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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Case No. 08-12606 (BLS)
)
) Jointly Administered
)
VERASUN ENERGY CORP., et al.,) Chapter 11
)
) Courtroom 1
) 824 Market Street
Debtors.) Wilmington, Delaware
)
) April 2, 2009
) 10:10 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

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1 WILMINGTON, DELAWARE, THURSDAY, APRIL 2, 2009, 10:10 A.M.

2 THE COURT: Please be seated. Good morning.

3 Mr. Wright, good morning.

4 MR. WRIGHT: Good morning, Your Honor. David E.
5 Wright from Skadden, Arps, Slate, Meagher & Flom, on behalf
6 of the VeraSun Energy Corporation and its affiliates as
7 Debtors and Debtors in Possession. With me today in the
8 courtroom is Mark Chehi, a partner of the Skadden's
9 Wilmington office. And also appearing telephonically is
10 Felecia Pearlman, partner in Chicago -- Skadden's Chicago
11 office.

12 THE COURT: Okay.

13 MR. WRIGHT: They will be handling the Interim
14 Fee Application.

15 THE COURT: Okay.

16 MR. WRIGHT: Your Honor, with your permission and
17 before turning to the amended agenda, I would like to
18 provide a quick update as to the sale process.

19 THE COURT: I would appreciate that.

20 MR. WRIGHT: Thank you, Your Honor. First of
21 all, thank you for entering the orders for the Valero deal
22 both Outlet City and the VSE assets. The VSE Asset Order
23 came just in time. And as I believe Mr. Nash informed you
24 on March 18 we had targeted April 1 as the closing date for
25 the sale of the VSE assets. And I'm happy to report we made

1 that and we closed on that acquisition yesterday.

2 THE COURT: Good.

3 MR. WRIGHT: Also, I'm happy to report that
4 Alvert [ph] City deal should close at the end of next week.

5 THE COURT: Okay.

6 MR. WRIGHT: As to the other orders both the
7 Valero and Albien [ph] Order and the credit base with West
8 LB, AgStar, and Dougherty, we expect those to close also by
9 the end of next week with the AgStar credit base targeted
10 for April 9. It is our intention that those remaining
11 orders will be entered or submitted to you either today or
12 tomorrow under a certification of counsel.

13 THE COURT: Okay.

14 MR. WRIGHT: Turning to the --

15 THE COURT: Let me make one comment with that.
16 That's all just fine. My practice is generally when we deal
17 with particularly sale orders and I know that there may be a
18 room full of people ready to close and wires ready to go.
19 As a general proposition if you've got an order that needs,
20 that absolutely needs to get entered or the parties are
21 expecting it to be entered that day, what I'd ask you to do
22 is to sent it over under certification, but give us a call
23 and make sure that somebody gets it to me because we get a
24 lot of orders. But if there is a priority to it, I
25 certainly don't want a measure of inadvertence to let

1 something sit for a day and I certainly wouldn't want to
2 prejudice the parties to a deal. So I think you've been
3 pretty good about that. I just want to lay that out for
4 this and for the future.

5 MR. WRIGHT: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. WRIGHT: And we'll make sure to call.

8 THE COURT: Sure.

9 MR. WRIGHT: I'll make sure I get a time frame
10 from our corporate department as well.

11 THE COURT: Fair enough.

12 MR. WRIGHT: Turning to the amended agenda then,
13 Your Honor.

14 THE COURT: Okay.

15 MR. WRIGHT: I believe we submitted the amended
16 version on May 31 or sorry, March 31 --

17 THE COURT: I have it. I have it.

18 MR. WRIGHT: -- in the afternoon. I would just
19 like to briefly go through the matters.

20 THE COURT: Okay.

21 MR. WRIGHT: The first item the 345 Motion.
22 We've been talking with the trustee and he's agreed to
23 continue that to the May 7 omnibus hearing.

