specifically provided for in the terms of a series of Preferred Stock.

FIFTH: The business and affairs of the Corporation shall be managed by or under the direction of the Board. The directors, other than those who may be elected by the holders of any series of Preferred Stock specified in the related Preferred Stock Designation, shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the initial term of office of the first class to expire at the 2015 annual meeting (the "Class I Directors"), the initial term of office of the second class to expire at the 2016 annual meeting (the "Class II Directors"), and the initial term of office of the third class to expire at the 2017 annual meeting (the "Class III Directors"), with each director to hold office until his successor shall have been duly elected and qualified. At each annual meeting of stockholders, directors elected to succeed those directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election, with each director to hold office until his successor shall have been duly elected and qualified. The Board is authorized to assign members of the Board already in office to Class I, Class II or Class III at the time such classification becomes effective. Subject to applicable law and the rights of the holders of any series of Preferred Stock, any newly created directorship that results from an increase in the number of directors or any vacancy on the Board that results from the death, disability, resignation, disqualification or removal of any director or from any other cause shall be filled solely by the affirmative vote of a majority of the total number of directors then in office, even if less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall hold office for the remaining term of his predecessor. No decrease in the number of authorized directors constituting the Board shall shorten the term of any incumbent director.

Subject to the rights of the holders of shares of any series of Preferred Stock, if any, to elect additional directors pursuant to this Amended and Restated Certificate of Incorporation (including any Preferred Stock Designation thereunder), any director may be removed, with or without cause, upon the affirmative vote of the holders of at least 66 2⁄3% of the outstanding shares of stock of the Corporation entitled to vote generally for the election of directors, acting at a meeting of the stockholders or by written consent (if permitted) in accordance with the DGCL, this Amended and Restated Certificate of Incorporation and the bylaws of the Corporation.

Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, if any, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the Board. Unless and except to the extent that the bylaws of the Corporation so provide, the election of directors need not be by written ballot. There shall be no cumulative voting in the election of directors.

SIXTH: Prior to the first date (the "Trigger Date") upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifty percent (50%) of the outstanding Common Stock of the Corporation, and subject to the rights of holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken at any annual meeting or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote of stockholders, if a consent or consents in writing, setting forth the action so taken, is or are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. On and after the Trigger Date, any action required or permitted to be

taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of stockholders and may not be taken by any consent in writing of such stockholders.

SEVENTH: Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of stockholders of the Corporation may be called only by the Chief Executive Officer, the Chairman of the Board or the Board pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies; *provided, however*, that prior to the Trigger Date, special meetings of the stockholders of the Corporation may also be called by the Secretary of the Corporation at the request of the holders of record of more than 50% of the outstanding shares of Common Stock. On and after the Trigger Date, and subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation do not have the power to call a special meeting of stockholders of the Corporation.

EIGHTH: In furtherance of, and not in limitation of, the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend or repeal the bylaws of the Corporation without any action on the part of the stockholders of the Corporation; *provided* that any bylaw adopted or amended by the Board, and any powers thereby conferred, may be amended, altered or repealed by the stockholders of the Corporation by the vote of holders of not less than 66 ⅔% in voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class. No bylaws hereafter made or adopted, nor any repeal of or amendment thereto, shall invalidate any prior act of the Board that was valid at the time it was taken.

NINTH: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as it now exists. In addition to the circumstances in which a director of the Corporation is not personally liable as set forth in the preceding sentence, a director of the Corporation shall not be liable to the fullest extent permitted by any amendment to the DGCL hereafter enacted that further limits the liability of a director.

Any amendment, repeal or modification of this Article Ninth shall be prospective only and shall not affect any limitation on liability of a director for acts or omissions occurring prior to the date of such amendment, repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, any business opportunities that are from time to time presented to NuDevco Partners, LLC, NuDevco Partners Holdings, LLC and W. Keith Maxwell III (collectively, the "Sponsors") or any of their respective affiliates or any of their respective agents, shareholders, members, partners, directors, officers, employees, affiliates or subsidiaries (other than the Corporation and its subsidiaries), including any director or officer of the Corporation who is also an agent, shareholder, member, partner, director, officer, employee, affiliate or subsidiary of any Sponsor (each, a "Business Opportunities Exempt Party"), even if the business opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and no Business Opportunities Exempt Party shall have any duty to communicate or offer any such business opportunity to the Corporation or be liable to the Corporation or any of its subsidiaries or any stockholder, including for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, and the Corporation shall indemnify each Business Opportunities Exempt Party against any claim that such person is liable to the Corporation or its stockholders for breach of any fiduciary duty, by reason of the fact that such person (i) participates in, pursues or acquires any such business opportunity, (ii) directs any such business opportunity to another person or (iii) fails to present any such business opportunity, or information regarding any such business opportunity, to the Corporation or its subsidiaries, unless, in the case of a person who is a director or officer of the Corporation, such business opportunity is expressly offered to such director or officer in writing solely in his capacity as a director or officer of the Corporation.

Neither the amendment nor repeal of this Article Tenth, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation, nor, to the fullest extent permitted by Delaware law, any modification of law, shall eliminate, reduce or otherwise adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that

occurred prior to, the time of such amendment, repeal, adoption or modification (regardless of when any proceeding (or part thereof) relating to such event, act or omission arises or is first threatened, commenced or completed).

If any provision or provisions of this Article Tenth shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Tenth (including, without limitation, each portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article Tenth (including, without limitation, each such portion of any paragraph of this Article Tenth containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by applicable law.

This Article Tenth shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the bylaws of the Corporation or applicable law. Any person or entity purchasing or otherwise acquiring any interest in any securities of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article Tenth.

ELEVENTH: Prior to the first date (the "Section 203 Trigger Date") upon which W. Keith Maxwell III no longer beneficially owns in the aggregate more than fifteen percent (15%) of the outstanding Common Stock of the Corporation, the provisions of Section 203 of the DGCL shall not be applicable to the Corporation. On and after the Section 203 Trigger Date, the provisions of Section 203 of the DGCL shall be applicable to the Corporation.

TWELFTH: The Corporation shall have the right, subject to any express provisions or restrictions contained in this Amended and Restated Certificate of Incorporation or bylaws of the Corporation, from time to time, to amend this Amended and Restated Certificate of Incorporation or any provision hereof in any manner now or hereafter provided by applicable law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by this Amended and Restated Certificate of Incorporation or any amendment hereof are subject to such right of the Corporation.

THIRTEENTH: Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation (and in addition to any other vote that may be required by applicable law, this Amended and Restated Certificate of Incorporation or the bylaws of the Corporation), the affirmative vote of the holders of at least 66 2/3% in voting power of the outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required to amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation.

FOURTEENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Corporation's bylaws, or (iv) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Fourteenth.

August 1, 2021

Mr. Jim Jones
Chief Financial Officer
Spark Energy, LLC
12140 Wickchester Lane, Suite 100
Houston, Texas 77079

Re: Amendment to Good Counsel Consulting Agreement

Dear Mr. Jones:

This Amendment is in reference to the Legal Engagement between Good Counsel Legal Services, LLC and Spark Energy, LLC dated August 27, 2020 ("Agreement") and serves, for good and valuable consideration, to amend the following in the Agreement:

1. The entity "Good Counsel Legal Services, LLC" is replaced with "Good Counsel Group LLC".
2. Barbara Clay represents that this change is strictly a tax efficiency change. Both entities are solely and 100% owned by Barbara Clay, Esq. and there will be no change in services.
3. Except as specifically amended by this Amendment, all other provisions of the Agreement remain in full force and effect.

By the signatures below, the parties accept this Amendment.

SPARK ENERGY LLC

/s/ Jim Jones____________________
By: Jim Jones
Title: Chief Financial Officer

GOOD COUNSEL LEGAL SERVICES, LLC

/s/ Barbara Clay__________________
By: Barbara Clay, Esq.
Title: Managing Member

GOOD COUNSEL GROUP LLC

/s/ Barbara Clay__________________
By: Barbara Clay, Esq.
Title: Managing Member

TRANSITION AND RESIGNATION AGREEMENT
AND MUTUAL RELEASE OF CLAIMS

This Transition and Resignation Agreement and Mutual Release of Claims (this "***Agreement***") is entered into by and between James Jones ("***Employee***") and Spark Energy, Inc. now known as VIA Renewables, Inc. (traded under NASDAQ: VIA) (the "***Company***").

