

COURT / ESTATE FILE NUMBERS B301-131451  
25-3131451

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



C10238

COM  
Jan 13, 2025

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 **AFFIDAVIT OF DONALD BENSON**

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  
Email: [dgillanders@millerthomson.com](mailto:dgillanders@millerthomson.com)/  
[jwreid@millerthomson.com](mailto:jwreid@millerthomson.com)  
File No.: 0287592.0001

**AFFIDAVIT OF DONALD BENSON  
SWORN JANUARY 3, 2025**

I, Donald Benson, of the City of Winnipeg, in the Province of Manitoba, MAKE OATH AND SAY THAT:

1. I am the President and Chief Executive Officer ("**CEO**") of the Applicant, Avila Energy Corporation ("**Avila**") and as such, I have personal knowledge of the facts and matters deposed to herein, unless stated to be based upon information and belief, in which case I believe same to be true.
2. This Affidavit is sworn in support of the application (the "**Application**") by Avila returnable January 13, 2025, before the Court of King's Bench of Alberta (the "**Court**").
3. I have previously sworn an affidavit in these proceedings on October 7, 2024 and November 18, 2024.

4. Unless otherwise stated, monetary figures in this Affidavit are expressed in Canadian dollars.

## **INTRODUCTION**

5. On September 20, 2024, Avila filed a notice of intention to make a proposal (the “**NOI Proceedings**”) pursuant to section 50.4(1) of *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”) and FTI Consulting Canada Inc. consented to act as proposal trustee under the BIA (in such capacity, the “**Proposal Trustee**”).
6. The NOI Proceedings are part of a planned restructuring process that Avila determined, in consultation with its professional advisors, had to be undertaken in the best interests of Avila and its stakeholders, and after identifying no viable alternative processes due to Avila’s insolvency.
7. Pursuant to section 50.4(8) of the BIA, the initial stay period under these proceedings was from September 20, 2024 to October 20, 2024. This initial period was extended twice and now expires on January 16, 2025.

## **NATURE OF THE APPLICATION AND OVERVIEW OF RELIEF SOUGHT**

8. This Affidavit is made in support of the Application before the Court seeking the following relief, 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 BIA, extending the time by which Avila may file a proposal to their 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 March 2, 2025, or such other date as this Honourable Court may order; and
  - (c) granting such further and other relief as counsel may request and this Honourable Court may deem appropriate.

## **BACKGROUND**

### ***Operations and Organization***

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

10. 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.
11. Avila is publicly listed on the Canadian Stock Exchange (CSE:VIK.CN).

### ***Financial Circumstances***

12. Avila along with its predecessor company, Petro Viking Energy Inc., have been in the energy production business since 2010 acquiring the bulk of its current operational assets in 2021 from 611890 Alberta which included, amongst other things, the operational licenses for oil and gas production (the “**Licenses**”).
13. In this regard, I would like to clarify my previous affidavits to ensure clarity. The Licenses were originally held by 611890 Alberta Ltd. (“**611**”). 611 amalgamated with Avila Exploration and Development Canada Ltd. into Avex Energy Inc. (“**Avex**”). The Licenses were intended to be transferred to Avila in 2021.
14. When Avila purchased the Licenses and when the Licenses were being transferred (in 2023), the Alberta Energy Regulator (“**AER**”) introduced Directive 067 which outlines the eligibility requirements for acquiring and holding energy licenses and approvals in Alberta.
15. In July 2023, the AER Applications branch approved Avila for Limited Eligibility.
16. Avila could not accept the conditions for Limited Eligibility and Avila requested a Regulatory Appeal for the Limited Eligibility decision.
17. Avila has since and during the NOI Proceeding amalgamated with Avex and holds the Licenses. The delay in the Licenses being held by Avila resulted in delay in operations.

### ***Since the Last Extension***

#### **A. AER Compliance**

18. Since the last stay extension, the AER has recognized that Avila is the holder of Avex’s General Eligibility licenses (subject to material change review by the AER). A copy of the correspondence between the AER and Avila related to the amalgamation and Licenses is attached as **Exhibit “A”**.
19. As per the letter attached at Exhibit “A,” Avila was notified of the AER’s position on December 17, 2024 which allowed Avila to attain General Eligibility.

