

MEMORANDUM

December 22, 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 363 and 365(A) and Fed. R. Bankr. P. 6006 to Approve the Memorandum of Understanding Between Debtors and Shell Trading (US) Company and the Extension and Assumption of the Related Customer Contract (the “Motion”)

By the Motion, the Debtors seek entry of an order (the “Order”) approving (i) a Memorandum of Understanding dated as of November 26, 2008 (the “MOU”), by and between the Debtors and Shell Trading (US) Company (“Shell”) and (ii) the extension and assumption of the related Prepetition Contract (defined below).

According to the Motion, Shell is the Debtors’ largest ethanol customer and is essential to the continuation and preservation of the Debtors’ business. Shell purchases ethanol from VeraSun Marketing, LLC under various confirmations pursuant to a General Terms and Conditions for the Sale and Purchase of Refined Products dated August 1, 2007 (collectively, the “Prepetition Contract”). The Motion states that, pursuant to the Prepetition Contract, (i) the Debtors owe Shell \$9,168,945 on account of certain prepetition credit memos issued by the Debtors for the difference between the estimated price and actual price of the ethanol paid by Shell (the “Credit Memo Amount”); and (ii) Shell owes the Debtors \$10,090,610 on account of certain purchases of ethanol made by Shell (the “Withholding”). A portion of the Withholding (in the amount of \$141,000) is on account of prepetition purchases of ethanol, and the remaining portion of the Withholding (in the amount of \$9,949,610) is on account of postpetition purchases of ethanol.

On November 26, 2008, the Debtors and Shell entered into the MOU. The key terms of the MOU are as follows:

- 1) Shell agreed to pay (and has already paid) to the Debtors the sum of \$5 million (the “Initial Payment”), which reduced the amount of the Withholding to \$5,090,610;

- 2) Subject to Court approval, the Prepetition Contract will be assumed and amended as set forth below (the "Contract"):
 - a) the provisional price for ethanol will be determined each week by the mutual agreement of the parties. In the absence of a mutual agreement, the provisional price will be the prior week's provisional price. The provisional price may be adjusted, by mutual agreement, during each week;
 - b) on or after the date on which the Contract is assumed, the Debtors may terminate the Contract, without penalty or damages (except as provided in the MOU), upon 10 days' written notice solely in the event of a sale or liquidation of their business, or if the Debtors otherwise substantially cease operations; provided, however, if the Debtors terminate the Contract, the Debtors must pay by wire transfer the value of the remaining outstanding "cure" or Credit Memo Amount to Shell and any and all other amounts due Shell under the Contract on the effective date of the termination; and
 - c) other non-material terms and conditions that have been negotiated by the parties, including increased volumes and delivery locations for 2009. The transactions agreed to by the parties through December 31, 2009 will be reflected in various confirmations for 2009.
- 3) Upon the entry of a final, non-appealable order approving the assumption of the Contract, Shell will pay by wire transfer \$921,665 to the Debtors, which will reduce the Withholding amount by the same amount;
- 4) The Credit Memo Amount will be treated as a "cure" amount under section 365 of the Bankruptcy Code and will be paid by the Debtors as follows:
 - a) upon the entry of a final, non-appealable order approving the assumption of the Contract, Shell will effect the setoff and recoupment of \$4,168,945 of the Credit Memo Amount against the remaining Withholding, thereby reducing the Withholding amount to zero; and
 - b) the remaining \$5 million of the Credit Memo Amount will be paid by the Debtors selling ethanol to Shell pursuant to the Contract with an additional price reduction of 8.3 cents per gallon, as compared to the price established in accordance with the specific terms of the Prepetition Contract until such time that the Credit Memo Amount is paid in full; provided, however, that if the Credit Memo Amount has not been paid in full within three months from November 26, 2008, the Debtors will pay any remaining amount to Shell by wire transfer in immediately available

funds within two business days. The reduction in price for ethanol is to begin effective on January 1, 2009.

- 5) If court approval for the assumption of the Contract is not received by January 10, 2009, then the MOU will terminate and become void (except for this provision) and the Debtors will within one business day return to Shell the Initial Payment; provided, however, that if the Debtors fail to return the Initial Payment, Shell will have the right to setoff the amount of the Initial Payment against amounts due to the Debtors for products delivered after November 26, 2008. After such termination in accordance with this paragraph, nothing in the MOU may be used to prejudice the rights of either party in asserting its legal position regarding any dispute between the parties related to the Withholding, Credit Memo Amount, or the potential termination of the Prepetition Contract. If court approval for the assumption of the Assumed Contract is not received by January 10, 2009, then the time period between November 26, 2008 and January 10, 2009 will be tolled for all purposes;
- 6) The Debtors may assign the Contract under section 365(f) of the Bankruptcy Code; provided, however, that (i) the Debtors shall be required to pay by wire transfer the value of the remaining outstanding "cure" or Credit Memo Amount to Shell and any and all other amounts due Shell under the Contract on the effective date of assignment, and (ii) Shell shall receive adequate assurances of future performance of the Contract by the assignee.