



COURT FILE NUMBER 1501-02652  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT PACER CONSTRUCTION HOLDINGS CORPORATION  
RESPONDENTS PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION  
DOCUMENT THIRD REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF PACER PROMEC ENERGY CORPORATION AND PACER PROMEC ENERGY CONSTRUCTION CORPORATION

**November 10, 2015**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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## INTRODUCTION

1. On March 10, 2015 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**”) of Pacer Promec Energy Corporation (“**PPEC**” or the “**Company**”) and its wholly-owned subsidiary, Pacer Promec Energy Construction Corporation (“**PPEC Construction**”) pursuant to an Order of this Honourable Court (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to take possession of and exercise control over the Property, carry on the business of the Company and to make such arrangements or agreements as deemed necessary by the Receiver.
3. On May 7, 2015 Honourable Justice B. Nixon granted an approval and vesting order allowing for the sale, free and clear of all encumbrances and claims, of a residential condominium unit owned by PPEC, located in downtown Calgary.
4. On May 7, 2015 Honourable Justice B. Nixon granted another order (“**May 7 Order**”) which, among other things, provided for:
  - (a) approval of the Pacer Agency Agreement and the Pacer Access Agreement;
  - (b) an increase to the Receiver’s borrowing powers, allowing additional borrowings of \$68 million, to bring the total approved borrowings for the receivership to \$78 million;
  - (c) the creation of the Krupp Facility Charge and General Facility Charge, and ranking those charges against the Debtors’ various assets;

- (d) approval of the proposed Lien Management process;
  - (e) approval the proposed Claims Procedure; and
  - (f) appointment of the Claims Officer.
5. On September 4, 2015 Honourable Justice K.M. Horner granted various orders (“**September 4 Orders**”) which, among other things:
- (a) Approved the sale of the PPEC Equipment by way of public auction pursuant to the terms set out in the liquidation agreement (“Liquidation Agreement”) between the Receiver and Century Services Inc. (“Century”) dated July 24, 2015; and
  - (b) Directed the Receiver to hold the net proceeds from the sale of the PPEC Equipment until further order of this Court.
6. The Receiver’s reports and other publicly available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/ppec>.
7. The purpose of this third report (the “**Third Report**”) is to provide the Court with:
- (a) A general update with respect to the Receiver’s activities since the Receiver’s Second Report dated August 19, 2015.
  - (b) An update with respect to the results of the PPEC Equipment auction that was held on October 15, 2015; and
  - (c) Recommendations with respect to distributing the funds generated from the sale of the PPEC Equipment (the “Proposed Distribution”); and

8. The Receiver is requesting from this Honourable Court an order approving the Proposed Distribution of the PPEC Equipment proceeds.

#### **TERMS OF REFERENCE**

9. In preparing this Third Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Companies' books and records and discussions with various parties (collectively, the "**Information**").
10. Except as described in this Third Report:
  - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
  - (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this First Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
11. Future oriented financial information reported or relied on in preparing this Second Report is based on assumptions regarding future events; actual results may vary from forecasts and such variations may be material.
12. The Receiver has prepared this Third Report in connection with the Receiver's Application scheduled to be heard on November 17, 2015. This Third Report should not be relied on for other purposes.

13. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order, and Motion Materials filed in the Receivership Proceedings, or in the previous Reports.

## **RECEIVER'S ACTIVITIES**

### **COMPLETION OF CNRL CONTRACTS**

14. The Receiver has now completed construction on all CNRL Contracts. The Receiver demobilized from the CNRL job site on about September 4, 2015 and all employees were laid off at that time. All retention bonuses related to the CNRL Contracts per PPEC's records were paid out on October 15, 2015.
15. The Receiver has retained approximately six former employees on a contract basis to assist in the completion of the remaining tasks comprising:
  - (a) Updating of the books and records and general accounting;
  - (b) Documentation regarding various change-orders and negotiating such change orders;
  - (c) Completing remaining invoicing and other administrative matters; and
  - (d) Employee related documentation