B. Meeting with Creditors and Stakeholders

20. Since the filing of these NOI Proceedings and since the last extension application I have been engaging with creditors and stakeholders of Avila on a daily basis although these efforts have been frustrated to some extent due to the Christmas holiday.
21. I have been extensively engaged in communications with the representative for Avila's largest secured creditor, Marc Girouard Investments Inc. ("**MGI**") ensuring that this creditor is aware of all steps of the NOI Proceedings and supportive of Avila's restructuring efforts.
22. From my conversations with MGI, it is my understanding and it has been directly represented to me that MGI is wholly supportive of Avila's restructuring efforts.

C. Discussions Regarding County Tax Arrears

23. At the date of the NOI and upon my involvement with Avila, I became aware that Avila is in arrears to certain counties for taxes.
24. I have had preliminary discussions with each of these counties regarding repayment of taxes, payment plans and communicated that dealing with these arrears are one of Avila's top priorities. These communications remain ongoing and I am optimistic that Avila will reach an agreement with the counties for repayment.

D. Repairing Well Sites and Increasing Production

25. On or around November 2024, a farmer whose land is on an oilfield caused an ATCO pipeline to break. This accident resulted in major revenue losses to Avila for much of November.
26. Avila has now repaired and brought 32 wells back into to production following this accident effective December 9, 2024. Despite this loss, Avila was able to increase revenue on a month over month basis from the date of the NOI to the end of December.
27. Further, Avila has arranged to put into production a further 22 wells. Production in these areas is expected to commence in mid January subject to third-party availability for final calibration of pipeline meters. This will bring increased revenues to Avila, supporting its cashflow and ability to create a viable proposal for its creditors.

E. Lifting of the Cease Trade Order

28. On November 22, 2024, the Alberta Securities Commission issued a Cease Trade Order in respect of Avila. A copy of the Cease Trade Order is attached as **Exhibit "B"**.
29. The Cease Trader Order relates to the December 31, 2023 Financial Statements of Avila wherein the same were not completed in accordance with relevant securities legislation.
30. Avila is preparing Amended and Restated December 31, 2023 Financial Statements (**the "Auditor Prepared Financial Statements"**). Upon receipt of same, Avila intends to seek to lift the Cease Trade Order following the filing of the Auditor Prepared Financial Statements.
31. I am hopeful that this can be completed by the end of January which would allow Avila to complete a proposed equity financing plan which involves the issuance of shares on Avila.

F. Demand to Terra Land Development

32. Avila requested documentation and paid receipts from Terra Land Development Ltd. to support a transfer of assets. These requests were not complied with.
33. On or about December 18, 2024, Avila demanded the repayment of \$1,400,000,00 from Terra Land Development Ltd. and its shareholder/director Andres Hernandez. A copy of the demand is attached as **Exhibit "C"**.

G. Equity Financing

34. As described above, I have been in active and ongoing communications with potential investors for new equity financing which shall be used to fund a future proposal in these proceedings. Avila intends to have investors subscribe for new equities to support these NOI Proceedings and to create a viable proposal.
35. It is my understanding that Avila will be able to raise significant capital once the cease trade order is lifted in this manner.

H. Discussions with the Alberta Energy Regulator

36. Since the filing of the NOI Proceedings I have met with the Alberta Energy Regulator and discussed the assets, wells and status of Avila.
37. The AER is aware of the NOI Proceedings, Recently, the AER confirmed that in light of the NOI Proceedings it is amenable to meet and discuss regulatory matters with Avila once the NOI Proceedings are completed.

38. The copy of the email correspondence between the AER and myself is attached as **Exhibit “D”**.

***Further Actions to Be Taken***

39. Avila requires time to lift the Cease Trade Order. Once lifted, Avila is in a better position to speak to investors and obtain equity to support a proposal.
40. Avila is currently conducting a forensic audit of its finances. Avila requires time to obtain the results and consider its next steps if any in respect of the findings.

