

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|----------------------------------|
| In re: |) | |
| |) | Chapter 11 |
| VERTEX ENERGY, INC., <i>et al.</i> , ¹ |) | |
| |) | Case No. 24-90507 (CML) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | (Emergency Hearing Requested) |

**DEBTORS' EMERGENCY MOTION
FOR ENTRY OF AN ORDER (I) APPROVING
NOTIFICATION AND HEARING PROCEDURES FOR
CERTAIN TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on September 25, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on September 25, 2024, at 12:30 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's homepage. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Lopez's homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.'s corporate headquarters and the Debtors' service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (a) approving certain notification and hearing procedures, substantially in the form of Exhibit 1 attached to the Order (the “Procedures”), related to certain transfers of, or declarations of worthlessness, with respect to Debtor Vertex Energy, Inc.’s existing classes of common stock or any Beneficial Ownership³ therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”), (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock in violation of the Procedures shall be null and void *ab initio*, and (c) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended*

² A description of the Debtors, their businesses, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases are set forth in greater detail in the *Declaration of R. Seth Bullock, Chief Restructuring Officer of Vertex Energy, Inc., in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

³ “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the U.S. Department of the Treasury regulations thereunder (“Treasury Regulations”) (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

Order of Reference to Bankruptcy Judges, dated May 24, 2012, from the United States District Court for the Southern District of Texas. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court's entry of a final order in connection with this Motion.

3. Venue is proper pursuant to 28 U.S.C. § 1408.

4. The bases for the relief requested herein are sections 105(a), 362, and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 1075-1 and 9013-1(i) of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”), and the *Procedures for Complex Cases in the Southern District of Texas* (the “Complex Case Procedures”).

Background

5. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

The Tax Attributes

6. Companies generate various Tax Attributes (as defined below) through the course of their operations. Generally, a company generates net operating losses (“NOLs”) if the operating expenses it has incurred exceed the revenues it has earned during a single tax year. A company

may apply or “carry forward”⁴ NOLs to reduce future tax payments (subject to certain conditions discussed below). NOLs arising in taxable years beginning before January 1, 2018, may be used to offset up to 100 percent of taxable income and NOLs arising in taxable years beginning after December 31, 2017, may be used to offset up to 80 percent of taxable income. *See* Internal Revenue Code (“IRC”) § 172. Generally, a company’s deduction for net business interest expense is limited to 30 percent of its adjusted taxable income plus certain other amounts. Any business interest expense disallowed is carried forward and treated as business interest expense in the following tax year (“163(j) Carryforwards”). *See* IRC § 163(j). While NOLs and 163(j) Carryforwards are the most ubiquitous tax attributes, companies can also generate a variety of other tax attributes, including general business credits, research and development credit carryforwards, unused minimum tax credits, foreign tax credits, business tax credits, and capital loss carryforwards, as the case may be.

7. As discussed below, a company’s Tax Attributes can become subject to significant limitation under sections 382 and 383 of the IRC if an “ownership change” occurs. *See* IRC §§ 382, 383. The purpose of the relief requested herein is to minimize the risk that an “ownership change” occurs before the conclusion of these chapter 11 cases. In doing so, the Debtors intend to maximize the value of their estates by limiting tax liabilities generated during or as a result of the actions taken during the cases.

8. The Debtors estimate that, as of December 31, 2023, they had approximately \$180 million of federal NOLs and approximately \$110 million of 163(j) Carryforwards. The Debtors expect to generate substantial additional tax attributes in the 2024 tax year, including during the

⁴ Under certain circumstances, certain NOLs generated may be “carried back” to offset taxable income in prior years. Generally, the specific rules regarding carrybacks and carryforwards depend on when a particular NOL was generated.

pendency of these chapter 11 cases (such tax attributes together with the aforementioned NOLs and 163(j) Carryforwards, and certain other tax attributes, collectively, the “Tax Attributes”). The Tax Attributes are potentially of significant value to the Debtors and their estates because the Tax Attributes may offset future federal taxable income or federal tax liability in future years, including any taxable income generated by transactions consummated during these chapter 11 cases (including with respect to any taxable disposition of some or all of the Debtors’ assets, including pursuant to one or more sale transactions under section 363 of the Bankruptcy Code). Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors’ stakeholders.

