

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

In re:	§	
	§	(Chapter 11)
	§	
Vertex Energy, Inc., et al.,¹	§	Case No. 24-90507 (CML)
	§	
Debtors.	§	(Jointly Administered)
	§	

LIMITED OBJECTION OF IDEMITSU TO DEBTORS' PROPOSED CURE COSTS

[Relates to Docket No. 158]

Idemitsu Apollo Renewable Corporation for itself, its subsidiaries, and related affiliates (collectively, "Idemitsu") by and through its undersigned counsel, hereby files this Limited Objection (the "Limited Objection") to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* [Docket No. 158], (the "Notice") filed by the above-captioned debtors (collective, the "Debtors") to object to the proposed Cure Costs (the "Proposed Cure Costs") set forth in the Notice relating to Idemitsu. Idemitsu and Debtors' professionals have been in discussions regarding the reconciliation of the amounts owed to Idemitsu, but the Debtors' professionals indicated the Debtors would not agree to the amount Idemitsu claims is due and owing. The Debtors owe Idemitsu under the Master Offtake Agreement between Vertex Refining Alabama LLC and Idemitsu dated as of February 8, 2022, which was assigned by Vertex Refining Alabama LLC to Vertex Renewables Alabama LLC on May 30, 2023 (such Master Offtake Agreement, as so assigned, the "Idemitsu Offtake Agreement"). Although Idemitsu does not generally oppose the possible assumption of the

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' 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.



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Idemitsu Offtake Agreement, it files this Cure Objection (as defined in the Notice) because the proposed Cure Costs (defined in the Notice) listed in the Notice relating to the Idemitsu Offtake Agreement do not reflect the actual amounts owed to Idemitsu. Pursuant to the Notice, this Cure Objection is filed timely within ten days after service of the initial Cure Note. In further support of this Limited Objection, Idemitsu respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors are soliciting offers for the purchase of all or substantially all of the Debtors' assets (the "Assets") consistent with the bidding and auction procedures that govern the sale of all or substantially all of the Assets, which are attached at Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures") approved by the Court pursuant to the Bidding Procedures Order [Docket No. 55]. The Debtors filed the Notice in which they stated that they may seek to assume and then assign the Idemitsu Offtake Agreement if a sale of Assets is approved by this Court. The Notice listed the Proposed Cure Costs for the Idemitsu Offtake Agreement at \$15,666,333.86 (the Notice listed other agreements relating to the Idemitsu Offtake Agreement, but the liability at issue here derives from the Idemitsu Offtake Agreement). The Proposed Cure Costs for the Idemitsu Offtake Agreement listed in the Notice are incorrect in that Idemitsu is owed not less than \$19,856,624.72. As of the filing of this Limited Objection, the amounts required to cure all monetary defaults under the Idemitsu Offtake Agreement are listed on **Exhibit A** of this pleading. While Idemitsu does not object to the possible sale of Assets that includes the Idemitsu Offtake Agreement at this time (Idemitsu reserves the right to assert an Adequate Assurance Objection in the time specified in the Notice), it objects to the assumption of the Idemitsu Offtake Agreement unless the Debtors or the reorganized Debtors (as applicable) pay the correct cure costs to Idemitsu.

FACTUAL BACKGROUND

2. On September 24, 2024 (the “Petition Date”), Vertex Energy, Inc. and its debtor affiliates each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors and debtor-in-possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

3. Prior to the Petition Date, Debtor Vertex Refining Alabama LLC (“Vertex Refining”) and Idemitsu entered into the Master Offtake Agreement dated as of February 8, 2022. The Idemitsu Offtake Agreement was assigned by Vertex Refining to Debtor Vertex Renewables Alabama LLC (“Vertex Renewables”) on May 30, 2023. Under the Idemitsu Offtake Agreement and related agreements, Idemitsu purchased renewable diesel fuel and certain environmental credits produced at the Alabama refinery pursuant to the Idemitsu Offtake Agreement and did some other related business with Vertex debtors at the Alabama refinery. Prior to the Petition Date, the Debtors owe Idemitsu not less than \$19,856,624.72. The Proposed Cure Costs listed in the Notice for Idemitsu is \$15,666,333.86 that the Debtors assert is owed by Vertex Refining, but this number did not include amounts owed to Idemitsu for its costs to transport fuel purchased from the Debtors to California over the last several months which charges were not known on the Petition Date and are billed after the actual transportation charges incurred by Idemitsu are confirmed. Furthermore, Vertex Renewables as assignee is also liable for the amounts owed to Idemitsu pursuant to the Idemitsu Offtake Agreement.

4. Idemitsu provided invoices documenting the amounts owed to the Debtors and Debtors’ counsel. To date, no agreement has been reached on the amounts owed to Idemitsu.