**RELIEF REQUESTED**

***Extension of Time to File a Proposal***

41. An extension of time for Avila to file a proposal is necessary to allow Avila to restructure its affairs, lift the Cease Trade Order, obtain financial and equity support, and formulate a proposal.
42. Since filing these NOI Proceedings, in addition to the actions outline above, Avila has been diligently complying with the various requirements under the BIA, including:
- (a) working with the Proposal Trustee to completed updated cash flow statements;;
  - (b) meeting with various creditors and stakeholders;
  - (c) reviewing assets and accounts;
  - (d) meeting with the professionals involved; and
  - (e) diligently creating the framework for a successful proposal.
43. Avila is working diligently and in good faith and with a view to maximize value for its creditors and other stakeholders.
44. I understand that in order to continue to work toward the formulation and filing of a proposal, Avila requires an extension of the time period within which they may file a proposal to its creditors. In this regard:
- (a) Avila has acted and is acting in good faith and with due diligence both in the period prior to and since filing the NOI Proceedings;
  - (b) an extension will enhance Avila’s abilities to make a viable proposal;

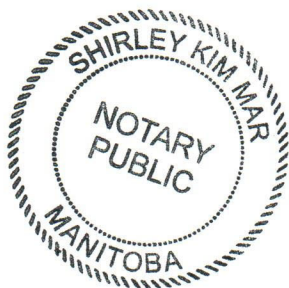


This is Exhibit "A" referred to in the Affidavit of Donald Benson affirmed before me this 3<sup>rd</sup> day of January 2025.

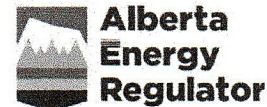
*Q*

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A NOTARY PUBLIC IN AND FOR MANITOBA







December 17, 2024

Calgary Head Office  
Suite 1000, 250 - 5 Street SW  
Calgary, Alberta T2P 0R4  
Canada

BY EMAIL ONLY

[www.aer.ca](http://www.aer.ca)

Donald Benson

**Avila Energy Corporation (BA CODE A91Z)**

**Eligibility for Avila Energy Corporation under *Directive 067***

Dear Donald Benson,

On July 7, 2023, the Alberta Energy Regulator (AER) granted Limited Eligibility with conditions (attached) under *Directive 067: Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals (Directive 067)* to Avila Energy Corporation (Avila), to hold AER energy licences and approvals. On August 17, 2023, Avila submitted a request for regulatory appeal against this AER decision to grant Limited Eligibility with conditions.

On October 30<sup>th</sup>, 2024, Avila amalgamated in the Alberta Corporate Registry with AVEX Energy Inc. (AVEX), and assumed all inventory, liability, and General Eligibility of AVEX. This material change under Section 5(18) of *Directive 067* was reported to the AER on November 28<sup>th</sup>, 2024.

This material change submission remains under review with the Regulatory Applications Branch. However, Avila has now assumed AVEX's General Eligibility, and therefore the eligibility application under *Directive 067* is moot in the opinion of Regulatory Applications Branch.

Regulatory Applications is requesting Avila withdraw their Request for Regulatory Appeal against the decision, as Avila has acquired General Eligibility through the above amalgamation process.

Withdrawal notices can be sent to [Hearing.Services@aer.ca](mailto:Hearing.Services@aer.ca)

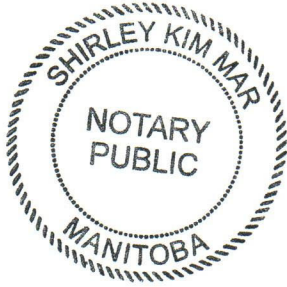
If you have questions or concerns, please contact [Directive067@aer.ca](mailto:Directive067@aer.ca).

This is Exhibit "B" referred to in the Affidavit of Donald Benson affirmed before me this 3<sup>rd</sup> day of January 2025.

*Q*

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A NOTARY PUBLIC IN AND FOR MANITOBA



**Citation: Re Avila Energy Corporation, 2024 ABASC 180**

**Date: 20241122**

**Avila Energy Corporation  
(the Issuer)**

**CEASE TRADE ORDER  
Under the securities legislation of Alberta (Legislation)**

**Background**

1. This is the order of the Executive Director of the Alberta Securities Commission (the **Decision Maker**).
2. The Issuer filed annual financial statements for the period ended December 31, 2023 (the **Financial Statements**).
3. The Issuer has acknowledged that the Financial Statements were not completed in accordance with the Legislation.
4. This order takes automatic effect in each jurisdiction of Canada that has a statutory reciprocal order provision, subject to the terms of the local securities legislation.
5. Pursuant to an authorization order of the Executive Director of the Alberta Securities Commission *Re Authorization Order*, 2024 ABASC 14, the Decision Maker is authorized to make orders under section 33.1 of the Legislation.

**Interpretation**

6. Terms defined in the Legislation or National Instrument 14-101 *Definitions* have the same meaning if used in this order, unless otherwise defined.

