

**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) AUTHORIZING CONTINUATION OF THE
PREPETITION HEDGING ARRANGEMENT, (II) AUTHORIZING
ENTRY INTO AND PERFORMANCE UNDER POSTPETITION HEDGING
ARRANGEMENTS, (III) PROVIDING SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS IN RESPECT OF POSTPETITION HEDGING ARRANGEMENTS,
(IV) MODIFYING THE AUTOMATIC STAY AND (V) 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) authorizing the continuation of the Prepetition Hedging Arrangement, (b) authorizing entry into and performance under the Postpetition Hedging Arrangements, in the ordinary course of business, (c) providing superpriority administrative expense status in respect of the Postpetition Hedging Arrangements, (d) modifying the automatic stay, and (e) granting related relief.³

2. The Debtors believe that entry into and performance under the Hedging Arrangements is an ordinary course activity of the Debtors’ business. However, they are filing this Motion out of an abundance of caution to assure the Postpetition Hedging Providers that the Debtors’ will be able to enter into and perform under the Hedging Arrangements notwithstanding the pendency of these chapter 11 cases.

3. As used herein, the term “Hedging Arrangements” encompasses a derivatives transaction entered into by a Debtor pursuant to agreements between one or more of the Debtors and a counterparty thereto in substantially the form of (a) Futures Commission Merchant

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 Capitalized terms used, but not defined, in this paragraph shall have the meanings ascribed to them herein.

Agreements (each, an “FCM Agreement”); and (b) forward contracts among and/or between the Debtors and third parties, including affiliated entities.⁴

Jurisdiction and Venue

4. 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 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.

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

6. The bases for the relief requested herein are sections 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (the “Bankruptcy Code”), rules 2002, 6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 1075-1, and 9013-1 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”).

⁴ In addition to the Hedging Arrangements described herein, the Debtors maintain, and are seeking relief to continue on a postpetition basis, certain prepetition hedging arrangements in connection with the Amended Intermediation Facility (as defined in the Intermediation Motion), as set forth in the Debtors’ *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Continuation of the Intermediation Contracts, as Amended, (II) Authorizing the Debtors to Enter Into and Perform Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (III) Providing Superpriority Administrative Expense Status and Liens in Respect of Postpetition Intermediation Transactions and Postpetition Hedging Transactions, (IV) Granting Adequate Protection to the Intermediation Provider, (V) Providing Superpriority Administrative Expense Status in Respect of Purchaser Support Agreements, (VI) Modifying the Automatic Stay, (VII) Setting a Final Hearing, and (VIII) Granting Related Relief* (the “Intermediation Motion”), filed contemporaneously herewith.

Background

7. 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.

Hedging Arrangements

8. To limit their exposure to fluctuations in commodity prices, the Debtors utilize the common “2-1-1” crack spread⁵ to track the directional profitability of certain refining configurations. Likewise, the Debtors also hedge the value of the refined products held in inventory against fluctuations in market prices. The Debtors’ prepetition hedging arrangement (the “Prepetition Hedging Arrangement”) is facilitated with the help of their futures commission merchant, RJ O’Brien & Associates LLC (“RJ O’Brien”).

9. The Debtors’ Prepetition Hedging Arrangement is relatively minor, with the notional value of the hedging arrangement typically representing less than three (3) percent of total monthly sales. The viability of the Debtors’ business is dependent on their ability to enter into derivative arrangements in the ordinary course of business, and the futures commodity trading services of RJ O’Brien. As of the Petition Date, the Debtors have approximately \$450,000 posted as margin to secure its open futures positions. Specifically, in exchange for RJ O’Brien’s services,

⁵ The “2-1-1 crack spread” measures the profitability of converting two barrels of crude oil into one barrel of gasoline and one barrel of diesel.

the Debtors pay a set fee of \$1.25 for each futures contract that is executed on their behalf (the “Broker’s Fees”). Notably, such hedging arrangements are common practice in the Debtors’ industry. Without the Prepetition Hedging Arrangement, the Debtors would be exposed to market volatility with no ability to safeguard against commodity fluctuations. As of the Petition Date, the Debtors’ Hedging Arrangements have a notional value of approximately \$4.3 million.