9. The Procedures are expected to preserve the value of the Tax Attributes to the benefit of the Debtors’ stakeholders by ensuring that there are no “ownership changes” that may negatively affect the Debtors’ utilization of the tax attributes. Conversely, a premature limitation of the Debtors’ Tax Attributes could cause substantial deterioration of value and significantly reduce recoveries to the Debtors’ stakeholders. Failure to obtain the relief sought in this Motion could, therefore, greatly increase the risk that the Debtors would be unable to maximize the value of their estates.

I. An “Ownership Change” May Negatively Affect the Debtors’ Utilization of the Tax Attributes.

10. Sections 382 and 383 of the IRC limit the amount of federal taxable income and federal tax liability, respectively, that can be offset by a corporation’s tax attributes in taxable years (or portions thereof) following an “ownership change.” Generally, an “ownership change” occurs if the percentage (by value) of the stock of a corporation owned by one or more “5-percent shareholders” has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the three-year testing period ending on the date of the relevant ownership change. The total percentage point increase of stock owned by one or more

“5-percent shareholders” within the measuring period is generally referred to as the amount of the “ownership change.” In situations involving multiple classes of stock with different rights, the determination of whether a shareholder is a “5-percent shareholder” is made by reference to stock value (without regard to certain considerations such as control premiums or minority discounts, and with reference to certain mechanical tests). For example, an ownership change would occur in the following situation:

An individual (“A”) owns 50.1 percent of the stock of corporation XYZ. A sells her 50.1 percent interest to another individual (“B”), who owns 5 percent of XYZ’s stock. Under section 382 of the IRC, an ownership change has occurred because B’s interest in XYZ has increased more than 50 percentage points (from 5 percent to 55.1 percent) during the testing period. The same result would follow even if B owned no XYZ stock prior to the transaction with A because B both becomes a 5-percent shareholder and increases his ownership by more than 50 percentage points during the testing period.

11. An “ownership change” can also occur as a result of a “worthless stock deduction” claimed by any “50-percent shareholder.” IRC § 382(g)(4)(D). A 50-percent shareholder is any person or entity (or group of people that is treated as a single entity under the applicable rules) with Beneficial Ownership of 50 percent or more of a corporation’s stock “at any time during the 3-year period ending on the last day of the taxable year” with respect to which the worthless stock deduction is claimed. *Id.* If the 50-percent shareholder still owns the corporation’s stock at the end of the taxable year, sections 382 and 383 of the IRC essentially treat such person or entity as newly purchasing the stock on the first day of the next taxable year. For example, if a person or entity with 50 percent of a corporation’s stock claims a worthless stock deduction with respect to the 2023 tax year but does not sell such stock in 2023, that person is treated: (a) as not having owned the stock at the end of 2023; and (b) as having purchased the stock on the first day of the 2024 tax year. That deemed purchase would cause an ownership change because the 50-percent

shareholder would be deemed to have a 50-percentage-point increase in its stock ownership. Notably, while the seminal case of *Off. Comm. of Unsecured Creditors v. PSS S.S. Co. (In re Prudential Lines Inc.)*, 928 F.2d 565 (2d Cir. 1991), is generally relied upon to support equity trading motions in general, the specific issue in *Prudential Lines* was, in fact, a worthless stock deduction.

12. If an ownership change occurs, section 382 of the IRC limits the amount of a corporation's future federal taxable income that may be offset by its "pre-change losses" and section 383 of the IRC limits the amount of a corporation's future federal tax liability that may be offset by its "excess credits," in each case, to an annual amount based on the fair market value of all of the stock of the corporation prior to the ownership change multiplied by the long-term tax-exempt rate that applies to the month of the ownership change.⁵ See IRC §§ 382(b) and 383(a). Pre-change losses and excess credits include the Debtors' Tax Attributes and any so-called "recognized built-in losses" (as defined in section 382(h)(2) of the IRC).⁶ Once a Tax Attribute is limited under section 382 or 383 of the IRC, its use may be limited forever.⁷ Thus, certain transfers or worthless stock deductions with respect to the Beneficial Ownership of Common Stock effected before the effective date of the Debtors' emergence from chapter 11 protection may trigger an "ownership change" for IRC purposes, endangering the Debtors' ability to utilize the

⁵ The applicable long-term tax-exempt rate changes from month to month. For ownership changes occurring in October 2024, the applicable long-term tax-exempt rate is 3.42 percent.

