

COURT FILE NUMBER 1301-04364

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

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

**AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON
CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP AND POSEIDON
CONCEPTS INC.**

DOCUMENT **APPLICATION
(Restricted Court Access Order and Sale
Approval and Vesting Order)**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

Norton Rose Canada LLP
3700 Devon Tower
400 Third Avenue SW
Calgary, Alberta T2P 4H2
Telephone: 403-267-8222
Fax: 403-264-5973
Attention: Howard A. Gorman/Randal S. Van de Mosselaer
Email: howard.gorman@nortonrose.com
File No. 01024527-0002

NOTICE TO THE 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 Court.

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

Date: Thursday, June 6, 2013
Time: 2:00 p.m.
Where: Calgary Courts Centre, 601 - 5th Street SW, Calgary, Alberta
Before: The Honourable Madam Justice B. E.C. Romaine

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

Remedy Sought:

1. Abridging, if necessary, the time for service of this Application and supporting materials, and declaring service of same to be good and sufficient;
2. Granting a Restricted Court Access Order substantially in the form attached hereto as Schedule "A" in respect of the Confidential Report of the Monitor to be filed in support of this Application exhibiting certain agreements and documents between the Applicants and Rockwater Energy Solutions, Inc.,

Clerk's Stamp

MWS Tanks, LLC and Rockwater Energy Solutions Canada, Inc. (collectively the "Purchaser") governing the sale of certain of the Applicants' assets to the Purchaser;

3. Granting an Order substantially in the form attached hereto as Schedule "B" approving the Poseidon APA and vesting the Purchased Assets in the Purchaser (as those capitalized terms are defined in the form of Order attached hereto as Schedule "B");
4. Such further and other relief as this Honourable Court deems appropriate in the circumstances.

Grounds for Making this Application:

5. The within Applicants (collectively "Poseidon") applied for and obtained an Initial Order (the "Initial Order") under the *Companies' Creditors Arrangement Act* ("CCAA") by Order of this Court dated April 9, 2013; The Initial Order approved the engagement by Poseidon of Ernst & Young Orenda Corporate Finance Inc. ("EYO") to act as financial advisor to Poseidon, approved the Solicitation Process (as that term is defined in the Originating Application in the within action), and authorized Poseidon to carry out the Solicitation Process to canvass opportunities to sell, restructure or recapitalize Poseidon's business subject to final Court approval;
6. On May 8, 2013 this Honourable Court amended various of the milestone dates in the Solicitation Process, including changing the date for providing final bids from 6:00 p.m. MDT on May 15, 2013 to 6:00 p.m. MDT on May 23, 2013 (the "Bid Deadline");
7. The bid provided by the Purchaser was selected by Poseidon (in consultation with EYO, the Monitor, and the Lending Syndicate) as the best bid which was received by the Bid Deadline;
8. The agreements governing the sale of the Purchased Assets by Poseidon to the Purchaser and arising out of the Solicitation Process contain and discuss matters of a highly sensitive commercial nature, and their publication prior to the contemplated approval application in respect of same has the risk of causing serious commercial damage to Poseidon and the Purchaser and could unduly impact on public markets and negatively impact on Poseidon's stakeholders;
9. The relief requested by Poseidon herein is fair, reasonable and in the best interests of Poseidon, its stakeholders and the within ongoing CCAA restructuring process;
10. The provisions of the CCAA;
11. Such further and other grounds as counsel may advise and this Court may permit.

Affidavit or other evidence to be used in support of this Application

12. The pleadings and proceedings filed herein including the Originating Application and the Affidavit of Leigh Cassidy sworn April 9, 2013, the Affidavit of Leigh Cassidy sworn May 29, 2013, the Monitor's Fifth Report to the Court (to be filed), the Monitor's Confidential Report to the Court dated May 29, 2013 (to be filed), and such further and other material as counsel may advise and this Honourable Court may permit.

How the Application is proposed to be heard or considered

13. In person.

AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.

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 rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

Schedule "A"

COURT FILE NUMBER 1301-04364
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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APPLICANTS

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

**AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON CONCEPTS
LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS
INC.**

DOCUMENT

RESTRICTED COURT ACCESS ORDER

ADDRESS FOR SERVICE AND
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Fax: 403-264-5973
Email: howard.gorman@nortonrose.com
Attention: Howard A. Gorman
File No. 01024529-0001

