

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF RICHLAND

SOUTHEAST JUDICIAL DISTRICT

_____)
Public Service Commission)
))
Petitioner,)
))
vs.)
))
VeraSun Hankinson, LLC)
))
Respondent.)
_____)
))
PSC Case No. GE-09-104)
_____)

CIVIL NO. 09-C-1034

AFFIDAVIT OF SERVICE
BY CERTIFIED MAIL

STATE OF NORTH DAKOTA)
))ss
COUNTY OF BURLEIGH)

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **13th day of June, 2011**, she deposited in the United States Mail, Bismarck, North Dakota, **7 envelopes** with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

1. Notice of Motion and Notice of Hearing;
2. Motion for Approval and Adoption of Report and Recommendation of Trustee;
3. Brief in Support of Motion for Approval and Adoption of Report and Recommendation of Trustee;
4. Report and Recommendation of Trustee with attached Exhibit A and Exhibit B
5. Affidavit of Service by Certified Mail

The envelopes were addressed as follows:

Joel West, Vice President of Risk Management
VeraSun Hankinson, LLC
110 North Minnesota Avenue Suite 300
Sioux Falls, SD 57104-6440
Cert. No. 7010 3090 0002 4629 3785

C T Corporation System
VeraSun Hankinson, LLC's Registered Agent
PO Box 400
Bismarck, ND 58502
Cert. No. 7010 3090 0002 4629 3792

Scott C. Williams
Manier & Herod
Liberty Mutual Insurance Company
150 Fourth Avenue North
Nashville, TN 37219
Cert. No. 7010 3090 0002 4629 3808

Stephen S. Newman
VeraSun Energy Corporation
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, IL 60606-1720
Cert. No. 7010 3090 0002 4629 3815

Adam W. Hamm
State Capitol – 5th Floor
600 East Boulevard Avenue
Bismarck, ND 58505-0320
Cert. No. 7010 3090 0002 4629 3822

John Bullis, Attorney for Keith Saunders
P.O. Box 275
Wahpeton, ND 58074-0275
Cert. No. 7010 3090 0002 4629 3839

James Wirtz
17275 95 R St SE
Fairmount, ND 58030
Cert. No. 7010 3090 0002 4629 3846

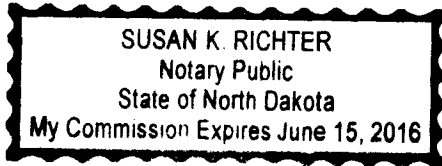
Shelly A Bauske

Subscribed and sworn to before me
this 13th day of June, 2011.

Susan K Richter

Notary Public

SEAL



FURTHER PLEASE TAKE NOTICE that any aggrieved person having an objection to the Commission's Report and Recommendation as Trustee shall file the objection with the Court and serve copies on the Commission, the warehouseman, and the surety at least ten (10) days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Bismarck, North Dakota, this **13th day of June, 2011.**



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

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF RICHLAND

SOUTHEAST JUDICIAL DISTRICT

_____)
Public Service Commission)
))
Petitioner,)
))
vs.)
))
VeraSun Hankinson, LLC)
))
Respondent.)
_____)
PSC Case No. GE-09-104)
_____)

CIVIL NO. 39-9-C-462-1

**MOTION FOR APPROVAL AND
ADOPTION OF REPORT AND
RECOMMENDATION OF
TRUSTEE**

The undersigned respectfully moves the Court for an Order Approving Trustee's Report, Approving Payment, and Discharging Trustee in the above matter.

Bismarck, North Dakota, this 13th day of June, 2011.

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

STATE OF NORTH DAKOTA
COUNTY OF RICHLAND

IN DISTRICT COURT
SOUTHEAST JUDICIAL DISTRICT

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

The Public Service Commission (Commission), as 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, an insolvent grain warehouse, seeks an order approving the Report and Recommendation of Trustee. The Commission has the authority to bring this motion and the Court has the power to grant the relief requested under North Dakota Century Code sections 60-04-03 and 60-04-07.

A bond must be filed with the Commission before any license can be issued to any public warehouseman in North Dakota. North Dakota Century Code section 60-02-09. The bond is for the protection of holders of outstanding receipts from the North Dakota licensed facility. North Dakota Century Code section 60-02-09(6)(a). The insolvent warehouse, VeraSun Hankinson, LLC, had such a bond issued by Liberty

Mutual Insurance Company, 6800 College Boulevard, Suite 701, Overland Park, Kansas, 66211, as surety.

The Commission received two claims against the warehouseman. Each claimant subsequently filed a letter withdrawing his claim. Therefore the only bond proceeds that will be needed are funds to reimburse the Commission for expenses incurred in this proceeding.

North Dakota Century Code section 60-04-09 provides:

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

The Commission respectfully requests the Court approve the Report and Recommendation of Trustee and authorize reimbursement to the Commission as recommended in the report.

Bismarck, North Dakota, this 13th day of June, 2011.



