

Form 49
[Rule 13.19]



COURT FILE NUMBER B201 851343

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, OF
PETROLAMA ENERGY CANADA INC.

Lord Nixon
COM
Sep 28, 2022

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2



Christa Nicholson KC/ Angad Bedi
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File: 15378.001

AFFIDAVIT OF PAUL FARLEY JOSLYN

SWORN ON SEPTEMBER 18, 2022

I, PAUL FARLEY JOSLYN, of Calgary, Alberta, make oath and SWEAR THAT:

1. I am the Chief Financial Officer of Petrolama Energy Canada Inc. (the "**Company**" or "**Petrolama**"). The facts stated in this Affidavit are based on my personal knowledge of the Company and its business and affairs, and my review of its books and records. In each case where I have relied upon information from others, I have stated the source of such information.

2. Unless otherwise expressly indicated in this Affidavit, all capitalized terms used herein and not otherwise defined shall have the meanings used in the Affidavit I swore on August 2, 2022 (the "**First Affidavit**"), including the Sales and Investment Solicitation Process ("**SISP**") which is attached and marked as Exhibit "3" to the First Affidavit.
3. This Affidavit is sworn in support of an application returnable on September 28, 2022 (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**") for an Order:
 - (a) Abridging the time for service of the Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
 - (b) Authorizing and empowering, but not requiring, Alvarez & Marsal Canada Inc. (the "**Proposal Trustee**"), or, alternatively, the Company, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada;
 - (c) Authorizing the Foreign Representative to apply for foreign recognition and approval of these proceedings, if and as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 ("**Chapter 15 Proceedings**");
 - (d) Authorizing an increase in the Interim Financing Terms to increase the Interim Facility and the Interim Lender Charge by US \$75,000;
 - (e) Authorizing an increase in the Administration Charge in the amount recommended by the Proposal Trustee in its forthcoming Second Report of the Proposal Trustee (the "**Second Report**"), to be filed;
 - (f) Approving receipt and application of the sum of US \$800,000 (the "**Funds**") by Phillips 66 Gulf Coast Properties LLC ("**P66**") which it holds to reduce its provable claim;
 - (g) Pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"); extending the time by which the Company may file a proposal to its creditors for a 45 day period from the date following the current deadline such that the Company may file a proposal up to and including 11:59 pm (local Calgary time) on November 14, 2022 or such other date as this Court may order (the "**Extension**"); and
 - (h) Such further and other relief as the Company requests and this Court may grant; (collectively, the "**Relief Sought**").

Keyera Texas Lawsuit Against Petrolama

4. Keyera Energy Inc. ("**Keyera**") commenced proceedings against Petrolama (and BB Energy USA LLC ("**BB**")) in the United States District Court for the Southern District of Texas (the "**Texas Court**") on August 26, 2022 (the "**Keyera Lawsuit**").
5. Petrolama became aware of the Keyera Lawsuit on September 1, 2022 when it was served on the Company.
6. The "Summons in a Civil Action" (the "**Summons**") served with the Keyera Lawsuit states that Keyera must respond within 21 days after service has been effected.
7. Attached hereto and collectively marked as **Exhibit "A"** is a copy of the Keyera Lawsuit and the Summons.
8. The Keyera Lawsuit relates to the affairs of Petrolama. The Company asserts that the oil that is the subject of the Keyera Lawsuit (the "**Oil**") is not owned by and has never been owned by Petrolama such that, in Petrolama's view, the Keyera Lawsuit does not relate to the property of Petrolama.
9. The Company is aware that BB commenced proceedings against Keyera in Oklahoma in relation to the Oil but did not sue Petrolama.
10. The Company, through its counsel, has been in without prejudice discussions with Keyera and BB, including in relation to the subject matter of the Keyera Lawsuit.
11. It is the Company's position that the Keyera Lawsuit is, *inter alia*, invalid because it was filed with knowledge of and subsequent to the initial stay of proceedings in place in these proceedings on account of the filing by the Company of a Notice of Intention to file Proposal pursuant to section 50.4 (1) of the BIA on July 27, 2022 and after Keyera had participated in and attended to them.
12. As a result of the Keyera Lawsuit, Petrolama may need to respond to the extent possible with a special appearance court filing in the Texas Court without prejudice to all of its rights, including to contest jurisdiction etc., or begin Chapter 15 Proceedings. It may be that failure to do so could undermine and frustrate the Company's ability to restructure its business to the detriment of the Company and its stakeholders.
13. Attached hereto and marked as **Exhibit "B"** is a copy of the letter (the "**Letter**") dated September 13, 2022 from Petrolama's counsel (redacted to exclude without prejudice aspects) to Keyera's Canadian counsel which accurately sets forth the primary substance of Petrolama's position regarding the Keyera Lawsuit.
14. Since sending the Letter, I am advised by counsel for Petrolama, Christa Nicholson KC, that she and Canadian counsel for Keyera have been in without prejudice discussions with a view to addressing the Keyera Lawsuit, including the requirement for Petrolama to

respond by September 22, 2022. Petrolama's hope is that it can avoid having to file proceedings in the Texas Court as noted above or Chapter 15 Proceedings.