DATE ON WHICH ORDER WAS PRONOUNCED Thursday, June 6, 2013

NAME OF JUSTICE WHO MADE THIS ORDER The Honourable Madam Justice B.E.C. Romaine

UPON THE APPLICATION of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively "Poseidon" or the "Applicants"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action, including the Affidavit of Leigh Cassidy sworn May 29 2013, filed, the Fifth Report of PricewaterhouseCoopers Inc. in its capacity as Monitor (the "Monitor"), filed (the "Monitor's Fifth Report"), and the Confidential Report of the Monitor dated May ___, 2013 (the "Confidential Monitor's Report"), to be filed; **AND UPON HEARING** counsel for Poseidon, counsel to the Monitor, counsel for Rockwater Energy Solutions, Inc., MWS Tanks, LLC and Rockwater Energy Solutions Canada, Inc. (collectively the "Purchaser") and from any other interested persons who by the Court record have appeared; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this

application; **AND WHEREAS** all capitalized terms not defined herein shall take the meaning ascribed to them in the Poseidon APA (as that term is defined in the Sale Approval and Vesting Order granted in the within proceedings);

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, time for service of this application is abridged to that actually given, and specifically, the service, notice and formal requirements of Part 6, Division 4 of the *Alberta Rules of Court*, Alta Reg 124/2010 shall not apply to this Order and are hereby dispensed with.
2. The Confidential Monitor's Report shall, subject to further Order of this Court, be marked "SEALED PURSUANT TO COURT ORDER - NOT TO BE OPENED WITHOUT PRIOR ORDER OF THE COURT", and shall be maintained in accordance with the terms of this Order and shall be treated as confidential, sealed and not form part of the public record.
3. Every person on whom the Confidential Monitor's Report is served shall keep the information contained therein confidential and such information:
 - (a) shall be used only for the purposes of this proceeding and not for any business or other purpose whatsoever;
 - (b) shall not be given, shown, made available, or communicated in any way to anyone other than for the purpose of retaining and instructing counsel with respect to these proceedings only, who shall be bound by the terms of this Order; and
 - (c) shall not be copied or reproduced, except by counsel for the purpose of responding to Poseidon's motion or preparing materials for use in these proceedings.
4. The Monitor and Poseidon are at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.
5. This Order will remain in effect subject to further Order of the Court granted on notice to Poseidon, the Purchaser, and the Monitor, an Application for which may be brought by any interested party only following the filing by the Monitor of the Monitor's Certificate confirming the closing (if any) of the transaction to which the Confidential Monitor's Report relates.

J.C.Q.B.A.

Schedule "B"

COURT FILE NUMBER 1301-04364
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANTS

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

**AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON CONCEPTS
LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS
INC.**

DOCUMENT

SALE APPROVAL AND VESTING ORDER

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NAME OF JUSTICE WHO MADE THIS ORDER The Honourable Madam Justice B.E.C. Romaine

UPON THE APPLICATION of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc. (collectively "Poseidon" or the "Applicants"); **AND UPON HAVING READ** the pleadings, proceedings, orders and other materials filed in this action, including the Affidavit of Leigh Cassidy sworn May 29 2013, filed, the Fifth Report of PricewaterhouseCoopers Inc. in its capacity as Monitor (the "Monitor"), filed (the "Monitor's Fifth Report"), and the Monitor's Confidential Report to the Court (the "Monitor's Confidential Report"), to be filed; **AND UPON HEARING** counsel for Poseidon, counsel to the Monitor, counsel for Rockwater Energy Solutions, Inc., MWS Tanks, LLC and Rockwater Energy Solutions Canada, Inc. (collectively the "Purchaser") and from any other interested persons who by the Court record have appeared; **AND UPON IT APPEARING** that all interested and affected parties have been served with notice of this application; **AND WHEREAS** all capitalized terms not defined herein shall take the meaning ascribed to them in the Poseidon APA, as that

term is defined below; **AND UPON IT APPEARING** that the sale of the Purchased Assets (as that term is defined below) as proposed is just, fair and appropriate in all the circumstances;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

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

APPROVAL OF TRANSACTIONS

2. The Asset Purchase Agreement (the "Poseidon APA") between the Purchaser and Poseidon which is attached to the Monitor's Confidential Report as Exhibit "___", including the purchase and sale of the Purchased Assets and the **[Real Property Option or Real Property - NTD: revise as appropriate depending on whether the Real Property Option has been exercised prior to the granting of this Order]** (referred to collectively hereinafter as the "Purchased Assets") is hereby authorized and approved, and it is hereby declared that the Poseidon APA is validly executed and commercially reasonable.
3. For greater certainty, the Purchased Assets include the lands, leases and other property set out in **Schedule "A"** hereto.
4. Poseidon, the Purchaser, and the Monitor are authorized and directed to conclude the transactions contemplated by the Poseidon APA (the "Transactions") and to take all such steps and execute all such deeds, documents and instruments and do all such things as may reasonably be necessary to consummate the Transactions contemplated therein substantially in accordance with its terms, subject to such amendments as the parties thereto may approve which do not materially and adversely alter the Transactions.