⁶ The rules relating to potential limitations on the ability to offset taxable income with so-called realized built-in losses are highly complex and depend on, among other things, the extent (if any) of a debtor's "net unrealized built-in loss." A net unrealized built-in loss is equal to the excess of the aggregate adjusted basis of all of a corporation's applicable assets over their fair market value (as determined for purposes of section 382 of the IRC) immediately prior to the ownership change. IRC § 382(h)(3)(A)(i). Once a net unrealized built-in loss is limited under section 382 or 383 of the IRC, its use is limited for 5 years.

⁷ Realized built-in losses that are deducted beginning after the expiration of a five-year "recognition period" are no longer subject to limitation, but any realized built-in losses that are deducted prior to the expiration of such period are limited forever.

Tax Attributes, which could cause substantial damage to the Debtors' estates. Although certain of the Debtors' Tax Attributes may already be subject to limitations as a result of prior ownership changes, a subsequent ownership change prior to the effective date would result in a much more restrictive limitation.

13. It is critical to understand that, under these rules, a company can be harmed as a result of actions by parties that are unknown to the company. As noted above, if a person unknown to the company were to acquire more than five percent of the company's stock (determined in accordance with the rules set forth above), the company would experience an "owner shift" (or an increase in the magnitude of an "owner shift") that could lead to an ownership change and resulting limitation in the amount of a corporation's future taxable income that may be offset. By the time the company knew who the unidentified shareholder was, the shareholder would have already purchased the shares and the harm would be done.

14. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors seek limited relief through establishment of the Procedures that will enable them to closely monitor certain transfers of Beneficial Ownership of Common Stock and certain worthless stock deductions with respect to Beneficial Ownership of Common Stock so as to be in a position to act expeditiously to prevent such transfers or worthlessness deductions, if necessary, with the purpose of preserving the Tax Attributes. By establishing and implementing such Procedures, the Debtors will be in a position to object to "owner shifts" that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

15. For the Procedures to be effective in allowing the Debtors to preserve the value of their Tax Attributes, however, the Procedures must bind unknown parties. Similar binding mechanisms are common regarding common stock ownership. As one particularly salient

example, companies in certain instances may enact charter restrictions to protect their tax attributes. Such charter restrictions may impose *substantive* limitations on sales and purchases of equity that are similar to the procedural limitations requested in this Motion. Although such charter restrictions are put to a shareholder vote before being enacted, they always bind unknown parties (*i.e.*, persons that are not shareholders at the time the vote is taken) and do so via public information issued by the company in connection with the adoption of such charter restrictions. It is true that the relief requested in this Motion is not being put to a shareholder vote—nor should it be, because the requested relief is intended to maximize the value of the Debtors for all stakeholders—but unlike charter restrictions, the relief requested in this Motion merely implements *procedures* that must be observed before relevant actions are taken. The Debtors respectfully submit that the notice provided to all parties potentially subject to the procedural relief requested herein—via first class mail to known current five-percent holders and via publication to potential purchasers—is sufficient under these circumstances.

16. Notably, the Debtors have limited the relief requested herein to the extent necessary to preserve estate value. Specifically, the proposed Order will affect only: (a) holders of the equivalent of more than 4,208,145 shares of Common Stock (*i.e.*, 4.5 percent or more of outstanding Common Stock);⁸ (b) parties who are interested in purchasing sufficient Common Stock to result in such party becoming a holder of 4.5 percent or more of Beneficial Ownership of any outstanding Common Stock; and (c) any “50-percent shareholder” seeking to claim a worthless stock deduction. Based on the Debtors’ books and records, as of the Petition Date, only two people or entities hold 4.5 percent or more of outstanding Common Stock, representing over

⁸ Based on approximately 93,514,346 shares of Common Stock outstanding as of the Petition Date.

twelve percent of total outstanding Common Stock. Accordingly, the Debtors believe that the relief requested herein is narrowly tailored and impacts only a small number of interested parties.

II. Proposed Procedures for Transfers of or Declarations of Worthlessness with Respect to Common Stock.

17. The Procedures are the mechanism by which the Debtors propose that they will monitor and, if necessary, object to certain transfers of Beneficial Ownership of Common Stock and declarations of worthlessness with respect to Beneficial Ownership of Common Stock to ensure preservation of the Tax Attributes. The Procedures are fully set forth in Exhibit 1 to the Order.

