IN THE UNITED 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' EMERGENCY MOTION FOR ENTRY OF ORDER (I) APPROVING SALE OF RENEWABLE ENERGY CERTIFICATES FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES AND (II) GRANTING RELATED RELIEF

Emergency relief has been requested. A hearing will be conducted on this matter on July 15, 2021, at 11:00 a.m. (CT) in Courtroom 404, 4th floor, 515 Rusk St., Houston, TX 77002. It is anticipated that all persons will appear telephonically and also may appear via video at this hearing.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. You will be responsible for your own long-distance charges. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554.

You may view video via GoToMeeting. To use GoToMeeting, the Court recommends that you download the free GoToMeeting application. To connect, you should enter the meeting code "JudgeIsgur" in the GoToMeeting app or click the link on Judge Isgur's home page on the Southern District of Texas website. Once connected, click the settings icon in the upper right corner and enter your name under the personal information setting.

[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.

Hearing appearances must be made electronically in advance of the hearing. To make your electronic appearance, go to the Southern District of Texas website and select "Bankruptcy Court" from the top menu. Select "Judges' Procedures," then "View Home Page" for Judge Isgur. Under "Electronic Appearance" select "Click here to submit Electronic Appearance". Select the case name, complete the required fields and click "Submit" to complete your appearance.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Relief is requested not later than July 15, 2021.

Entrust Energy, Inc. ("**Entrust**") and its debtor affiliates (collectively, the "**Debtors**"), debtors and debtors in possession in the above-captioned, jointly administered chapter 11 cases (collectively, the "**Chapter 11 Cases**"), respectfully state as follows in support of this motion (the "**Motion**"):

Relief Requested

1. Pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"),[2] and rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors hereby more for entry of an order authorizing the Debtors to (a) sell or transfer certain renewable energy certificates (the "**RECs**") in any individual transaction or series of transactions to a single buyer or multiple buyers in the public secondary market, free and clear of all liens, claims, interests, and encumbrances (collectively, the "**Liens**"), without the need for further Court approval and with Liens (if any)

[2] Unless otherwise noted, "section" or "sections" refers to the specified section(s) of the Bankruptcy Code and "rule" or "rules" refer to the specified rule(s) of the Bankruptcy Rules.

attaching to the proceeds of such sale with the same validity, extent, and priority as had attached to the assets immediately prior to the sale or transfer; and (b) pay those necessary fees and expenses (if any) incurred in connection with the sale or transfer of RECs.

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

3. The Debtors submit the declaration of C. Alexis Keene in support of the Motion attached hereto as **Exhibit B** and incorporated herein by reference.

Jurisdiction and Venue

4. 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

5. On March 30, 2021 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code—thereby commencing the above-captioned, jointly administered Chapter 11 Cases. The Debtors continue to operate their businesses as debtors in possession pursuant to Sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases.

6. The Official Committee of Unsecured Creditors was appointed on April 28, 2021 (Doc. No. 95).

7. 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 Entrust RECs

8. Entrust currently owns 213,690 RECs (collectively, the "**Entrust RECs**"). A true and correct summary of the Entrust RECs is attached hereto as **Exhibit C** and incorporated herein by reference.

9. RECs are market-based instruments that represent the property rights to the environmental, social and other non-energy attributes of renewable electricity generation. *See* United States Environmental Protection Agency, *Renewable Energy Certificates (RECs)*, available at https://www.epa.gov/greenpower/renewable-energy-certificates-recs. Pursuant to state renewable portfolio standard ("**RPS**") programs, RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource. *Id*. Under certain RPS programs, the type of energy used to generate the REC governs the categorization of the REC for compliance purposes.

10. Entrust constitutes a retail electricity provider ("**REP**") subject to the RPS programs in the following jurisdictions: (a) the State of Maryland; (b) the State of New Jersey, (c) the State of Ohio; (d) the Commonwealth of Pennsylvania; and (e) the State of Texas. Under the RPS programs for these jurisdictions, certain portions of the electricity sold by REPs in the jurisdiction must be generated by renewable energy sources and, in some cases, specifically identified sources (e.g., solar, wind, etc.). *See* Md. Code Ann., Pub. Util. § 7-701, *et seq.*; N.J. Admin. Code § 14:8-1.1, *et seq.*; Ohio Admin. Code 4901:1-40-01, *et seq.*; 52 Pa. Code § 75.1, *et seq.*; 16 Tex. Admin. Code § 25.173.

11. REPs may comply with these requirements by selling energy generated from renewable or clean energy sources, purchasing and retiring the requisite number of RECs generated from such sources, or paying an alternative compliance payment. *See* Md. Code Ann.,

Pub. Util. § 7-703; N.J. Admin. Code § 14:8-2.3, 2.9; Ohio Admin. Code 4901:1-40-03, 1-40-04, 1-40-08; 52 Pa. Code § 75.61-75.70; 16 Tex. Admin. Code § 25.173. To facilitate compliance through the retirement of RECs, RPS programs permit the sale and assignment of RECs via secondary markets established organically or by the state regulatory entity. *See, e.g.*, Md. Code Ann., Pub. Util. § 7-708; N.J. Admin. Code § 14:8-2.3-2.11; Ohio Admin. Code 4901:1-40-08; 52 Pa. Code § 75.70; 16 Tex. Admin. Code § 25.173(d).

12. The Debtors have determined that the interests of the estates and creditors are best served by the liquidation of the Entrust RECs. Entrust RECs possess significant value to operating REPs, which can use the Entrust RECs to comply with the RPS programs for the subject jurisdictions. Based on current market prices, the Debtors estimate that Entrust RECs have a market value of approximately $1.44 million.[3] *See* Ex. C. If the Debtors are unable to act quickly, however, the value of the Entrust RECs may decline significantly due to, among other factors, the expiration of approximately 43,329 Pennsylvania RECs (valued at approximately $396,000[3]) and general depreciation as RECs near their expiration dates.

Entrust REC Sale Process

13. The sale will be effectuated on the secondary market for RECs pursuant to standard terms and conditions, which will be negotiated at arms'-length with a buyer or buyers for a transparent market price and on market terms. The Debtors believe that selling the Entrust RECs on the secondary market at market prices and on market terms will achieve the highest and best offer for the Entrust RECs. Moreover, the time and expense associated with marketing efforts for a public auction of the Entrust RECs would needlessly duplicate the function of the REC secondary

[3] The estimated valuations of the Entrust RECs, or any of them, provided herein are premised on current market conditions, as known to the Debtors, as of the filing of this Motion or the most recent market pricing information available. The value of the Entrust RECs may fluctuate based on changes in the secondary market.

market and is unlikely to result in more favorable offers. Further, sale via a public auction may entail delay that could jeopardize the value of the Entrust RECs to the estates due to the expiration of approximately 43,329 Class I and Class II Pennsylvania RECs on August 31, 2021. Further, the Entrust RECs will depreciate at an accelerating rate as the expiration date approaches as the market for the Pennsylvania RECs shrinks and demand slacks. Accordingly, a sale of the Entrust RECs into the secondary market is in the best interest of the Debtors' estates and should be approved.

14. Some of the sale transactions involving the Entrust RECs may constitute transactions in the ordinary course of business under Section 363(e); however, out of an abundance of caution, the Debtors are filing this Motion to seek authority from the Court pursuant to Section 363(b) to sell the Entrust RECs in the established and public secondary market for RECs, as described above, and submit that the relief requested herein is in the best interests of the Debtors' estates.

15. Given the number of RECs and potential for multiple transactions, the Debtors submit that it would be an inefficient use of resources to seek Court approval separately each time the Debtors have an opportunity to sell any Entrust RECs and, indeed, may substantially impair the ability of the Debtors to maximize the value of the Entrust RECs for the benefit of the estates and their creditors. Additionally, in certain circumstances, the Debtors have a limited window of time in which they may enter into or take advantage of opportunities to sell, transfer, or otherwise monetize such RECs—especially with respect to the RECs set to expire this year. The cost and delay associated with seeking Court approval of each REC sale transaction could eliminate or substantially diminish the economic benefits of the transactions. Thus, the Debtors hereby request authority to sell the Entrust RECs in the secondary market without further approval of this Court.

Basis for Requested Relief

I. The Sale of Entrust RECs is Warranted under Section 363(b)

16. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although Section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, bankruptcy courts routinely authorize sales of estate assets outside the ordinary course of business if such sale is based upon the sound business judgment of the debtor. *See Asarco, Inc. v. Elliott Management (In re ASARCO, L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011), (quoting *The Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986)) ("'[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.").

17. Courts generally will accord significant deference to a debtor's business judgment to use or sell estate assets outside the ordinary course of business. *See In re ASARCO, L.L.C.*, 650 F.3d at 601 ("The business judgment standard in section 363 is flexible and encourages discretion."); *see also GBL Holding Co. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (N.D. Tex. 2005) ("Great judicial deference is given to the Trustee's exercise of business judgment."), (citing *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 516 (Bankr. N.D. Ala.2002)); *see also In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836–37 (Bankr. E.D. Va. 1997) ("[G]reat deference is given to a business in determining its own best interests."); *see also In re Global Crossing, Ltd.*, 295 B.R. 726, 744 n. 58 (Bankr. S.D.N.Y. 2003) ("[T]he Court does not believe that it is

appropriate for a bankruptcy court to substitute its own business judgment for that of the [d]ebtors and their advisors, so long as they have satisfied the requirements articulated in the case law.”).

18. The Debtors submit that the proposed sale of the Entrust RECs reflects a reasonable exercise of their business judgment. By selling the Entrust RECs, the Debtors will be able to obtain the value of these assets for the benefit of their estates and creditors. Further, selling the Entrust RECs in the secondary market will ensure that the Debtors obtain the highest and best price for these assets in an efficient and cost-effective manner. Requiring the Debtors to file a motion with the Court each time the Debtors seek to dispose of a REC or group of RECs would cause the Debtors to incur unnecessary costs that would reduce the benefit to the estates and, indeed, may prevent the Debtors from realizing any value from such assets due to the pending expiration of certain Entrust RECs and approaching compliance deadlines for the various jurisdictions. Accordingly, the Debtors submit that the proposal to sell the Entrust RECs in the manner described herein reflects the Debtors’ exercise of sound business judgment and, thus, may and should be approved under Section 363(b).

II. Sale of Entrust RECs Free and Clear of Liens is Warranted under Section 363(f)

19. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party’s interest in the property if: (a) applicable non-bankruptcy law permits such a “free and clear” sale; (b) the holder of the interest consents; (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property; (d) the interest is in *bona fide* dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f). After a reasonably inquiry, the Debtors are unaware of any Liens on the Entrust RECs; regardless, out of an abundance of caution,

the Debtors request approval of a sale free and clear of any Liens to ensure the Debtors are able to market and convey clean title to the Entrust RECs.

20. Even assuming the Entrust RECs are subject to Liens, the relief requested is warranted under Section 363(f). The Debtors propose to sell or transfer the Entrust RECs in a commercially reasonable manner and expect that the value of the proceeds from such sales or transfers will fairly reflect the value of the Entrust RECS sold. The Debtors further propose that any party with a Lien on Entrust RECs sold or transferred pursuant to this Motion shall have a corresponding security interest in the proceeds from the sale of the subject Entrust RECs. Moreover, the Debtors propose that no objection to the entry of the Order approving this Motion following the provision of notice, be deemed "consent" to any sales or transfers pursuant to the Order within the meaning of Section 363(f)(2). As such, the requirements of Section 363(f) would be satisfied for any proposed sales or transfers of any Entrust RECs free and clear of Liens.

III. Purchasers of Entrust RECs should be Entitled to Protections of Section 363(m)

21. Section 363(m) of the Bankruptcy Code provides in relevant part that the reversal or modification on appeal of an authorization under Section 363(b) of a sale or lease of property of the estate does not affect the validity of the subject sale or lease as to a purchaser who bought or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless the subject authorization and sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m). Although the Bankruptcy Code does not define "good-faith purchaser," "[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of [purchaser's] conduct in the course of the sale proceedings." *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (internal citations omitted); *see Factory Mutual Insurance, Co. v. Panda Energy Int'l, Inc. (In re Hereford Biofuels, L.P.)*, 466 B.R. 841, 860 (Bankr. N.D. Tex. 2012). "Typically, the

misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders, or an attempt to take grossly unfair advantage of other bidders." *In re Hereford Biofuels, L.P.*, 466 B.R. at 860. The Debtors submit that any agreement that results in the sale or divestiture of any Entrust RECs will be an arms'-length transaction through a public secondary market and, thus, the purchaser should be entitled to the protections of Section 363(m).

Request for Emergency Relief

22. The Debtors respectfully request an emergency hearing to consider this Motion due to the approaching expiration of the Pennsylvania RECs and continuing diminution in the value of the Entrust RECs as they approach expiration. Emergency consideration will allow the Debtors to sell the Entrust RECs as expeditiously as possible and, in so doing, maximize the value of the Entrust RECs for the estates. The Debtors respectfully submit that the rights and interests as party in interest will not be impaired as the Debtors are not aware of any security interests in the Entrust RECs and, regardless, all parties on the Limited Service List will receive notice of the Motion and provided an opportunity to respond.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

23. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

24. Notice of this Motion, whether by facsimile, electronic mail, or first class mail, 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 that the Court enter an order, substantially in the form of the proposed order attached hereto as Exhibit A, (a) granting the Motion in its entirety, (b) authorizing the Debtors to sell the Entrust RECs as proposed herein pursuant to Section 363(b) without further order of the Court, (c) authorizing such sale free and clear of any and all Liens, with such Liens attaching to the sale proceeds in the manner discussed herein, pursuant to Section 363(f), (d) finding that purchasers of any Entrust RECs on the secondary market are entitled to the protections of a good faith purchaser under Section 363(m), and (e) granting any further or additional relief deemed warranted by the Court.

RESPECTFULLY SUBMITTED the 2nd day of July 2021.

BAKER & HOSTETLER LLP

*/s/ Jimmy D. Parrish*_____
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Certificate of Service

I certify that on July 2, 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