



COURT / ESTATE FILE
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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS
AMENDED

AND IN THE MATTER OF THE NOTICE OF
INTENTION TO MAKE A PROPOSAL OF AVILA
ENERGY CORPORATION

DOCUMENT

BRIEF OF LAW

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
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PART I - INTRODUCTION

1. The Applicant, Avila Energy Corporation (“**Avila**”) seeks an Order for among other things:
 - (a) abridging the time for service of this Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
 - (b) pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), extending the time by which Avila may file a proposal to its creditors for a 45-day period from the date following the current deadline to do so such that Avila may file a proposal up to and including 11:59 p.m. (local Calgary time) on December 4, 2024, or such other date as this Honourable Court may order;
 - (c) granting an Administration Charge (as defined below) over the assets and property of Avila, in the amount of \$350,000, as security for the payment of professional fees and disbursements incurred and to be incurred by counsel for Avila, FTI Consulting Canada Inc. (in such capacity, the “**Proposal Trustee**”), and the Proposal Trustee’s counsel; and
 - (d) granting such further and other relief as counsel may request and this Honourable Court may deem appropriate.
2. Capitalized terms used and not otherwise defined herein have the same meanings ascribed to them in Affidavit of Donald Benson, sworn October 7, 2024 (the “**Affidavit**”).

PART II - FACTS

3. The facts relevant to the Application are set out in detail in the Affidavit. A summary of the key facts as they relate to the relief requested in the Application is set out in the following section.

A. Background

4. Avila is an established producer, explorer and developer of energy in Canada with its head office being located in Calgary, Alberta.¹

¹ Affidavit of Donald Benson, sworn October 7, 2024 (the “**Affidavit**”) at para 8.

5. Avila is the owner of roughly 125,875 acres (net) of developed and undeveloped mineral rights in Canada within a network of over 250kms of associated pipelines and natural gas processing facilities.²
6. Avila is publicly listed on the Canadian Stock Exchange (CSE:VIK.CN).³

B. Financial Circumstances

7. Avila along with its predecessor company, Petro Viking Energy Inc., has been in the energy production business since 2010 acquiring the bulk of its current operational assets in 2021 from 611890 Alberta and which included, amongst other things, the operational licenses for oil and gas production (the "**Licenses**").⁴
8. The Licenses were originally held in a wholly owed subsidiary of 611890 Alberta Ltd. named Avila Exploration and Development Ltd. and were intended to be transferred to Avila in 2021.⁵
9. Despite assurances from the Alberta Energy Regulator ("**AER**") that the Licenses could be transferred, during the time between when Avila purchased the Licenses and when the Licenses were being transferred (in 2024), the AER introduced Directive 067 which outlines the eligibility requirements for acquiring and holding energy licenses and approvals in Alberta.⁶
10. At this time the AER has denied the transfer of the Licenses. Although time consuming, Avila is in the process of complying with the additional requirements implemented by the AER in order to facilitate the transfer. It is expected that the transfer of the Licenses to Avila will be completed.⁷
11. Further, as of the date of the NOI Proceedings, certain producing assets of Avila had been contaminated by a third-party (by introducing H₂S to its system) which caused a shut down

² *Ibid* at para 9.

³ *Ibid* at para 10,

⁴ *Ibid* at para 11.

⁵ *Ibid* at para 16.

⁶ *Ibid* at para 17 and Exhibit "B."

⁷ *Ibid* at para 18.

of Avila's production facility. Avila expects that the contamination will be resolved and production will recommence on or about October 15, 2024.⁸

12. Once the above noted issues have been dealt with, Avila will be in a position to raise capital in order to complete remedial work on non-producing assets owned by Avila to bring those assets back into production.⁹

C. Assets and Liabilities

Assets

13. Avila has a total consolidated assets value of which consist of \$35,834,251 which is mostly made up of property, plants, equipment, and investments.¹⁰
14. The assets of Avila can generally be described as 125,875 acres (net) of developed and undeveloped mineral rights within a network of over 250kms of associated pipelines and natural gas processing facilities.¹¹

Liabilities and Overview of Secured Creditors

15. As at September 18, 2024, Avila has collective liabilities of approximately \$19,900,303.84 including, but not limited to:
- (a) secured obligations in an aggregate principal amount of approximately \$500,000 owing to AVED Capital Corporation;
 - (b) secured obligations in an aggregate principal amount of approximately \$3,390,000 owing to Mark Girouard;
 - (c) approximately \$387,000 for judgments registered at the Alberta Personal Property Registry (\$40,000 of which have been paid but not discharged); and
 - (d) approximately \$12,285 due to the field operator.¹²

⁸ *Ibid* at para 19.

⁹ *Ibid* at para 20.

¹⁰ *Ibid* at para 23 and Exhibit "C."

¹¹ *Ibid* at para 24.

¹² *Ibid* at para 25.

