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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
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File No.: 0287592.0001

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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 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.

PART II - FACTS

2. The facts relevant to the Application are set out in detail in the Affidavit of Donald Benson, sworn January 3, 2025 (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

3. Avila is an established producer, explorer and developer of energy in Canada with its head office being located in Calgary, Alberta.¹
4. 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
5. Avila is publicly listed on the Canadian Stock Exchange (CSE:VIK.CN);³ however, Avila is currently under a cease trade order which prohibits the exchange of Avila stock or the issuance of new stock to assist in raising capital as detailed in the Affidavit.

¹ Affidavit of Donald Benson, sworn January 3, 2025 (the “**Benson Affidavit**”) at para 9.

² *Ibid* at para 10.

³ *Ibid* at para 11.

B. Financial Circumstances and Events Leading to the Filings of the NOI

6. 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 Ltd. (“**611890**”) and which included, amongst other things, the operational licenses for oil and gas production (the “**Licenses**”).⁴ Through certain amalgamations, Avex Energy Inc. (“**Avex**”) held the Licenses prior to the NOI Proceedings.
7. The Licenses were intended to be transferred to Avila in 2021 and during this time the Alberta Energy Regulator (“**AER**”) introduced Directive 067 which outlines the eligibility requirements for acquiring and holding energy licenses and approvals in Alberta.⁵
8. In July 2023, the AER Applications branch approved Avila for Limited Eligibility.⁶
9. Avila could not accept the conditions for Limited Eligibility and Avila requested a Regulatory Appeal for the Limited Eligibility decision.⁷
10. As a result of the failure to hold the Licenses and additionally the shutdown of production due to certain contamination Avila was forced to file a notice of intention pursuant to the BIA (the “**NOI Proceedings**”).

C. Actions Taken Since Extension

11. Since the commencement of the NOI Proceedings, Avila has been active and diligent in its efforts to restructure and turn its financials around as described in paragraphs 18 through 38 of the Affidavit.⁸ The activities include, but are not limited to, Avila amalgamating with Avex in order to hold the Licenses⁹ and allow production, meeting with creditors and investors, repairing well sites and increasing production, and engaging with relevant counties where Avila’s assets are located to discuss tax arrears.¹⁰

⁴ *Ibid* at para 12-13.

⁵ *Ibid* at para 14.

⁶ *Ibid* at para 15.

⁷ *Ibid* at para 16.

⁸ *Ibid* at paras 18-38.

⁹ *Ibid* at para 17.

¹⁰ *Ibid* at paras 18-38.

PART III - ISSUE

12. The following issue before this Court is whether to extend the time to file a proposal.

PART IV - LAW AND ANALYSIS

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

13. Avila filed for these NOI Proceedings on September 20, 2024. Pursuant to section 50.4(8) of the BIA, Avila was required to file a proposal with the official receiver within 30 days (the “**Proposal Period**”).
14. On October 18, 2024 and again on November 27, 2024, Avila obtained an order extending the Proposal Period for an additional 45 days.¹¹
15. Section 50.4(8)¹² of the *BIA* provides that a debtor that has filed an NOI will be deemed to have made an assignment into bankruptcy if it does not file its proposal, unless pursuant to section 50.4(9) of the BIA the insolvent person applies and is granted an extension based on the following criteria being met:
- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
 - (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.¹³
16. There is competing jurisprudence on the meaning of an applicant acting in “good faith” within the context of section 50.4(9). It has been said that it is equivalent to not acting in bad faith, with bad faith requiring a “motivation and conduct that is unacceptable”.¹⁴
17. In *Re Chester Basin Seafood Group Inc* the Nova Scotia Supreme Court took the view that that “good faith imposes a positive obligation to act in good faith, which is not satisfied merely by a bald statement that an applicant is acting in good faith.¹⁵ There must be

¹¹ *Ibid* at para 7.