LAW AND ARGUMENT

5. Pursuant to section 365(b)(1) of the Bankruptcy Code, prior to assumption of an executory contract, the trustee or debtor-in-possession is required to cure defaults under such executory contract. 11 U.S.C. § 365(b)(1). Therefore, the Debtors cannot assume the Offtake Agreement unless the outstanding amounts owing under the Idemitsu Offtake Agreement are paid prior to assumption of the Idemitsu Offtake Agreement. Idemitsu does not object to the Proposed Cure Costs for Idemitsu, provided that the Idemitsu Cure Cost is \$19,856,624.72.

6. The amount of the Idemitsu Cure Cost also is subject to upward adjustments for any amounts that accrue prior to the date of any assumption but are not billed or become due under the Idemitsu Offtake Agreement until after such effective date, including, without limitation, any amounts that may later be billed by Idemitsu or become due and payable under the Idemitsu Offtake Agreement.

7. Idemitsu further objects to the assumption of any of the Idemitsu Offtake Agreement until its objection to the Proposed Cure Costs set forth herein is resolved.

8. A cure under 11 U.S.C. § 365 means that all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005). Accordingly, unless and until the Debtors cure the balance owed to Idemitsu in full for all amounts owed under the Idemitsu Offtake Agreement, the Debtors cannot assume or assume and assign this agreement.

RESERVATION OF RIGHTS

9. Idemitsu reserves any and all rights, claims, and defenses it has or may have with regard to the Idemitsu Agreements, the Notice, any and all cure claims and cure costs, and any other motion, application, notice, or other document filed in these cases. Idemitsu further reserves its right to supplement this Limited Objection to preserve and assert in any manner its rights in

connection with the Idemitsu Offtake Agreement should its concerns not be resolved, including filing a further objection to the assumption of any of its Idemitsu agreements. Nothing herein shall be interpreted as Idemitsu's consent to the assumption of the Idemitsu Offtake Agreement and all objections and defenses to any request by the Debtors to assume the Idemitsu Offtake Agreement are expressly reserved

WHEREFORE, Idemitsu respectfully requests that this Court require the Debtors to pay Idemitsu the \$19,856,624.72 as a condition to assumption of the Idemitsu Offtake Agreement, and grant Idemitsu such other and further relief as the Court deems just and proper.

Date: October 21, 2024

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: /s/ Hugh M. Ray, III

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 21, 2024, a true and correct copy of this document was served via the Court's CM/ECF system on all counsel of record who are deemed to have consented to electronic service.

/s/ Hugh M. Ray, III

Hugh M. Ray, III

EXHIBIT A
(Idemitsu Cure Costs)

APAR	Invoice No.	Invoice Date	Due Date	Description	Amount (USD)	Note
AR	2462983	6/18/2024	6/26/2024	Sales - RINs	14,450,290.93	Invoiced, for 4/9 RIN transfer
AR	2469067	7/10/2024	7/17/2024	Sales - RINs	741,072.74	Invoiced, for 6/10 RIN transfer
					15,191,363.67	
AR	2494543	9/30/2024	10/9/2024	Storage Lease Fees	4,158,000.00	invoiced, storage fee @LA for 12 months
AR	2451576	5/11/2024	5/16/2024	Demurrage - Valero barge	2,766.32	Jan loading (OSM-E)
AR	2489464	9/16/2024	9/26/2024	Demurrage - Valero barge	24,322.45	Jan loading (OSM-E)
AR	2489465	9/16/2024	9/26/2024	Demurrage - Valero barge	22,834.94	Jun loading (OSM-H)
AR	2492301	9/24/2024	10/1/2024	Loading Inspection Fee	5,383.59	Apr loading (OSM-G)
AR	2492380	9/24/2024	10/1/2024	Loading Inspection Fee	3,329.25	Jan loading (OSM-E)
AR	2492379	9/24/2024	10/1/2024	Loading Inspection Fee	2,590.25	Jan loading (OSM-E)
AR	2492381	9/24/2024	10/1/2024	Loading Inspection Fee	3,164.00	Jun loading (OSM-H)
AR	2492382	9/24/2024	10/1/2024	Loading Inspection Fee	3,164.00	Jun loading (OSM-H)
AR	2492383	9/24/2024	10/1/2024	Loading Inspection Fee	13,217.20	Jul loading (OSM-I)
AR	2494541	9/30/2024	10/9/2024	Voy10 Freight (7/11-8/24)	297,535.56	invoiced
AR	2494542	9/30/2024	10/9/2024	Voy11 Freight (8/24-10/10?)	115,975.40	Provisional Invoice
AR	2494618	9/30/2024	10/9/2024	LCFS for tank bottom at Blakely	12,978.09	invoiced, CI: 28.83, LCFS price: Sep CMA
					4,665,261.05	
					19,856,624.72	