IN THE UNTED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	**Chapter 11**
ENTRUST ENERGY, INC. *et al.* [1]	**Case No.: 21-31070**
Debtors.	**Jointly Administered**

DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE RETENTION AND COMPENSATION OF CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS, INCLUDING CERTAIN PROFESSIONALS ON A *NUNC PRO TUNC* BASIS; AND (II) GRANTING RELATED RELIEF

This Motion seeks an order that may adversely affect you. If you oppose the Motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the Motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the Motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the Motion at the hearing.

Represented parties should act through their attorney.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Entrust Energy, Inc. (2194); Entrust Treasury Management Services, Inc. (2347); Entrust Energy East, Inc. (3446); Power of Texas Holdings, Inc. (8159); Knocked, Corp. (0195); Akyta Holdings, Inc. (7696); Enserve, Inc. (9111); Akyta, Inc. (7560); Energistics, Inc. (3460); SPH Investments, Inc, (0271); Akyta IP, Inc. (8798); Surge Direct Sales, Inc. (7225); Entrust Energy Operations, Inc. (7479); Strategic Power Holdings, LLC (7069); NGAE, Inc. (1888). The Debtors' mailing address is Entrust Energy, Inc., 1301 McKinney Street, Suite 2950, Houston, TX 77010.

Entrust Energy, Inc. ("**Entrust**") and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully represent as follows in support of the Motion.

Relief Requested

1. Pursuant to sections 105(a), 327, 328, and 330 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rule 2014-1 and 2016-1 of the Bankruptcy Local Rules for the Southern District of Texas (the **"Bankruptcy Local Rules**"), the Debtors request entry of an order (a) authorizing, but not directing, the Debtors to retain and compensate certain professionals utilized in the ordinary course of business (each, an "**OCP**," an collectively, the "**OCPs**"), pursuant to the compensation procedures set forth in the Proposed Order (the "**Compensation Procedures**"), including certain OCPs on a *nunc pro tunc* basis; and (b) granting related relief.

2. A proposed form of order granting the relief requested herein is attached hereto (the "**Proposed Order**").

Jurisdiction and Venue

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

4. On March 30, 2021 (the "**Petition Date**"), each of the Debtors commenced with this Court a voluntary petition for relief under the Bankruptcy Code. The Debtors continue to operate their businesses as debtors in possession pursuant to §§ 1107(a) and 1108 of the

Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

5. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of C. Alexis Keene in Support of Chapter 11 Petitions and First Day Motions* (Doc. No. 9).

The Ordinary Course Professionals

6. The Debtors seek to employ the OCPs to render services that are essential to the Debtors' winddown and administration of its financial affairs during these chapter 11 cases. These services include specialized legal advice and accounting services. A list of the Debtors current OCPs is attached as **Exhibit 1** to the Proposed Order (the "**OCP List**"). The Debtors may also seek to employ additional OCPs as necessary during these chapter 11 cases, subject to the procedures set forth herein.

7. As described in more detail below, three of the OCPs performed a small amount of work for the Debtors shortly after the Petition Date for a relatively *de minimis* amount of fees (approximately $2,394 in fees). Therefore, the Debtors seek to employ these OCPs on a *nunc pro tunc* basis to the Petition Date.

8. The OCPs have knowledge, expertise, and familiarity with the Debtors and their business operations. Although the Debtors anticipate that the OCPs will want to continue to represent the Debtors on an ongoing basis, some may not do so if the Debtors cannot meet their payment obligations on a regular basis. The Debtors are not requesting authority by this Motion to pay prepetition amounts owed to the OCPs. The Debtors submit that the continued employment and compensation of the OCPs is in the best interest of their estates, creditors, and other interested parties.

The Compensation Procedures

9. The Debtors request that the Court approve the Compensation Procedures set forth in the Order, which establish a streamlined process for the post-petition retention and compensation of OCPs. The Compensation Procedures will permit the Debtors to employ OCPs upon the filing of a declaration of disinterestedness, substantially in the form attached as **Exhibit 2** to the Proposed Order (the "**Declaration of Disinterestedness**"), and upon the expiration of a reasonable objection period for parties in interest, including the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") and any statutory committee appointed in these chapter 11 cases. Among other things, each Declaration of Disinterestedness will state that the respective OCP does not have any material interest adverse to the Debtors or their estates with respect to the matter on which such OCP is proposed to be employed.

