



COURT FILE NUMBER

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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE *BUSINESS*  
*CORPORATIONS ACT*, R.S.A. 2000, c. B-9

AND IN THE MATTER OF FAIRWEST  
ENERGY CORPORATION.

DOCUMENT

**EIGHTH REPORT OF THE MONITOR  
PRICEWATERHOUSECOOPERS INC.**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

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## INTRODUCTION

1) On December 12, 2012, FairWest Energy Corporation (the “Applicant” or “FEC” or the “Company”) applied to this Court for an order under the *Companies’ Creditors Arrangement Act* (the “CCAA”). This Honourable Court made an order on that day granting the relief requested by the Applicant (the “Initial Order”), including:

- a) an interim stay of proceedings and restraint of certain rights and remedies against the Applicant until and including January 11, 2013, or such later date as this Court may by subsequent order direct (the “Stay Period”);
- b) a declaration that the Applicant is a company to which the CCAA applies, and authorizing the Applicant to file with the Court, on a date to be set upon further application to this Honourable Court, a Plan of Compromise or Arrangement under the CCAA (the “Plan”); and
- c) the appointment of PricewaterhouseCoopers Inc. as an officer of the Court to monitor the business and affairs of the Applicant (the “Monitor”).

2) Paragraph 24(b) of the Initial Order directs the Monitor to:

“report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicant.”

3) On March 19, 2013 the following changes were made to the Initial Order:

The following paragraph was added to the Initial Order as Paragraph 6A:

“The Applicant shall not make any disbursements unless the Monitor has confirmed to the Applicant, in accordance with paragraph 24(k) hereof, that such disbursements are consistent with the cash flow forecasts prepared by the Monitor, provided that in the event that the Applicant believes reasonably and in good faith after consultation with the Monitor that the failure to make any disbursement not contemplated by the cash flow forecasts would (i) have a material adverse effect on the value of its business assets, or (ii) pose material risk to public health or safety, then the Applicant shall be permitted to make such disbursement notwithstanding that it is inconsistent with the cash flow forecast.”

Paragraph 24 of the Initial Order was amended for the following:

“The Monitor shall review all future disbursements by the Applicant to confirm that such disbursements are made in accordance with the cash flow forecasts prepared by the Monitor.”

- 4) On May 28, 2013 this Honourable Court Ordered that (the “May 28 Order”) Marion Mackie, previously the Chief Financial Officer, be appointed the Chief Restructuring Officer (the “CRO”) of FEC. The CRO will act as an officer of this Honourable Court and will be responsible for carrying on the Company’s operations and performing other duties deemed necessary by this Honourable Court.
- 5) Also, pursuant to the May 28 Order, the powers of the Monitor were enhanced to perform the following duties:
  - a) Select the successful bid (the “Successful Bid”) if the Board of Directors do not approve the Successful Bid before resigning or being removed; and
  - b) Oversee and facilitate the completion of the transaction contemplated by the Successful Bid.
- 6) This Honourable Court has issued multiple extensions since the date of the Initial Order. On July 16, 2013 this Honourable Court issued an order extending the Stay Period to September 30, 2013.
- 7) This constitutes the Monitor’s Eighth Report (the “Eighth Report”) to this Honourable Court contemplated by such provision of the Initial Order. Updates of the proceedings as well as the Monitor’s Report will be posted on the Monitor’s website, [www.pwc.com/car-fec](http://www.pwc.com/car-fec).
- 8) It is recommended that this report be read in conjunction with the Monitor’s prior reports. Capitalized words in this Eighth Report not otherwise defined carry the same meaning as in the prior reports.
- 9) Certain information contained in this report is based on information obtained from the Applicant’s books and records and discussions with management and staff. The Monitor has not independently verified the accuracy or completeness of such information; accordingly the Monitor does not express an opinion thereon.

## MONITORING OF BUSINESS AND FINANCIAL AFFAIRS

- 10) As required by the Initial Order, the Applicant has provided the Monitor with access to its property and to its books, records, data and financial information to enable the Monitor to oversee and assess the Applicant's business and financial affairs.
- 11) The Monitor has, with the cooperation of management, implemented a number of procedures to monitor the Applicant's business and financial affairs and its compliance with the provisions of the Initial Order regarding its property and the carrying on of its business. These procedures include:
- a) review of all disbursements made by the Applicant;
  - b) review of cash receipts; and
  - c) comparison of actual results to the Applicant's financial forecasts.

