

MEMORANDUM

December 29, 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 Recently Filed Pleading

Debtors’ Motion for Order Under Bankruptcy Code Sections 105(a), 362, and 553(a) and Bankruptcy Rule 9019 Authorizing Procedures for the Resolution of Setoff Rights Asserted by Counterparties and Their Affiliates (the “Motion”)

By the Motion, the Debtors request entry of an order (i) establishing procedures for resolving setoff claims (the “Setoff Procedures”) and (ii) prohibiting creditors from seeking to setoff such claims outside of the requirements established by the Setoff Procedures.

According to the Motion, since the Debtors’ bankruptcy filing, many creditors have asserted setoff claims against one or more of the Debtors, and the Debtors expect that many more creditors will assert such claims in the coming months. Absent the relief requested in the Motion, each of these creditors will be required to seek relief from the automatic stay of section 362 of the Bankruptcy Code and a determination as to the validity of their setoff rights under section 553(a) of the Bankruptcy Code. The Debtors assert that the proposed Setoff Procedures will provide an expeditious and efficient means for resolving these claims. The proposed Setoff Procedures are as follows:

- (a) The Debtors shall send a copy of the order approving the Setoff Procedures to all known creditors and to the parties entitled to receive notice in these chapter 11 cases;
- (b) The determination as to whether a setoff claimant (a “Setoff Claimant”) may exercise a setoff right (a “Setoff Right”) will be made solely by (i) the agreement of the Setoff Claimant and the Debtors (the “Setoff Agreement”), (ii) the procedures set forth set forth in the Motion, or (iii) order of the Bankruptcy Court;
- (c) Any Setoff Claimant seeking to exercise a Setoff Right against payables shall submit a written request (the “Setoff Request”) on or before 60 calendar days after entry of the Order (the “Setoff Claim Deadline”) to: (i) the Debtors, c/o VeraSun Energy; (ii) counsel to the Debtors; (iii) counsel to the provider of debtor-in-possession financing that is applicable to the Debtor affected by the

Setoff Request (the “Affected DIP Lender”); (iv) the Office of the United States Trustee; and (v) counsel to the Committee (collectively, the “Setoff Request Notice Parties”);

- (d) The Setoff Request shall include the basis for such Setoff Right and reasonably detailed documentation supporting such Setoff Right;
- (e) In addition to complying with the Setoff Procedures, each Setoff Claimant will bear the burden of proof with respect to supporting its Setoff Claim;
- (f) The Debtors will serve a notice of a Setoff Agreement (the “Agreement Notice”) to the Committee and the Affected DIP Lender. The Committee and the Affected DIP Lender shall have 20 calendar days (the “Objection Deadline”) after the service of an Agreement Notice to object (the “Objection”) to the Setoff Agreement by notifying counsel to the Debtors, the Setoff Claimant, and the Setoff Request Notice Parties of such Objection;
- (g) The Setoff Agreement shall become effective without further order of the Bankruptcy Court, unless an Objection is raised in accordance with the foregoing paragraph;
- (h) In the event that a proper and timely Objection is received, and the Debtors, the Setoff Claimant, and the objecting party are not able to reach a consensual resolution of the Objection, the Setoff Claimant shall file a motion with the Bankruptcy Court seeking relief from the automatic stay to effectuate its alleged right of setoff;
- (i) If the Setoff Claimant and the Debtors fail to agree in writing that any amount is included in a Setoff Right within 45 calendar days of the Setoff Claim Deadline (the “Agreement Deadline”), the Debtors shall (unless all such parties agree to extend such 45 calendar day period), schedule a hearing with the Bankruptcy Court;
- (j) Following expiration of the Setoff Claim Deadline, which shall serve as a bar date for asserting any prepetition rights of setoff (but shall not bar any such creditor from asserting a related or unrelated general unsecured claim), creditors shall be forever barred from seeking or asserting prepetition setoff rights; and
- (k) The Setoff Procedures shall be the sole and exclusive method for the handling of any and all Setoff Claims asserted against the Debtors. All adversary proceedings and contested matters, whether currently pending or initiated in the future, in connection with any Setoff Claim, are stayed under section 362 of the Bankruptcy Code, except for proceedings initiated in accordance with the Setoff Procedures,

and all Setoff Claimants shall be stayed from taking any other action for the resolution or treatment of their Setoff Claims, including, without limitation, commencing or continuing adversary proceedings or contested matters against the Debtors in connection with any Setoff Claims.