



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

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September 10, 2010

Mr. Scott C. Williams
Manier & Herod
One Nashville Place, Suite 2200
150 Fourth Avenue North
Nashville, TN 37219

Mr. Stephen S. Neuman
Skadden, Arps, Slate, Meagher & Flom, LLP
155 North Wacker Drive
Chicago, IL 60606-1720

RE: VeraSun Energy Corporation
U.S. Bankruptcy Court Case No. 08-12606
N.D. District Court Case No. 39-9-C-462-1
PSC Case No. GE-09-104

Dear Mr. Williams & Mr. Neuman:

As stipulated and agreed, and as authorized in the Order signed by The Honorable Brenden L. Shannon on September 14, 2009, the Commission filed for appointment as trustee in the referenced case. Following appointment, the Commission published a notice of appointment and notice to file claims, and investigated and evaluated the information filed in support of the claims.

Following Commission Staff's evaluation of the two claims filed with the Commission, Staff made a recommendation to the Commission that the claims be considered cash claims. At the Administrative Matters portion of the August 24, 2010 Regular Commission Meeting, the Commission discussed Staff's recommendation when reviewing a Draft Report and Recommendation of Trustee. The Commission concurred with the Staff's recommendation that both claims be considered cash claims in the DRAFT Report and Recommendation of Trustee.

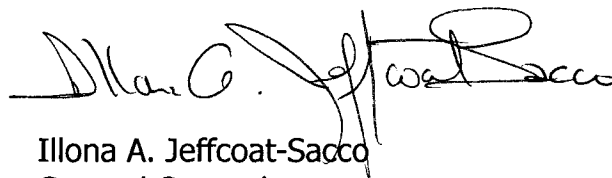
As agreed to and provided in the September 14, 2009 Order, the Commission is forwarding to you with this letter a copy of the Commission's DRAFT Report and Recommendation.

72 **GE-09-104** Filed: 9/10/2010 Pages: 13
Letter forwarding draft Report and Recommendation

Mr. Williams & Mr. Neuman
September 10, 2010
Page 2

If you have any questions, please feel free to call our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Illona A. Jeffcoat-Sacco". The signature is fluid and cursive, with a large loop at the end.

Illona A. Jeffcoat-Sacco
General Counsel

Attachment



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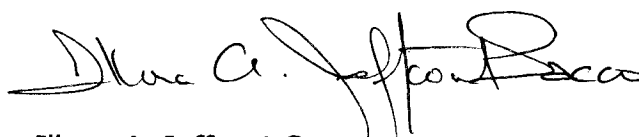
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Sincerely,

A handwritten signature in black ink, appearing to read "Ilona A. Jeffcoat-Sacco". The signature is fluid and cursive, with a large, stylized initial "I" and a long, sweeping underline.

Ilona A. Jeffcoat-Sacco
General Counsel

Attachment

This draft document does not contain copies of the exhibits referenced.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF RICHLAND

SOUTHEAST JUDICIAL DISTRICT

_____)	
Public Service Commission)	CIVIL NO. 39-9-C-462-1
)	
Petitioner,)	
)	
vs.)	
)	REPORT AND
VeraSun Hankinson, LLC)	RECOMMENDATION OF
)	TRUSTEE
Respondent.)	
_____)	
PSC Case No. GE-09-104)	
_____)	

The North Dakota Public Service Commission (Commission) as Trustee, makes the following Report and Recommendation to the Court:

1. VeraSun Hankinson, LLC, a North Dakota Limited Liability Company, authorized to business in North Dakota, operated a grain warehouse at Hankinson, North Dakota, and was licensed under North Dakota Century Code Chapters 60-02 and 60-04.
2. VeraSun Hankinson, LLC operated its grain warehouse facility at Hankinson, North Dakota under license number 1196.
3. As part of the licensing process, VeraSun Hankinson, LLC filed a surety bond with the Commission as required by North Dakota Century Code section 60-02-09 in the amount of \$380,000 and identified as number 674012345 with Liberty Mutual Insurance Company, 6800 College Blvd., Suite 701, Overland Park, Kansas, 66211, as surety.

4. On October 21, 2008 VeraSun Hankinson, LLC, as a subsidiary or affiliate of VeraSun Energy Corporation filed a Petition for Reorganization under Chapter 11 of the United States Bankruptcy Code for the District of Delaware (Bankruptcy Court). On November 3, 2008, the United States Bankruptcy Court entered an order directing the joint administration of the VeraSun Energy Corporation Chapter 11 Cases.
5. On March 12, 2009, the Commission received a letter from attorney John Bullis representing Keith Saunders, P.O. Box 275, Wahpeton, ND 58074-0275, and on August 4, 2009, the Commission received a letter from James Wirtz, 17275 95th St. SE, Fairmount, ND 58030, each setting forth a claim against VeraSun Hankinson, LLC for collection of outstanding funds owed.
6. On March 27, 2009, the Commission filed a Motion for Relief From Stay with Bankruptcy Court. The matter was scheduled for hearing on May 7, 2009, and thereafter it was continued to subsequent hearings.
7. On June 24, 2009, the Commission issued an order canceling warehouse license number 1196 and ordered that VeraSun Hankinson, LLC shall not conduct any further business under license number 1196.
8. On August 27, 2009, Liberty Mutual Insurance Company, the surety, filed an Objection of Liberty Mutual Insurance Company to Motion for Relief From Stay Filed by North Dakota Public Service Commission with Bankruptcy Court.
9. Prior to September 11, 2009, the Commission entered into a Stipulation and Agreed Order Modifying the Automatic Stay to Allow North Dakota Public Service Commission to Commence State Proceeding. On September 11, 2009, this