¹² *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (“**BIA**”), at s 50.4(8) [**TAB 1**];

¹³ *BIA* at s 50.4(9) [**TAB 1**]; *Castle Rock Research Corp v AGC Investments Ltd*, 2012 ABQB 208 at para 8 [**TAB 2**].

¹⁴ *H&H Fisheries Limited, (Re)*, 2005 NSSC 346 at para 17 [**Tab 3**].

¹⁵ *Chester Basin Seafood Group Inc (Re)*, 2023 NSSC 388 at paras 17 – 20 [**Tab 4**].

sufficient material for the court to make an evaluation that the applicant is acting in good faith.¹⁶

18. There is no evidence to suggest that the Applicant has acted in bad faith. On the contrary, the evidence on the record demonstrates how diligently Avila is working throughout these NOI Proceedings. This is evidenced by efforts taken to prepare the updated cash flow, negotiations and correspondence with creditors, the pursuit of investors to further the cash required to create a viable proposal and dealing with its property tax issues.
19. The second criterion at section 50.4(9) of the BIA requires the inquiry of whether the insolvent person would likely be able to make a viable proposal if the extension was granted. The word “likely” has been interpreted in this context to mean that a viable proposal “might well happen”.¹⁷ This is to be assessed based on whether a proposed proposal is reasonable on its face to a reasonable creditor.
20. Taking steps that increase the likelihood of a viable proposal has been deemed sufficient to satisfy this criterion.¹⁸ Avila is increasing its assets and production to increase revenue which will support bringing a proposal, it is having discussions with its creditors and stakeholders to discuss the proposal, and it is dealing with its tax and regulatory issues so it can create a proposal and come out of these NOI Proceedings.
21. The final criterion requires consideration of whether any creditor will be materially prejudiced by the stay extension. “Materially prejudiced” has been interpreted as requiring a creditor to demonstrate that they will be substantially or considerably prejudiced by the extension.¹⁹
22. There is no evidence that any creditor will be materially prejudiced if the Applicant receives an extension to file a proposal. Avila’s largest secured creditor is in support of Avila’s application.²⁰

¹⁶ *Ibid.*

¹⁷ *T & C Steel Ltd. (Re)*, 2022 SKKB 236 at para 6, citing *Enirgi Group Corp v Andover Mining Corp*, 2013 BCSC 1833 [Tab 5].

¹⁸ *In the Matter of the Bankruptcy of Bear Creek Contracting Ltd.*, 2021 BCSC 783 at para 64 [Tab 6].

¹⁹ *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, 2005 BCSC 351 at para 21 [Tab 7].

²⁰ *Benson Affidavit*, supra note 1 at para 22.

23. Based on the above considerations, Avila submits that the Court should extend the Proposal Period up to and until March 2, 2025.

PART V - CONCLUSION

24. 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 6th DAY OF JANUARY, 2025.

MILLER THOMSON LLP

A handwritten signature in blue ink, appearing to be 'Dustin Gillanders' or 'James W. Reid', written over a horizontal line.

Per:

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

TABLE OF AUTHORITIES

<u>TAB</u>	<u>AUTHORITIES</u>
1	<u><i>Bankruptcy and Insolvency Act, RSC 1985, c B-3,</i></u>
2	<u><i>Castle Rock Research Corp v AGC Investments Ltd, 2012 ABQB 208</i></u>
3	<u><i>H&H Fisheries Limited, (Re),2005 NSSC 346</i></u>
4	<u><i>Chester Basin Seafood Group Inc (Re), 2023 NSSC 388</i></u>
5	<u><i>T & C Steel Ltd. (Re), 2022 SKKB 236</i></u>
6	<u><i>In the Matter of the Bankruptcy of Bear Creek Contracting Ltd., 2021 BCSC 783</i></u>
7	<u><i>In the Matter of the Proposal of Cantrail Coach Lines Ltd., 2005 BCSC 351</i></u>