10. The Debtors believe it is to the benefit of all stakeholders to (a) continue the Prepetition Hedging Arrangement and (b) obtain authority to enter into and perform under—in the ordinary course of business and consistent with prepetition practices—postpetition hedging arrangements (the “Postpetition Hedging Arrangements” and together with the Prepetition Hedging Arrangement, the “Hedging Arrangements”). The Hedging Agreements are a significant and—importantly—low-risk means to reduce the impact of commodity-price and other volatility on the Debtors’ cash flow.

11. To provide assurance to RJ O’Brien and other potential counterparties to Postpetition Hedging Arrangements (the “Postpetition Hedging Providers”) of the Debtors’ continued ability to enter into and perform under the Hedging Arrangements during these chapter 11 cases, the Debtors respectfully request that the Court enter the Order, providing the Postpetition Hedging Providers with administrative expense status under section 364 of the Bankruptcy Code, and relief from the automatic stay to the extent necessary to allow the Postpetition Hedging Providers the benefits of the Postpetition Hedging Arrangements.

Basis for Relief

I. Section 363(c) of the Bankruptcy Code Authorizes the Debtors to Continue the Prepetition Hedging Arrangement and to Enter into Postpetition Hedging Arrangements.

12. Section 363(c)(1) of the Bankruptcy Code provides that a debtor in possession “may enter into transactions . . . in the ordinary course of business, without notice or a hearing,

and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The ordinary course of business standard embodied in this provision is intended to allow a debtor in possession the flexibility to run its business during its chapter 11 proceedings. *See Moore v. Brewer (In re HMH Motor Servs., Inc.)*, 259 B.R. 440, 448–49 (Bankr. S.D. Ga. 2000).

13. The Bankruptcy Code does not define “ordinary course of business.” *In re Com. Mortg. & Fin. Co.*, 414 B.R. 389, 393 (Bankr. N.D. Ill. 2009). However, courts have clarified that the standard is meant “to embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Med. Malpractice Ins. Assoc. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997) (quoting *In re Watford*, 159 B.R. 597, 599 (M.D. Ga. 1993)); *see also, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (stating that section 363 of the Bankruptcy Code is designed to allow a debtor in possession “flexibility to engage in ordinary transactions without unnecessary . . . oversight”). The two tests ordinarily applied by the courts to determine the ordinary course of business are the “horizontal test” and the “vertical test.” *Denton Cty. Elec. Co-Op., Inc. v. Eldorado Ranch (In re Denton Cty. Elec. Co-Op. Inc.)*, 281 B.R. 876, 882 (Bankr. N.D. Tex. 2002); *In re Springfield Contraction Corp.*, 154 B.R. 214, 225-26 (Bankr. E.D.V.A 1993). The “horizontal test” focuses on the way businesses operate “from an industry-wide perspective”. *Id.* The “vertical test” focuses on the expectations of creditors. *Id.* Continuation of the Prepetition Hedging Arrangement and entry into Postpetition Hedging Arrangements satisfy both tests.

14. Under the horizontal test, the Hedging Arrangements are typical arrangements that are ubiquitous among companies in the Debtors’ industry. Accordingly, the Debtors believe that continuation of the Prepetition Hedging Arrangement, entry into Postpetition Hedging

Arrangements, and the incurrence and payment of the obligations thereunder (the “Hedging Obligations”) fall within the standard, ordinary course practice of companies in the Debtors’ industry.