24 THE COURT: Okay.

25 MR. WRIGHT: The same is true with Items 2, 3,

1 and 4, the Kinder Morgan Motions. We are hopeful that they
2 will be resolved in connection with Kinder Morgan's claim
3 objection that it is under Item #10 --

4 THE COURT: Right.

5 MR. WRIGHT: -- that I'll get to shortly. Item
6 #5, Your Honor, Union Tank Car Administrative Expense
7 Request. We are also continuing that to May 7 to give both
8 parties some time to complete certain discovery requests.

9 THE COURT: Okay.

10 MR. WRIGHT: Items #6 and 7 are also continuing.
11 Item #7 we're continuing to evaluate certain options and
12 we'll address that at the May 7 hearing.

13 THE COURT: Sure.

14 MR. WRIGHT: Item #8 actually Your Honor has
15 already entered that order.

16 THE COURT: Yep.

17 MR. WRIGHT: And Item #9 as with the Kinder
18 Morgan Motions, the Aux Sable Motion to Assume or Reject we
19 are actually seeking to continue to the May 7 hearing in
20 light of the objection -- cure objection and resolution of
21 that.

22 THE COURT: Okay. That sounds fine.

23 MR. WRIGHT: Turning to Item #10, Your Honor, the
24 Notice of Cure Amounts and the three objections that were
25 filed by Kinder Morgan, Aux Sable, and CenterPoint. Just to

1 give Your Honor some background, we provided an Initial Cure
2 Notice on February 27 and amended that on March 14. And
3 pursuant to that Initial and Amended Cure Notice, Kinder
4 Morgan and CenterPoint filed objections. On March 13, we
5 also filed a Supplemental Cure Notice and Aux Sable filed an
6 objection under that that was originally scheduled for
7 today's hearing and incorrectly noticed on the March 31 --

8 THE COURT: Okay.

9 MR. WRIGHT: -- agenda. As is indicated in our
10 amended agenda, we believe that these three cure objections
11 are either resolved or close to resolution. And If I said
12 anything wrong, I'm sure AgStar's counsel will jump up. But
13 I believe we are in agreement as to the cash amount and the
14 amount that each of the three will receive in the form of a
15 letter of credit, but we are continuing to work through the
16 terms of those three cure objections and the affiliated
17 contracts and expect to have those finally resolved without
18 further hearing with the Court.

19 THE COURT: Okay. That sounds fine. Let me ask
20 you one question. From the sale hearing there were dozens
21 of cure issues that were to be carried and ultimately
22 hopefully resolved by the parties. And I see that these
23 three are resolved. Are the other ones simply being carried
24 or have they all been disposed of by virtue of whatever
25 resulted from the sales?

1 MR. WRIGHT: Your Honor, I believe a large
2 majority of them have been resolved already. There are
3 certain cure objections specifically with Valero, West LB
4 and Dougherty that have been continued to the May 7
5 omnibus --

6 THE COURT: Okay.

7 MR. WRIGHT: -- just to provide additional time.

8 THE COURT: And my -- I expected that was the
9 case, I just want to make sure and I don't know how you're
10 going to manage it. But I want to make sure that to the
11 extent that there are any that remain outstanding that they
12 don't fall off the radar. And I'm not requiring or
13 directing you to keep them on the agenda but somebody needs
14 to keep a list of them.

15 MR. WRIGHT: Yes, Your Honor, we will.

16 THE COURT: Okay, all right. Do you wish to be
17 heard, ma'am?

18 MS. RECKLER: Good morning, Your Honor. Caroline
19 Reckler on behalf of AgStar. Your Honor, the three that --
20 three current cure objections that are listed on the agenda
21 are the only three that remain open with respect to the
22 AgStar facility.

23 THE COURT: Sure, okay.

24 MS. RECKLER: And as Mr. Wright said, we think
25 that they will be resolved, the economic terms and we're

1 just walking through and working through some of the
2 documentation issues with respect to the terms of the LC's,
3 but again all of those terms have been agreed to in
4 principal and we think that we will be able to submit sale
5 orders reflecting that.