WHEREAS, Employee and the Company are parties to that certain Amended and Restated Employment Agreement dated June 14, 2019 (the "***Employment Agreement***");

WHEREAS, Employee is currently employed by the Company and wishes to resign from such employment;

WHEREAS, the Company seeks to retain Employee for a period of time, as set forth below, for the purpose of transitioning his duties prior to his separation from employment;

WHEREAS, Employee's employment with the Company will end as of the Separation Date (as defined below);

WHEREAS, the parties agree that Employee shall receive severance pay and additional consideration as set forth in this Agreement, which pay and consideration is conditioned upon Employee's timely execution (and non-revocation) of this Agreement and Employee's compliance with the terms of this Agreement; and

WHEREAS, the parties wish to resolve any and all claims that Employee has or may have against the Company or any of the other Company Parties (as defined below), including any claims that Employee may have arising out of Employee's employment or the end of such employment, as well as claims the Company may have against Employee as set forth herein.

NOW, THEREFORE, in consideration of the promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **Transition Services; Separation from Employment**. Employee promises that, between the date he signs this Agreement and his final day of employment with the Company, he will assist the Company in transitioning the duties of the Chief Financial Officer position, and otherwise provide those services that the Company may reasonably request of him from time to time. Employee's employment with the Company will end at 11:59 p.m. on November 4, 2021 (the "***Separation Date***"), and the parties acknowledge and agree that Employee's separation shall be pursuant to his voluntary resignation. The parties further agree that the provisions set forth herein shall in all respects supersede the provisions of the Employment Agreement pertaining to the separation or termination of Employee's employment (including such provisions with respect to any severance pay). Following the Separation Date, Employee will not have any further employment relationship with the Company or any other Company Party (as defined below), and Employee will no longer serve as an officer of the Company or any other Company Party.

Separation Payment. Provided that Employee (i) executes this Agreement and returns it to the Company, care of Maureen Zuniga at 12140 Wickchester Lane, Suite 100, Houston, TX 77079

(e-mail: mzuniga@sparkenergy.com) so that it is received by Ms. Zuniga no later than November 3, 2021; (ii) provides the assistance and services described in Section 1 above; (iii) timely executes and returns the Confirming Release (as defined below) to the Company as set forth in Section 7 below (and does not exercise his revocation right as described in the Confirming Release); and (iv) abides by each of Employee's commitments set forth herein, then the Company will provide Employee with a total severance payment equal to $300,000.00, less ordinary withholdings for federal income, Social Security, and Medicare taxes (the "***Separation Payment***"). The Separation Payment will be paid in twenty-six substantially equal bi-weekly installments of $11,538.46, less applicable withholdings. Company shall pay Employee $13,000.00 in a lump sum payment due on the first regularly scheduled bi-weekly pay date of the Company that falls on or after the tenth (10th) business day following the date on or after November 4, 2021, that Employee returns to Company an executed copy of the Confirming Release. Company shall not pay Employee's 2021 bonus. The Company represents that neither the Company nor any Company Party has any right of set-off in connection with the Separation Payment or the Accelerated Shares except as expressly provided in this Agreement. The first installment payment of the Separation Payment shall be due on the first regularly scheduled bi-weekly pay date of the Company that falls on or after the tenth (10th) business day following the date on or after November 4, 2021, that Employee returns to Company an executed copy of the Confirming Release. Each of the remaining installments shall be paid on the Company's regular bi-weekly payroll dates thereafter. Company agrees to continue to pay health insurance for a period of 12 months or until Employee has a life event and acquires the ability to secure health insurance from a new employer.

2. **Acceleration of Vesting**. Provided that Employee satisfies (through the date he returns the Confirming Release) the requirements to receive the Separation Payment as set forth in Section 2 above (and so long as Employee does not exercise his revocation right with respect to the Confirming Release), then as of the Separation Date, the Company shall accelerate the vesting of all outstanding unvested long-term incentive awards (excluding those awards granted pursuant to a Notice of Grant of Change in Control Restricted Stock Unit) granted to Employee pursuant to the Company's Amended and Restated Long Term Incentive Plan (the "***LTIP***") such that a total of 107,971 Restricted Stock Units (as defined in the LTIP) that were unvested as of the date immediately before the Separation Date shall become vested as of the Separation Date (such Restricted Stock Units subject to this accelerated vesting are referred to herein as the "***Accelerated Shares***"); *provided, however* 42,487 (39.35%) of the Accelerated Shares will be withheld by the Company as withholding towards Employee's federal income tax obligations. The Company agrees that it will timely remit to the U.S. Treasury on Employee's behalf such income tax withholding in an amount equal to the value of 42,487 shares of the Company's publicly-traded stock as of the Separation Date. The Company expressly promises and agrees that, no later than the first (1st) business day following the date that the Confirming Release has been executed by Employee and returned to the Company pursuant to Section 7 below and become no longer revocable, it shall initiate the process to cause the remaining 65,484 Accelerated Shares to be fully settled and freely tradeable by Employee in his personal trading account as currently designated to the Company as his repository for all vested LTIP grants. Employee expressly agrees and promises that, following the Separation Date, he shall not sell more than 10,000 of the Accelerated Shares in any one day.

3. **<u>Satisfaction of All Leaves and Payment Amounts; Prior Rights and Obligations</u>.** In consideration of the promises made in this Agreement, Employee expressly acknowledges and agrees that, following the date he signs this Agreement, Employee shall be entitled to receive only Employee's base salary and benefits for services performed through the Separation Date and the other consideration set forth in this Agreement. Employee further acknowledges that he has received all leaves (paid and unpaid) to which he has been entitled through the date he signs this Agreement. Notwithstanding the foregoing, Employee remains entitled to receive Employee's base salary and benefits for services performed between the date that Employee signs this Agreement and the Separation Date, as well as reimbursement for any expenses properly incurred prior to the date of this Agreement (which reimbursement shall be paid within thirty (30) days after the Separation Date).

4. **<u>General Release of Claims</u>**.

(a) In exchange for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by Employee, Employee hereby releases, discharges and forever acquits the Company, NuDevco, their respective parents, subsidiaries and affiliates, and each of the foregoing entities' respective shareholders, members, partners, officers, managers, directors, fiduciaries, employees, representatives, agents and benefit plans (and fiduciaries of such plans), in their personal and representative capacities (collectively, the "***Company Parties***" or any one, individually, a "***Company Party***"), from liability for, and Employee hereby waives, any and all claims, damages, demands, or causes of action of any kind that Employee has or could have, whether known or unknown, against any Company Party, including any and all claims, damages, demands, or causes of action relating to his employment, engagement or affiliation with any Company Party, the termination of such employment, engagement or affiliation, Employee's status as a shareholder of a Company Party, or any other acts or omissions related to any matter occurring or existing on or prior to the date that Employee executes this Agreement, including, (i) any alleged violation through such date of: (A) Title VII of the Civil Rights Act of 1964; (B) the Civil Rights Act of 1991; (C) Sections 1981 through 1988 of Title 42 of the United States Code; (D) the Americans with Disabilities Act of 1990; (E) the Employee Retirement Income Security Act of 1974 ("***ERISA***"); (F) the Immigration Reform Control Act; (G) the Americans with Disabilities Act of 1990; (H) the Occupational Safety and Health Act; (I) the Sarbanes-Oxley Act of 2002; (J) the Dodd-Frank Wall Street Reform and Consumer Protection Act; (K) any federal, state, municipal or local anti-discrimination or anti-retaliation law, including the Texas Labor Code (including the Texas Payday Law, the Texas Anti-Retaliation Act, Chapter 21 of the Texas Labor Code, and the Texas Whistleblower Act); (L) any federal, state, municipal or local wage and hour law; (M) any other local, municipal, state, or federal law, regulation or ordinance; and (N) any public policy, contract, tort, or common law claim, including claims for breach of fiduciary duty, fraud, breach of implied or express contract, breach of implied covenant of good faith and fair dealing, wrongful discharge or termination, promissory estoppel, infliction of emotional distress, or tortious interference; (ii) any allegation for costs, fees, or other expenses including attorneys' fees incurred in, or with respect to, a Released Claim; (iii) any and all rights, benefits or claims Employee may have under any employment contract (including the Employment Agreement), incentive compensation plan (including the LTIP and any award agreement thereunder), equity-based plan, or other agreement with any Company Party; (iv) any claim, whether direct or derivative, arising from, or relating to, Employee's status as a member or holder of any interests in the Company, the Parent, or any of their subsidiaries; and (v) any claim

for compensation, benefits, or damages of any kind not expressly set forth in this Agreement (collectively, the "***Released Claims***"). THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF ANY OF THE COMPANY PARTIES.

(b) The Released Claims do not include any claims arising out of this Agreement, to the Separation Payment, for reimbursement of properly incurred expenses that are outstanding as of the date Employee signs this Agreement or are properly incurred after the date Employee signs this Agreement, or any rights or claims that first arise after Employee's execution of this Agreement. Further, in no event shall the Released Claims include any right of Employee to indemnification under the Employment Agreement, the Company's by-laws and amended and restated certificate of incorporation, or the Indemnification Agreement between Employee and the Company dated August 1, 2014 (the "***Indemnification Agreement***"). The Company expressly reaffirms its obligation to indemnify Employee following the Separation Date to the extent required by these instruments.