15. Under the vertical test, creditors’ reasonable expectations of a debtor’s “ordinary course of business” are based on the debtor’s specific prepetition business practices and norms and the expectation that the debtor will conform to those practices and norms while operating as a debtor in possession. *In re Garofalo’s Finer Foods, Inc.*, 186 B.R. 414, 425 (N.D. Ill. 1995). Thus, a fundamental characteristic of an “ordinary” postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Com. Credit (In re Nat’l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (9th Cir. B.A.P. 1995); *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y. 1983). The size, nature, and type of business and the size and nature of the transactions in question are all relevant to determining whether the transactions at issue are ordinary. *U.S. ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 598 (M.D. Tenn. 1990); *In re Johns-Manville Corp.*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986). “Accordingly, a postpetition transaction undertaken by the debtor that is similar in size and nature to prepetition transactions undertaken by the debtor would be within the ordinary course of business.” *Garofalo’s*, 186 B.R. at 426.

16. Here, with respect to the Postpetition Hedging Arrangements, the Debtors will be operating consistent with the Debtors’ prepetition practices. Subject to reaching acceptable commercial terms, the continuation of the Prepetition Hedging Arrangement and the entry into the Postpetition Hedging Arrangements would merely continue the Debtors’ long-standing and successful prepetition hedging efforts. Refineries and other energy companies commonly enter into financial derivatives and other hedging arrangements to maximize the value of their estates,

and courts in this jurisdiction routinely approve similar relief. *See, e.g., In re Oasis Petroleum North America LLC*, No. 20-34771 (Bankr. S.D. Tex. Sept. 30, 2020) (granting authority to initiate and continue hedging arrangements and granting superpriority administrative-expense claim status to counterparties); *In re Denbury Resources Inc.*, No. 20-33801 (Bankr. S.D. Tex. Aug. 31, 2020) (same); *In re Bruin E&P Partners, LLC*, No. 20-33605 (Bankr. S.D. Tex. Aug. 4, 2020) (same); *In re Chesapeake Energy Corp.*, No. 20-33233 (Bankr. S.D. Tex. June 29, 2020) (granting authority to enter into postpetition hedging agreements and granting superpriority administrative expense claim status to counterparties); *In re Ultra Petroleum Corp.*, No. 20-32631 (Bankr. S.D. Tex. June 8, 2020) (same).⁶

17. The Debtors submit that they are authorized to continue the Prepetition Hedging Arrangement and enter into the Postpetition Hedging Arrangements without prior Court approval, pursuant to section 363(c)(1) of the Bankruptcy Code. However, to the extent that the continuation of the Prepetition Hedging Arrangement and the entry into the Postpetition Hedging Arrangements implicate section 363(b) of the Bankruptcy Code, the Debtors submit that continuing performance under and entering into such arrangements would constitute a proper exercise of the Debtors' business judgment. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that debtors "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." Under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also, e.g., In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov.

⁶ 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.

20, 2012) (noting that it is “well-settled” that a debtor may use its assets outside the ordinary course where such use “represents the sound exercise of business judgment”); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith, and supported by a good business reason). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Johns-Manville*, 60 B.R. at 616 (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

18. There is no question that a sound business purpose exists for the Debtors to continue the Prepetition Hedging Arrangement and enter into the Postpetition Hedging Arrangements because they will provide a low risk means to reduce the impact of volatility on the Debtors’ cash flow and help the Debtors’ limit working capital requirements. Accordingly, the Hedging Arrangements will enhance the value of the Debtors’ estates for the benefit of all their stakeholders.

II. The Debtors Should Be Authorized to Grant Superpriority Administrative Expense Status on Account of the Postpetition Hedging Obligations Pursuant to Section 364 of the Bankruptcy Code.