6 THE COURT: Okay. I'll look for the orders.

7 MS. RECKLER: Thank you.

8 THE COURT: Thank you. Ms. Sawczuk, good
9 morning.

10 MS. SAWCZUK: Good morning, Your Honor. Maria
11 Sawczuk on behalf of CenterPoint Energy Minnesota Gas. Your
12 Honor, it was my understanding that we had come to a
13 resolution of that matter and we were going to read the
14 terms into the record. So I wanted to ask counsel if that
15 was his understanding if we could do that.

16 THE COURT: Okay.

17 MR. WRIGHT: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. SAWCZUK: Do you want me to --

20 MR. WRIGHT: Yes, please.

21 MS. SAWCZUK: Your Honor, the terms of the
22 settlement were that AgStar is going to issue a letter of
23 credit in the amount of \$348,000 for the benefit of
24 CenterPoint Energy to secure the liability for the payment
25 of the cure amounts. Additionally, AgStar agrees that the

1 letter of credit will provide that CenterPoint will be
2 entitled to draw upon it -- to draw on it upon the earliest
3 of to occur of the following events: A date no later than
4 six months after the closing date of AgStar's purchase of
5 the Janesville Plant; the start up and commercial operation
6 of the facility, or no later than ten days after sale of the
7 plant to a third party. In addition, the letter of credit
8 will be irrevocable and terms consistent with other normal
9 practice. Finally, CenterPoint must receive the letter of
10 credit prior to the date of the closing of the sale to RBF
11 Acquisition.

12 THE COURT: Mr. Wright, does that work for you?
13 Ms. Reckler?

14 MS. RECKLER: The only -- good morning, Your
15 Honor. The only issue with that is I think we will have to
16 provide the LC at closing. I don't think logistically we'll
17 be able to do it before closing just because of the new
18 funding mechanisms that we are putting into place with
19 respect to the newly created LLC.

20 THE COURT: Okay. Well that seems like a
21 banker's issue.

22 MS. SAWCZUK: Yeah. I think that will be fine,
23 Your Honor.

24 THE COURT: Okay, very good.

25 MS. SAWCZUK: Thank you, Your Honor.

1 THE COURT: Sure.

2 MR. WRIGHT: Thank you, Your Honor. With your
3 permission, I'd also like to address Agenda Item #16.

4 THE COURT: Sure.

5 MR. WRIGHT: Prior to turning it over the podium
6 to Mr. Chehi.

7 THE COURT: Okay.

8 MR. WRIGHT: Item 16 is the Debtors' Bar Date
9 Motion that we filed on March 25. And in that motion we are
10 seeking a general bar date of May 25, 2009 at 5:00 p.m.,
11 pacific time. With the addition that there be either the
12 later of the general bar date or 30 days past the date in
13 which we provide a Notice of Amended Schedules or rejection
14 of any executory contract for those parties affected. The
15 motion also requests approval of the Form of Notice and the
16 Form of Proof of Claim that are attached to the order
17 itself. Your Honor, have you seen a copy of that?

18 THE COURT: Sure, yeah, I have.

19 MR. WRIGHT: Do you have any questions with --

20 THE COURT: I don't have any questions. And I
21 think that this was the subject of a discussion between
22 maybe be and Mr. Nash at the last hearing.

23 MR. WRIGHT: Yes, it was, Your Honor.

24 THE COURT: And the idea was that knowing as of a
25 couple of weeks ago where you were with the sales and where

1 you expected the case to play out that there wasn't any real
2 purpose to be served by delaying the bar date and that that
3 was one of the steps that particularly the committee would
4 need in order to move forward with case. So I think I
5 allowed the matter to be heard today. And I don't have any
6 issues with the proposed schedule. I don't know if the
7 Committee or anybody else has gotten back to you with any
8 comments or concerns, but again, it looked fairly routine to
9 me. Mr. Botter, good morning.