10. The Compensation Procedures further provide that the Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100 percent of the fees and reimbursable expenses to each of the OCPs retained pursuant to these procedures (including the filing of a Declaration of Disinterestedness) upon the OCP's submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses incurred after the Petition Date. Prior to the confirmation of a plan in these chapter 11 cases, the fees of each OCP, excluding costs and reimbursable expenses, may not exceed the budgets described in Exhibit 1 to the Proposed Order with a permitted variance of twenty percent (20%) for each OCP (the "**OCP Budget**"). As detailed in Exhibit 1, due to the varied nature of the services the OCPs provide and how long the OCPs will provide services to the Debtors, the OCP Budget for each OCP varies from a project-based fee to a monthly budget to a budget across a few months. In addition, the Debtors seek to reserve the rights to retain additional OCPs, as the need

arises, by filing a supplement to the OCP List that identifies such additional OCPs and serving the same on the Debtors' Limited Service List.

11. To the extent an OCP seeks compensation in excess of the OCP Budget (the "**Excess Fees**"), the OCP shall (a) file with the Court a Notice of Fees in Excess of the OCP Budget (the "**Notice of Excess Fees**") and an invoice setting forth, in reasonable detail the nature of the services rendered and disbursements actually incurred and (b) serve the Notice of Excess Fees on the following parties: (i) the Debtors: Entrust Energy, Inc. et al., 1301 McKinney Street, Suite 2950, Houston, TX 77010 (Attn: C. Alexis Keene, alexis.keene@entrustenergy.com); (ii) proposed counsel to the Debtors: Baker & Hostetler LLP, 200 S. Orange Avenue Suite 2300, Orlando, FL 32801 (Attn: Elizabeth A. Green, egreen@bakerlaw.com; Jimmy Parrish, jparrish@bakerlaw.com; and Jorian Rose, jrose@bakerlaw.com); (iii) the Office of the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77002 (Attn: Stephen Douglas Statham, Stephen.statham@usdoj.gov); and (iv) proposed counsel for the Official Committee of Unsecured Creditors: McDermott Will & Emery LLP, 2501 North Harwood Street, Suite 1900, Dallas, TX (Attn: Charles R. Gibbs, crgibbs@mwe.com; Darren Azman, dazman@mwe.com) (collectively, the "**Notice Partie**s"). The Notice Parties shall then have 14 days to object to the Notice of Excess Fees. If no objection is filed within 14 days, the Excess Fees shall be deemed approved, and the OCP may be paid 100 percent of its fees and 100 percent of its expenses without the need to file a fee application.

12. Beginning with the period ending June 30, 2021, and in three month increments thereafter prior to the confirmation of a plan in these chapter 11 cases (each, a "**Quarter**"), the Debtors shall file with the Court and serve on the Notice Parties, no later than 30 days after the conclusion of such Quarter, a statement with respect to each OCP paid during the immediately

preceding three-month period. Each OCP statement shall include the following information: (a) the name of the OCP; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported Quarter; (c) all postpetition payments made to that OCP to date; and (d) a general description of the services rendered by that OCP. The initial OCP statement shall cover the period beginning on the Petition Date and ending June 30, 2021, and shall be filed by July 31, 2021.

13. The foregoing Compensation Procedures shall not apply to those professionals for whom the Debtors filed (or will file) separate applications for approval of employment, such as the Debtors' proposed bankruptcy counsel.

Basis for Relief

14. Section 327(a) of the Bankruptcy Code requires court approval for the employment of "professional persons," retained to represent or perform services of the estate. 11 U.S.C. § 327(a). In determining whether an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code, and therefore must be retained by express approval of the court, courts generally consider whether such entity is involved in the actual reorganization effort, rather than a debtor's ongoing business operations. *See, e.g., Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) ("[T]he phrase 'professional persons,' as used in § 327(a), is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor's estate."). In making this determination, courts often consider the following factors in determining whether an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code:

a. whether the entity controls, manages, administers, invests, purchases, or sells assets that are significant to the debtor's reorganization;
b. whether the entity is involved in negotiating the terms of a plan of reorganization;

c. whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
d. whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate;
e. the extent of the entity's involvement in the administration of the debtor's estate; and
f. whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

See, e.g., In re First Merchs. Acceptance Corp., Case No. 97-1500-JJF, 1997 WL 873551, at *3 (D. Del. Dec. 15, 1997) (listing factors); *In re Sieling Assocs. Ltd. P'shi*p, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (authorizing the debtor to retain an environmental consultant in the ordinary course of business); *In re Riker Indus., Inc*., 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (not requiring approval under section 327 of the Bankruptcy Code of the fees of a management and consulting firm that performed only "routine administrative functions" and whose "services were not central to [the] bankruptcy case").