**Decision**

7. The Decision Maker is satisfied that the decision concerning the cease trade meets the test set out in the Legislation to make this decision.
8. It is ordered under the Legislation that trading and purchasing cease in respect of each security of the Issuer.
9. Despite this order a beneficial securityholder of the Issuer who is not, and was not at the date of this order, an insider or control person of the Issuer, may sell securities of the Issuer acquired before the date of this order if both of the following apply:
  - (a) the sale is made through a “foreign organized regulated market”, as defined in section 1.1 of the Universal Market Integrity Rules of the Canadian Investment Regulatory Organization; and

- (b) the sale is made through an investment dealer registered in a jurisdiction of Canada in accordance with applicable securities legislation.

22 November 2024

*“original signed by”*

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Denise Weeres  
Director, Corporate Finance  
Alberta Securities Commission

This is Exhibit "C" referred to in the Affidavit of Donald Benson affirmed before me this 3<sup>rd</sup> day of January 2025.

*Q*

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A NOTARY PUBLIC IN AND FOR MANITOBA



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**Fwd: Demand for repayment**

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**From :** DONALD BENSON <dbenson57@shaw.ca>  
**Subject :** Fwd: Demand for repayment  
**To :** Roland Bishop <rbishop@kmss.ca>

Wed, Dec 18, 2024 12:57 PM

Roland FYI

From: "DONALD BENSON" <dbenson57@shaw.ca>  
To: "andres hernandez35" <andres.hernandez35@gmail.com>  
Cc: "Dustin Gillanders" <dgillanders@millerthomson.com>, "Dustin Olver" <Dustin.Olver@fticonsulting.com>  
Sent: Wednesday, December 18, 2024 10:27:28 AM  
Subject: Demand for repayment

Mr. Andres Hernandez and Terra Land Development Ltd.

Avila Energy Corporation herein demands the repayment of all sums totaling \$1,400,000.00 + which was diverted to Terra Land Development Ltd and its shareholder and Director Andres Hernandez. There was never an acceptance to your proposal and no resolution was approved by the board of directors of Avila Energy Corporation.

Failure to resolve this matter to the satisfaction of Avila Energy Corporation will leave us no alternative but to resort to the Courts for recovery.

Govern yourselves accordingly.

Donald Benson  
President

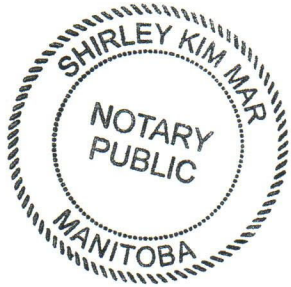
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This is Exhibit "D" referred to in the Affidavit of Donald Benson affirmed before me this 3<sup>rd</sup> day of January 2025.



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A NOTARY PUBLIC IN AND FOR MANITOBA







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**Re: Avila Energy Corporation - Failure to Comply with an Order**

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**From** Donald Benson <donald.b@avilaenergy.com>

**Date** Thu 12/19/2024 2:58 PM

**To** Katy Kemp <Katy.Kemp@aer.ca>

**Cc** Rob Borth <Rob.Borth@aer.ca>; Chris Schacher <Chris.Schacher@aer.ca>

**Bcc** Gillanders, Dustin <dgillanders@millerthomson.com>; Olver, Dustin <dustin.olver@fticonsulting.com>

1 attachment (152 KB)

2024-12-19 Avila Failure to Comply.pdf;

Good Afternoon Ms. Kemp

Thank you for the attached letter. Avila Energy herein confirms that it will schedule a meeting with the AER within 2 weeks of emerging from our proceedings.

A sincere Merry Christmas to you, Mr. Borth and Chris Schacher.

Donald

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**From:** Katy Kemp <Katy.Kemp@aer.ca>

**Sent:** Thursday, December 19, 2024 1:58 PM

**To:** Donald Benson <donald.b@avilaenergy.com>

**Cc:** Rob Borth <Rob.Borth@aer.ca>; Chris Schacher <Chris.Schacher@aer.ca>

**Subject:** Avila Energy Corporation - Failure to Comply with an Order

Good Day,

Please see the attached correspondence regarding the AER order that was issued to Avex in October.

The AER acknowledges that Avila is currently undergoing corporate restructuring. The order remains active, and the AER would like to meet with Avila to discuss the order requirements following restructuring (see attached letter).

Best Regards,

Katy

**Katy Kemp**

Specialist, Compliance Assurance | Regulatory Compliance