

**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)

**LIMITED OBJECTION OF ATMOS ENERGY LOUISIANA INDUSTRIAL GAS, LLC
TO THE FIRST AMENDED JOINT CHAPTER 11 PLAN
OF VERTEX ENERGY, INC. AND ITS DEBTOR AFFILIATES**

Atmos Energy Louisiana Industrial Gas, LLC (“Atmos”), for its limited objection to the *First Amended Joint Chapter 11 Plan of Vertex Energy, Inc. and its Debtor Affiliates* [Doc. 425] (the “Plan”), states as follows:

1. Atmos supplies natural gas to Debtor Vertex Energy Operating, LLC (“Vertex”) under, *inter alia*, a *Base Contract for Interruptible Sale and Purchase of Natural Gas*.
2. Atmos holds a pre-petition claim in the amount of \$155,469.33, represented by Proof of Claim No. 33 (the “Claim”).
3. Atmos also holds a pre-petition security deposit of Vertex in the amount of \$200,000 (the “Security Deposit”).
4. Pursuant to 11 U.S.C. § 366(c)(4), as a utility, Atmos “may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.” Atmos similarly has a right of recoupment with respect to the Security Deposit.

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.



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5. The Debtors have requested that Atmos withhold exercising its setoff/recoupment rights with respect to the Security Deposit, in anticipation that Atmos's contracts will likely be assumed and the Claim paid by the Debtors as a cure payment.

6. The Plan, at Article V1(J), limits setoff and recoupment rights as follows:

In no event shall any Holder of Claims against, or Interests in, the Debtors be entitled to recoup any such Claim or Interest against any claim, right, or Cause of Action of the Debtors or the Post-Effective Date Debtors, as applicable, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XIII.G of the Plan on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

7. "Claims" is broadly defined in the Plan to have the same meaning as in 11 U.S.C. § 101(5), which includes, *inter alia*, "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured"

8. Atmos fears its setoff and recoupment rights could be compromised if it continues to hold the Security Deposit after the Effective Date of the Plan. Atmos also fears that the term "Claims" could be construed to cover claims that arise after the Effective Date.

9. Atmos is willing to withhold exercising its setoff and recoupment rights now, provided that its contracts are assumed and the Claim paid, and to continue to hold the Security Deposit as security after the Effective Date for accounts presumably in the names of the Reorganized Debtors (or "Post-Effective Date Debtors"). Atmos reserves all rights with respect to the amount of a deposit it may be entitled to and require after the Effective Date.

10. Atmos submits this limited objection to the extent the Plan purports to limit its setoff and recoupment rights after the Effective Date, and seeks protective language in the Plan, or the order confirming the Plan, clarifying its rights with respect to the Security Deposit after the Effective Date.

Based on the foregoing, Atmos requests that the Plan be amended, or the order confirming the Plan include protective language in favor of Atmos, preserving its setoff and recoupment rights as set forth above.

Respectfully submitted,

/s/ Brandon C. Bickle

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Atmos Energy Louisiana Industrial Gas, LLC*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that, on December 17, 2024, a true and correct copy of the foregoing document was served on all parties requesting service via the Court's ECF system.

/s/ Brandon C. Bickle

Brandon C. Bickle