15. Dealing with this matter has caused Petrolama to incur further expenses than were initially contemplated and further expenses will need to be incurred if Petrolama determines it must take any proceedings in the United States. (Given the circumstances, the Company intends to seek reimbursement of same from Keyera as stated in the Letter).

Foreign Representative

16. If it becomes necessary for Petrolama to file Chapter 15 Proceedings, it seeks:
 - (a) The Court's authorization and empowerment, but not the requirement, for the Proposal Trustee or, alternatively, the Company, to act as the Foreign Representative under sections 268 and 269 of the BIA in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada; and
 - (b) This Court's authorization for the Foreign Representative to apply for foreign recognition and approval of these proceedings, if and as necessary, in any jurisdiction outside of Canada, including in the United States.

Increase to the Interim Facility and the Interim Lender Charge

17. In light of the Keyera Lawsuit, given the potential for additional expenses to be incurred beyond what was originally contemplated, Petrolama as entered into an Amendment of the Interim Financing Terms with 884304, Alberta Ltd., as the Interim Lender, dated September 17, 2022(the "**Amendment**"). Attached hereto and marked as **Exhibit "C"** is a copy of the Amendment.
18. Petrolama seeks:
 - (a) Approval of the Amendment, including its increase of the Interim Facility by US \$75,000 thereunder; and
 - (b) An increase in the amount secured by the Interim Lender Charge to a maximum of CDN \$300,000 plus a further US \$75,000;(collectively, the "**Interim Lending Increase**").
19. The Interim Lender has indicated that absent the approval of the Interim Lending Increase, it is not willing to advance further funds to finance the Restructuring Process.
20. I believe the Amendment is fair and reasonable in the circumstances, having regard to, among other things: (a) the Keyera Lawsuit and associated costs; and (b) the likelihood

that the Interim Lending Increase will enhance the prospects of a viable proposal to the Company's stakeholders.

Increase to Administration Charge

21. As a result of the Keyera Lawsuit, counsel to the Company, the Proposal Trustee and the Proposal Trustee's counsel (the "**Administrative Professionals**") have now been engaged to complete additional work that was not contemplated at the time the initial Cash Flow Forecast was created.
22. I am currently working with the Proposal Trustee to create a new and updated cash flow forecast (the "**Updated Forecast**"). The Proposal Trustee will append the Updated Forecast to its Second Report.
23. In the Second Report it is expected that the Proposal Trustee will recommend increasing the amount secured by the Administration Charge (the "**Administration Increase**").
24. It is the view of the Company that the Administration Increase and the work of the Administrative Professionals will be necessary to fund Petrolama through the Restructuring Process.

P66 and the Funds

25. On September 7, 2022, Petrolama's counsel received a letter from P66's counsel, a copy of which is attached hereto and marked as **Exhibit "D"** (the "**P66 Letter**"). Since receiving the P66 Letter, Petrolama's counsel and P66's counsel have been working together to address the matters in the P66 Letter.
26. The P66 Letter refers to a Cash Collateral Agreement dated March 10, 2021 (the "**Cash Collateral Agreement**"). Attached hereto and marked as **Exhibit "E"** is a copy of the Cash Collateral Agreement.
27. Petrolama advanced the Funds to P66 under the Cash Collateral Agreement. The Cash Collateral Agreement states that P66 shall have "free and unrestricted right to use and dispose of all Funds it holds". It has always been the perspective of Petrolama that the Funds were the property of P66 and has treated the Funds as if they were already owned by P66.
28. P66 wishes to apply to Funds to reduce the amount of its provable claim. The Company and Proposal Trustee do not oppose this use of the Funds.

Form 44.1 (of the BIA) Notices re Disclaiming Contracts

29. On September 15, 2022, Petrolama sent to each of Keyera and P66 a Notice in Form 44.1 (the "**Notices**") pursuant to section 65.11 of the BIA disclaiming the agreements referred

to therein, copies of which are attached hereto and marked as **Exhibit "F"** and **Exhibit "G"**, respectively. The Notices indicate that they were approved by the Proposal Trustee.

