

MEMORANDUM

December 28, 2008

To: Official Committee of Unsecured Creditors (the “Committee”) of VeraSun Energy Corporation, et al. (the “Debtors”)

From: Akin Gump Strauss Hauer & Feld LLP (“Akin Gump”)

Re: VeraSun Energy Corporation, et al. – Summary of Kinder Morgan Motions

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1. **Kinder Morgan Interstate Gas Transmission, LLC’s Motion for Relief from Stay to Require Compliance with Tariff, or in the Alternative, to Allow Termination [Docket No. 333] (the “Kinder Morgan-Central City Motion”)**
2. **Kinder Morgan Interstate Gas Transmission, LLC’s Motion for Relief from Stay to Require Compliance with Tariff, or in the Alternative, to Allow Termination [Docket No. 335] (the “Kinder Morgan-Ord Motion”)**
3. **Kinder Morgan Interstate Gas Transmission, LLC’s Motion for Relief from Stay to Allow Setoff, to Require Compliance with Tariff, or in the Alternative, to Allow Termination [Docket No. 337] (the “Kinder Morgan-Albion Motion,” and together with the Kinder Morgan-Central City Motion and the Kinder Morgan-Ord Motion, the “Motions”)**

By each of the Motions, Kinder Morgan Interstate Gas Transmission, LLC (“Kinder Morgan”) seeks entry of an order (i) determining that the automatic stay of section 362 of the Bankruptcy Code does not apply to the applicable FT Agreement (defined below), or (ii) in the alternative, lifting the automatic stay to allow Kinder Morgan to terminate the applicable FT Agreement. In addition, by the Kinder Morgan-Albion Motion, Kinder Morgan seeks entry of an order allowing Kinder Morgan to setoff certain prepetition amounts owed by Albion (defined below) against certain prepayments made by Albion to Kinder Morgan.

According to the Motions, (i) Kinder Morgan and Debtor VeraSun Central City, LLC (“Central City”) are parties to a firm transportation service agreement dated October 16, 2003 (the “Central City FT Agreement”); (ii) Kinder Morgan and Debtor VeraSun Ord, LLC (“Ord”) are parties to a firm transportation service agreement dated January 4, 2007 (the “Ord FT Agreement”); and (iii) Kinder Morgan and Debtor ASA Albion, LLC (“Albion”) are parties to a firm transportation service agreement dated September 1, 2006 (the “Albion FT Agreement” and together with the Central City FT Agreement and the Ord FT Agreement, the “FT Agreements”). Pursuant to each

of the FT Agreements, Kinder Morgan is required to provide pipeline transportation of natural gas.<sup>1</sup> Each Motion asserts that, because the FT Agreements relate to the transportation of a commodity on an interstate pipeline, the Federal Energy Regulatory Commission (“FERC”) has jurisdiction over certain requirements, including the rate that can be charged and the amount of collateral that must be posted to provide adequate protection of the respective Debtor’s performance under the FT Agreement. According to the Motions, the amount of the collateral must equal approximately three months worth of services. With respect to the Albion FT Agreement, Albion is required to post an additional letter of credit in the amount of \$5,335,743.

Kinder Morgan asserts that, despite its full and timely performance under each of the FT Agreements, the Debtors have defaulted under the FT Agreements by failing to (i) pay certain amounts in respect of both prepetition and postpetition services and (ii) post the requisite amount of collateral. The table below summarizes Kinder Morgan’s claims:

<b><u>Debtor</u></b>	<b><u>Amount of Prepetition Claim Asserted by Kinder Morgan</u></b>	<b><u>Amount of Postpetition Claim Asserted by Kinder Morgan</u></b>	<b><u>Amount of Collateral to be Posted</u></b>
Central City	\$109,380	\$3,524	\$360,000
Ord	\$54,880	\$1,873	\$201,000
Albion	\$322,186	\$9,446	Letter of credit for \$5,335,743

In the Motions, Kinder Morgan sets forth three basic arguments. First, Kinder Morgan argues that the FT Agreements constitute forward contracts within the meaning of section 101(25) of the Bankruptcy Code and, therefore, Kinder Morgan is entitled, pursuant to section 556 of the Bankruptcy Code, to terminate the FT Agreements without seeking relief from the automatic stay. Second, Kinder Morgan argues that, if the Bankruptcy Court determines that the FT Agreements are not forward contracts and thus are subject to the automatic stay, “cause” nonetheless exists to lift the automatic stay to permit Kinder Morgan to terminate each of the FT Agreements. Kinder Morgan argues that cause exists because the Debtors have failed to provide the requisite amount of collateral. Third, with respect only to the Albion FT Agreement, Kinder

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<sup>1</sup> Specifically, under the Central City FT Agreement, Kinder Morgan is required to provide transportation of natural gas from June 1, 2004 through October 31, 2014. Under the Ord FT Agreement, Kinder Morgan is required to provide transportation of natural gas from March 1, 2007 through March 31, 2017. Under the Albion FT Agreement, Kinder Morgan is required to provide transportation of natural gas from July 1, 2007 through June 30, 2017.

Morgan argues that it should be permitted to setoff its prepetition claim (in the amount of \$322,186) against prepetition collateral currently held by Kinder Morgan and that, after the setoff is effectuated, Albion should be required to replenish the collateral by the same amount.