16. The Receiver continues its efforts to complete final invoices for the CNRL Contracts and expects to issue such invoices in the coming weeks. In addition, prior to and after the Receivership Proceedings commenced, PPEC and the Receiver completed several construction tasks that were outside the original scope of the CNRL contracts (these tasks are referred to as “Change Orders”). The Receiver continues to finalize the Change Orders and continues discussions with CNRL regarding amounts owing.
17. Given the outstanding receivables and related Change Orders owing by CNRL the Receiver has secured the outstanding obligations by causing a builders lien to be registered against the CNRL job site.
18. The Receiver intends to report further to this Honourable Court with a further update and recommendation on the CNRL construction projects recoveries once there are additional details available with respect to Change Orders, receivables collections, and the final administrative tasks have been completed.

#### **CLASS ACTION LAWSUIT**

19. The Receiver has had preliminary discussions with Jensen Shawa Solomon Duguid Hawkes LLP (“JSS”) regarding a potential class action lawsuit against PPEC in relation to unpaid retention bonuses owing to employees working on the PPEC Kearl Lake and MLMR Contracts that were completed prior to the Receivership Proceedings.
20. JSS submitted a proof of claim to the Receiver on June 18, 2015 asserting an unsecured claim on behalf of the class action participants. The Receiver has performed some preliminary analysis on the potential claim and reports there may be valid claims for unpaid retention bonuses owing to employees for work on the PPEC Kearl Lake and MLMR Contracts for the following categories:

- (a) Employees who had and made an eligible claim under the Wage Earner Protection Program (“WEPP”), which claim, once paid, did not fully satisfy the amounts owing to the employee related to the Kears Lake and/or MLMR Contracts;
  - (b) Employees who had an eligible WEPP claim however failed to make the claim to Service Canada; and
  - (c) Employees who were not eligible for a WEPP claim as their wages were earned outside the eligible WEPP period.
21. The Receiver notes that although the claims may be valid claims, they are asserted as unsecured claims. Therefore the Receiver has not performed a detailed legal or financial review of the claims as no recoveries are anticipated for unsecured creditors at this time.
22. The Receiver understands that JSS will soon file an Application in these proceedings seeking certain relief in connection with the class action proceedings.

#### **PPEC EQUIPMENT AUCTION**

23. On October 15, 2015 Century held a public auction to sell the PPEC Equipment pursuant to the terms of the Liquidation Agreement. The proceeds generated by the auction exceeded the net minimum guarantee identified in the Liquidation Agreement. Net proceeds after deducting the agreed upon fees totaled \$3,532,625.
24. The Receiver has collected \$3.1 million of the total net proceeds from Century and expects to collect the remaining balance next week.



## PROPOSED DISTRIBUTION OF NET PROCEEDS

25. Included in the auction were several pieces of equipment that were leased or financed through various equipment financing/leasing companies. The Receiver elected to include this equipment in the auction given the following;
- (a) Based on a third party equipment appraisal the equipment appeared to contain equity as the appraised value exceeded the amount of debt/lease payments owing on the equipment. Therefore selling these items at auction would result in increased recoveries to the estates; and/or
  - (b) Pacer had guaranteed the lease payments or finance debt and therefore was required to pay the lease/finance company back in full satisfaction of their debt if PPEC was unable to do so. Pacer requested that the Receiver include these items in the Century auction. If the item sold for more than the lease/finance debt outstanding, then it would result in a net gain to the recoveries of the estate. If the item sold for less than the lease/finance debt owing, then the loss would be funded by the Receiver through the proceeds generated from the auction however this distribution would be treated as a repayment of the Receiver's certificate to Pacer since the Receiver's certificate has the first priority charge.
26. Since the leased/financed equipment included some of the larger more valuable pieces of equipment the Receiver determined that including these items would also likely increase the overall interest in the auction as a whole. Drawing a larger crowd to the auction was anticipated to have a positive effect on the net proceeds realized on smaller items.