19. Section 364 of the Bankruptcy Code authorizes a debtor to obtain “credit” on a superpriority or senior secured basis when obtaining such credit on other terms is unavailable. 11 U.S.C. §§ 364(c), (d). Courts generally afford debtors considerable deference to determine, in their business judgment, the terms under which they obtain postpetition secured credit. *See, e.g., In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

20. To provide comfort to the Postpetition Hedging Providers that the Debtors will be able to honor the Postpetition Hedging Obligations, the Debtors seek authority to grant

superpriority administrative expense status on account of the Postpetition Hedging Obligations. Courts in this jurisdiction routinely approve similar relief. *See, e.g., In re Oasis Petroleum North America LLC*, No. 20-34771 (Bankr. S.D. Tex. Sept. 30, 2020) (granting superpriority administrative-expense claim status to counterparties); *In re Denbury Resources Inc.*, No. 20-33801 (Bankr. S.D. Tex. Aug 31, 2020) (same); *In re Bruin E&P Partners, LLC*, No. 20-33605 (Bankr. S.D. Tex. Aug. 4, 2020) (same); *In re Chesapeake Energy Corp.*, No. 20-33233 (Bankr. S.D. Tex. June 29, 2020) (same); *In re Ultra Petroleum Corp.*, No. 20-32631 (Bankr. S.D. Tex. June 8, 2020) (same).⁷

21. Granting superpriority administrative expense status on account of the Postpetition Hedging Obligations is not unduly burdensome on the Debtors, and the Debtors believe that these grants are necessary to enter into the Postpetition Hedging Arrangements, which are essential both to the stability of the Debtors' businesses and the success of the Debtors' restructuring. In light of the foregoing, the Debtors believe that authorizing the Debtors to provide the Postpetition Hedging Obligations with superpriority administrative expense status will preserve the value of the Debtors' estates and is, therefore, appropriate and in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

III. The Automatic Stay Should Be Modified on a Limited Basis.

22. The proposed Order modifies the automatic stay provisions of section 362 of the Bankruptcy Code to the extent necessary to allow the Postpetition Hedging Providers to exercise rights and remedies following the occurrence and during the continuation of an event of default or a termination event under the Postpetition Hedging Arrangements, including with respect to

⁷ 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.

netting, the early termination of trades, and other rights and remedies in accordance with the terms of any such Postpetition Hedging Arrangement.

23. The stay modification, in the Debtors' business judgment, is reasonable and fair under the circumstances of the chapter 11 cases. Accordingly, the Court should modify the automatic stay to the extent contemplated by the Order.

Emergency Consideration

24. Pursuant to Bankruptcy Local Rule 9013-1(i), 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." An immediate and orderly transition into chapter 11 is critical to the viability of their operations and any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

25. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

26. 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

27. 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) Postpetition Hedging Providers; (l) RJ O'Brien; and (m) 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 25, 2024

/s/ Jason G. Cohen

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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 25, 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:)	
)	Chapter 11
VERTEX ENERGY, INC., <i>et al.</i> , ¹)	
)	Case No. 24-90507 (CML)
Debtors.)	
)	(Joint Administration Requested)
)	
)	Re: Docket No. __

**ORDER (I) AUTHORIZING CONTINUATION
OF THE PREPETITION HEDGING ARRANGEMENT,
(II) AUTHORIZING ENTRY INTO AND PERFORMANCE
UNDER POSTPETITION HEDGING ARRANGEMENTS,
(III) PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS IN RESPECT OF POSTPETITION HEDGING ARRANGEMENTS,
(IV) MODIFYING THE AUTOMATIC STAY AND (V) 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) authorizing the continuation of the Prepetition Hedging Arrangement, (b) authorizing entry into and performance under the Postpetition Hedging Arrangements, (c) providing superpriority administrative expense status in respect of the Postpetition Hedging Arrangements, (d) modifying the automatic stay, and (e) 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 may enter a final order consistent with Article III of the United States

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.

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 this Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found 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 Debtors are authorized, but not directed, to continue performing under the Prepetition Hedging Arrangement, in the ordinary course of business and in accordance with the Debtors' prepetition practice, and to honor, pay, or otherwise satisfy all obligations arising under the Prepetition Hedging Arrangement as they come due, including the payment of accrued and outstanding Broker's Fees.