Basis for Relief

18. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541. The Tax Attributes are property of the Debtors’ estates. *See Off. Comm. of Unsecured Creditors v. PSS S.S. Co. (In re Prudential Lines Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) (“We hold that the right to a carryforward attributable to its . . . NOL was property of [the debtor’s] bankruptcy estate.”); *Off. Comm. of Unsecured Creditors v. Forman (In re Forman Enters., Inc.)*, 273 B.R. 408, 415 (Bankr. W.D. Pa. 2002) (finding that NOLs are property of the debtors’ estates). Moreover, section 362(a)(3) of the Bankruptcy Code, stays “any act [of an entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Accordingly, any act of a holder of a debtor’s equity securities that causes the termination, or limits use, of the Tax Attributes violates the automatic stay. *See, e.g., In re Prudential Lines*, 928 F.2d at 574 (holding that causing the termination of or adversely affecting the value of a debtor’s NOL violates the automatic stay).

19. Implementation of the Procedures is necessary and appropriate to enforce the automatic stay and, critically, to preserve the value of the Tax Attributes for the benefit of the Debtors' estates. Under sections 382 and 383 of the IRC, certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock prior to the consummation of a chapter 11 plan (the "Plan") could cause the termination or limit the use of the Tax Attributes. As stated above, the Debtors estimate that, as of December 31, 2023, they had approximately \$180 million of U.S. federal NOLs and approximately \$110 million of 163(j) Carryforwards, and certain other tax attributes, and, in addition, the Debtors expect to generate substantial additional Tax Attributes in the current tax year, including during the pendency of these chapter 11 cases. These Tax Attributes may be necessary to address tax consequences resulting from consummation of the sale of some or substantially all of the Debtors' assets (a "Sale") and/or implementation of the Plan and, depending upon the structure utilized to consummate a Sale and/or Plan, they may provide the potential for material future tax savings (including in post-emergence years). The termination or limitation of the Tax Attributes could, therefore, be materially detrimental to all parties in interest, including by potentially limiting the Debtors' ability to utilize certain structures to consummate a Sale and/or the Plan. Granting the relief requested herein will preserve the Debtors' flexibility in operating their businesses during the pendency of these chapter 11 cases and implementing an emergence strategy that makes full and efficient use of the Tax Attributes and maximizes the value of the Debtors' estates.

20. Additionally, the Procedures do not bar all transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock. The Debtors seek to establish procedures only to monitor those types of transactions that would pose a serious risk under the ownership change test pursuant to sections 382 and 383 of the IRC and to preserve the

Debtors' ability to seek substantive relief if it appears that a proposed transfer or declaration of worthlessness could jeopardize the Debtors' utilization of the Tax Attributes. Because of the Tax Attributes' importance to the Debtors' chapter 11 cases, and thus all parties in interest, the benefits of implementing the Procedures outweigh the drawbacks of subjecting a small subset of transfers to the Procedures.

21. Courts in this district and other jurisdictions routinely grant relief similar to the relief requested in this Motion in a number of cases. *See, e.g., In re Digital Media Sols., Inc.*, No. 24-90468 (ARP) (Bankr. S.D. Tex. Sept. 12, 2024) (authorizing procedures for declarations of worthlessness); *In re SmileDirectClub, Inc.*, No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 2, 2023) (same); *In re Genesis Care Pty Ltd.*, No. 23-90614 (DRJ) (Bankr. S.D. Tex. June 1, 2023) (same); *In re Benefytt Techs., Inc.*, No. 23-90566 (CML) (Bankr. S.D. Tex. May 23, 2023) (same); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (same).⁹

Emergency Consideration

22. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm" and Bankruptcy Local Rule 9013-1(i). This Motion requests relief from procedural rules and requirements that pertain to matters of immediate significance or which involve deadlines sooner than twenty-one (21) days after the commencement of these chapter 11 cases. The relief will save costs and avoid undue administrative burden and confusion only if granted immediately. The Debtors have satisfied the "immediate and irreparable harm"

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Reservation of Rights

23. Nothing contained herein or any actions taken pursuant to the relief requested or granted (including any payment made in accordance with any such order) is intended as or shall be construed as: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any

particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

24. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Consenting Term Loan Lenders; (d) the agent under the Debtors' Term Loan Facility and counsel thereto; (e) the agent under the Debtors' DIP Facility and counsel thereto; (f) counsel to Macquarie; (g) the United States Attorney's Office for the Southern District of Texas; (h) the Internal Revenue Service; (i) the United States Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business; (k) beneficial owners holding 4.5 percent or more of outstanding Common Stock; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