## CASH FLOWS

- 12) The table below summarizes the Applicant's cumulative cash flows from December 12, 2012 to September 20, 2013:

<u>Post- CCAA Cash Flow from Dec 12, 2012 - Sep 20, 2013</u>	<u>TOTALS</u>
<b>OPERATIONS</b>	\$
Oil & Gas Revenue	2,585,430
Operating Expenses	(1,564,737)
<b>CASH FLOW FROM OPERATIONS</b>	<u>1,020,692</u>
 <b>CASH EXPENSES</b>	
G&A	(1,449,619)
Interest	(185,580)
Reorganization Expenses paid by FEC	(304,000)
Court ordered trust re: RILP dispute	(167,946)
<b>TOTAL CASH EXPENSES</b>	<u>(2,107,145)</u>
 <b>Change in Cash</b>	 <b>(1,086,453)</b>
 December 12, 2012 Opening Cash Position	 94,951
DIP draws forwarded to FEC for opex	1,004,613
<b>September 20, 2013 Cash Position</b>	<b><u>13,111</u></b>
 DIP draws forwarded to FEC for opex	 1,004,613
DIP Draws for Reorg. costs paid by SGI	839,770
<b>DIP Balance September 20, 2013</b>	<b><u>1,844,383</u></b>

## **ROYALTY INVESTMENT LIMITED PARTNERSHIP**

13) Pursuant to Orders of this Honourable Court dated March 19, 2013, April 26, 2013 and June 18, 2013, the FEC has paid a total of \$167,946 in to trust pending resolution of an outstanding dispute. Tallinn, a secured creditor of Royalty Investment Limited Partnership and Supreme Group Inc. ("SGI"), a secured creditor of FEC, are the key stakeholders in this dispute.

## **DIP FINANCING**

14) On December 12, 2012, this Honourable Court granted a DIP charge in favour of SGI on all the property of FEC to secure all obligations owing under the DIP Loan. The DIP charge gives SGI a super priority over all the assets of FEC. The Amending Order dated July 16, 2013, authorized the Applicant to borrow under a credit facility from the DIP Lender up to a limit of \$2,325,000 (the "DIP Funds"). As of September 20, 2013, \$1,844,383 of DIP funds have been advanced.

## **UPDATE ON THE ACTIVITIES OF THE APPLICANT**

15) This Honourable Court approved a Sales and Investment Solicitation Process (the "SISP") on March 19, 2013. The Financial Advisor, in consultation with the Company and Monitor, designated the credit bid submitted by SGI, for a significant portion of FEC's assets, as the Successful Bid.

16) During July 2013, the Monitor presented the Successful Bid to the Alberta Energy Regulator (the "AER" formerly the Energy Resources Conservation Board) for consideration as the Successful Bid did not include all of the 224 Alberta well licenses held by FEC.

17) The AER is a regulatory body that controls the issuance and transfers of all well licenses in the Province of Alberta. The Monitor understands that the AER has a policy that well license transfers are only approved if the transferee and the transferor are both in good standing under the Liability Management regulations.

- 18) The Monitor also understands that the AER will make exceptions to their policy for well license transfers where all of the licenses held by an insolvent entity are transferred to an entity that is in good standing under the Liability Management regulations.
- 19) Furthermore, the Monitor understands the AER has on occasion made a further exception to their policy where only a portion of the licenses held by an insolvent entity are transferred to an entity that is in good standing under the Liability Management regulations. However, this exception is discretionary and based on the unique facts of each situation.
- 20) The following table summarizes the composition of the wells that are included and excluded in the Successful Bid.