(c) In no event shall the Released Claims include any claim to vested benefits under an employee benefit plan of the Company that is subject to ERISA (including any rights to vested benefits under health and retirement plans). Further notwithstanding this release of liability, *nothing in this Agreement prevents Employee from filing any non-legally waivable claim (including a challenge to the validity of this Agreement) with the Equal Employment Opportunity Commission, National Labor Relations Board, Occupational Safety and Health Administration, Securities and Exchange Commission, or other federal, state or local governmental agency or commission (collectively "**Governmental Agencies**") or participating in any investigation or proceeding conducted by any Governmental Agencies or communicating or cooperating with such an agency; however, Employee understands and agrees that, to the extent permitted by law, Employee is waiving any and all rights to recover any monetary or personal relief from any Company Party as a result of such Governmental Agency proceeding or subsequent legal actions*. Nothing herein waives Employee's right to receive an award for information provided to a Governmental Agency.

(d) Employee hereby represents and warrants that, as of the time Employee executes this Agreement, Employee has not brought or joined any lawsuit or filed any charge or claim against any of the Company Parties in any court or before any government agency or arbitrator for or with respect to a matter, claim or incident that occurred or arose out of one or more occurrences that took place on or prior to the time at which Employee signs this Agreement. Employee hereby further represents and warrants that Employee has not: (i) assigned, sold, delivered, transferred or conveyed any rights Employee has asserted or may have against any of the Company Parties to any person or entity, in each case, with respect to any Released Claims; or (ii) assisted or advised any employee, officer or agent of any Company Party with respect to his or her pursuit or evaluation of any claim or cause of action against a Company Party.

(e) Employee represents that he has not engaged in any breach of fiduciary duty, breach of any duty of loyalty or disclosure, breach of contract, fraudulent activity, tortious activity, or illegal activity, in each instance: (i) towards or with respect to the Company or its subsidiaries; or (ii) with respect to any action or omission undertaken (or that was failed to be

undertaken) in the course of his employment or engagement with the Company or its subsidiaries. In express reliance on Employee's representations set forth herein, including those in the previous sentence, the Company, for itself and its subsidiaries, hereby releases, discharges and forever acquits Employee (including all immediate family members) from liability for, and waives, any and all claims, damages, demands, or causes of action of any kind that the Company or any of its subsidiaries has or could have, whether known or unknown, against Employee, including any and all claims, damages, demand, or causes of action relating to Employee's employment, engagement or affiliation with any Company Party, the termination of his employment, engagement or affiliation, his status as a shareholder of a Company Party, or any other acts or omissions related to any matter occurring or existing on or prior to Employee's execution of this Agreement. For the avoidance of doubt, the claims released in the previous sentence do not include any claims arising out of this Agreement or any rights or claims that first arise after Employee's execution of this Agreement.

5. Acknowledgements.

(a) By executing and delivering this Agreement, Employee expressly acknowledges that:

(1) Employee has carefully read this Agreement;

(2) Employee is not otherwise entitled to the consideration set forth in this Agreement, but for his entry into this Agreement;

(3) Employee has had sufficient time to consider this Agreement before the execution and delivery to Company;

(4) Employee has been advised, and hereby is advised in writing, to discuss this Agreement with an attorney of Employee's choice and Employee has had adequate opportunity to do so prior to executing this Agreement;

(5) Employee fully understands the final and binding effect of this Agreement; the only promises made to Employee to sign this Agreement are those stated within the four corners of this document; and Employee is signing this Agreement knowingly, voluntarily and of Employee's own free will, and that Employee understands and agrees to each of the terms of this Agreement; and

(6) No Company Party has provided any tax or legal advice regarding this Agreement and Employee has had an adequate opportunity to receive sufficient tax and legal advice from advisors of Employee's own choosing such that Employee enters into this Agreement with full understanding of the tax and legal implications thereof.

6. Confirming Release. Within twenty-one (21) days following the Separation Date, and no later than November 25, 2021, Employee shall execute the Confirming Release Agreement that is attached as Exhibit A (the "***Confirming Release***") and return the executed

Confirming Release to the Company such that it is received by Maureen Zuniga at 12140 Wickchester Lane, Suite 100, Houston, TX 77079 (e-mail: mzuniga@sparkenergy.com).

7. Affirmation of Restrictive Covenants; Continued Cooperation.

(a) Employee acknowledges that he has made certain commitments with respect to confidentiality and non-disclosure of Confidential Information (as defined in the Employment Agreement), non-competition, non-solicitation and non-disparagement, as set forth in Sections 3 and 4 of the Employment Agreement. Employee recognizes the continuing effectiveness and enforceability of such provisions of the Employment Agreement and reaffirms his promise to abide by such provisions following the Separation Date.

(b) The parties acknowledge and agree that Section 4 of the Employment Agreement shall not be interpreted or applied in a manner to prevent or restrict Employee from practicing finance; provided, however, Employee acknowledges and agrees that Employee shall continue to be bound by all ethical and professional obligations (including those with respect to conflicts and confidentiality) that arise from Employee's provision of financial services to, and as Chief Financial Officer for, the Company.

(c) Notwithstanding the foregoing, nothing in this Agreement (including in Sections 9 and 10 below) shall prohibit or restrict Employee from lawfully (A) initiating communications directly with, cooperating with, providing information to, causing information to be provided to, or otherwise assisting in an investigation by, any Governmental Agency regarding a possible violation of any law; (B) responding to any inquiry or legal process directed to Employee from any such Governmental Agency; (C) testifying, participating or otherwise assisting in any action or proceeding by any such Governmental Agency relating to a possible violation of law, or (D) making any other disclosures that are protected under the whistleblower provisions of any applicable law. Additionally, pursuant to the federal Defend Trade Secrets Act of 2016, an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (1) is made (a) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (b) solely for the purpose of reporting or investigating a suspected violation of law; or (2) is made to the individual's attorney in relation to a lawsuit for retaliation against the individual for reporting a suspected violation of law or (3) is made in a complaint or other document filed in a law suit or proceeding, if such filing is made under seal. Nothing in this Agreement requires Employee to obtain prior authorization before engaging in any conduct described in this paragraph, or to notify the Company that Employee has engaged in any such conduct.

(d) Employee agrees to provide reasonable cooperation and assistance to the Company and the other Company Parties that it may designate with respect to any action or proceeding (or any appeal from any action or proceeding) which relates to events occurring during Employee's employment or affiliation with the Company or any other Company Party. Such cooperation and assistance following the Separation Date shall be furnished at mutually agreeable times and Employee will be compensated by the Company at the rate of $250 per complete hour (pro-rated for partial hours) that he provides such cooperation and assistance following the Separation Date. Employee agrees that when providing such cooperation he shall

provide full and complete information to the best of his ability or recollection, and only truthful testimony.

8. Non-Disparagement; Resignation Announcement.

(a) As a material inducement for the Company to enter into this Agreement, Employee agrees to refrain from making any statements that are critical, disparaging, or derogatory about, or which injure the reputation of, the Company or any other Company Party. The Company agrees that (i) it will not make any statement that is critical, disparaging, or derogatory about, or that injure the reputation of, Employee, and (ii) it will instruct its officers, directors and human resources representatives to refrain from making any statements that are critical, disparaging, or derogatory about, or which injure the reputation of, Employee.

9. Entire Agreement. This Agreement (and Sections 3 and 4 of the Employment Agreement, the "Indemnity and D&O Insurance" section in Exhibit A to the Employment Agreement, and the Indemnification Agreement) constitutes the entire agreement between the parties with respect to the matters herein provided. No modifications or waiver of any provision hereof shall be effective unless in writing and signed by each party.

10. Governing Law; Jurisdiction. The validity, interpretation, construction, performance and enforcement of this Agreement shall be governed by the laws of the State of Texas, without giving effect to the principles of conflicts of law. With respect to any claim arising out of or relating to this Agreement or Employee's employment or the termination thereof, the parties hereby consent to the exclusive jurisdiction, forum and venue of the state and federal courts (as applicable) located in Houston, Texas.

11. Headings; Interpretation. Titles and headings to Sections hereof are for the purpose of reference only and shall in no way limit, define or otherwise affect the provisions hereof. Unless the context requires otherwise, all references herein to laws, regulations, contracts, agreements, instruments and other documents shall be deemed to refer to such laws, regulations, agreements, instruments and other documents as they may be amended, supplemented, modified and restated from time to time, and references to particular provisions of laws or regulations include a reference to the corresponding provisions of any succeeding law or regulation. The word "or" as used herein is not exclusive and is deemed to have the meaning "and/or." The words "herein", "hereof", "hereunder" and other compounds of the word "here" shall refer to the entire Agreement, including all exhibits, and not to any particular provision hereof. The use herein of the word "including" following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by each of the parties hereto and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the parties.