15. The foregoing factors must be considered as a whole when determining if an entity is a "professional" within the meaning of section 327 of the Bankruptcy Code. No factor alone is dispositive. *See First Merchs*., 1997 WL 873551 at *3 ("In applying these factors, the Court stresses that no one factor is dispositive and that the factors should be weighed against each other and considered in total.")

16. Additionally, section 327(e) of the Bankruptcy Code provides that "[t]he trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

17. Upon consideration of the above-listed factors, and because the OCPs will not be involved in the administration of these chapter 11 cases, the Debtors do not believe that the OCPs are "professionals" requiring formal retention proceedings under section 327(a) of the Bankruptcy Code. Instead, the OCPs will provide services in connection with the Debtors' ongoing business operations, which services are ordinarily provided by non-bankruptcy professionals. Nevertheless, to provide clarity and an opportunity for oversight, the Debtors seek the relief requested herein to establish definitive mechanisms for retention and payment of the OCPs pursuant to the Compensation Procedures and thereby avoid any subsequent controversy with respect thereto.

18. The Debtors and their estates will be well-served by continued retention of the OCPs because of their established relationships with the Debtors and understanding of the Debtors and their operations and legal issues. In light of the significant costs associated with the preparation of retention applications under sections 327, 328, and 330 of the Bankruptcy Code for OCPs who will receive relatively modest fees, it would be impractical and inefficient for the Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each OCP. Therefore, it is in the best interests of all creditors and parties in interest to retain and compensate the OCPs in accordance with the Compensation Procedures and, thereby, avoid any disruption in the professional services that are required for the day-to-day operation of the Debtors' businesses.

19. Although certain of the OCPs may hold unsecured claims against the Debtors in connection with services rendered to the Debtors prepetition, the Debtors do not believe that any of the OCPs hold interests materially adverse to the Debtors, their creditors, or other parties in interest. In any event, the Compensation Procedures include a requirement that each OCP file a

Declaration of Disinterestedness and be subject to a reasonable objection period before an OCP can be compensated.

Basis for *Nunc Pro Tunc* Relief

20. Local Rule 2014-1(b) requires additional information if an application for the approval of the employment of a professional is made more than 30 days after that professional commences the provision of services and the application seeks to make the authority retroactive to the date on which the professional commenced providing services.

21. In these cases, the following three OCPs performed work for the Debtors shortly after the Petition Date and more than 30 days before the filing of this Motion for a total of $2,394 in fees:

a. Scott Douglass McConnico performed a total of 3.9 hours of work on March 30, March 31, and April 1 for approximately $1,729.50 in fees.

b. Fisher & Philips, LLP performed a total of 0.6 hours of work on March 31 for approximately $267 in fees.

c. GreeneHurlocker performed a total of 1.5 hours of work on April 2, April 4, and April 6 for approximately $397.50 in fees.

22. By this Motion, the Debtors seek to employ these OCPs on a *nunc pro tunc* basis to the Petition Date so the Debtors may compensate the OCPs for the work performed just after the Petition Date. The amount of compensation is relatively small and totals approximately $2,394. The Debtors assert that this relief is in their bests interests and in the best interest of creditors, because it is more efficient and economical for the Debtors to continue utilizing the same professionals they employed in the ordinary course prior to the Petition Date. This Motion was not filed earlier due to the Debtors' quick transition into these bankruptcy cases in the aftermath of the

extreme weather conditions in February 2021, and the Debtors respectfully assert that no party is materially prejudiced by this short delay.

Notice

23. Notice of this Motion, whether by facsimile, electronic mail, or overnight courier, will be provided to the Debtors' Limited Service List as described in the *Order Granting Debtors' Emergency Motion for Entry of an Order (I) Establishing Scope of Notice; (II) Approving the Opt-In Procedure; and (III) Granting Related Relief* (Doc. No. 148). The method of service for each party will be described more fully in the certificate of service prepared by the Debtors' claims and noticing agent. The Debtors respectfully submit that, under the circumstances, such notice is sufficient and that no other or further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and for all other relief that is appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 7th day of May, 2021.

BAKER & HOSTETLER LLP

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Proposed Counsel for the Debtors and Debtors in Possession

Certificate of Service

I certify that on May 7, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Jimmy D. Parrish
Jimmy D. Parrish