

**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.)	
)	(Jointly Administered)

**DECLARATION OF DOUGLAS MCGOVERN
IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED JOINT
CHAPTER 11 PLAN OF VERTEX ENERGY, INC. AND ITS DEBTOR AFFILIATES**

Pursuant to 28 U.S.C. § 1746, I, Douglas McGovern, hereby declare as follows under penalty of perjury:

1. I submit this declaration (this “Declaration”) in support of confirmation of the Debtors’ *Second Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and Its Debtor Affiliates* [Docket No. 564] (as modified, amended, or supplemented from time to time, the “Plan”).² The statements in this Declaration are, except where specifically noted, based on my personal knowledge or opinion, on information that I have from the Debtors’ books and records, the Debtors’ employees, the Debtors’ advisors and their employees, or employees working directly with me or from other members of the team at Perella Weinberg Partners LP (“PWP”) working under my supervision or direction.

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan, the *Disclosure Statement for the First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and Its Debtor Affiliates* [Docket No. 426] (the “Disclosure Statement”), or the Bidding Procedures Motion (as defined herein), as applicable.



2. I have overseen the PWP team that has been one of the principal advisors for the Debtors, and in that capacity, I have been directly involved in the matters relating to the Debtors' chapter 11 proceedings.

3. I am not being specifically compensated for this testimony other than through payments received by PWP as a professional, whose retention this Court has approved. I am over the age of 18 years and authorized to submit this Declaration on behalf of the Debtors. If I were called upon to testify, I could and would competently testify to the facts set forth herein.

Background and Qualifications

4. I am a partner at PWP, a leading investment banking firm listed on the Nasdaq stock exchange with its principal offices at 767 Fifth Avenue, New York, New York, 10153. PWP is a registered broker dealer with the United States Securities and Exchange Commission and is a member of the Securities Investor Protection Corporation and is regulated by the Financial Industry Regulatory Authority. PWP has advised more than 1,000 clients in over 50 countries around the world. Our professionals have considerable expertise and experience in providing investment banking and financial advisory services to financially distressed companies and to creditors, equity holders, and other constituencies in reorganization proceedings and complex financial restructurings, both in- and out-of-court. In addition, PWP's investment banking professionals have extensive experience in advising debtors in chapter 11 cases and have served as investment bankers to numerous debtors, creditors' committees, and buyers in chapter 11 proceedings.

5. I received a Bachelor of Arts in Public Policy from Duke University, and an MBA from the Wharton School of Business at the University of Pennsylvania. I have approximately

twenty years of investment banking and restructuring experience. I have been employed by PWP since January of 2010.

6. Since joining PWP in 2010, I have advised companies and their stakeholders in chapter 11 restructurings, out-of-court workouts, and other distressed transactions, including the following representative publicly disclosed transactions, among others: California Resources, Gulfport Energy Corporation, Halcon Resources, Legacy Reserves, Memorial Production Partners, Alta Mesa, Pengrowth Energy, Approach Resources, Bonanza Creek, and Highpoint Resources.

The Retention of PWP

7. In June 2024, the Debtors retained PWP as their investment banker to pursue balance sheet alternatives, including investment banking services in connection with a potential capital raise, restructuring, and/or the sale of Vertex, in part or in full, through an in-court process, including assistance with the negotiation of the terms of the proposed debtor-in-possession financing (the “DIP Facility”), the continuation of the intermediation facility, (the “Amended Intermediation and Hedge Facility”), and the restructuring support agreement (the “RSA”) in these Chapter 11 Cases. Based on PWP’s work with the Debtors, members of the PWP team and I are familiar with the Debtors’ capital structure, liquidity needs, and business operations.

The Debtors’ Marketing Process

8. Based on my experience and involvement with the marketing and sale process of the Debtors’ assets (the “Marketing Process”), I believe the Debtors conducted, in good faith, a thorough, fair, and transparent Marketing Process.

9. At the outset of the Marketing Process, the Debtors, with PWP's assistance, prepared a preliminary summary and compiled an initial list of approximately fifty-three potential purchasers (in addition to the eighteen financial institutions potentially interested in financing alternatives), which included both strategic and financial parties, including several parties who previously completed significant diligence in connection with the Debtors' prior capital raises and financing efforts, as further described in the First Day Declaration. Additionally, the Debtors, with PWP's assistance, prepared a detailed confidential information memorandum (a "CIM") for the Assets (as defined in the Bidding Procedures Motion) and populated a virtual data room (the "VDR") containing substantial diligence materials.

10. On September 3, 2024, PWP commenced formal market outreach and provided a preliminary summary and non-disclosure agreement ("NDA") to potential purchasers and third-party sources of financing. On the Petition Date, to facilitate the Marketing Process, the Debtors filed the *Debtors' Emergency Motion for Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, An Auction, Objection Deadlines, and a Sale Hearing, (III) Approving the Assumption and Assignment Procedures, and (V) Granting Related Relief* [Docket No. 5] (the "Bidding Procedures Motion"), requesting authority to establish procedures to govern a marketing and auction process designed to maximize the value for the Debtors' existing assets (the "Assets") by, among other things, allowing the Debtors a reasonable amount of time to solicit, evaluate, and potentially identify a value-maximizing transaction. The Court approved the Bidding Procedures Motion on September 25, 2024, through the *Order (I) Approving the Bidding Procedures and Auction, (II) Scheduling Bid Deadlines, an Auction,*

Objection Deadlines, and a Sale Hearing, (III) Approving the Form and Manner of Notice of a Sale Transaction, the Auction, the Sale Hearings, and Assumption and Assignment Procedures, and (V) Granting Related Relief [Docket No. 55] (the “Bidding Procedures Order”).

