

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)
)
) (Jointly Administered)
)
) **Re: Docket No. 14****ORDER (I) APPROVING THE DEBTORS' PROPOSED
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE
UTILITY SERVICES, (II) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
(III) APPROVING THE DEBTORS' PROPOSED PROCEDURES FOR RESOLVING
ADEQUATE ASSURANCE REQUESTS, AND (IV) 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 the Proposed Adequate Assurance of payment for future Utility Services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, (c) approving the Adequate Assurance Procedures for resolving Adequate Assurance Requests, and (d) 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

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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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 Adequate Assurance Deposit and the Adequate Assurance Procedures are hereby approved and are deemed adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. Within three (3) business days after entry of the Order, the Debtors shall serve a copy of the Motion and this Order to the Utility Providers on the Utility Providers List attached hereto as Exhibit 1.

3. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account during the pendency of these chapter 11 cases.

4. The following Adequate Assurance Procedures are hereby approved:

- a. Subject to paragraphs (b)-(j) below, the Debtors shall deposit the Adequate Assurance Deposit in the amount of \$188,258 in the Adequate Assurance Account for the benefit of the Utility Providers as soon as reasonably practicable, but no later than fifteen (15) business days after the entry of this Order (or as soon as reasonably practicable thereafter).
- b. The funds in the Adequate Assurance Account shall constitute adequate assurance for each Utility Provider in the amount set forth for such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Providers List, and as may be amended or modified in accordance with this Order.

- c. A Utility Provider may request a disbursement from the Adequate Assurance Account if the Debtors have not satisfied their postpetition payment obligation with respect to the Utility Services in accordance with the terms and conditions of such service, and such payment obligation remains unpaid beyond any applicable grace period. No disbursement will be made for an Adequate Assurance Request from the Adequate Assurance Account unless the requesting Utility Provider provides notice to the following parties: (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, 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); and 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); (iii) 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 Lozano (jonathan.lozano@bracewell.com); and Bracewell LLP, 31 W. 52nd Street, Suite 1900, New York, New York 10019, Attn: Mark Dendinger (mark.dendinger@bracewell.com); and (iv) U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002 Attn: Andrew Jimenez, (Andrew.jimenez@usdoj.gov), and Jana Whitworth (jana.whitworth@usdoj.gov); and (v) counsel to any statutory committee appointed in these cases (collectively, the “Notice Parties”). The Debtors shall honor such request within ten (10) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount so disbursed.
- d. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors automatically, without further order of the Court, on the earlier of (i) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases, or (iii) the consummation of a sale, pursuant to section 363 of the Bankruptcy Code, of all or substantially all the assets of the Debtors.
- e. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties within thirty (30) days beginning on the

Petition Date; *provided* that any Subsequently Identified Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties within twenty-one (21) days from the date of service of the Motion and the Order.

- f. The Adequate Assurance Request must (i) be made in writing, (ii) set forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), the outstanding balance for each such account, and a summary of the Debtors' payment history relevant to the affected account(s), (iii) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment under section 366 of the Bankruptcy Code or the basis for the Adequate Assurance Request, each as applicable, and (iv) list all Prepetition Deposits (if applicable) that the Utility Provider holds for the Utility Services related to the Adequate Assurance Request.
- g. Unless and until a Utility Provider files and serves an Adequate Assurance Request in accordance with the Adequate Assurance Procedures, the Utility Provider will be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- h. The Debtors may, without further order from the Court, resolve an Adequate Assurance Request by mutual agreement with a Utility Provider, and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment including cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable.
- i. If the Debtors and the Utility Provider are not able to reach an alternative resolution within fourteen (14) days of receipt of the Adequate Assurance Request, the Debtors or the Utility Provider may request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
- j. Pending resolution of the Determination Hearing, the Utility Provider filing such Adequate Assurance Request will be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

- k. Any Utility Provider that objects to the Adequate Assurance Procedures may file an objection (an “Adequate Assurance Procedures Objection”). The Adequate Assurance Procedures Objection must: (i) be made in writing; (ii) explain why the Utility Provider believes the Proposed Adequate Assurance Procedures are not sufficient under section 366 of the Bankruptcy Code or the basis for seeking the Adequate Assurance Procedures Objection, as applicable; and (iii) be filed no later than 14 days after the entry of this Order. If the Debtors and the Utility Provider are not able to resolve such Adequate Assurance Procedures Objection within 14 days of receipt of such Adequate Assurance Procedures Objection, a hearing to resolve the Adequate Assurance Procedures Objection shall be held on [•], 2024, at 1:00 p.m., prevailing Central Time.

5. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein.

6. Absent compliance with the Adequate Assurance Procedures set forth in this Order, the Utility Providers including, without limitation, those listed on Exhibit 1 attached hereto, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors’ Proposed Adequate Assurance.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Providers List shall not be deemed an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized to: (a) add any Subsequently Identified Utility Provider to the Utility Providers List; (b) remove any Utility Provider from the Utility Providers List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit allocated to the added or removed Utility Providers or Subsequently Identified Utility Providers; *provided* that the Debtors shall provide notice (as set forth in paragraph 10 herein) to the Subsequently Identified Utility Provider of its addition to the Utility Providers List and of its corresponding

proposed Adequate Assurance Deposit; *provided, further*, that the Debtors shall provide fourteen (14) days' notice to the Utility Provider that it is being removed from the Utility Providers List and that the corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate Assurance Account.

9. With respect to an addition to the Utility Providers List, for any Subsequently Identified Utility Provider, the Debtors will increase the Adequate Assurance Deposit as soon as reasonably practicable by an amount equal to approximately one half of the Debtors' average monthly cost of services from the Subsequently Identified Utility Provider, excluding any Prepetition Deposits held by such Subsequently Identified Utility Provider. If an objection is received, the Debtors shall request a hearing before this Court at the next omnibus hearing date, or such other date that the Debtors and the Subsequently Identified Utility Provider may agree. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the fourteen (14) day notice period has expired.

10. The Debtors must: (a) serve any Subsequently Identified Utility Provider a copy of the Motion and this Order within three (3) business days of such provider being added to the Utility Providers List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Provider of its proposed Adequate Assurance Deposit.

11. Any Subsequently Identified Utility Provider shall (a) be bound to the Adequate Assurance Procedures and (b) have twenty-one (21) days from the date of service of the Motion and this Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

12. The Debtors are authorized to make payments to the Utility Providers in the ordinary course of business on a postpetition basis.

13. Notwithstanding anything to the contrary set forth herein, any payment made hereunder, and any authorization contained herein, shall be subject to the requirements imposed under 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 approved any budget in connection therewith. 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.

14. 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.

15. 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.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

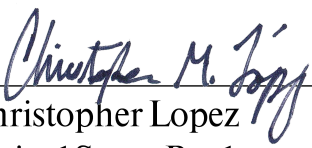
17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

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

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

Signed: September 25, 2024



Christopher Lopez
United States Bankruptcy Judge

Exhibit 1

Utility Providers List

Utility Providers List

Provider	Address	Service(s) Provided	Average Monthly Expenditure	Prepetition Deposits	Adequate Assurance Deposit
8X8, INC.	675 CREEKSIDE WAY, CAMPBELL, CA 95008	Telecommunications	\$4,512	--	\$2,256
A-1 MCDUFFIE SANITATION LLC	4102 AZALEA PARK COURT, SEMMES, AL 36575	Waste Management	\$13,858	--	\$6,929
AIR BAGS, LLC	PO BOX 10, BELLE CHASSE, LA 70037	Waste Management	\$82	--	\$41
ALABAMA POWER COMPANY	600 N 18TH ST, P O BOX 2641, BIRMINGHAM, ALABAMA, 35203	Electric	\$1,253,285	\$1,475,000 ¹	--
AT&T INC.	208 S AKARD ST, DALLAS, TX 75202	Telecommunications	\$12,930	--	\$6,465
ATMOS ENERGY CORPORATION	1800 THREE LINCOLN CENTRE, 5430 LBJ FREEWAY, DALLAS, TX 75240	Gas	\$96,565	\$200,000	--
BCC WASTE SOLUTIONS LLC	107 SAINT FRANCIS ST, STE 2370, MOBILE, AL 36602	Waste Management	\$33	--	\$17
BI-COUNTY WATER SUPPLY CORPORATION	4094 FM 2254, PITTSBURG, TX 75686	Water	\$552	--	\$276
C SPIRE	1018 HIGHLAND COLONY PKWY. RIDGELAND, MS 39157	Telecommunications	\$419	--	\$210
CENTERPOINT ENERGY, INC.	1111 LOUISIANA STREET, HOUSTON, TX 77002	Gas / Electric	\$4,095	--	\$2,048