10 MR. BOTTER: Good morning, Your Honor, David
11 Botter, Akin Gump, on behalf of the Committee. We had
12 already previously worked through all of our issues prior to
13 filing the motion, so we're all set, Your Honor.

14 THE COURT: Very good. All right. Does anyone
15 else wish to be heard regarding the Debtors' Bar Date
16 Motion?

17 (No audible response heard)

18 THE COURT: Okay. I find that the relief is
19 largely routine. I note that Bankruptcy Rule 2002 does
20 require 20 days notice of a bar date, but I have pursuant to
21 Bankruptcy Rule 9006, shortened that time, I believe for
22 good cause shown. And I share the Debtors and the
23 Committee's sense that the bar date is a necessary set for
24 moving forward with the case and that we're now moving into
25 the next phase of the case. So the setting a bar date

1 promptly I think is definitely an appropriate step in this
2 case. And the proposed forms, as well as, the proposed
3 deadline are both satisfactory and I think compliant with
4 the rules. So I'm happy to enter the order. Do you have a
5 clean order?

6 MR. WRIGHT: Yes, I do Your Honor. May I
7 approach?

8 THE COURT: Sure. Thank you, sir. Okay.

9 MS. SAWCZUK: Good morning, again, Your Honor.
10 Maria Sawczuk on behalf of CenterPoint. I have nothing
11 further here. May I be excused?

12 THE COURT: Have a good day.

13 MS. SAWCZUK: Thank you, sir.

14 MR. WRIGHT: All right. Your Honor, that
15 concludes the non-fee related matters on the agenda, and
16 with that I'd like to turn the podium over to Mr. Chehi.

17 THE COURT: It's the main event now.

18 MR. WRIGHT: Yes, Your Honor.

19 THE COURT: Okay. Mr. Chehi.

20 MR. CHEHI: Thank you, Your Honor. Good morning.
21 The notice of this first interim fee application was sent
22 out on March 26 with respect to all of the professional
23 applications. And unless Your Honor wants to proceed
24 otherwise, I'll present our firm's application very briefly.

25 THE COURT: Well actually --

1 MR. CHEHI: If you need it or and if you need
2 it --

3 THE COURT: No, I've had an opportunity to get
4 through the fee applications. And I'll say what I normally
5 say. These are interim. I had the opportunity to carefully
6 review them. I mean, I've gone through them quickly and I
7 will more carefully review them as the case goes along.
8 Obviously, the fee applications themselves are substantial,
9 but it's a big case and I'm well aware of the amount of
10 time, effort, and energy that's gone in really on a
11 surprisingly successful basis. This was a difficult case
12 when it -- when you came out of the box. And so I don't
13 have any issues with the applications that have been
14 submitted by your firm or by the other firms that are before
15 me today for purposes of the interim. I cannot recall and
16 I've got to come up with a better procedure for this, but in
17 a case of this size, it's my practice to direct fee
18 appointment of a fee examiner. Have I asked for that in
19 this case?

20 MR. CHEHI: I'm going to let Ms. Pearlman, who is
21 on the line, address that because she has been addressing
22 that issue.

23 THE COURT: Okay.

24 MR. CHEHI: And knows it better than I do.

25 THE COURT: Okay. Ms. Pearlman?

1 MS. PEARLMAN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MS. PEARLMAN: We have requested a fee examiner
4 with the U.S. Trustee. We did, and along with the
5 Committee, gave some names to the U.S. Trustee and that is
6 where this is sitting. In part, has given the case of the
7 (indiscernible) and to see that it would be moved to a sale
8 so we have had those discussions with the U.S. Trustee, but
9 one has not been appointed as of yet.

10 THE COURT: Okay. Two things. That's just fine,
11 I appreciate it. If you would just reach out to the U.S.
12 Trustee and advise that I'd like to see an order under
13 certification by a week from tomorrow.

