

ENTERED

September 25, 2024

Nathan Ochsner, Clerk

**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) 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.



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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