¹ Prepetition Deposit held in the form of a surety bond.

Provider	Address	Service(s) Provided	Average Monthly Expenditure	Prepetition Deposits	Adequate Assurance Deposit
CHARTER COMMUNICATIONS, INC.	400 WASHINGTON BOULEVARD, STAMFORD, CT 06902	Telecommunications	\$103	--	\$51
CITY OF CORPUS CHRISTI	1201 LEOPARD ST, CORPUS CHRISTI, TX 78401	Water	\$543	--	\$272
CITY OF PITTSBURGH	414 GRANT ST PITTSBURGH, PA 15219	Water	\$73	--	\$37
COMCAST CORPORATION	1701 JOHN F. KENNEDY BLVD., PHILADELPHIA, PA 19103	Telecommunications	\$2,364	--	\$1,182
COVANTA ENERGY, LLC	PO BOX 28893, NEW YORK, NY 10087-8893	Waste Management	\$429	--	\$214
COX COMMUNICATIONS, INC.	205 PEACHTREE DUNWOODY RD., ATLANTA, GA 30328	Telecommunications	\$1,629	--	\$814
CPS ENERGY	4525 RIGSBY AVENUE, SUITE 112, SAN ANTONIO, TX 78222	Electric	\$218	--	\$109
DIRECT ENERGY	2 GREENWAY PLZ SUITE 250, HOUSTON, TX 77046	Gas / Electric	\$647	--	\$323
ENTERGY CORPORATION	639 LOYOLA AVE STE 300 NEW ORLEANS, LA 70113	Electric	\$54,223	--	\$27,111
FRONTIER COMMUNICATIONS PARENT, INC.	1919 MCKINNEY AVE. DALLAS, TX 75201	Telecommunications	\$482	--	\$241
JEFFERSON PARISH WATER DEPARTMENT	1221 ELMWOOD PARK BOULEVARD SUITE 909. JEFFERSON, LA 70123	Water	\$41,931	--	\$20,965

Provider	Address	Service(s) Provided	Average Monthly Expenditure	Prepetition Deposits	Adequate Assurance Deposit
LINCOLN WASTE SOLUTIONS	PO BOX 7598, BLOOMFIELD, CT 06002	Waste Management	\$650	--	\$325
MANVILLE WATER SUPPLY CORPORATION	13805 STATE HWY 95, COUPLAND, TX 78615	Water	\$159	--	\$80
MOBILE AREA WATER & SEWER SYSTEM	4725 MOFFETT RD, MOBILE, AL 36618	Water	\$8,691	--	\$4,346
OKLAHOMA ELECTRIC COOPERATIVE	2520 HEMPHILL DR. NORMAN, OK 73069	Electric	\$238	--	\$119
PEOPLES TELEPHONE COOPERATIVE INC	02 NORTH STEPHENS QUITMAN, TX 75783	Telecommunications	\$150	--	\$75
PLAQUEMINES PARISH WATER DEPARTMENT	333 F. EDWARD HEBERT BOULEVARD BUILDING 100. BELLE CHASSE, LA 70037	Water	\$477	--	\$239
RELIANT ENERGY RETAIL HOLDINGS, LLC	910 LOUISIANA ST. HOUSTON, TX 77002	Electric	\$8,053	--	\$4,027
REWORLD WASTE, LLC	PO BOX 28893, NEW YORK, NY 10087-8893	Waste Management	\$731	--	\$366
RIVER BIRCH, LLC	2000 S. KENNER ROAD, AVONDALE, LA 70094	Waste Management	\$68,512	--	\$34,256
SAN ANTONIO WATER SYSTEM	2800 US HIGHWAY 281, SAN ANTONIO, TX 78212	Water	\$163	--	\$82
SANITATION SOLUTIONS, INC.	2146 S CHURCH ST, PARIS, TX 75460	Waste Management	\$804	--	\$402