Sales Process

30. On August 10, Justice K.M. Horner granted an Order (the **"Initial Extension Order"**), which, *inter alia*, extended the period within which the Company is required to file a proposal to its creditors with the Official Receiver under subsection 62(1) of the BIA to 11:59 pm (local Calgary time) on October 10, 2022 and approved the Sales and Solicitation Process (the **"SISP"**).
31. Pursuant to the Initial Extension Order, the Proposal Trustee and Company began the SISP on August 12, 2022 and a teaser was circulated. Attached hereto and marked as **Exhibit "H"** is a copy of the teaser.
32. The Bid Deadline is September 23, 2022.
33. The SISP contemplates:
 - (a) The following steps if the Stalking Horse Bid is the Successful Bid:
 - (i) Filing the Stalking Horse Proposal and mailing the Creditor Package by October 3, 2022;
 - (ii) Holding a Creditor Meeting to vote on the Stalking Horse Proposal by October 26, 2022;
 - (iii) Applying to this Honourable Court for approval of Stalking Horse Bid by October 26, 2022; and
 - (iv) Closing the Stalking Horse Transaction and implementing the Stalking Horse Proposal by November 1, 2022; and
 - (b) The following steps if a Superior Offer is the Successful Bid:
 - (i) Applying to this Honourable Court for approval of the Successful Bid by October 12, 2022; and
 - (ii) Determining any further steps based on the structure of the Successful Bid.

Extension

34. The Extension is necessary in order to complete the steps in the SISP and advance a proposal. In order to continue to work toward the formulation and filing of a proposal, as further discussed above, the Company requires an extension, pursuant to section 50.4(9)

of the BIA, of the time period within which it may file a proposal to its creditors as outlined in the Relief Sought.

35. In this regard:

- (a) Having regard to what is set out above, the Company has acted and is acting in good faith and with due diligence both in the period prior to the granting of the Initial Order and in the period following the granting of the Initial Order;
- (b) The Company will likely be able to make a viable proposal through either the Stalking Horse Proposal or, if a Superior Offer is advanced in the SISP, by way of implementation of such Superior Offer; and
- (c) The expectation in the Stalking Horse Proposal is that if the Mexico Project is successfully advanced by Petrolama, its creditors have the opportunity to be paid their pro rata share of the Net Creditor Recovery Amounts (as defined in the Stalking Horse Proposal which is Schedule B to the Arrangement Agreement attached and marked as Exhibit "2" to the First Affidavit) as Proceeds are received by Petrolama, all as more particularly outlined in Article 6.6 of the Stalking Horse Proposal. The total Net Creditor Recovery Amounts could be as high as approximately \$9,000,000 USD. The alternative to filing a proposal is an assignment into bankruptcy by which Petrolama's creditors will receive nothing. As a result, no creditor will be materially prejudiced by the granting of the Relief Sought.

The deponent was not physically present before the Commissioner, but was linked with the Commissioner utilizing video technology and the process described in the *Notice to the Profession and Public: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the Covid-19 Pandemic* was utilized.

SWORN BEFORE ME

on 18 day of September, 2022.



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

PAUL FARLEY JOSYLN

This is **Exhibit "A"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

Service of Process Transmittal Summary

TO: Scott Holmes
PetroLama Energy Canada Inc.
715-5th Ave SW Ste 330
Calgary, AB T2P 2X6

RE: Process Served in Texas

FOR: PetroLama Energy Canada Inc. (Domestic State: AB)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: KEYERA ENERGY INC // To: PetroLama Energy Canada Inc.
CASE #: 422CV02919
NATURE OF ACTION: Monies Due and Owing - Services Rendered
PROCESS SERVED ON: C T Corporation System, Dallas, TX
DATE/METHOD OF SERVICE: By Process Server on 09/01/2022 at 03:18
JURISDICTION SERVED: Texas
ACTION ITEMS: SOP Papers with Transmittal, via UPS Worldwide Saver
Image SOP
Email Notification, Scott Holmes sholmes@petrolama.com

REGISTERED AGENT CONTACT: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201
877-467-3525
SmallBusinessTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

PROCESS SERVER DELIVERY DETAILS

Date:

Thu, Sep 1, 2022

Server Name:

ernesto Herrera

Entity Served	PETROLAMA ENERGY CANADA INC.
Case Number	4-22-cv-2919
Jurisdiction	TX

Inserts		



A.R

EMHPS4418

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

9/1/22

for the

Southern District of Texas



KEYERA ENERGY INC.,

Plaintiff(s)

v.

