

COURT / ESTATE FILE NUMBERS 25-3131451

Clerk' Stamp



COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

C100521  
COM  
Oct 18, 2024

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 **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MILLER THOMSON LLP  
Barristers and Solicitors  
525-8<sup>th</sup> Avenue SW, 43<sup>rd</sup> Floor  
Calgary, AB, Canada T2P 1G1

Attention: Dustin L. Gillanders/James W. Reid  
Phone: 306.667.5616/402-298-2418  
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File No.: 0287592.0001

**NOTICE TO RESPONDENT(S):**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the application judge / judge.

To do so, you must be in Court when the application is heard as shown below:

Date	<u>October 18, 2024</u>
Time	<u>2:00 p.m.</u>
Where	<u>Calgary Law Courts</u> <u>Via WEBEX</u>
Before Whom	<u>The Honourable Justice R.W. Armstrong</u>

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicant, Avila Energy Corporation (“**Avila**”) seeks an Order substantially in the form attached as **Schedule “A”**, 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.

**Grounds for making this Application:**General

2. Avila is a producer, explorer and developer of energy in Canada with its head office located in Calgary, Alberta.
3. Avila is insolvent and filed a Notice of Intention to Make a Proposal with the Official Receiver on September 20, 2024 (the “**NOI Proceedings**”). The Proposal Trustee consented to act as proposal trustee in the NOI Proceedings.
4. Avila seeks to restructure its affairs for the benefit of its creditors and stakeholders.

Background to Avila’s Insolvency

5. 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**”).

6. The Licenses were intended to be transferred to Avila in 2021, however, as a result of a new Alberta Energy Regulator (“**AER**”) directive the transfers were stalled.
7. At this time the AER has denied the transfer of the Licenses. Avila is in the process of complying with the additional requirements implemented by the AER in order to facilitate the transfer.
8. Further, as of the date of the NOI Proceedings, certain producing assets of Avila had been contaminated by a third-party (by introducing H<sub>2</sub>S to its system) which caused a shut down of Avila’s production facility.
9. Once the above 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.

#### Extension of Time to File Proposal

10. Avila is acting in good faith and with due diligence in pursuing these NOI Proceedings and working towards the preparation of a proposal that will maximize value for its creditors and other stakeholders.
11. Unless Avila receives an extension of time for filing a proposal, the deadline to file a proposal with the official receiver expires on October 20, 2024.
12. The proposed extension of time to file a proposal will give Avila the necessary time to develop a proposal to restructure its affairs.
13. No creditors will be materially prejudiced by the requested extension.
14. The NOI Proceedings are in the best interests of all stakeholders of Avila.

#### Administration Charge

15. Avila requests an Order approving a Court-ordered charge over the assets and property of Avila in favour of the Proposal Trustee, counsel to the Proposal Trustee, and counsel to Avila, to secure payment of their respective fees and disbursements incurred in connection with services rendered to Avila prior-to and after filing the NOI Proceedings up to a maximum amount of \$350,000 (the “**Administration Charge**”).

16. The Administration Charge is proposed to rank ahead of and have priority over all of the other security interests and Court-ordered charges against Avila.
17. Avila requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during these proceedings.
18. The Proposal Trustee is of the view that the Administration Charge is fair and reasonable in the circumstances and the Proposal Trustee supports the Administration Charge.
19. The Proposal Trustee supports Avila bringing this Application.

**Material or evidence to be relied on:**

20. Affidavit of Donald Benson, sworn October 7, 2024, to be filed.
21. Brief of Law, dated October 7, 2024, to be filed.
22. The First Report of the Proposal Trustee, to be filed.
23. Such further and other materials as counsel may advise and this Honourable court may permit.

**Applicable rules**

24. *Alberta Rules of Court*, Alta Reg 124-2010.
25. *The Bankruptcy and Insolvency General Rules*, CRC, c. 368 section 3.
26. Such other Rules as counsel may refer to or that this Honourable Court may permit.