2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment and in accordance with the Debtors' prepetition practice, to enter into and perform under the Postpetition Hedging Arrangements in the ordinary course of business.

3. The Debtors shall maintain a matrix/schedule of Pre-Petition Hedging Arrangements and Post Petition Hedging Arrangements entered into or terminated pursuant to this Order, including the following information: (a) the names of the respective parties to the arrangements; (b) the operative dates of the arrangements; (c) the general terms of the arrangements; and (d) any arrangements that have been terminated by reason of default or

occurrence of a termination event. If the Debtors do not confirm a chapter 11 plan within sixty (60) days of the Petition Date, the Debtors shall provide a copy of the matrix/schedule to the U.S. Trustee, counsel to the Consenting Term Loan Lenders, and any statutory committee appointed in these chapter 11 cases every thirty (30) days thereafter.

4. The Postpetition Hedging Obligations shall have and are hereby granted superpriority administrative expense status pursuant to sections 364(c)(1) and 503(b)(1) of the Bankruptcy Code and shall be allowed in an amount determined in accordance with the terms of the Postpetition Hedging Arrangements, the DIP Loan Agreement, and the DIP Orders.

5. The automatic stay provisions of section 362 of the Bankruptcy Code, and the setoff and netting provisions of section 553 of the Bankruptcy Code, are hereby modified solely to the extent necessary to:

a. permit immediate unconditional exercise and enforcement of rights and remedies by the Postpetition Hedging Providers upon the occurrence and during the continuation of an event of default or a termination event (each as defined in the Postpetition Hedging Arrangements) under the Postpetition Hedging Arrangements (as applicable, including, but not limited to, the suspension, termination, liquidation, withholding of performance, or acceleration thereof and setoff, netting, and application of any payment, settlement payment, termination values, termination payments, and any other amounts that such Postpetition Hedging Provider would be entitled to receive from or otherwise be obligated to pay to any Debtor under any Postpetition Hedging Arrangement), and the Postpetition Hedging Providers' rights thereunder shall not be modified, stayed, avoided, or otherwise limited by order of this Court or any court proceeding under the Bankruptcy Code, including, but not limited to, the right to collect from the Debtors amounts that may be owed to a Postpetition Hedging Provider following such termination and the right to withhold performance pursuant to the terms of any Postpetition Hedging Arrangement. The Debtors waive the right and shall not seek relief, including under section 105(a) or section 549 of the Bankruptcy Code, to the extent that any such relief would in any way restrict or impair the rights of any Postpetition Hedging Providers under the Postpetition Hedging Arrangements or this Order; *provided* that nothing herein shall limit the rights of the Debtors to seek an order from the Court on an expedited basis to challenge that an event of default or a termination event has actually occurred or is continuing;

b. provide that the Postpetition Hedging Providers' rights, powers, privileges, and remedies under the Postpetition Hedging Arrangements, as

applicable, and this Order may not be modified, stayed, avoided, or otherwise limited by further order of the Court or any court proceeding under the Bankruptcy Code without the consent of such parties.

6. The Postpetition Hedging Providers shall enjoy all protections provided by this Order, including, but not limited to, the superpriority administrative claims solely up to the amount in the Excluded Accounts (as defined in the DIP Loan Agreements) and automatic stay relief solely with respect to the Excluded Accounts (as defined in the DIP Loan Agreement), in each case, in respect of transactions authorized by this Order.

7. Notwithstanding anything to the contrary contained in the Motion or set forth herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to the requirements and in accordance with any interim or final orders authorizing the Debtors' use of cash collateral and/or postpetition debtor-in-possession financing (any such order, a "DIP Order") and the Approved Budget (as defined in the DIP Order), which such Approved Budget shall control. To the extent there is any inconsistency between the terms of any DIP Order (including any approved budget in connection therewith) and any approval or action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

8. 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.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

15. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

Dated: _____, 2024

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE