

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
VERASUN ENERGY CORPORATION, et al.,)
)
Debtors.¹)
)

Case No. 08-12606 (BLS)
Chapter 11
Jointly Administered

MOTION FOR RELIEF FROM STAY

The North Dakota Public Service Commission moves this Court for Relief from the automatic stay. The grounds supporting this motion are as follows:

1. On October 21, 2008 (the Petition Date), VeraSun Energy Corporation and 24 of its subsidiaries and affiliates (collectively, the Debtors), each filed a Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code for the District of Delaware (the Bankruptcy Court). On November 3, 2008, this Court entered an order directing the joint administration of the Debtors' Chapter 11 Cases. Prior to filing its petition, VeraSun Hankinson, LLC (90-0287129), a subsidiary or affiliate of the Debtors operated as a licensed public grain warehouse in North Dakota under Chapter 60-02 of the North Dakota Century Code.

¹ The Debtors consist of: VeraSun Energy Corporation (EIN: 20-3430241); ASA Albion, LLC (EIN: 55-0907221); ASA Bloomingburg, LLC (EIN: 55-0907224); ASA Linden, LLC (EIN: 55-0907228); ASA OpCo Holdings, LLC (EIN: 68-0609122); US Bio Marion, LLC (EIN: 20-34377343); US BioEnergy Corporation (EIN: 20-1811472); VeraSun Albert City, LLC (EIN: 20-2264707); VeraSun Aurora Corporation (EIN: 40-0462174); VeraSun BioDiesel, LLC (EIN: 20-3790860); VeraSun Central City, LLC (EIN: 55-0816855); VeraSun Charles City, LLC (EIN: 20-3735184); VeraSun Dyersville, LLC (20-5765890); VeraSun Fort Dodge, LLC (EIN: 42-1630527); VeraSun Granite City, LLC (EIN: 20-5909621); VeraSun Hankinson, LLC (90-0287129); VeraSun Hartley, LLC (EIN: 20-5381200); VeraSun Janesville, LLC (EIN: 20-4420290); VeraSun Litchfield, LLC (EIN: 20-8621370); VeraSun Marketing, LLC (EIN: 20-3693800); VeraSun Ord, LLC (75-3204878); VeraSun Reynolds, LLC (EIN: 20-5914827); VeraSun Tilton, LLC (EIN: 26-1539139); VeraSun Welcome, LLC (EIN: 20-4115888); VeraSun Woodbury, LLC (20-0647425).

2. By the provisions of 11 U.S.C. § 362, the commencement of actions or proceedings against the Debtors, with certain limited exceptions, are stayed.

3. VeraSun Hankinson, LLC furnished one grain elevator warehouse bond running to the State of North Dakota and executed by Liberty Mutual Insurance Company as surety, to the North Dakota Public Service Commission for the purpose of securing a license to operate as a public grain warehouseman in North Dakota. The penal sum of the bond is \$380,000.00.

4. Section 60-02-09 of the North Dakota Century Code provides that a public warehouseman's bond shall be conditioned 1) for the faithful performance of the licensee's duties as a public warehouse, 2) for compliance with the provisions of law and the rules of the commission relating to the storage and purchase of grain, and 3) for the specific purpose of protecting the holders of outstanding receipts from loss or damage by reason of violation of Chapter 60-04 and covering the costs incurred by the commission in the administration of Chapter 60-04 in the event of the licensee's insolvency.

5. The Debtor (VeraSun Hankinson, LLC) purchased grain, as defined in North Dakota Century Code Section 60-02-01(3) from producers and has failed to pay producers in full for the grain that was purchased.

6. There appears to be adequate bond coverage for persons who suffered loss or damage by reason of the Debtors' failure to faithfully perform its duties as a public grain warehouseman and comply with the provisions of the laws and rules relating to the purchase of grain in an insolvency proceeding.

7. Section 60-04-03 of the North Dakota Century Code, provides for the appointment of the Public Service Commission by the District Court, Southeast Judicial District, Wahpeton, North Dakota to act as trustee for the benefit of persons who suffer loss or damage by reason of a public grain warehouseman's failure to faithfully perform its duties as a grain buyer and comply with the provisions of the laws and rules relating to the purchase of grain in North Dakota. As trustee, the Public Service Commission is authorized to bring an action against the surety on the grain warehouseman's bond for loss or damages occurring by reason of the public grain warehouseman's failure to fulfill the conditions of the bond.

8. Recovery of proceeds by the Public Service Commission from the surety on the public grain warehouseman's bond on behalf of persons who suffered loss or damage by reason of Debtors' failure to faithfully perform its duties as a public grain warehouseman buyer and comply with the provisions of the laws and rules relating to the purchase of grain are believed to be sufficient to provide full protection to potential complaints as well as cover the costs incurred by the Public Service Commission in the administration of the licensee's insolvency.

9. The Public Service Commission's appointment as trustee under North Dakota law by the state District Court, Southeast Judicial District and the Commission's action against the surety on the public grain warehouseman's bond will not hinder, burden, delay, or be inconsistent with this proceeding.


10. Surety bonds given to secure a license from the State are not property of the estate because the debtor has no property interest in the bonds; rather, they are

essentially third-party beneficiary contracts. In the Matter of Buna Painting and Drywall Co., Inc., 503 F2d 618 (9th Cir. 1974).

11. Relief from the automatic stay for cause under 11 U.S.C. § 362(d) is warranted because the bond is payable only to the State of North Dakota and only for the protection of persons who sold grain to the Debtor. The bond is not necessary to an effective reorganization.

WHEREFORE, the Public Service Commission respectfully requests that this Court enter an Order terminating or modifying the stay afforded by 11 U.S.C. § 362 to permit the Public Service Commission to commence an action in state District Court, Southeast Judicial District against VeraSun Hankinson, LLC to secure the Commission's appointment as trustee for the benefit of persons who suffered loss or damage by reason of the Debtor's failure to faithfully perform its duties as a public grain warehouseman and comply with the provisions of the laws and rules relating to the purchase of grain, and to take all actions in accordance with North Dakota law including maintaining an action against the surety on the public grain warehouseman's bond furnished by VeraSun Hankinson, LLC.

Dated this 27th day of March, 2009.


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