	Producing	Non-Producing	Total Wells
<b>Alberta Wells</b>			
SGL Bid	48	113	161
Excluded	5	107	112
Total	53	220	273*
<b>Saskatchewan Wells</b>			
Excluded	0	50	50
<b>Total</b>	<b>53</b>	<b>270</b>	<b>323</b>

\*FEC holds 224 Alberta well licenses, none are held in Saskatchewan

- 21) The Monitor understands that counsel to SGI has had numerous discussions with counsel to the AER regarding a proposed settlement relating to the Successful Bid. However, the Monitor understands that the AER is generally not supportive of the Successful Bid as it involves a credit bid and the bid does not encompass all of the assets of the Company.
- 22) Without the support of the AER, there is no reason for SGI to continue to pursue a transaction as contemplated in the Successful Bid because the AER has advised that it will not facilitate the transfer of the well licenses.
- 23) As a result SGI has advised the Monitor that it is no longer prepared to fund the ongoing losses of FEC through DIP funding.

- 24) At this point it is prudent and responsible for FEC to shut-in all production. Veracity Energy Services Ltd. ("Veracity"), an agent of the Company who is familiar with FEC's operations, has the expertise and capacity to shut-in all of the oil and gas wells operated by FEC and do so in accordance with good and prudent oilfield practice.
- 25) As further described in the numerous Monitor's reports and other materials provided to this Honourable Court during these proceedings, the Company cannot continue to operate without the ongoing support of SGI and the DIP funding.
- 26) Therefore, the Company is not in a position to seek a further extension of the stay at this time and on September 30, 2013 the CCAA stay period will end and the rights of all creditors as against FEC will be reinstated.
- 27) The AER is aware of the Company's situation and has been provided notice of this application to ensure that the AER is prepared to enforce their regulatory control over all the wells that the Company operated.
- 28) The Monitor with the acknowledgement of FEC and the consent of SGI, is seeking the advice and direction of this Honourable Court for an order that will allow the Monitor:
- (a) to take possession and control of the books, records, data, including data in electronic form and other documents of the Company (the "Books and Records") and make arrangements to store the Books and Records on terms satisfactory to the Monitor for a period of not less than six months from the date of this Order, after which, the Monitor may abandon the Books and Records;
  - (b) to receive and collect all monies and accounts now owed or hereafter owing to the Company (the "Receipts");
  - (c) to pay on behalf of the Company all reasonable costs and expenses associated with the collection or receipt of the Receipts;

- (d) to distribute the Receipts held from time to time to repay SGI, the DIP Lender, in respect of the indebtedness outstanding under the DIP Facility, in such amounts and on such terms as the Monitor determines appropriate;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of the Business and any of the Property, whether in the Monitor's name or in the name and on behalf of the Company, for any purpose expressly contemplated by this Order; and
- (f) to perform such other duties or take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor by this Order or any other Order of this Honourable Court in these proceedings.

29) The Company has advised the Monitor that it anticipates receiving approximately \$170,000 on October 25, 2013 for the payment of the September 2013 production. The Monitor does not anticipate the collection of any other significant amounts.

30) SGI has agreed to fund the reasonable fees and disbursements of the Monitor and its legal counsel to complete the above noted items in the event that there are insufficient funds available in the Company's bank accounts.

## **CONCLUSION**

31) In summary, the Monitor recommends that this Honourable Court authorize Veracity, as an agent of FEC, to shut-in all oil and gas wells operated by FEC, in accordance with good and prudent oilfield practice and order the Monitor to:

- a) to take possession and control of the Books and Records and make arrangements to store the Books and Records on terms satisfactory to the Monitor for a period of not less than six months from the date of this Order, after which, the Monitor may abandon the Books and Records;
- b) to receive and collect the Receipts;



- c) to pay on behalf of the Company all reasonable costs and expenses associated with the collection or receipt of the Receipts;
- d) to distribute the Receipts held from time to time to repay SGI, the DIP Lender, in respect of the indebtedness outstanding under the DIP Facility, in such amounts and on such terms as the Monitor determines appropriate;
- e) to execute, assign, issue and endorse documents of whatever nature in respect of the Business and any of the Property, whether in the Monitor's name or in the name and on behalf of the Company, for any purpose expressly contemplated by this Order; and
- f) to perform such other duties or take any steps reasonably incidental to the exercise of the powers and obligations conferred upon the Monitor by this Order or any other Order of this Honourable Court in these proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

this 25<sup>th</sup> day of September, 2013

A handwritten signature in cursive script that reads "PricewaterhouseCoopers Inc." is positioned above the printed name of the firm.

**PRICEWATERHOUSECOOPERS INC.**

Court Appointed Monitor of  
FairWest Energy Corporation