**Applicable Acts and regulations:**

27. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, including Division I of Part III, and without limitation, and in particular, sections 50.4, 64.2, and 183.
28. Such further and other Acts and Regulations as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

29. None.

**How the application is proposed to be heard or considered:**

30. On the Commercial List, via Webex before the Honourable Justice R. W. Armstrong.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**SCHEDULE "A"**

**Proposed form of Order**

COURT / ESTATE FILE NUMBER 25-3131451  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANTS 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

**ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MILLER THOMSON LLP  
Barristers and Solicitors  
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File No.: 0287592.0001

**DATE ON WHICH ORDER WAS PRONOUNCED:** October 18, 2024

**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary Courts Centre

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice R.W. Armstrong

**UPON THE APPLICATION** by Avila Energy Corporation ("**Avila**") for an order, among other things: (a) extending the time for Avila to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (the "**BIA**"); (b) approving the Administration Charge (defined below) (the "**Application**");

**AND UPON HAVING READ** the Application, Affidavit of Donald Benson, sworn October 7, 2024 (the "**Benson Affidavit**"), the Brief of Law of Avila dated October 7, 2024, the First Report of FTI Consulting Canada Inc., in its capacity as Licensed Insolvency Trustee of Avila (in such capacity, the "**Proposal Trustee**") (the "**First Report**"), and the Affidavit(s) of Service of Marica Ceko sworn October [], 2024;

**AND UPON HEARING** the oral submissions of counsel for Avila and any other interested party;

**IT IS HEREBY ORDERED THAT:**

**SERVICE**

1. Service of notice of the Application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of the Application, and time for service of the Application is abridged to that actually given.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. Pursuant to Section 50.4(9) of the BIA, the time for Avila to file a proposal is hereby extended to December 4, 2024 (as that date may be extended by further order of the Court, the **"Proposal Extension Date"**).

**ADMINISTRATION CHARGE**

3. The Proposal Trustee, counsel to the Proposal Trustee, and counsel to Avila shall be entitled to the benefit of and are hereby granted a charge (the **"Administration Charge"**) on all of the present and future assets, undertakings and property of every nature and kind whatsoever and wherever situate of Avila, including all proceeds thereof (collectively, the **"Property"**), which charge shall not exceed an aggregate amount of \$350,000 (before GST), as security for payment of their respective professional fees and disbursements incurred at their normal rates and charges, both before and after filing the NOI Proceedings.
4. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record, or perfect.
5. The Administration Charge shall constitute a charge on the Property, and such Administration Charge shall rank in priority to all other security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise (collectively, **"Encumbrances"**) in favour of any Person as against the Property.



6. Except as otherwise expressly provided for herein, or as may be approved by this Court, Avila shall not grant any Encumbrances over any of the Property that rank in priority to, or *pari passu* with the Administration Charge, unless Avila also obtains the prior written consent of the Proposal Trustee and the other beneficiaries of the Administration Charge affected thereby, or further Order of this Court.

#### **MISCELLANEOUS MATTERS**

7. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Proposal Trustee will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Proposal Trustee's reports shall be filed by the Clerk of the Court notwithstanding that they do not include an original signature.
8. This Court hereby requests the aid and recognition of any court, tribunal, regulatory, or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist the Proposal Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.
9. Each of Avila or the Proposal Trustee, shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
10. Any interested party (including the Proposal Trustee) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

#### **SERVICE OF ORDER**

11. Service of this Order shall be deemed good and sufficient:

- (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
  - (b) by posting a copy of this Order on the Proposal Trustee's website at: <http://cfcanada.fticonsulting.com/avilaenergy/> .
12. Service of this Order on any other person is hereby dispensed with.
13. This order may be signed and delivered in counterparts, each of which will be considered to be an original, and all of which together will constitute one and the same instrument. This Order may be transmitted by e-mail attachment or any other electronic means, and the reproduction of signatures in such manner will be binding as if originals.
14. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of King's Bench of Alberta