Stipulation and Agreed Order Modifying Automatic Stay was filed with the Bankruptcy Court (a copy was attached to the Application for Appointment as Trustee as Exhibit B).

10. On September 14, 2009, the United States Bankruptcy Judge signed the Stipulation and Agreed Order Modifying the Automatic Stay to Allow North Dakota Public Service Commission to Commence State Proceeding (a copy of this document was attached to the Application for Appointment as Trustee as Exhibit C).
11. The Stipulation and Agreed Order Modifying Automatic Stay provided that the automatic stay be lifted to the extent necessary for the Commission to commence those proceedings in state district court for appointment as trustee and, once appointed, to publish notice, investigate potential claims, and prepare a draft Report and Recommendation of Trustee.
12. On the date the Commission applied to the District Court for an order finding VeraSun Hankinson, LLC insolvent and appointing the Commission trustee, a surety bond was on file with the Commission as required by North Dakota Century Code section 60-02-09 in the amount of \$380,000 and identified as number 674012345 with Liberty Mutual Insurance Company, 6800 College Blvd., Suite 701, Overland Park, Kansas, 66211, as surety.
13. On October 26, 2009, the District Court, finding VeraSun Hankinson, LLC insolvent, appointed the Commission Trustee of the trust fund provided by North Dakota Century Code section 60-04-03 for the purpose of marshalling all trust assets of VeraSun Hankinson, LLC. The Order was filed with the Clerk of the District Court on October 26, 2009.

14. On November 3, 2009, a copy of the Notice of Entry of Order Appointing Trustee with attached copy of the signed Order Appointing Trustee and a copy of the Notice of Appointment as Trustee and Notice to File Claims was sent by regular mail to claimant, James Wirtz, 17275 95 R Street SE, Fairmount, ND 58030 and to John Bullis, Attorney for claimant Keith Saunders, P.O. Box 275, Wahpeton, ND 58074-0275, who had each filed a claim in the insolvency proceeding. Copies were also sent by regular mail to Joel West, VeraSun Hankinson, LLC, 110 North Minnesota Avenue Suite 300, Sioux Falls, SD 57104-6440, C T Corporation System, PO Box 400, Bismarck, North Dakota 58502, registered agent for VeraSun Hankinson, LLC, Ian Connor Bifferato, Kevin G. Collins, Bifferato, LLC, 800 N. King St., First Floor, Wilmington, DE 19801, Mark S. Chehi, David L. Wright, Megan E. Cleghorn, Jason M. Liberi, Skadden, Arps, Slate, Meagher & Flom, One Rodney Square, P.O. Box 636, Wilmington, DE 19899, Michael E. Collins, Scott C. Williams, Manier & Herod, 150 4th Ave. North, Suite 2200, Nashville, TX 37219, Timothy R. Pohl, Felicia Gerber Perlman, John K. Lyons, Skadden, Arps, Slate, Meagher & Flom, 333 West Wacker Drive, Chicago, IL 60606, Frankie E. Cooley, Liberty Mutual Insurance Company, 688 College Boulevard, Suite 701, Overland Park, KS 66221, Office of the US Trustee, Attn: Mary Kenney, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19802, and Dennis A. Meloro, Donald J. Detweiler, Monica Loftin Townsend, Sandra G.M. Selzer, Greenberg Traurig, 1007 North Orange Street, Suite 1200, Wilmington, DE 19801. The notice required the filing of claims with the Commission within 45 days of the second publication of the notice.

15. The Notice of Appointment as Trustee and Notice to File Claims was published as a legal publication in The Wahpeton Daily News on November 8 and November 15, 2009. The Wahpeton Daily News is located in Richland County and is the official county newspaper of the county in which the warehouse is located as provided in North Dakota Century Code section 60-04-03.3.

16. After publication no additional claims were received. The two claims totaling \$132,784.85 were filed with the Commission as shown below, and with detail on Exhibit A to this report.

<u>Claimant Name</u>	<u>Claim Filed</u>
a. Keith Saunders	\$ 105,850.15
b. James Wirtz	\$ 26,934.70
Total	\$ 132,784.85

17. On December 14, 2009 through December 16, 2009, Timothy Erdmann, Public Service Commission Licensing Division Grain Warehouse Inspector, reviewed the business records of VeraSun Hankinson, LLC at Hankinson, North Dakota, and obtained documents that supported the claims filed by Keith Saunders and James Wirtz.