12. **Third Party Beneficiaries.** Each Company Party that is not a signatory hereto shall be a third-party beneficiary of Employee's release and representations as set forth in Section 5, and entitled to enforce such provisions as if it was a party hereto.

13. **Return of Property.** Employee expressly represents and warrants that he has complied, or as of the Separation Date he will comply, with the requirements of Section 3 of the Employment Agreement, and Employee further represents and warrants that he has, or as of the Separation Date he will have returned to the Company all property belonging to the Company and any other Company Party, including all documents, computer files and other electronically stored information, electronically stored information and other materials provided to Employee by the Company or any other Company Party in the course of his employment or affiliation. Employee further represents and warrants that he has not maintained (or, after the Separation Date, he will not maintain) a copy of any such materials in any form.

14. **No Waiver.** No failure by any party at any time to give notice of any breach by the other party of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

15. **Severability and Modification.** To the extent permitted by applicable law, the parties agree that any term or provision of this Agreement (or part thereof) that renders such term or provision (or part thereof) or any other term or provision (or part thereof) of this Agreement invalid or unenforceable in any respect shall be severable and shall be modified or severed to the extent necessary to avoid rendering such term or provision (or part thereof) invalid or unenforceable, and such severance or modification shall be accomplished in the manner that most nearly preserves the benefit of the parties' bargain hereunder.

16. **Withholding of Taxes and Other Employee Deductions.** The Company may withhold from any payments made pursuant to this Agreement all federal, state, local, and other taxes and withholdings as may be required pursuant to any law or governmental regulation or ruling. Employee shall satisfy all of his tax obligations arising from his receipt of the consideration and benefits set forth herein, and shall indemnify and hold harmless the Company and the other Company Parties for any costs, expenses or liabilities arising from his failure to do so. The Company shall satisfy all of its tax obligations arising out of this Agreement, including its obligation to remit to the U.S. Treasury: (i) all amounts withheld from the Separation Pay; and (ii) the amounts that the Company has agreed to remit as described in Section 3 above; the Company shall indemnify and hold harmless Employee for any costs, expenses or liabilities arising from its failure to do so.

17. **Counterparts.** This Agreement may be executed in one or more counterparts (including portable document format (.pdf) and facsimile counterparts), each of which shall be deemed to be an original, but all of which together will constitute one and the same agreement.

18. **Section 409A.** Neither this Agreement nor the payments provided hereunder are intended to constitute "deferred compensation" subject to the requirements of Section 409A of the Internal Revenue Code of 1986 and the Treasury regulations and interpretive guidance issued thereunder (collectively, "***Section 409A***"), and this Agreement shall be construed and

administered in accordance with such intent. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Notwithstanding the foregoing, the Company makes no representations that this Agreement or the payments provided under this Agreement complies with or is exempt from the requirements of Section 409A and in no event shall the Company or any other Company Party be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by Employee on account of non-compliance with Section 409A.

19. **No Assignment**. Company shall not assign its obligations under this Agreement to any other person or entity. Company further agrees that in the event of a Change in Control of the Company (as defined in the LTIP), all of Company's payment obligations set forth herein shall accelerate and shall be paid on or before the effective date of such Change in Control. In the event that Company merges or otherwise combines with any other entity, Company agrees that such merger or combination agreement shall require the successor entity to assume all of Company's obligations under the terms of this Agreement.

[*Signatures begin on the following page*]

IN WITNESS WHEREOF, the parties have executed this Agreement with the intent to be legally bound.

James Jones

/s/James G. Jones II
James Jones

Date: 11/3/2021

VIA Renewables, Inc.

By: /s/ William Keith Maxwell III

Name: William Keith Maxwell III

Title: Chief Executive Officer

Date: 11/3/2021

Signature Page to
Transition and Resignation Agreement and
General Release of Claims

EXHIBIT A

CONFIRMING RELEASE AGREEMENT

This Confirming Release Agreement (this "***Confirming Release***") is that certain Confirming Release referenced in Section 7 of the Transition and Resignation Agreement and Mutual Release of Claims (the "***Resignation Agreement***") entered into by and between James Jones ("***Employee***") and Spark Energy, Inc. now known as VIA Renewables, Inc. (traded under NASDAQ: VIA) (the "***Company***"). Capitalized terms used herein that are not otherwise defined have the meanings assigned to them in the Resignation Agreement.

1. General Release of Claims.

(a) For good and valuable consideration, including Employee's receipt of the consideration described in Sections 2 or 3 of the Resignation Agreement (and any portion thereof), Employee hereby forever releases, discharges and acquits the Company, NuDevco, their respective parents, subsidiaries and affiliates, and each of the foregoing entities' respective shareholders, members, partners, officers, managers, directors, fiduciaries, employees, representatives, agents and benefit plans (and fiduciaries of such plans), in their personal and representative capacities (collectively, the "***Confirming Release Company Parties***" or any one, individually, a "***Confirming Release Company Party***"), from liability for, and Employee hereby waives, any and all claims, damages, demands, or causes of action of any kind that Employee has or could have, whether known or unknown, against any Confirming Release Company Party, including any and all claims, damages, demands, or causes of action relating to his employment, engagement or affiliation with any Confirming Release Company Party, the termination of such employment, engagement or affiliation, his status as a shareholder of any Company Party, or any other acts or omissions related to any matter occurring or existing on or prior to the date that Employee executes this Confirming Release, including, (i) any alleged violation through such date of: (A) Title VII of the Civil Rights Act of 1964; (B) the Civil Rights Act of 1991; (C) Sections 1981 through 1988 of Title 42 of the United States Code; (D) the Americans with Disabilities Act of 1990; (E) the Employee Retirement Income Security Act of 1974 ("***ERISA***"); (F) the Immigration Reform Control Act; (G) the Americans with Disabilities Act of 1990; (H) the Occupational Safety and Health Act; (I) the Age Discrimination in Employment Act of 1967 (including as amended by the Older Workers Benefit Protection Act); (J) the Sarbanes-Oxley Act of 2002; (K) the Dodd-Frank Wall Street Reform and Consumer Protection Act; (L) any federal, state, municipal or local anti-discrimination or anti-retaliation law, including the Texas Labor Code (including the Texas Payday Law, the Texas Anti-Retaliation Act, Chapter 21 of the Texas Labor Code, and the Texas Whistleblower Act); (N) any federal, state, municipal or local wage and hour law; (M) any other local, municipal, state, or federal law, regulation or ordinance; and (N) any public policy, contract, tort, or common law claim, including claims for breach of fiduciary duty, fraud, breach of implied or express contract, breach of implied covenant of good faith and fair dealing, wrongful discharge or termination, promissory estoppel, infliction of emotional distress, or tortious interference; (ii) any allegation for costs, fees, or other expenses including attorneys' fees incurred in, or with respect to, a Confirming Released Claim; (iii) any and all rights, benefits or claims Employee may have under any employment contract (including the Employment Agreement), incentive compensation plan (including the LTIP), equity-based plan, or other agreement with any Confirming Release Company Party; (iv) any claim, whether

individual or derivative, arising from, or relating to, Employee's status as a member or holder of any interests in the Company, the Parent, or any of their subsidiaries; and (v) any claim for compensation, benefits, or damages of any kind not expressly set forth in this Agreement (collectively, the "***Confirming Released Claims***"). THIS RELEASE INCLUDES MATTERS ATTRIBUTABLE TO THE SOLE OR PARTIAL NEGLIGENCE (WHETHER GROSS OR SIMPLE) OR OTHER FAULT, INCLUDING STRICT LIABILITY, OF ANY OF THE CONFIRMING RELEASE COMPANY PARTIES.

(b) The Released Claims do not include any claims arising out of this Agreement, to the Separation Payment, for reimbursement of properly incurred expenses that are outstanding as of the date Employee signs this Agreement, or any rights or claims that first arise after Employee's execution of this Agreement. Further, in no event shall the Released Claims include any right of Employee to indemnification under the Employment Agreement, the Company's by-laws and amended and restated certificate of incorporation, or the Indemnification Agreement between Employee and the Company dated August 1, 2014 ("the Indemnification Agreement"). The Company expressly reaffirms its obligation to indemnify Employee following the Separation Date to the extent required by these instruments.

(c) In no event shall the Confirming Released Claims include any claim to vested benefits under an employee benefit plan of the Company that is subject to ERISA (including any rights to vested benefits under health and retirement plans). Further notwithstanding this release of liability, *nothing in this Confirming Release prevents Employee from filing any non-legally waivable claim (including a challenge to the validity of this Agreement) with a Governmental Agency or participating in any investigation or proceeding conducted by any Governmental Agencies or communicating or cooperating with such agency; however, Employee understands and agrees that, to the extent permitted by law, Employee is waiving any and all rights to recover any monetary or personal relief from any Confirming Release Company Party as a result of such Governmental Agency proceeding or subsequent legal actions*. Nothing herein waives Employee's right to receive an award for information provided to a Governmental Agency.