D. Events Leading to the Filing of the NOIs

16. Avila is no longer able to meet its short-term obligations as they become due.¹³
17. This is a result of the issues described in paragraphs 16 through 18 of the Affidavit which relate to the ongoing difficulties with the transfer of the Licenses¹⁴ and the contamination of certain producing assets of Avila by a third-party (by introducing H2S to its system).¹⁵
18. Avila is confident that once these issues have been dealt with, Avila will be able to return to production and be able to recommence payments to its varied creditors and suppliers.¹⁶

PART III - ISSUES

19. The following issues are before the Court:
- (a) Should the Court extend the time to file a proposal?
- (b) Should the Court grant the Administration Charge?

PART IV - LAW AND ANALYSIS

A. The Court should extend the time to file a proposal

20. Avila filed for these NOI Proceedings on September 20, 2024. Pursuant to section 50.4(8) of the BIA, Avila is required to file a proposal with the official receiver within 30 days (the “**Proposal Period**”) unless it otherwise obtains an extension of time from the Court.
21. Pursuant to section 50.4(9) of the BIA, before the expiry of the Proposal Period, a debtor in a proposal proceeding may apply to the Court for an order extending the time to file a proposal by a maximum of 45 days. For an extension to be granted under the BIA, the Court must be satisfied that:
- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;

¹³ *Ibid* at para 44.

¹⁴ *Ibid* at para 16-18.

¹⁵ *Ibid* at para 19.

¹⁶ *Ibid* at para 20.

- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
 - (c) no creditor would be materially prejudiced if the extension being applied for were granted.¹⁷
22. Since filing for these NOI Proceedings, Avila has been diligently complying with the various requirements under the BIA, including:
- (a) preparing and analyzing the list of creditors;
 - (b) providing the Proposal Trustee with access to Avila's employees and books and records; and
 - (c) completing a cash flow forecast to the week ending December 8, 2024.¹⁸
23. To advance a proposal to present to the Avila's creditors, Avila is seeking a 45-day extension from the current deadline October 19, 2024, to and until December 4, 2024. The test for the Court to grant the extension of the Proposal Period are met in the circumstances of this case:
- (a) Avila is insolvent and acting in good faith and with due diligence in working with the Proposal Trustee to prepare a proposal for the benefit of Avila's creditors and other stakeholders; and
 - (b) the extension should not adversely affect or prejudice any group of creditors.¹⁹
24. The 13-week cash-flow shows that Avila will have sufficient liquidity to recommence production and work toward a viable proposal before the expiry of the proposed 45-day Proposal Period extension.
25. Based on the above considerations, Avila submits that the Court should extend the Proposal Period up to and until December 4, 2024.

¹⁷ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended ("BIA"), at s 50.4(9) [TAB 1]; *Castle Rock Research Corp v AGC Investments Ltd*, 2012 ABQB 208 at para 8 [TAB 2].

¹⁸ The Affidavit, *supra* at para 33.

¹⁹ *Ibid* at para 36.

B. The Administration Charge should be granted

26. Avila seeks the Administration Charge, which shall not exceed the aggregate amount of \$350,000 to secure the fees of the Administrative Professionals in connection with the NOI Proceedings, in priority to existing creditors of Avila.²⁰
27. The Court has the statutory jurisdiction to grant the Administration Charge under section 64.2 of the BIA:²¹

64.2(1) Court may order security or charge to cover certain costs: On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division;

[...]

64.2(2) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

28. Administration charges have been approved in BIA proposal proceedings where, as in the present case, the participation of insolvency professionals is necessary to assist a restructuring under the BIA.²²
29. Pursuant to section 64.2(2) of the BIA, the Court may order that an administration charge be granted priority over the claim of any secured creditor of a person.²³ Avila requests that the Administration Charge form a charge on the Property in first priority over all security

²⁰ *Ibid* at para 39.

²¹ BIA, *supra* note 17 at s 64.2 [TAB 1].

²² *Re Mustang GP Ltd*, 2015 ONSC 6562 at para 33 [TAB 3]; *Re Mantle Materials Group Ltd*, 2023 ABKB 488 at para 14 [TAB 4].

²³ BIA, *supra* note 17 at s 64.2(2) [TAB 1].

interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors statutory or otherwise, in favour of a Person.²⁴

30. Avila submits that granting the Administration Charge to provide the Administration Professionals with security for payment of their services is necessary to complete the restructuring of Avila as a going concern. The Proposal Trustee is supportive of the Administrative Charge.²⁵

PART V - CONCLUSION

31. For the reasons set out above, Avila requests that this Honourable Court grant the relief sought in the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF OCTOBER, 2024.

MILLER THOMSON LLP

Per:



Dustin Gillanders/ James W. Reid
Counsel for the Applicant, Avila Energy
Corporation

²⁴ The Affidavit, supra at para 40.

²⁵ *Ibid* at para 41.