PETROLAMA ENERGY CANADA INC., and
BB ENERGY USA LLC,_____
Defendant(s)

Civil Action No. H-22-2919

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* PETROLAMA ENERGY CANADA INC.
c/o its Registered Service Agent in Texas:
CT Corporation System
1999 Bryan Street, Suite 900
Dallas, TX 75201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David H. Herrold and Scott K. Koelker, BURKE BOGDANOWICZ PLLC, 1201 Elm Street, Suite 4000, Dallas, TX 75270.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: August 29, 2022

Nathan Ochsner, Clerk of Court

s/ Rhonda Moore-Konieczny
Signature of Clerk or Deputy Clerk

A.R.

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

A.B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEYERA ENERGY INC.,

Plaintiff,

vs.

PETROLAMA ENERGY CANADA INC.,
AND BB ENERGY USA LLC,

Defendants.

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Civil Action No. 4:22-cv-2919

COMPLAINT

Plaintiff KEYERA ENERGY INC., for its cause of action against Defendants PETROLAMA ENERGY CANADA INC., and BB ENERGY USA LLC, hereby alleges and states as follows:

PARTIES

1. Plaintiff KEYERA ENERGY INC. ("Keyera") is a Delaware corporation with its principal place of business in Houston, Texas.

2. Defendant PETROLAMA ENERGY CANADA INC. ("PetroLama") is incorporated in Alberta, Canada and has its principal place of business in Calgary, Alberta, Canada. PetroLama may be served through its Texas registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

3. Defendant BB ENERGY USA LLC ("BB Energy") is a Delaware limited liability company. BB Energy is a wholly owned subsidiary of BB Energy Holdings N.V., which is a foreign corporation organized under the laws of Curaçao and with its principal place of business

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in Curaçao. BB Energy may be served through its Texas registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), (2), and/or (3), given that the parties are entirely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

5. The citizenships of the parties are **Delaware and Texas (Keyera) versus Canada (PetroLama)** and **Curaçao and/or United Arab Emirates (BB Energy)**. As to the citizenship of the parties, Keyera would specifically allege and show:

- a. Keyera Energy Inc. Keyera is a corporation. Pursuant to 28 U.S.C. § 1332(c): “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” Keyera is incorporated in the State of Delaware. Keyera’s principal place of business is in Houston, Texas. *See Hertz Corp. v. Friend*, 559 U.S. 77, 81 (2010) (principal place of business is “nerve center” where “the corporation’s high-level officers direct, control, and coordinate the corporation’s activities.”). Keyera is therefore a citizen of **Delaware and Texas** for diversity jurisdiction purposes.
- b. PetroLama Energy Canada Inc. PetroLama is a foreign corporation. It is incorporated in Alberta, Canada. Similarly, PetroLama’s principal place of business is in Calgary, Alberta, Canada. PetroLama is therefore a citizen of its foreign state, **Canada**, for diversity jurisdiction purposes.

c. BB Energy USA LLC. BB Energy is a Delaware limited liability company. It is jurisdictionally irrelevant that BB Energy was formed in Delaware because the “citizenship of an LLC is determined by the citizenship of each of its members.” *See Greenwich Ins. Co. v. Capso Indus. Inc.*, 934 F.3d 419, 422 (5th Cir. 2019). BB Energy is a wholly owned subsidiary of BB Energy Holdings N.V. An “N.V.” abbreviation is for the Dutch phrase *naamloze vennootschap*, and is a common business structure in Dutch or Dutch-influenced nations. An N.V. entity is most like a domestic public company or corporation. An N.V. should be treated by this Court, and has been treated by other courts,¹ for diversity citizenship purposes as a corporation. BB Energy Holdings N.V. is incorporated in Curaçao. Its “nerve center” principal place of business is also within Curaçao or alternatively, on information and belief, Dubai, United Arab Emirates.² BB Energy is therefore, for diversity jurisdiction purposes, a citizen of **Curaçao and/or Dubai**.

6. This Court has personal jurisdiction over PetroLama and BB Energy as both are registered to do business within the State of Texas and subjected themselves to the jurisdiction of

¹ *See, e.g., Stockton v. CNH Indus. Am., LLC*, No. 16-CV-464-GKF-PJC, 2016 WL 11430713 (N.D.Okla. Sept. 29, 2016)(noting that the N.V. defendant “was *incorporated* under the laws of the Netherlands as a naamloze vennootschap, and other federal courts have treated Netherlands N.V.’s as corporations for the purposes of diversity jurisdiction analysis”); *De Wit v. KLM Royal Dutch Airlines, N.V.*, 570 F.Supp. 613, 616 (S.D.N.Y. 1983)(finding KLM to be a “Dutch corporation”); *BouMatic, LLC v. Idento Operations, BV*, 759 F.3d 790, 791 (7th Cir. 2014) (similar B.V. corporation). The Internal Revenue Service similarly treats N.V. entities as corporations for taxation purposes. *See* 26 C.F.R. § 301.7701-2(b)(8)(i).