Provider	Address	Service(s) Provided	Average Monthly Expenditure	Prepetition Deposits	Adequate Assurance Deposit
SHELL ENERGY NORTH AMERICA	1000 MAIN ST, STE 1700, HOUSTON, TEXAS 77002	Gas / Electric	\$1,223,374	\$1,750,000	--
SLEMCO	2727 SE EVANGELINE THRUWAY, LAFAYETTE, LA 70508	Electric	\$164	--	\$82
SOUTHEAST WATERWORKS DISTRICT NO. 2	417 TRAHAN, ABBEVILLE, LA 70510	Water	\$62	--	\$31
SOUTHERN DISPOSAL, INC.	194069 US HWY 271 S, ANTLERS, OK 74523	Waste Management	\$26,053	--	\$13,027
SOUTHWESTERN ELECTRIC POWER COMPANY	4421 W LOOP 281, LONGVIEW, TX 75604	Electric	\$532	--	\$266
SPIRE INC.	700 MARKET ST. ST. LOUIS, MO 63101	Gas	\$53,234	--	\$26,617
SUDDENLINK COMMUNICATIONS	111 STEWART AVENUE BETHPAGE, NY 11714	Telecommunications	\$269	--	\$135
TELECOM, INC.	2201 BROADWAY STE 103, OAKLAND, CALIFORNIA, 94612	Telecommunications	\$164	--	\$82
TIMBERLANE LANDFILL COMPANY	PO BOX 598, OAKDALE, LA 71463	Waste Management	\$8,876	--	\$4,438
TRI-COUNTY ELECTRIC COOPERATIVE INC.	200 BAILEY RANCH ROAD, ALED0, TX 76008	Electric	\$19	--	\$10
UNITI GROUP INC	2101 RIVERFRONT DR STE A LITTLE ROCK, AR, 72202	Telecommunications	\$332	--	\$166

Provider	Address	Service(s) Provided	Average Monthly Expenditure	Prepetition Deposits	Adequate Assurance Deposit
UPSHUR RURAL ELECTRIC COOPERATIVE	1200 W TYLER ST, GILMER, TX 75644	Electric	\$4,479	--	\$2,240
US ECOLOGY	PO BOX 936227, ATLANTA, GA 31993-6227	Waste Management	\$27,971	--	\$13,986
VERIZON COMMUNICATIONS INC.	1095 AVENUE OF THE AMERICAS NEW YORK, NY 10036	Telecommunications	\$5,938	--	\$2,969
WASTE CONNECTIONS US INC.	310 LEXINGTON DR, RAYNE, LA 70578	Waste Management	\$1,312	--	\$656
WASTE MANAGEMENT OF NEW ORLEANS	PO BOX 9001054, LOUISVILLE, KY 40290-1054	Waste Management	\$4,712	--	\$2,356
WASTE MANAGEMENT OF TEXAS, INC. PASADENA	PO BOX 660345, DALLAS, TX 75266	Waste Management	\$1,846	--	\$923
WINDSTREAM HOLDINGS, INC.	005 RODNEY PARHAM ROAD, LITTLE ROCK, ARKANSAS, 72212	Telecommunications	\$8,364	--	\$4,182
WM CORPORATE SERVICES INC	PO BOX 55558, BOSTON, MA 02205-5558	Waste Management	\$4,437	--	\$2,218
Total			\$2,949,742	\$3,425,000	\$188,258