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The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
September 24, 2024

/s/ Jason G. Cohen

BRACEWELL LLP

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge.
This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Jason G. Cohen

Jason G. Cohen

Certificate of Service

I certify that on September 24, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jason G. Cohen

Jason G. Cohen

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)
) **Re: Docket No. __**

**ORDER (I) APPROVING NOTIFICATION
AND HEARING PROCEDURES FOR CERTAIN
TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS
WITH RESPECT TO COMMON STOCK AND (II) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), (a) approving certain hearing procedures, substantially in the form of **Exhibit 1** attached hereto (the “Procedures”), related to certain transfers of, or declarations of worthlessness with respect to Debtor Vertex Energy, Inc.’s existing classes of common stock or any Beneficial Ownership³

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

³ “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the U.S. Department of the Treasury regulations thereunder (“Treasury Regulations”) (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”), (b) directing that any purchase, sale, other transfer of, or declaration of worthlessness with respect to Common Stock in violation of the Procedures shall be null and void ab initio, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Procedures, as set forth in **Exhibit 1** attached hereto, are hereby approved; *provided, however*, that any party in interest may file a motion and seek emergency relief from the Procedures based upon a showing of sufficient cause; *provided, further*, that the Debtors’ and the other Notice Parties’ rights to oppose such relief are fully reserved and preserved.

2. Any transfer of or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.

3. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors, which may include the actions specified in Private Letter Ruling 201010009 (Dec. 4, 2009), to appropriately reflect that such transfer is null and void *ab initio*.

4. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

5. The Debtors are authorized to retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures.

6. The Debtors shall post the Procedures to the website established by the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants, LLC, d/b/a Verita Global for these chapter 11 cases (<https://www.veritaglobal.net/vertex>), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown.

7. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

8. Nothing herein shall preclude any person desirous of acquiring Common Stock from requesting relief from this Order from the Court, subject to the Debtors' and the other Notice Parties' rights to oppose such relief.

9. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse compliance therewith.

10. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. Notice of the Motion satisfies the requirements of the Bankruptcy Rules, and the Bankruptcy Local Rules are satisfied by such notice.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2024

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

**Procedures for Transfers of and Declarations of Worthlessness
with Respect to Beneficial Ownership of Common Stock**

**PROCEDURES FOR TRANSFERS OF AND DECLARATIONS
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

The following procedures apply to transfers of Common Stock:¹

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) that is a Substantial Shareholder (as defined herein) must file with the Court, and serve upon: (i) the Debtors, Vertex Energy, Inc., 1331 Gemini Street Suite 250, Houston, Texas 77058, Attn.: R. Seth Bullock; (ii) proposed co-counsel to the Debtors (a) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Brian Schartz, P.C. (brian.schartz@kirkland.com), Josephine Fina (josephine.fina@kirkland.com), and Brian Nakhaimousa (brian.nakhaimousa@kirkland.com); Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, Attn: John R. Luze (john.luze@kirkland.com), and Rachael M. Bentley (rachael.bentley@kirkland.com); (b) proposed co-counsel to the Debtors, Bracewell LLP, 711 Louisiana Street, Suite 2300, Houston, Texas 77002, Attn: Jason G. Cohen (jason.cohen@bracewell.com), and Jonathan L. Lozano (jonathan.lozano@bracewell.com); Bracewell LLP, 31 W. 52nd Street, Suite 1900, New York, New York 10019, Attn: Mark E. Dendinger (mark.dendinger@bracewell.com) (iii) counsel to the Consenting Term Loan Lenders, Sidley Austin LLP, 787 7th Avenue, New York, New York 10019, Attn: Leslie A. Plaskon (lplaskon@sidley.com) and Michele A. Nudelman (mnudelman@sidley.com); Sidley Austin LLP, 1999 Avenue of the Stars, 17th Floor, Los Angeles, CA 90067, Attn: Genevieve Weiner (gweiner@sidley.com) (iv) the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn.: Andrew Jimenez (andrew.jimenez@usdoj.gov), and Jana Whitworth (jana.whitworth@usdoj.gov); and (v) any statutory committee appointed in these chapter 11 cases (collectively, the “Notice Parties”), a declaration of such status, substantially in the form attached hereto as **Exhibit 1A** (each, a “Declaration of Status as a Substantial Shareholder”), on or before the later of (A) twenty (20) calendar days after the date of the Notice of Order, or (B) ten (10) calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock,

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

substantially in the form attached hereto as **Exhibit 1B** (each, a “Declaration of Intent to Accumulate Common Stock”).

- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form attached hereto as **Exhibit 1C** (each, a “Declaration of Intent to Transfer Common Stock,” and together with a Declaration of Intent to Accumulate Common Stock, each, a “Declaration of Proposed Transfer”).
- d. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock, as applicable, described in the Declaration of Proposed Transfer on the grounds that such transfer is reasonably expected to adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors or any of the other Notice Parties file an objection, such transaction will remain ineffective unless such objection is withdrawn, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty (20)-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional twenty (20)-day waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the Notice Parties.
- e. For purposes of these Procedures (including, for the avoidance of doubt, with respect to both transfers and declarations of worthlessness): (i) a “Substantial Shareholder” is any entity or individual person that has Beneficial Ownership of at least 4,208,146 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of section 382 of the IRC, and the Treasury Regulations promulgated thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual

and such individual's family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An "Option" to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The following procedures apply for declarations of worthlessness of Common Stock:

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder² must file with the Court and serve upon the Notice Parties a declaration of such status, substantially in the form attached hereto as **Exhibit 1D** (each, a "Declaration of Status as a 50-Percent Shareholder"), on or before the later of (i) twenty (20) calendar days after the date of the Notice of Order and (ii) ten (10) calendar days after becoming a 50-Percent Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors' emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction (a "Declaration of Intent to Claim a Worthless Stock Deduction"), substantially in the form attached hereto as **Exhibit 1E**.
 - i. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize their Tax Attributes.
 - ii. If the Debtors or the other Notice Parties timely object, the filing of the tax return or amendment thereto with such claim will not be

² For purposes of the Procedures, a "50-Percent Shareholder" is any person or entity that, at any time since December 31, 2020, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).

permitted unless approved by a final and non-appealable order of the Court, unless such objection is withdrawn.

- iii. If the Debtors and the other Notice Parties do not object within such twenty (20)-day period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional twenty (20)-day waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to the Notice Parties.

NOTICE PROCEDURES

The following notice procedures apply to these Procedures:

- a. No later than five (5) business days following entry of the Order, or as soon as reasonably practicable thereafter, the Debtors shall serve a notice by first class mail or overnight mail, postage prepaid, substantially in the form attached to the Procedures as **Exhibit 1F** (the “Notice of Order”), on: (i) the U.S. Trustee; (ii) the entities listed on the consolidated list of creditors holding the thirty (30) largest unsecured claims; (iii) the U.S. Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the Notice Parties; and (vi) each equity security holder directly registered with the transfer agent for the Debtors’ Common Stock and all banks, brokers, intermediaries, other nominees, or their mailing agents (collectively, “Nominees”) that hold the Common Stock in “street name” for the beneficial holders (with instructions to serve down to the beneficial holders of such Common Stock).
- b. All registered and Nominee holders of Common Stock and Nominees that hold the Common Stock in “street name” shall be required to serve the Notice of Order on any holder for whose benefit such registered or Nominee holder holds such Common Stock, down the chain of ownership for all such holders of Common Stock, as applicable.
- c. Any entity or individual, or broker or agent acting on such entity’s or individual’s behalf who sells Common Stock to another entity or individual, shall be required to serve a copy of the Notice of Order on such purchaser of such Common Stock, or any broker or agent acting on such purchaser’s behalf.
- d. Within five calendar days following entry of the Order, or as soon as reasonably practicable, the Debtors shall submit a copy of the Notice of

Order (modified for publication) for publication in *The New York Times (National Edition)*.

- e. To the extent confidential information is required in any declaration described in the Procedures, such confidential information may be filed with the Court and served in redacted form; *provided, however*, that any such declarations served on the Debtors ***shall not*** be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except: (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided, further, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to an objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.

Exhibit 1A

Declaration of Status as a Substantial Shareholder

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER²

The undersigned party is/has become a Substantial Shareholder with respect to the existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Vertex Energy, Inc. Vertex Energy, Inc. is a debtor and debtor in possession in Case No. 24-90507 (CML) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 4,208,145 shares of Common Stock (representing approximately 4.5 percent of issued and outstanding shares of Common Stock); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)) and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option (as defined herein) to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

As of _____, the undersigned party currently has Beneficial Ownership of _____ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

| Number of Shares | Type of Stock (Common) | Date Acquired |
|-------------------------|-------------------------------|----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

(Attach additional page or pages if necessary)

The last four digits of the taxpayer identification number of the undersigned party are _____.

Pursuant to the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. ____] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

At the election of the Substantial Shareholder, the Declaration to be filed with the Court (but not the Declaration that is served upon the Debtors) may be redacted to exclude the Substantial Shareholder’s taxpayer identification number and the amount of Common Stock that the Substantial Shareholder beneficially owns.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and,

to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Substantial Shareholder)

By:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Dated: _____, 2024
_____, _____
(City) (State)

Exhibit 1B

Declaration of Intent to Accumulate Common Stock

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

**DECLARATION OF INTENT TO
ACCUMULATE COMMON STOCK²**

The undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more shares of the existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Vertex Energy, Inc. Vertex Energy, Inc. is a debtor and debtor in possession in Case No. 24-90507 (CML) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 4,208,145 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

If applicable, on _____, __, __, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

The undersigned party currently has Beneficial Ownership of _____ shares of Common Stock.

Pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of _____ shares of Common Stock or an Option with respect to _____ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of _____ shares of Common Stock.

The last four digits of the taxpayer identification number of the undersigned party are _____.

Pursuant to the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. ____] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

At the election of the undersigned party, the Declaration to be filed with the Court (but not the Declaration that is served upon the Debtors) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

Pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

The Debtors and the other Notice Parties have twenty (20) calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

Any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Dated: _____, _____
_____, _____

(City)

(State)

Exhibit 1C

Declaration of Intent to Transfer Common Stock

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

**DECLARATION OF INTENT
TO TRANSFER COMMON STOCK²**

The undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the “Proposed Transfer”) one or more shares of the existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Vertex Energy, Inc. Vertex Energy, Inc. is a debtor and debtor in possession in Case No. 24-90507 (CML) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 4,208,145 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock); and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

If applicable, on _____, _____, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

The undersigned party currently has Beneficial Ownership of _____ shares of Common Stock.

Pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of _____ shares of Common Stock or an Option with respect to _____ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of _____ shares of Common Stock after such transfer becomes effective.

The last four digits of the taxpayer identification number of the undersigned party are _____.

Pursuant to the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. ____] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

At the election of the undersigned party, the Declaration to be filed with the Court (but not the Declaration that is served upon the Debtors) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

Pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

The Debtors and the other Notice Parties have twenty (20) calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors or any of the other Notice Parties file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn or such transaction is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

Any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Dated: _____, ____
_____, _____

(City)

(State)

Exhibit 1D

Declaration of Status as a 50-Percent Shareholder

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER

The undersigned party is/has become a 50-Percent Shareholder² with respect to one or more shares of the existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Vertex Energy, Inc. Vertex Energy, Inc. is a debtor and debtor in possession in Case No. 24-90507 (CML) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2020, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

As of _____, _____, the undersigned party currently has Beneficial Ownership of _____ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

| Number of Shares | Type of Stock (Common) | Date Acquired |
|-------------------------|-------------------------------|----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

(Attach additional page or pages if necessary)

The last four digits of the taxpayer identification number of the undersigned party are _____.

Pursuant to the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. ____] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Dated: _____, _____
_____, _____

(City)

(State)

Exhibit 1E

Declaration of Intent to Claim a Worthless Stock Deduction

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION²

The undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “Worthless Stock Deduction”) with respect to one or more shares of the existing classes of common stock or any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”) of Vertex Energy, Inc. Vertex Energy, Inc. is a debtor and debtor in possession in Case No. 24-90507 (CML) pending in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

² For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time since December 31, 2020, has owned Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834 as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

If applicable, on _____, _____, the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Court and served copies thereof as set forth therein.

The undersigned party currently has Beneficial Ownership of _____ shares of Common Stock.

Pursuant to the Worthless Stock Deduction, the undersigned party proposes to declare that _____ shares of Common Stock became worthless during the tax year ending _____.