(d) Employee hereby represents and warrants that, as of the time Employee executes this Confirming Release, Employee has not brought or joined any lawsuit or filed any charge or claim against any of the Confirming Release Company Parties in any court or before any government agency or arbitrator for or with respect to a matter, claim or incident that occurred or arose out of one or more occurrences that took place on or prior to the time at which Employee signs this Confirming Release. Employee hereby further represents and warrants that Employee has not: (i) assigned, sold, delivered, transferred or conveyed any rights Employee has asserted or may have against any of the Confirming Release Company Parties to any person or entity, in each case, with respect to any Confirming Released Claims; or (ii) assisted or advised any employee, officer or agent of any Confirming Release Company Party with respect to his or her pursuit or evaluation of any claim or cause of action against a Confirming Release Company Party.

2. Satisfaction of All Leaves and Payment Amounts; Prior Rights and Obligations. In signing this Confirming Release, Employee expressly acknowledges and agrees that since his execution of the Resignation Agreement he has received all leaves (paid and unpaid) to which Employee has been entitled following his execution of the Resignation

Agreement, and that he has also received all wages (including the value of any accrued but unused vacation days), bonuses and other compensation owed or that has been owed or ever could be owed by the Company or any other Confirming Release Company Party (with the exception of the consideration set forth in Sections 2 and 3 of the Resignation Agreement), including all payments arising out of all incentive plans and any other bonus arrangements. Notwithstanding the foregoing, Employee remains entitled to receive, if still unpaid, any unpaid base salary and benefits for services performed in the pay period in which the Separation Date occurred. For the avoidance of doubt, Employee acknowledges and agrees that he has no further or future right to severance pay or benefits pursuant to the Employment Agreement.

3. **Employee's Acknowledgments; Binding Effect.** Employee has been advised, and hereby is advised in writing, to consult with an attorney of his choice regarding the form and content of this Confirming Release, and he represents that he has had a sufficient opportunity (and a full 21 days) to do so before execution and return, and that he has read this Confirming Release and enters into it voluntarily and of his own free will. This Confirming Release and the releases and covenants contained herein shall be binding upon Employee, his heirs, executors, administrators, assigns, agents, attorneys in fact, attorneys at law, and representatives. This Confirming Release and the releases and covenants contained herein shall inure to the benefit of all Confirming Release Company Parties and each of their respective predecessors, successors, and assigns.

4. **Revocation Right.** Notwithstanding the initial effectiveness of this Confirming Release, Employee may revoke the delivery (and therefore the effectiveness) of this Confirming Release within the seven-day period beginning on the date Employee executes this Confirming Release (such seven day period being referred to herein as the "***Confirming Release Revocation Period***"). To be effective, such revocation must be in writing signed by Employee and must be received by the Company, care of Maureen Zuniga at 12140 Wickchester Lane, Suite 100, Houston, TX 77079 (e-mail: mzuniga@sparkenergy.com) so that it is received by Ms. Zuniga no later than 11:59 p.m. Houston, Texas time, on the last day of the Confirming Release Revocation Period. In the event Employee exercises his revocation right as set forth herein, this Confirming Release will be of no force or effect, and Employee will not be entitled to receive the consideration set forth in Sections 2 or 3 of the Resignation Agreement.

IN WITNESS WHEREOF, Employee has executed this Confirming Release with the intent to be legally bound.

James Jones

James Jones

Date:

Employment Agreement
Via Renewables, Inc.

This Employment Agreement (this "Agreement") dated November 4, 2021 is between Miguel "Mike" Barajas ("Employee") and Via Renewables, Inc. (the "Company"). Capitalized terms that are not otherwise defined are defined in Exhibit B to this Agreement.

1. Employment. The Company will employ Employee in accordance with the terms and conditions set forth in this Agreement and Exhibit A to this Agreement. During the Term (as defined in Exhibit A to this Agreement), Employee will devote his full business time, attention and best efforts to the business of the Company, as may be requested by the Company's Board of Directors (the "Board"). Employee acknowledges and agrees that he owes the Company fiduciary duties, including duties of loyalty and disclosure, and that the obligations described in this Agreement are in addition to, and not in lieu of, the obligations owed to the Company and its subsidiaries under common law.

2. Termination of Employment.

(a) Right to Terminate for Convenience. Either the Company or Employee shall have the right to terminate the employment under this Agreement for convenience at any time and for any reason, or no reason at all, upon written notice to the other party. Such termination shall be effective immediately unless otherwise agreed between the parties.

(b) Company's Right to Terminate Employee's Employment for Cause. The Company shall have the right to terminate Employee's employment at any time for Cause.

(c) Employee's Right to Terminate for Good Reason. Employee shall have the right to terminate Employee's employment with the Company at any time for Good Reason. Any assertion by Employee of a termination for Good Reason shall not be effective unless all of the following conditions are satisfied: (i) the condition giving rise to Employee's termination of employment must have arisen without Employee's written consent; (ii) Employee must provide written notice to the Board of the existence of such condition(s) within 30 days of the initial existence of such condition(s); (iii) the condition(s) specified in such notice must remain uncorrected for 30 days following the Board's receipt of such written notice; and (iv) the date of Employee's termination of employment must occur within 75 days after the initial existence of the condition(s) specified in such notice.

(d) Death or Disability. Upon the death or Disability of Employee, Employee's employment with Company shall terminate with no further obligation under this Agreement of either party hereunder.

(e) Effect of Termination.

(i) If Employee's employment is terminated by the Company for convenience pursuant to Section 2(a) above, is terminated as a result of a non-renewal of the Term of this Agreement by the Company pursuant to Exhibit A, or is terminated by Employee for Good Reason pursuant to Section 2(c) above, and Employee: (A) executes within 50 days following the date on which Employee's employment terminates, and does not revoke within the time provided by the Company to do so, a release of all claims

in a form reasonably acceptable to the Company (the "Release"); and (B) abides by Employee's continuing obligations under Sections 3 and 4 of this Agreement, then the Company shall pay to Employee any bonus earned for the calendar year prior to the year in which the termination occurs but which is unpaid as of the date of termination (which shall be paid to Employee on the same date as such bonus would have been paid had Employee remained in employment) (the "Post-Termination Bonus Payment") and make severance payments to Employee in a total amount equal to: (X) 12 months' worth of Employee's Base Salary; plus (Y) an additional amount equal to the target annual bonus for the Employee for the year in which Employee is terminated prorated up to the date of termination for the number of days worked during such calendar year and calculated based on relative achievement of key performance targets as determined by the Compensation Committee of the Board in its reasonable discretion (such total severance payments being referred to as the "Severance Payment"). For the avoidance of doubt, a non-renewal of the Term of this Agreement by Employee, a termination by reason of Employee's death or Disability, a termination by the Company for Cause a termination of employment by Employee without Good Reason under Section 2(a) above, or a separation qualifying under Section 2(f) below, shall not give rise to a right to the Severance Payment or Post-Termination Bonus Payment under this subsection 2(e)(i).

(ii) The Severance Payment will be paid in substantially equal monthly installments in accordance with the Company's normal payroll practices, beginning on Company's first pay date that is on or after the 60th day following the date of termination of employment; *provided, however*, that the first installment payment shall include all amounts that would otherwise have been paid to Employee during the period beginning at termination and ending on the first payment date (without interest) if no delay had been imposed. Any Severance Payment is conditional upon Employee's compliance with Sections 3 and 4. Each payment of a portion of the Severance Payment under this Agreement is intended to be a series of separate payments and not as the entitlement to a single payment for purposes of Section 409A. For purposes of this Agreement, references to Employee's termination of employment shall mean, and be interpreted in accordance with, Employee's "separation from service" from the Company within the meaning of Treasury Regulation § 1.409A-1(h)(1)(ii).

(iii) Upon a termination of employment by Employee for Good Reason, by the Company for convenience or non-renewal by the Company, then all outstanding unvested long term incentive awards granted to the Employee during his employment with the Company under the Long Term Incentive Plan shall become fully vested and exercisable for the remainder of their full term in accordance with, and subject to, any applicable agreements and plan documents as may be amended from time to time.

(iv) Upon a Change in Control, the Employee shall retain all outstanding long term incentive awards previously granted to Employee under the Long Term Incentive Plan subject to the existing vesting schedules, the terms of such awards and the terms of the Long Term Incentive Plan and any terms of this Agreement which might otherwise apply, provided that all such awards shall be modified by the Compensation Committee in its discretion to reflect the consideration, whether in shares of stock, other

securities, cash or property that the Employee would be entitled to receive had he vested into such awards immediately prior to the Change in Control.