VESTING OF PROPERTY

5. Upon the Monitor filing with this Court and delivering to Poseidon and the Purchaser a certificate (the "Monitor's Certificate") substantially in the form set out in **Schedule "B"** hereto certifying that the sale of the Purchased Assets has closed substantially in accordance with the terms of the Poseidon APA and all purchase monies due and owing in respect of such sale have been tendered under and in accordance with the Poseidon APA, then:
 - (a) all of Poseidon's right, title and interest in and to the Purchased Assets shall vest in the name of the Purchaser (or its nominee) free and clear of and from all security interests, claims, estate, security, right, title, interest, and liens, including but not limited to, claims, hypothecs, mortgages, charges, liens (whether contractual, statutory or otherwise), security interests,

assignments, actions, levies, taxes, judgments, writs of execution, trusts or deemed trusts (whether contractual, statutory or otherwise), options, agreements, disputes, debts, encumbrances or other rights, limitations or restrictions of any nature whatsoever, against Poseidon, or any Applicant, including without limitation any rights or interests of any of the stakeholders or creditors of the Applicants, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, whether liquidated, unliquidated or contingent (all of the foregoing being collectively referred to hereinafter as the "Claims"), whether such Claims against the Applicants came into existence prior to, subsequent to or as a result of any previous Order of this Court, by or of all persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities or tribunals and all other natural persons or corporations, whether acting in their capacity as principals or agents, trustees, executives, administrators or other legal representatives (collectively, the "Claimants"), and by all persons who claim by, through or under the Applicants in respect of the Purchased Assets, such vesting being subject only to the permitted encumbrances outlined in **Schedule "C"** hereto (the "Permitted Encumbrances");

- (b) the Applicants and all persons who claim by, through or under the Applicants in respect of the Purchased Assets, save and except the Permitted Encumbrances, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession of same to the Purchaser or their nominee;
- (c) the Purchaser shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by the Applicants, or any person claiming by or through or against the Applicants.

- 6. For greater certainty and without limiting the generality of the foregoing: (i) any Claims; and (ii) the beneficiary of any Claims created or provided for pursuant to any previous Order in these proceedings, are extinguished, released and forever discharged, and the Purchaser shall, by virtue of the completion of the Transactions, have no liability of any claim whatsoever to any Claimants in respect of any Claims any of the Claimants may have against any of the Applicants.
- 7. The Transactions shall not be void or voidable at the instance of a Trustee or any Claimant and shall not constitute nor shall be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other challengeable or reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended or any other applicable federal or provincial legislation, and the Transactions, or any actions taken in connection therewith, shall not

constitute conduct meriting an oppression remedy pursuant to any applicable federal or provincial legislation.

8. Upon the filing of a certified copy of this Order, together with any applicable registration fees, the appropriate government authorities are hereby requested and directed to register such transfers, discharges, discharge statements or conveyances, as may be required to register title to the Purchased Assets to the Purchaser or the Purchaser's Nominee subject only to the Permitted Encumbrances.
9. Upon the filing of the Monitor's Certificate, the Monitor may discharge, or authorize the discharge of, any security registration or registrations in the Personal Property Registry of the Province where the Purchased Assets are located as may be required to convey clear title of the Purchased Assets to the Purchaser.

VESTING OF REAL PROPERTY [NTD: Use this section only if the Real Property Option is exercised prior to the granting of this Order]

10. Upon the delivery of the Monitor's Certificate, and upon the filing of a certificated copy of this Order, together with any applicable registration fees, the appropriate government authorities, and in particular the Registrar of Land Titles of Alberta (the "Registrar") shall and is hereby directed to cancel the existing Certificate of Title for those certain lands legally described as:

ALL THAT PORTION OF THE NORTH WEST QUARTER OF SECTION TWENTY FOUR (24) TOWNSHIP FIFTY THREE (53) RANGE SEVENTEEN (17) WEST OF THE FIFTH MERIDIAN, LYING NORTH OF A LINE DRAWN PARALLEL TO AND CONCENTRIC WITH THE CENTRE LINE OF THE GRAND TRUNK PACIFIC RAILWAY AS SHOWN ON RAILWAY PLAN 691AC AND FIFTY (50) FEET PERPENDICULARLY OR RADially DISTANT NORTHERLY THEREFROM, CONTAINING 27.3 HECTARES (67.39 ACRES) MORE OR LESS.

EXCEPTING THEREOUT:

(A) 0.894 HECTARES (2.21 ACRES) MORE OR LESS AS SHOWN ON ROAD PLAN 5581PX.

(B) 0.381 HECTARES (0.94 ACRES) MORE OR LESS FOR ROAD PLAN 8821294.

EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: TOWN OF EDSON

REFERENCE NUMBER: 062 373 132

(the "Real Property")

and to issue a new Certificate of Title for the Real Property in the name of Rockwater Energy Solutions Canada, Inc., or its nominee, and to register such transfers, discharges, discharge

statements of conveyances, as may be required to convey clear title to the Real Property to Rockwater Energy Solutions Canada, Inc. (or its nominee) which Certificate of Title shall be subject only to those encumbrances listed on Schedule "C" hereto.

11. This Order shall be registered by the Registrar notwithstanding the requirements of section 191(1) of the *Land Titles Act*, RSA 2000, c. L-7.

VESTING OF REAL PROPERTY OPTION [NTD: Use this section only if the Real Property Option has not been exercised prior to the granting of this Order]

12. Upon the delivery of the Monitor's Certificate, Rockwater Energy Solutions Canada, Inc. shall have the Real Property Option (as that term is defined in the Poseidon APA) to purchase those certain lands legally described as:

ALL THAT PORTION OF THE NORTH WEST QUARTER OF SECTION TWENTY FOUR (24) TOWNSHIP FIFTY THREE (53) RANGE SEVENTEEN (17) WEST OF THE FIFTH MERIDIAN, LYING NORTH OF A LINE DRAWN PARALLEL TO AND CONCENTRIC WITH THE CENTRE LINE OF THE GRAND TRUNK PACIFIC RAILWAY AS SHOWN ON RAILWAY PLAN 691AC AND FIFTY (50) FEET PERPENDICULARLY OR RADially DISTANT NORTHERLY THEREFROM, CONTAINING 27.3 HECTARES (67.39 ACRES) MORE OR LESS.

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EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: TOWN OF EDSON

REFERENCE NUMBER: 062 373 132

(the "Real Property")

on the terms and subject to the conditions (including the payment of the Real Property Purchase Price) set out in the Poseidon APA.

13. If the Real Property Option is duly exercised after the granting of this Order and in accordance with the provision of the Poseidon APA, Poseidon shall be at liberty to reapply to this Honourable Court for a Sale Approval and Vesting Order in respect of the Real Property.

SALE PROCEEDS

14. Until further Order of this Honourable Court, the net proceeds arising out of the Poseidon APA shall be held in trust by the Monitor or the Monitor's counsel and such net proceeds shall stand in the place and stead of the Purchased Assets and all Claims shall attach solely to such net proceeds with the same validity, priority and in the same amounts and subject to the same defences that were or may have been available immediately prior to the closing of the Transactions as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the closing of the Transactions.
15. Nothing in this Order shall prejudice a person's *in personam* claim against any of the Applicants.

MISCELLANEOUS MATTERS

16. This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or any of its provinces or territories and any federal or state court or administrative body or any other foreign courts to act in aid of and to be complimentary to this Court in carrying out the terms of this Order.
17. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
18. Service of this Order on any party not attending this application is hereby dispensed with.
19. The Monitor is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

J.C.Q.B.A.

Schedule "A"

Specific Purchased Assets

Schedule "B"

COURT FILE NUMBER 1301-04364

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

Clerk's Stamp

APPLICANTS

**IN THE MATTER OF THE COMPANIES'
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**AND IN THE MATTER OF POSEIDON
CONCEPTS CORP., POSEIDON CONCEPTS
LTD., POSEIDON CONCEPTS LIMITED
PARTNERSHIP AND POSEIDON CONCEPTS
INC.**

DOCUMENT

**MONITOR'S CERTIFICATE OF
PRICEWATERHOUSECOOPERS INC. AS
THE COURT-APPOINTED MONITOR OF
POSEIDON CONCEPTS CORP., POSEIDON
CONCEPTS LTD., POSEIDON CONCEPTS
LIMITED PARTNERSHIP AND POSEIDON
CONCEPTS INC.**

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All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Sale Approval and Vesting Order of the Honourable Madam Justice B.E.C. Romaine made in these proceedings on the 6th day of June, 2013 (the "SAVO").

PricewaterhouseCoopers Inc. (the "Monitor") in its capacity as Court-appointed Monitor of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc., and pursuant to the provisions of the SAVO, delivers and files with the Court this certificate and hereby certifies that:

1. Closing (as defined in the Poseidon APA) has occurred;

2. The Monitor (or the Monitor's counsel) has received the purchase price owing under the Poseidon APA;

DATED at the City of Calgary, in the Province of Alberta, this _____ day of _____, 2013.

PricewaterhouseCoopers Inc. in its capacity as Court-appointed Monitor of Poseidon Concepts Corp., Poseidon Concepts Ltd., Poseidon Concepts Limited Partnership, and Poseidon Concepts Inc.

Per: _____

Authorized Signatory

Schedule "C"

Permitted Encumbrances