The last four digits of the taxpayer identification number of the undersigned party are _____.

Pursuant to the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. ____] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

At the election of the undersigned party, the Declaration to be filed with the Court (but not the Declaration that is served upon the Debtors) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

Pursuant to the Order, the undersigned party acknowledges that the Debtors and the other Notice Parties have twenty (20) calendar days after receipt of this Declaration to object to the Worthless Stock Deduction described herein. If the Debtors or any of the other Notice parties file an objection, such Worthless Stock Deduction will not be effective unless such objection is withdrawn or such action is approved by a final and non-appealable order of the Court. If the Debtors and the other Notice Parties do not object within such twenty-day period, then after

expiration of such period the Worthless Stock Deduction may proceed solely as set forth in this Declaration.

Any further claims of worthlessness contemplated by the undersigned party will each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional twenty (20)-day waiting period.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By:

Name: _____

Address: _____

Telephone: _____

Facsimile: _____

Dated: _____, 2024

_____, _____

(City)

(State)

Exhibit 1F

Notice of Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

VERTEX ENERGY, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-90507 (CML)
)
) (Joint Administration Requested)
)

**NOTICE OF ORDER
APPROVING NOTIFICATION AND HEARING
PROCEDURES FOR CERTAIN TRANSFERS OF AND
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF THE EXISTING CLASSES OF COMMON STOCK (THE “COMMON STOCK”) OF VERTEX ENERGY, INC.:

PLEASE TAKE NOTICE that on September 24, 2024 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the Southern District of Texas (the “Court”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

PLEASE TAKE FURTHER NOTICE that on the Petition Date, the Debtors filed the *Debtors’ Emergency Motion for Entry of an Order (I) Approving Notification and Hearing*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/vertex>. The location of Debtor Vertex Energy, Inc.’s corporate headquarters and the Debtors’ service address in these chapter 11 cases is 1331 Gemini Street Suite 250, Houston, Texas 77058.

Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief [Docket No. [___]] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that on [____], 2024, the Court entered the *Order (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief* [Docket No. [___]] (the “Order”) approving procedures for certain transfers and declarations of worthlessness with respect to Common Stock, set forth in **Exhibit 1** attached to the Order (the “Procedures”).²

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, a Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock, or Beneficial Ownership of Common Stock in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, the Procedures shall apply to the holding and transfers of Common Stock, or any Beneficial Ownership therein by a Substantial Shareholder or someone who may become a Substantial Shareholder.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock, or Beneficial Ownership of Common Stock, in violation of the Procedures, and any such deduction in violation of the Procedures shall be null and void *ab initio*, and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Order or the Motion, as applicable.

PLEASE TAKE FURTHER NOTICE that pursuant to the Order, upon the request of any person or entity, the proposed notice, claims, and solicitation agent for the Debtors, Kurtzman Carson Consultants, LLC, d/b/a Verita, will provide a copy of the Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at <https://ecf.njb.uscourts.gov/> for a fee, or free of charge by accessing the Debtors' restructuring website at <https://www.veritaglobal.net/vertex>.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, failure to follow the Procedures set forth in the Order shall constitute a violation of, among other things, the automatic stay provisions of section 362 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that nothing in the Order shall preclude any person desirous of acquiring any Common Stock from requesting relief from the Order from this Court, subject to the Debtors' and the other Notice Parties' rights to oppose such relief.

PLEASE TAKE FURTHER NOTICE that, except to the extent that the Order expressly conditions or restricts trading in Common Stock, nothing in the Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of Common Stock, including in connection with the treatment of any such stock under any chapter 11 plan or any applicable bankruptcy court order.

PLEASE TAKE FURTHER NOTICE that any prohibited purchase, sale, or other transfer of, or declaration of worthlessness with respect to, Common Stock, Beneficial Ownership thereof, or option with respect thereto in violation of the Order is prohibited and shall be null and void *ab initio* and may be subject to additional sanctions as the Court may determine.

PLEASE TAKE FURTHER NOTICE that the requirements set forth in the Order are in addition to the requirements of applicable law and do not excuse compliance therewith.

Houston, Texas
September [●], 2024

/s/ *Draft*

BRACEWELL LLP

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-and-

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*

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-and-

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*Proposed Co-Counsel to the Debtors
and Debtors in Possession*