(f) Effect of Change in Control. In the event of a Change in Control in which the Employee's employment is terminated by the Company for convenience under Section 2(a), for Good Reason under Section 2(c) or as a result of a non-renewal of the Term of this Agreement by the Company pursuant to Exhibit A within that window consisting of the period commencing 120 days prior to execution of a definitive agreement for such Change in Control transaction and ending 365 days after consummation or final closing of such transaction, provided Employee: (A) executes within 50 days following the date on which Employee's employment so terminates under this Section 2(f), and does not revoke within the time provided by the Company to do so, a Release; and (B) abides by Employee's continuing obligations under Sections 3 and 4 of this Agreement, then the Company shall pay to Employee, and Employee shall be entitled to, the following, in lieu of any Severance Payment under Section 2(e)(i) and (ii) above:

(i) any bonus earned for the calendar year prior to the year in which the termination occurs but which is unpaid as of the date of termination, which sum shall be paid within 15 days following the date on which employment is terminated; plus

(ii) an amount equal to the target annual bonus for the Employee for the year in which Employee is terminated prorated up to the date of termination for the number of days worked during such calendar year and calculated based on relative achievement of key performance targets as determined by the Compensation Committee of the Board in its reasonable discretion, which sum shall be paid within 15 days following the date on which employment is terminated; plus

(iii) a lump sum payment equal to 1.0 times the sum of the Employee's annual Base Salary then in effect and the full target annual bonus for the year in which the termination date occurs, which shall be paid within 15 days following the date on which employment is terminated; plus

(iv) If the Employee timely and properly elects health continuation coverage under COBRA, for a period of 18 full months commencing on the first day of the month after the month in which employment was terminated, the Company shall reimburse the Employee for, or pay on Employee's behalf, the monthly COBRA premium paid by the Employee for himself and his dependents. Such reimbursement shall be paid to the Employee no later than the date on which Employee timely remits the premium payment. The Employee shall be eligible to receive such reimbursement until the earliest of: (i) the completion of the eighteen-month term set forth above; (ii) the date the Employee is no longer eligible to receive COBRA continuation coverage; and (iii) the date on which the Employee receives substantially similar coverage from another employer or other source. The Company shall pay to the Employee, no later than the time taxes are required to be paid by the Employee or withheld by the Company, an additional amount (the "Gross-up Payment") equal to the sum of the withholding taxes payable by the Executive, plus the amount necessary to put the Employee in the same after-tax position (taking into account any and all applicable federal, state and local income, employment, and other taxes (including the any income and employment taxes imposed on the Gross-up Payment))

that he would have been in if the Employee had not incurred any withholding tax liability in connection with the COBRA payment.

(v) For the avoidance of doubt, the provisions of subsection (e)(iii) and (iv) of this Section 2 shall apply with respect to outstanding long term incentive awards previously granted to the Employee.

3. <u>Confidentiality</u>. The Company will provide Employee and give Employee access to Confidential Information during the Term. Employee will hold all Confidential Information in a fiduciary capacity for the benefit of the Company. During the Term and at all times after termination of Employee's employment hereunder, Employee will: (a) not disclose any Confidential Information to any person or entity other than in the proper performance of his duties during the Term; (b) not use any Confidential Information except for the benefit of the Company; and (c) take all such precautions as may be reasonably necessary to prevent the disclosure to any third party of any of the Confidential Information.

Upon termination of employment, Employee will surrender and deliver to the Company all documents (including electronically stored information) and other materials of any nature containing or pertaining to all Confidential Information and any other Company property or property of its subsidiaries (including, without limitation, any Company-issued computer, mobile device, credit card, or other equipment or property), in Employee's possession, custody and control and Employee will not retain any such document or other materials or property.

Notwithstanding anything herein to the contrary, nothing in this Agreement shall (i) prohibit the Employee from making reports of possible violations of federal law or regulations to any governmental agency or entity in accordance with the provisions of and the rules promulgated under Section 21F of the Securities Exchange Act of 1934, as amended (the "Exchange Act") or Section 806 of the Sarbanes-Oxley Act of 2002, or of any other whistleblower protection provisions of state or federal law or regulations or waive any right to monetary recovery in connection therewith, or (ii) require notification or prior approval by the Company of any reporting described in clause (i).

4. <u>Non-Competition and Non-Solicitation</u>.

(a) The Company shall provide Employee access to the Confidential Information for use only during the Term, and Employee acknowledges and agrees that the Company will be entrusting Employee, in Employee's unique and special capacity, with developing the goodwill of the Company and its subsidiaries, and in consideration thereof and in consideration of the access to Confidential Information and as a condition to the Company's entry into this Agreement and employment of Employee, and Employee's receipt of equity-based compensation pursuant to the Long-Term Incentive Plan as described in Exhibit A, Employee has voluntarily agreed to the covenants set forth in this Section 4. Employee further agrees and acknowledges that the limitations and restrictions set forth herein, including geographical and temporal restrictions on certain competitive activities, are reasonable in all respects and are material and substantial parts of this Agreement intended and necessary to prevent unfair competition and to protect the Company's and its subsidiaries' legitimate business interests, including the protection of its Confidential Information and goodwill.

(b) Employee agrees that, during the period that he is employed by the Company or any of its subsidiaries and continuing through the date that is 12 months following the date that Employee is no longer employed by the Company or any of its subsidiaries, Employee shall not, without the prior

written approval of the Company, directly or indirectly, for himself or on behalf of or in conjunction with any other person or entity of whatever nature engage in any Prohibited Activity.

(c) During the Term and at all times following the termination of Employee's employment for whatever reason, Employee shall not (except to the extent required by law) disparage, and shall cause the Employee's affiliates not to disparage, either orally or in writing, the Company or any of its subsidiaries or affiliates, or any of their directors, officers, managers, agents, representatives, stockholders, investors, partners, members, or employees, or any of their respective businesses, products, services or practices. During the Term and at all times following the termination of Employee's employment for whatever reason, the Company shall not (except to the extent required by law) disparage, and shall cause the Company's subsidiaries not to disparage, either orally or in writing, the Employee.

(d) Because of the difficulty of measuring economic losses to the Company as a result of a breach of the foregoing covenants, and because of the immediate and irreparable damage that would be caused to the Company for which it would have no other adequate remedy, Employee agrees that the Company and its subsidiaries shall be entitled to enforce the foregoing covenants, in the event of a breach, by injunctions and restraining orders and that such enforcement shall not be the Company's or such subsidiary's exclusive remedy for a breach but instead shall be in addition to all other rights and remedies available to the Company or its subsidiaries at law and equity.

(e) The covenants in this Section 4, and each provision and portion thereof, are severable and separate, and the unenforceability of any specific covenant shall not affect the provisions of any other covenant. Moreover, in the event any arbitrator or court of competent jurisdiction shall determine that the scope, time or territorial restrictions set forth are unreasonable, then it is the intention of the parties that such restrictions be enforced to the fullest extent which the arbitrator or court deems reasonable, and this Agreement shall thereby be reformed.

5. **Applicable Law; Submission to Jurisdiction**. This Agreement shall in all respects be construed according to the laws of the State of Texas without regard to its conflict of laws principles that would result in the application of the laws of another jurisdiction. With respect to any claim or dispute related to or arising under this Agreement or relating to Employee's employment or the termination thereof, the parties hereby consent to the exclusive jurisdiction, forum and venue of the state and federal courts located in Houston, Texas. Notwithstanding the foregoing, the Company and its subsidiaries shall be entitled to enforce their rights under Section 4 in any court of competent jurisdiction.

6. **Entire Agreement and Amendment**. This Agreement, the Long Term Incentive Plan and the award agreement evidencing any equity compensation awards granted under the Long Term Incentive Plan contains the entire agreement of the parties with respect to the matters covered herein; moreover, this Agreement supersedes all prior and contemporaneous agreements and understandings, oral or written, between the parties hereto concerning the subject matter hereof. This Agreement may be amended only by a written instrument executed by both parties hereto.

7. **Waiver of Breach**. Any waiver of this Agreement must be executed by the party to be bound by such waiver. No waiver by either party hereto of a breach of any provision of this Agreement by the other party, or of compliance with any condition or provision of this Agreement to be performed by such other party, will operate or be construed as a waiver of any subsequent breach by such other party or any similar or dissimilar provision or condition at the same or any subsequent time. The failure of

either party hereto to take any action by reason of any breach will not deprive such party of the right to take action at any time while such breach continues.

8. **Assignment**. This Agreement is personal to Employee, and neither this Agreement nor any rights or obligations hereunder shall be assignable or otherwise transferred by Employee. The Company may assign this Agreement without Employee's consent, including to any subsidiary of the Company and to any successor (whether by merger, purchase or otherwise) to all or substantially all of the equity, assets or businesses of the Company.