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

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 do 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 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 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. Two claims totaling \$132,784.85 were filed with the Commission as shown below.

<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.

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.

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.

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.

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.

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.

24. On March 3, 2011, after preparing a draft Report and Recommendation of Trustee, the Commission filed with Bankruptcy Court a motion and notice for an order modifying stipulation and agreed order to allow further action on state court proceeding, or alternatively, for relief from the automatic stay as well as a proposed order granting the motion.

25. On April 7, 2011, the Bankruptcy Court granted the Commission further relief from the automatic stay to allow the Commission to pursue to conclusion its state district court proceeding.
26. On May 17, 2011, the Commission received a letter from Liberty Mutual Insurance Company enclosing an original letter from James Wirtz dated May 13, 2011, withdrawing his claim. (Copy of James Wirtz letter attached as Exhibit A.)
27. On May 24, 2011 the Commission received a letter from Liberty Mutual Insurance Company enclosing an original letter from Keith Saunders dated May 13, 2011, withdrawing his claim. (Copy of Keith Saunders letter attached as Exhibit B.)
28. The Commission claims expenses incurred to date in the amount of \$3,908.83 to administer this insolvency. The Commission recommends the Court approve the reimbursement of these expenses and order the bonding company to pay the Commission \$3,908.83 to reimburse the Commission for its expenses.

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. Order the bonding company to make payment in the amount of \$3,908.83 to the Commission for reimbursement of expenses incurred in this proceeding.

Respectfully submitted at Bismarck, North Dakota, this 13th day June, 2011

A handwritten signature in black ink, reading "Illona A. Jeffcoat-Sacco". The signature is written in a cursive style with a horizontal line underneath it.

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

May ^{7th} 13, 2011

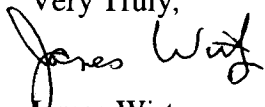
Darrell Nitschke, Executive Secretary
c/o Sue Richer (via email: srichter@nd.gov)
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: Public Service Commission v. VeraSun Hankinson, LLC, Case No. 39-9-C-462-1,
District Court, Southeast Judicial District, Richland County, North Dakota (the
"State Proceeding"), Public Service Commission Case No. 09-104GE

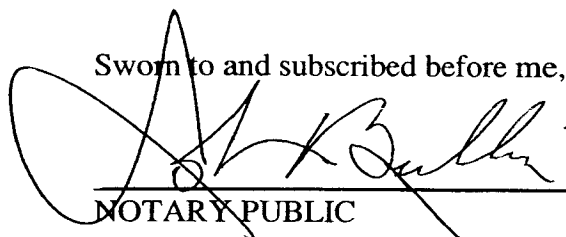
Dear Mr. Nitschke:

By this letter, I hereby withdraw my claim filed in Commission Case No. 09-104 (the
"Claim") which is part of the State Proceeding referenced above. Please update the docket in
Commission Case No. 09-104 to reflect the withdrawal of the Claim. You may file this letter in
the State Proceeding to the extent necessary for your reporting in the State Proceeding.

I appreciate your attention to this matter.

Very Truly,

James Wirtz
17275 95 R Street S.E.
Fairmont, ND 58030

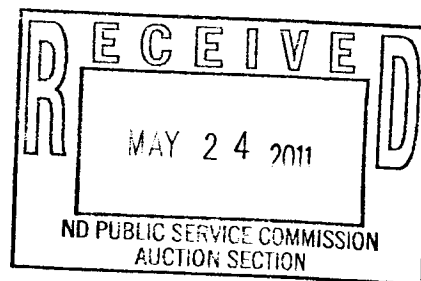
Sworn to and subscribed before me, this the 13th day of May, 2011.


NOTARY PUBLIC

My commission expires

JOHN BULLIS
Notary Public
State of North Dakota
My Commission Expires Aug. 20, 2014

May ¹⁴13, 2011



Darrell Nitschke, Executive Secretary
c/o Sue Richer (via email: srichter@nd.gov)
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RE: Public Service Commission v. VeraSun Hankinson, LLC, Case No. 39-9-C-462-1,
District Court, Southeast Judicial District, Richland County, North Dakota (the
"State Proceeding"), Public Service Commission Case No. 09-104GE

Dear Mr. Nitschke:

By this letter, I hereby withdraw my claim filed in Commission Case No. 09-104 (the
"Claim") which is part of the State Proceeding referenced above. Please update the docket in
Commission Case No. 09-104 to reflect the withdrawal of the Claim. You may file this letter in
the State Proceeding to the extent necessary for your reporting in the State Proceeding.

I appreciate your attention to this matter.

Very Truly,

Keith Saunders
P.O. Box 275
Wahpeton, ND 58074-0275

Sworn to and subscribed before me, this the 13 day of May, 2011.

NOTARY PUBLIC

JOHN BULLIS
My commission expires:
State of North Dakota
My Commission Expires Aug. 20, 2014