14 MS. PEARLMAN: Okay.

15 THE COURT: That would be helpful.

16 MS. PEARLMAN: Okay.

17 THE COURT: I have heard by -- in other cases and
18 really by way of commentary from the podium that given the
19 volume of cases that have been filed not just in this
20 jurisdiction but in others that there is some difficulty in
21 finding fee examiners that have the resources to do this or
22 to take on new work. I certainly can't speak to that. And
23 if that's an issue, I'd be happy to hear from parties about
24 it.

25 My goal in these cases and think I said this to

1 Mr. Nash, as I've said to other counsel, is that I try to
2 get that under way early because otherwise you dump, you
3 know, 50 pounds of fee applications on a fee auditor at a
4 late point and you wind up frankly delaying the compensation
5 process and that's not the purpose of the fee auditor
6 function. So if there is an issue with that, I would -- I'm
7 all ears and I'm certainly prepared to be flexible and
8 creative, but I just don't want it to sit because, you know,
9 I don't want the fee auditor to be really behind the curve.
10 And I also don't want counsel to be in the position where
11 either compensation is delayed or they get surprised at a
12 later point in the case. One of the goals is that the
13 parties know as they go through. That's what our internal
14 comp procedures are for. You kind of measure with certainly
15 and confidence so that we're not dealing with unpleasant
16 exercises of discouragement or tinkering with it one way or
17 the other.

18 MR. CHEHI: Your Honor, we'll ping the U.S.
19 Trustee and move it forward and report back if there some
20 practical problem at this point getting an appointment.

21 THE COURT: Yeah, if there is, and there may be
22 because my recollection is there aren't that many folks that
23 actually do this. So and I would not be surprised if they
24 are swamped right now.

25 MR. CHEHI: The usual suspects are very busy, I'm

1 sure.

2 THE COURT: Of that I'm confident. Okay. But
3 for purposes of considering the interim orders, I have seen
4 the applications that were submitted in accordance with our
5 local rules and the interim compensation procedure. And I
6 am satisfied that they are compliant both with the U.S.
7 Trustee Guidelines, as well as, the standards under rule --
8 under Section 330 for purposes of approval on an interim
9 basis of fee applications and I will be prepared to
10 entertain that order. Do you have an Omnibus Order?

11 MR. CHEHI: I have an order for our firm and the
12 McGladrey firm. Are there any other orders available today?

13 UNKNOWN SPEAKER: We thought we had an Omnibus
14 Order. We can certainly --

15 THE COURT: Why don't we do this, why don't you
16 get me an Omnibus Order at the end of the day that will have
17 everybody on it and we'll go from there. And if you can --
18 what I would invite you to do is contact my chambers if
19 there is an issue with the fee auditor because I have it as
20 a "to do" in a number of my cases where I think I've asked
21 for it and I haven't seen orders and I don't know where it
22 stands. And the orders may have come through, but I am a
23 little bit concerned about that just because I, you know, I
24 don't want to get too far down the road in a lot of these
25 cases so we'll leave that at that. But I'll look for an

1 order under certification that will be entered today.

2 MR. CHEHI: Thank you, Your Honor.

3 THE COURT: Okay. Anything further today? Mr.
4 Wright, you're in charge.

5 MR. WRIGHT: Not from the Debtors, Your Honor.
6 There was nothing from --

7 MR. BOTTER: Nor from the Committee, Your Honor.
8 Thank you very much.

9 THE COURT: Very good. We'll stand in recess.
10 Thank you, counsel. Have a good day.

11 MR. CHEHI: Thank you, Your Honor.

12 MR. WRIGHT: Thank you, Judge.

13 Whereupon, at 10:27 a.m., the hearing was adjourned.)

14 I certify that the foregoing is a correct
15 transcript from the electronic sound recording of the
16 proceedings in the above-entitled matter.

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19 _____
Traci L. Calaman
Transcriber

12 April 2009
Date

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VERASUN ENERGY, 04.02.09.TLC.DOC

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