9. **Notices**. Notices provided for in this Agreement shall be in writing and shall be deemed to have been duly received when delivered in person or on the third business day following deposit in the United States mail, registered or certified mail, return receipt requested: to the address of the Company's principal offices, Attention: General Counsel, if to the Company; and to the home address of the Employee on file with the Company if to the Employee.

10. **Section 409A.** If any provision of this Agreement does not satisfy the requirements of Section 409A, then such provision shall nevertheless be applied in a manner consistent with those requirements. Any payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. Notwithstanding the foregoing, the Company makes no representations that the payments and benefits provided under this Agreement are exempt from, or compliant with, Section 409A and in no event shall the Company be liable for all or any portion of any taxes, penalties, interest or other expenses that may be incurred by the Employee on account of non-compliance with Section 409A. If any payment or benefit provided to the Employee in connection with his termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Employee is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then all such payments or benefits shall not be paid until the first payroll date to occur following the six-month anniversary of the separation from service date as defined in accordance with Section 409A in a lump sum, and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

11. **Section 280G**.

(a) Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Employee or for the Employee's benefit pursuant to the terms of this Agreement or otherwise ("**Covered Payments**") constitute parachute payments ("**Parachute Payments**") within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**") and would, but for this Section 12 be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "**Excise Tax**"), then prior to making the Covered Payments, a calculation shall be made comparing (i) the Net Benefit (as defined below) to the Employee of the Covered Payments after payment of the Excise Tax to (ii) the Net Benefit to the Employee if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax. Only if the amount calculated under (i) above is less than the amount under (ii) above will the Covered Payments be reduced to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax

(that amount, the "**Reduced Amount**"). **"Net Benefit"** shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes.

(b) Any such reduction shall be made in accordance with Section 409A of the Code and the following: the Covered Payments shall be reduced in a manner that maximizes the Employee's economic position. In applying this principle, the reduction shall be made in a manner consistent with the requirements of Section 409A of the Code, and where two economically equivalent amounts are subject to reduction but payable at different times, such amounts shall be reduced on a pro rata basis but not below zero.

(c) Any determination required under this Section 12 shall be made in writing in good faith by the accounting firm that was the Company's independent auditor immediately before the change in control (the "**Accountants**"), which shall provide detailed supporting calculations to the Company and the Employee as requested by the Company or the Employee. The Company and the Employee shall provide the Accountants with such information and documents as the Accountants may reasonably request in order to make a determination under this Section 12. For purposes of making the calculations and determinations required by this Section 12, the Accountants may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Accountants' determinations shall be final and binding on the Company and the Employee. The Company shall be responsible for all fees and expenses incurred by the Accountants in connection with the calculations required by this Section 12.

(d) It is possible that after the determinations and selections made pursuant to this Section 12 the Employee will receive Covered Payments that are in the aggregate more than the amount otherwise provided under this Section 12 ("**Overpayment**") or less than the amount otherwise provided under this Section 12 ("**Underpayment**").

(i) In the event that: (A) the Accountants determine, based upon the assertion of a deficiency by the Internal Revenue Service against either the Company or the Employee which the Accountants believe has a high probability of success, that an Overpayment has been made or (B) it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved that an Overpayment has been made, then the Employee shall pay any such Overpayment to the Company together with interest at the applicable federal rate (as defined in Section 7872(f)(2)(A) of the Code) from the date of the Employee's receipt of the Overpayment until the date of repayment.

(ii) In the event that: (A) the Accountants, based upon controlling precedent or substantial authority, determine that an Underpayment has occurred or (B) a court of competent jurisdiction determines that an Underpayment has occurred, any such Underpayment will be paid promptly by the Company to or for the benefit of the Employee together with interest at the applicable federal rate (as defined in Section 7872(f)(2)(A) of the Code) from the date the amount would have otherwise been paid to the Employee until the payment date.

12. **Effect of Termination**. The provisions of Sections 2(e), 2(f), 3, 4, 6 and 11 and those provisions necessary to interpret and enforce them, shall survive any termination of this Agreement and any termination of the employment relationship between Employee and the Company.

13. **Third-Party Beneficiaries**. Each subsidiary of the Company that is not a signatory to this Agreement is an intended, third-party beneficiary of Employee's obligations under Sections 3 and 4 above and shall be entitled to enforce such obligations as if a party hereto.

14. **Severability**. If an arbitrator or court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, then the invalidity or unenforceability of that provision shall not affect the validity or enforceability of any other provision of this Agreement and all other provisions shall remain in full force and effect.

/s/ Miguel Barajas
Employee Name: Miguel "Mike" Barajas

VIA RENEWABLES, INC.

By: /s/ William Keith Maxwell III
Name: William Keith Maxwell III
Title: Chief Executive Officer

EXHIBIT A TO EMPLOYMENT AGREEMENT

OF MIGUEL "MIKE" BARAJAS

Title: Chief Financial Officer

Duties: Those normally incidental to the title identified above, as well as such additional duties as may be assigned to Employee by the Board from time to time.

Term: The term of this Agreement shall be for the period beginning on the date of the Agreement and ending on December 31, 2022. On January 1, 2023 and on each subsequent anniversary thereafter, this Agreement shall automatically renew and extend for a period of 12 months unless written notice of non-renewal is delivered from either party to the other not less than 30 days prior to the expiration of the then-existing Term. The Term shall include the initial term and any renewal periods. The Term shall end effective as of the date of termination of Employee's employment for any reason.

Base Salary: Annual base salary of $250,000.00 (less applicable taxes and withholdings) as adjusted from time to time by the Company (the "Base Salary") payable in conformity with the Company's customary payroll practices for similarly situated employees as may exist from time to time, but no less frequently than monthly.

RSUs: Employee shall be awarded 10,000 RSUs upon the execution of this Agreement, which shall vest according to the following schedule:

May 18, 2022: 25%
May 18, 2023: 25%
May 18, 2024: 25%
May 18, 2025: 25%

Bonus: Employee shall be eligible to participate in such annual bonus plan as may be established by the Company in its discretion from time to time and in which other similarly situated Company employees are eligible to participate, subject to the terms and conditions of the applicable plan in effect from time to time. The Company shall not, however, be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any bonus plan, so long as such changes are similarly applicable to similarly situated Company employees generally. Except to the extent specifically provided for in Section 2(e)(i) or 2(f), any bonus shall not be payable unless Employee remains continuously employed within the Company to the date on which such bonus is paid.

Equity Based Compensation: Employee will be eligible to receive equity based compensation awards pursuant to, and subject to the terms of, an equity compensation plan adopted by the Company, as such plan may be amended by the Company from time to time (the "Long Term Incentive Plan"). Such awards will be in an amount determined by the Company and subject to the terms and conditions established by the Board or a committee thereof.

Benefits: Employee shall be eligible to participate in the same benefit plans and programs in which other similarly situated Company employees are eligible to participate, subject to the terms and conditions of the applicable plans and programs in effect from time to time. The Company shall not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing, any such plan or policy, so long as such changes are similarly applicable to similarly situated Company employees.

Indemnity and D&O Insurance: The Company will indemnify and hold Employee harmless for all acts and omissions occurring during his employment to the maximum extent provided under the Company's certificate of incorporation, by-laws and applicable law (as each may be amended from time to time). During the Term, the Company will purchase and maintain, at its own expense, directors' and officers' liability insurance providing coverage for Employee in the same amount as for similarly situated executives of the Company.

EXHIBIT B
TO EMPLOYMENT AGREEMENT OF MIGUEL "MIKE" BARAJAS
DEFINITIONS

"Business" means the products or services offered, marketed, or sold, or with respect to which there are active plans to offer, market or sell, by the Company or its subsidiaries during the period in which Employee is employed by the Company or any of its subsidiaries and for which Employee has material responsibility or about which Employee obtains Confidential Information, which such products and services include, without limitation, the business of supplying electricity and natural gas to homes and businesses.

"Business Opportunity" means any commercial, investment or other business opportunity relating to the Business.

"Cause" means:

(i) Employee's material breach of this Agreement, or any other material obligation owed to the Company or any of its subsidiaries; provided that, if the Company determines that any such breach is capable of cure by Employee, written notice of such breach must be delivered to Employee and Employee must be given a period of 15 days following delivery of such notice to cure the breach;

(ii) the commission of an act of gross negligence, willful misconduct, breach of fiduciary duty, fraud, theft or embezzlement on the part of Employee, which such act has an adverse effect on the Company or any of its subsidiaries or can reasonably be expected to have an adverse effect on the Company or any of its subsidiaries;

(iii) the conviction or indictment of Employee, or a plea of *nolo contendere* by Employee, to any felony or any crime involving moral turpitude;

(iv) Employee's willful failure or refusal to perform Employee's obligations pursuant to this Agreement or willful failure or refusal to follow the lawful instructions of the Board; provided that, if the Company determines that any such failure is capable of cure by Employee, written notice of such failure must delivered to Employee and Employee must be given a period of 15 days following delivery of such notice to cure the failure; or

(v) any conduct by Employee which is materially injurious (monetarily or otherwise) to the Company or any of its subsidiaries.