18. On March 11, 2010, the Affidavit of James Wirtz in Support of Nonpayment of Grain Claim of James Wirtz was filed with the Commission. Mr. Wirtz's Affidavit contained specifics regarding his grain deliveries of corn to VeraSun Hankinson, LLC and the misplacement of the check issued by VeraSun Hankinson, LLC. (Copy attached as Exhibit B.)

19. On March 11, 2010, the Affidavits of Timothy Erdmann in Support of Nonpayment of Grain Claim of James Wirtz and in Support of Nonpayment of Grain Claim of Keith

Saunders were filed with the Commission. The Affidavits contained additional information that Mr. Erdmann obtained from his review of the VeraSun Hankinson, LLC records to support the grain claims filed by Mr. Wirtz and Mr. Saunders. (Copy attached as Exhibit C.)

20. On March 15, 2010, the Affidavit of Keith Saunders in Support of Nonpayment of Grain Claim of Keith Saunders was filed with the Commission. (Copy attached as Exhibit D.).

21. On May 6, 2010, the Supplemental Affidavit of Keith Saunders in Support of Nonpayment of Grain Claim of Keith Saunders was filed with the Commission. The Supplemental Affidavit provided information supporting Mr. Saunders' claim as a cash claim and addressed why Mr. Saunders did not attempt to cash checks that were issued, as early as July 2008, by VeraSun Hankinson, LLC until November, 2008. (Copy attached as Exhibit E.)

22. On May 12, 2010, the Supplemental Affidavit of James Wirtz in Support of Nonpayment of Grain Claim of James Wirtz was filed with the Commission. The Supplemental Affidavit provided information supporting Mr. Wirtz's claim as a cash claim and addressed by Mr. Wirtz did not attempt to cash the check that was issued in September 2008, by VeraSun Hankinson, LLC until December, 2008. (Copy attached as Exhibit F.)

23. On June 9, 2010, the Second Supplemental Affidavit of Mr. Saunders was filed with the Commission relating to the delayed cashing of checks issued by VeraSun Hankinson, LLC. (Copy attached as Exhibit G.).

24. On _____, 2010 the Commission filed a motion for Further Relief From Stay with Bankruptcy Court requesting relief from stay to the extent necessary to complete the State Court proceeding.
25. On _____, 2010 the United States Bankruptcy Judge signed an Order lifting the stay to allow the North Dakota Public Service Commission to complete the State Court proceeding.
26. On _____, 2010 the Commission filed a motion with the Court asking that the surety, Liberty Mutual Insurance Company, be joined as a party to the insolvency proceeding and ordering the surety to deposit bond proceeds with the Trustee sufficient to pay all valid claims with interest and Trustee expenses.
27. On _____, 2010 the Court ordered that the surety, Liberty Mutual Insurance Company, be joined as a party to the insolvency proceeding deposit bond proceeds with the Trustee sufficient to pay all valid claims with interest and Trustee expenses.
28. There were no grain assets available for the Commission to liquidate. The \$380,000 North Dakota bond proceeds are the only assets available for the North Dakota trust fund and are needed to pay North Dakota claimants for their outstanding valid cash claims.
29. There are sufficient funds available from the bond proceeds to pay each claimant 100% of his claim. There are also sufficient funds available from the bond proceeds to pay the expenses incurred by the Commission in the administration of insolvency as provided in North Dakota Century Code section 60-04-09.

30. Under North Dakota Century Code section 60-04-09 (4) interest can be paid to claimants at the weighted average prime rate charged by the Bank of North Dakota from the date of insolvency. There are funds available from the bond proceeds to pay interest from the date of insolvency. Therefore, we propose to pay each claimant interest on his claim from the date of insolvency.

31. The Commission recommends that each claimant be paid 100% of each respective valid cash claim plus interest. The final amounts to be paid will be determined once Court approval is received and the bond proceeds have been forwarded to the Commission.

32. The net valid cash claim amounts recommended for payment by the Commission total \$132,784.85 as shown below and with detail on Exhibit A:

<u>Claimant Name</u>	<u>Claim Filed</u>	<u>Valid Cash Claim</u>
a. Keith Saunders	\$ 105,850.15	\$ 105,850.15
b. James Wirtz	\$ 26,934.70	\$ 26,934.70
Total	\$ 132,784.85	\$ 132,784.85

Wherefore the Commission respectfully asks the Court to:

1. Set a time and place for hearing with the appropriate notice for interested parties to show cause why the Report and Recommendation of Trustee should not be approved.
2. Approve the Report and Recommendation of Trustee.
3. Authorize the Commission to make payments of bond proceeds consistent with this Report and Recommendation to persons with valid claims for grain purchased for cash by VeraSun Hankinson, LLC.

Respectfully submitted at Bismarck, North Dakota, this ___ **day** _____,

2010.

Illona A Jeffcoat-Sacco (ID#03315)
Special Assistant Attorney General
Public Service Commission
State Capitol – 12th Floor
600 E Boulevard Ave – Dept 408
Bismarck, North Dakota 58505-0480
701-328-2400

Attorney for the Public Service Commission