## GE Equipment

27. At the time of the receivership PPEC had various pieces of equipment (“GE Equipment”) that were either leased or financed by GE Canada Equipment Financing G.P. (“GE GP”) and GE Canada Leasing Services Company (“GE Leasing”) (collectively “GE”). As at September 30, 2015 PPEC owed GE GP \$1,084,082 plus a per diem of \$139.93 and GE Leasing \$838,993 (collectively “GE Indebtedness”). Pacer had guaranteed the GE Indebtedness and therefore would be required to pay any unpaid debts. Pacer requested that the Receiver include all of the equipment leased or financed through GE in the Century auction.
28. The Receiver’s counsel has reviewed the GE GP, GE Leasing and Pacer security and has determined that it is valid and enforceable.
29. On October 16, 2015 the Receiver entered into an assignment agreement with GE Canada Equipment Financing G.P. (“GE GP”) and GE Canada Leasing Services Company (“GE Leasing”) (collectively “GE”) whereby; the Receiver would be permitted to sell the GE Equipment. In exchange the Receiver would agree to pay the GE Indebtedness in full from the Century auction proceeds. As such, the Receiver proposes and requests approval to make a distribution to fully satisfy the GE Indebtedness (“Proposed GE Distribution”) as follows:
  - (a) Payment to GE GP in the amount of \$1,091,918 less any lease/finance payments made to GE GP in normal course after September 30, 2015 (per diem calculated assuming a payment date of November 25, 2015); and
  - (b) Payment to GE Leasing in the amount of \$838,993 less any lease/finance payments made to GE Leasing in normal course after September 30, 2015.

## **CWB Equipment**

30. At the time of the receivership PPEC had four equipment leases (“CWB Equipment”) with Canadian Western Bank Leasing Inc. (“CWB”). The total amount owing to CWB per a payout statement received from CWB on November 2, 2015 is \$741,666 (“CWB Indebtedness”). Pacer has guaranteed the CWB Indebtedness. In consultation with Pacer the Receiver elected to include the CWB Equipment in the Century auction.
31. The Receiver’s counsel has reviewed the CWB security and has determined that it is valid and enforceable.
32. The Receiver proposes and requests approval to make a distribution in the amount of \$741,666 less any lease/finance payments made to CWB in normal course after November 2, 2015 to fully satisfy the CWB Indebtedness (“Proposed CWB Distribution”).

### Net Auction Proceeds Break-down

33. The table below presents a breakdown of the net auction proceeds split by GE Equipment, CWB Equipment, and other equipment, as well as the proposed distributions for the leased/financed GE Equipment and CWB Equipment. The purpose of the table is to demonstrate whether including the GE Equipment and the CWB Equipment resulted in a net gain or loss after making the Proposed GE Distribution and the Proposed CWB Distribution.

	Net Proceeds	Proposed Distribution	Gain (loss)
GE Equipment	1,763,163	1,930,911	(167,748)
CWB Equipment	832,193	741,666	90,527
Other Equipment *	937,269	860,048	77,221
Total	3,532,625	3,532,625	(0)

\* Other Equipment secured by Reciever's Certificates.

34. Including the CWB Equipment in the auction resulted in a net gain whereas the GE Equipment resulted in a shortfall. The Receiver considers the payment to GE in the shortfall amount of \$167,748.00 to be the satisfaction of Pacer's liability to GE under its guarantee. The Receiver will account for this by setting off this payment against what is owing to Pacer under the Receiver's Certificates. The Receiver intends utilize the remaining proceeds from the auction \$860,048 (after paying the Proposed GE and Proposed CWB Distributions) to repay the Receiver's Certificates as descried in the Receiver's Second report.

## RECEIVER'S RECOMMENDATIONS

35. The Receiver respectfully requests that this Honourable Court grant an Order approving:

- (a) the Proposed GE Distribution; and
- (b) the Proposed CWB Distribution.

All of which is respectfully submitted this 10<sup>th</sup> day of November, 2015.

FTI Consulting Canada Inc. in its capacity as receiver  
and manager of the assets undertakings and  
properties Pacer Promec Energy Corporation and  
Pacer Promec Construction Corporation



Deryck Helkaa  
Senior Managing Director



Jamie Engen  
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