"Change in Control" means the occurrence of one of the following events

(i) The consummation of an agreement to acquire or a tender offer for beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act): (X) by any Person, of 50% or more of the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"), or (Y) by any Person (including the Company or its affiliates) of 90% or more of the then total outstanding shares of Class A Common Stock of the Company; provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (A) any acquisition directly from the

Company, or (B) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company;

(ii) Individuals who constitute the Incumbent Board cease for any reason to constitute at least a majority of the Board;

(iii) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company or an acquisition of assets of another entity (a "Business Combination"), in each case, unless, following such Business Combination, (A) the Outstanding Company Voting Securities immediately prior to such Business Combination represent or are converted into or exchanged for securities that represent or are convertible into more than 50% of, respectively, the then outstanding shares of common stock or common equity interests and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors or other governing body, as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity that as a result of such transaction owns the Company, or all or substantially all of the Company's assets either directly or through one or more subsidiaries), (B) no Person (excluding any employee benefit plan (or related trust) of the Company or the entity resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock or common equity interests of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors or other governing body of such entity, except to the extent that such ownership results solely from ownership of the Company that existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors or similar governing body of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination;

(iv) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company;

(v) a public offering or series of public offerings by Retailco, LLC and its affiliates, as a selling shareholder group, in which their total interest drops below 10 million of the total Outstanding Company Voting Securities;

(vi) a disposition by Retailco, LLC and its affiliates in which their total interest drops below 10 million of the total Outstanding Company Voting Securities; or

(vii) Any other business combination, liquidation event of Retailco, LLC and its affiliates or restructuring of the Company which the Compensation Committee deems in its discretion to achieve the principles of a Change in Control notwithstanding that such transaction does not fall with the foregoing list; provided for any transaction in which a member of the Compensation Committee shall have a financial interest (other than ownership of equity awards under the Long Term Incentive Plan and common stock constituting less than 1% of the total outstanding shares), such member shall not participate or vote in this determination.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985.

"Confidential Information" means: all non-public information, designs, ideas, concepts, improvements, product developments, discoveries and inventions, whether patentable or not, that are conceived, made, developed or acquired by or disclosed to Employee, individually or in conjunction with others, during or prior to the Term that relate to the Company's or its subsidiaries businesses or properties, products or services (including all such information relating to hedging strategies and current, prospective and historic customer segmentation analysis, corporate opportunities, business plans, strategies for developing business and market share, research, financial and sales data, pricing terms, evaluations, opinions, interpretations, acquisition prospects, customer requirements, the identity of key contacts within customers' organizations or within the organization of acquisition prospects, or marketing and merchandising techniques, prospective names and marks). All documents, videotapes, written presentations, brochures, drawings, memoranda, notes, records, files, correspondence, manuals, models, specifications, computer programs, e-mail, voice mail, electronic databases, maps, drawings, architectural renditions, models and all other writings or materials of any type including or embodying any Confidential Information shall be deemed Confidential Information and be subject to the same restrictions on disclosure applicable to Confidential Information pursuant to this Agreement. For purposes of this Agreement, Confidential Information shall not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure or wrongful act of Employee; (ii) was available to Employee on a non-confidential basis before its disclosure by the Company; or (iii) becomes available to Employee on a non-confidential basis from a source other than the Company, provided that such source is not bound by a confidentiality agreement with the Company or any of its subsidiaries.

"Covered Vendor or Supplier" means any individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other entity who is or was: (A) a vendor or supplier of the Company or any of its subsidiaries at any time during the last 12 months of Employee's employment with the Company or any of its subsidiaries; or (B) a prospective vendor or supplier of the Company or any of its subsidiaries about which Employee had confidential information or with which Employee had contact in Employee's capacity as a representative of the Company or any of its subsidiaries.

"Covered Employee or Agent" means any individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other person or entity who is or was an employee, director, officer, contractor, consultant, or vendor of the Company or any of its subsidiaries at any time during the Term and for a period of twelve months after termination of Employee's employment.

"Disability" shall exist if Employee is unable to perform the essential functions of Employee's position, with reasonable accommodation, due to an illness or physical or mental impairment or other incapacity that continues, or can reasonably be expected to continue, for a period in excess of 90 days, whether or not consecutive. The determination of whether Employee has incurred a Disability will be made in good faith by the Board.

"Good Reason" means:

(i) the material diminution of Employee's Base Salary;

(ii) the material diminution in Employee's title, duties, authority or responsibilities at the Company;

(iii) the relocation of the Company's corporate offices at which Employee is required to perform services by more than fifty (50) miles from its location as of the date of this Agreement; or

(iv) a material breach by the Company of any other material obligation under this Agreement or any other written agreement between Employee and the Company.

"Incumbent Board" means the portion of the Board constituted of the individuals who are members of the Board as of the effective date of this Agreement and any other individual who becomes a director of the Company after the effective date of this Agreement and whose election or appointment by the Board or nomination for election by the Company's stockholders was approved by a vote of at least a majority of the directors then comprising the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Incumbent Board.

"Market Area" means that geographic area in the United States of America in which the Company or any of its subsidiaries (A) engages in business, (B) sells or markets to, or obtains products or services from, Covered Customers or Suppliers, (C) has Covered Employees or Agents located, or (D) contemplates doing any of the foregoing, which such area includes Texas, Connecticut, Illinois, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Arizona, California, Colorado, Florida, Indiana, Michigan, Nevada, Delaware, the District of Columbia and Ohio.

"Person" means any person or entity of any nature whatsoever, specifically including an individual, a firm, a company, a corporation, a partnership, a limited liability company, a trust or other entity; a Person, together with that Person's affiliates and associates (as those terms are defined in Rule 12b-2 under the Exchange Act, provided that "registrant" as used in Rule 12b-2 shall mean the Company), and any Persons acting as a partnership, limited partnership, joint venture, association, syndicate or other group (whether or not formally organized), or otherwise acting jointly or in concert or in a coordinated or consciously parallel manner (whether or not pursuant to any express agreement), for the purpose of acquiring, holding, voting or disposing of securities of the Company with such Person, shall be deemed a single "Person."

"Prohibited Activity" means:

(a) to engage in or participate within the Market Area in competition with the Company or any of its subsidiaries in any aspect of the Business, including directly or indirectly owning, managing, operating, joining, becoming an employee or consultant of, or loaning money to or selling or leasing equipment or real estate to or otherwise being affiliated with any person or entity engaged in, or planning to engage in, the Business in competition, or anticipated competition, in the Market Area, with the Company or any of its subsidiaries;

(b) to appropriate any Business Opportunity of, or relating to, the Company or any of its subsidiaries located in the Market Area;

(c) to solicit, canvass, approach, entice or induce any Covered Customer or Supplier to cease, fail to establish, or lessen such Covered Customer or Supplier's business with the Company or any of its subsidiaries; or

(d) to solicit, canvass, approach, entice or induce any Covered Employee or Agent to alter, lessen or terminate his, her or its employment, engagement or relationship with the Company or any of its subsidiaries.

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, W. Keith Maxwell III, certify that:

1. I have reviewed this Quarterly Report (the “report”) on Form 10-Q of Via Renewables, Inc. (the “registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 4, 2021

/s/ W. Keith Maxwell III
W. Keith Maxwell III
Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED

I, James G. Jones II, certify that:

1. I have reviewed this Quarterly Report (the “report”) on Form 10-Q of Via Renewables, Inc. (the “registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 4, 2021

/s/ James G. Jones II
James G. Jones II
Chief Financial Officer
(Principal Accounting and Financial Officer)

EXHIBIT 32

Certification by the Principal Executive Officer and Principal Financial Officer
Pursuant to 18 U.S.C. Section 1350,
Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 (the “Report”) of Via Renewables, Inc., a Delaware corporation (the “Company”), as filed with the Securities and Exchange Commission on the date hereof, W. Keith Maxwell III, Principal Executive Officer of the Company and James G. Jones II, Principal Financial Officer of the Company, each certify, pursuant 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his knowledge:

1. This Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 4, 2021

/s/ W. Keith Maxwell III
W. Keith Maxwell III
Chief Executive Officer
(Principal Executive Officer)

/s/ James G. Jones II
James G. Jones II
Chief Financial Officer
(Principal Accounting and Financial Officer)