11. Following entry of the Bidding Procedures Order and over the course of the Marketing Process, the Debtors, with PWP’s assistance, reached out to approximately eighty potential purchasers, which resulted in approximately forty parties signing non-disclosure agreements and receiving due diligence regarding the Assets, including the Debtors’ go-forward business plans. PWP scheduled site visits for potential purchasers to the Mobile refinery and the Marrero facility, and facilitated management conferences for potential purchasers to learn about the facilities’ operations directly from management and operational leadership. The Debtors made clear to the market and all interested parties that they were willing to consider any and all offers for some or all of the Debtors’ Assets.

12. On October 8, 2024, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the United States Trustee [Docket No. 151]. On October 17, 2024, the Committee filed the *Omnibus Objection of the Official Committee of Unsecured Creditors to Debtors’ Emergency Motions to Obtain Postpetition Debtor-in-Possession Financing and Continuation of the Intermediation Contracts* [Docket No. 181], which, among other things, took issue with the Debtors’ sale milestones. In connection with resolving the Committee’s objection, the Debtors extended the Indications of Interest deadline by a week, to provide multiple interested parties additional time to conduct diligence.

13. The Debtors received fourteen non-binding written Indications of Interest. In consultation with the Consultation Parties, the Debtors reviewed the Indications of Interest and determined that all but two were Acceptable Indications of Interest for the Assets. Accordingly, the Debtors continued the Marketing Process, and the Required Lenders agreed to waive the Credit Bid Sale Hearing milestone.

14. In the weeks that followed the Indication of Interest deadline, the Debtors, in consultation with the Consultation Parties, continued to engage with multiple interested parties on the terms of their non-binding proposals and provided these parties with additional diligence materials. As the Marketing Process progressed, the Debtors, in consultation with the Consultation Parties, determined that the interest in the Debtors' assets and/or equity interest warranted two extensions of the Marketing Process. To that end, the Debtors extended certain deadlines, to provide the Debtors with additional time to complete the Marketing Process, to receive and evaluate any Bids, and if necessary, to hold an Auction to determine the highest and best Bid for some or substantially all of the Debtors' Assets.

15. As the Qualified Bid deadline approached, the Debtors received multiple Bids from various third parties; however, after a fulsome review, the Debtors, in consultation with the Consultation Parties, determined that they had not received any Qualified Bids for any particular Asset or portion of the Assets by the Qualified Bid Deadline. The Debtors adjourned the Auction by a week and continued to engage in arm's-length negotiations with certain bidders and their advisors in attempt to enhance their respective proposals. Although the Debtors and their advisors made all reasonable efforts to facilitate a Qualified Bid, unfortunately, no Qualified Bids were

received. Further, the non-binding indications of interest submitted in the Marketing Process did not produce any actionable third-party offers for the purchase of the Debtors' Assets with a high enough purchase price to induce the Debtors' secured lenders to pursue the Asset Sale. Consequently, on December 10, 2024, the Debtors, in consultation with the Consultation Parties, filed that certain *Notice of Cancellation of Auction* [Docket No. 519], cancelling the Auction.

16. It is my opinion that the Marketing Process was fair and exhaustive under the circumstances. All in, the postpetition Marketing Process lasted seventy-seven days, and no potential interested parties requested additional time beyond the extended Bid Deadline to complete their diligence. I believe that this timeframe was appropriate to survey the market and engage with potential buyers, while moving the Chapter 11 Cases along at an efficient pace. As noted above, the Debtors reached out to approximately eighty parties during the Marketing Process, however, the Debtors did not receive any Qualified Bids. Based on the results of this process and my previous experience, I believe it is highly likely that the value of the Debtors' business does not exceed the DIP Claims and the Term Loan Claims.

17. The Debtors, in partnership with PWP, have extensively marketed their business in a highly visible, court-supervised marketing process. I do not believe that additional marketing of the Debtors' business or further delay in the Marketing Process will produce a better outcome for the Debtors. Moreover, any delay in the Marketing Process could eliminate the Debtors' ability to emerge from these Chapter 11 Cases as a going concern at all.

The Recapitalization Transaction is the Best Available Option for the Debtors

18. The Marketing Process has run its course without yielding any viable value-maximizing alternatives to the Recapitalization Transaction contemplated by the RSA and

the Plan. While the Recapitalization Transaction served as the baseline restructuring option during these Chapter 11 Cases, it was the result of hard-fought negotiations with the Required Consenting Term Loan Lenders. Prior to the Petition Date, the Debtors and Required Consenting Term Loan Lenders acted in good faith and negotiated at arm's length to achieve a value-maximizing outcome for all stakeholders. The Recapitalization Transaction stands as the Debtors' best option to emerge from bankruptcy as a viable enterprise. It is, in fact, the only actionable path forward.

19. I believe that consummating the Recapitalization Transaction is a sound exercise of the Debtors' business judgment. I believe that the Plan, including the Committee Settlement and RVO Settlement, delivers significant value to creditors, avoids a liquidation, and allows the Debtors to continue their business as a going concern. In addition to the substantial number of people remaining employed with the Debtors, the Recapitalization Transaction allows the Debtors to maintain their relationships and continue significant business with their vendors and other key stakeholders.

Conclusion

20. The Recapitalization Transaction provides substantial benefits to the Debtors and their estates and, in my opinion, constitutes a sound exercise of their reasonable business judgment. At the present time, the Debtors have only one going concern option and only one realistic choice to avoid liquidation – the Recapitalization Transaction.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 20, 2024

/s/ Douglas McGovern

Douglas McGovern

Partner

Perella Weinberg Partners LP