² BB Energy Holdings N.V.’s business address is listed as “Van Engelenweg 23, Curaçao” on Page 62 of BB Energy’s 2022 Brochure available online at <https://www.bbenergy.com/brochure/mobile/index.html>. On information and belief, if BB Energy contends its principal place of business is not in Curaçao, Keyera alternatively alleges that it would then be in Dubai, United Arab Emirates, which is the worldwide business office of the ultimate parent company, BB Energy Group Holding Ltd., at DIFC, Emirates Financial Towers, South Tower, Unit S2102, Level 21, P.O. Box 340808, Dubai– UAE.

courts within Texas. This Court further has personal jurisdiction because both have either conducted a substantial amount of business in Texas, have or recently had offices and employees within the State of Texas, have purposefully availed themselves of the rights, benefits, and obligations of conducting business in Texas, have continuous, systematic contacts with Texas, and are otherwise at home and constitutionally subject to personal jurisdiction within the State of Texas. Further, PetroLama has also contractually agreed to submit to the personal jurisdiction of state or federal courts within Harris County, Texas in one or more of the contracts underlying this matter.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c). Specifically, as to both PetroLama and BB Energy, for § 1391 venue purposes, under (c)(2) both are defendant entities with the capacity to sue and be sued in their common names and therefore reside “in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question;” Because each are corporate entities with locations appearing within this judicial district, venue is proper under 28 U.S.C. § 1391(b)(1). Alternatively, if the Defendants contend they are non-residents of this district, then under Section 1391(c)(3) they are considered non-residents in the United States and therefore may be sued in any judicial district, including this judicial district. Finally, PetroLama has also contractually agreed to venue within this district in one or more of the contracts underlying this matter.

FACTUAL BACKGROUND

8. Keyera is the operator of the Wildhorse Terminal in Cushing, Oklahoma (“Wildhorse Terminal”).

9. The Wildhorse Terminal is a new-build crude oil storage and blending facility that includes 12 above-ground tanks with a working storage capacity of 4.5 million barrels. Operations at Wildhorse Terminal commenced on or about July 20, 2021 (the “Operational Date”).

A. *PetroLama’s Default*

10. PetroLama’s business primarily focuses on trading crude oil throughout the United States and Canada.

11. On May 14, 2018, Keyera and PetroLama entered into that certain Crude Oil Storage Agreement for Keyera to provide 1,000,000 barrels of working storage capacity to PetroLama for a term of 6 years from the Operational Date.

12. On May 15, 2018, Keyera and PetroLama entered into a second Crude Oil Storage Agreement for Keyera to provide another 1,000,000 barrels of working storage capacity to PetroLama for a term of 4 years from the Operational Date. (For all material purposes here and unless otherwise expressly noted, the terms of the two Crude Oil Storage Agreements are identical and they are collectively referred to as the “PetroLama Storage Agreements.”) PetroLama’s 2,000,000 barrels of Customer Capacity is reserved in tanks 201, 202, 204, 214, and 216 at the Wildhorse Terminal.

13. Under the PetroLama Storage Agreements: “The storage fee shall be thirty-five cents (\$0.35) per working Barrel per month (the “Storage Fee”) and shall be applied to the entire Customer Capacity and payable regardless of the volume of Product received or delivered pursuant to this Agreement.” See PetroLama Storage Agreements at ¶ 5.1.

14. Shortly after the Operational Date, PetroLama commenced storing some crude oil at the Wildhorse Terminal under its 2,000,000 barrels of Customer Capacity.

A.B.

15. However, PetroLama never paid its Storage Fees despite storing crude at the Wildhorse Terminal, and despite Keyera's monthly invoices to PetroLama.

16. On September 2, 2021, Keyera sent PetroLama a Notice of Customer Event of Default which detailed, among other things, two breaches by PetroLama of the PetroLama Storage Agreements: (1) failure to provide a letter of credit in favor of Keyera for 9 months of Storage Fees as required by Article 12 of the PetroLama Storage Agreements; and (2) failure to pay the Storage Fees that were then due, i.e., pro-rated Storage Fees for July 2021 (\$264,193.55).

17. Under the PetroLama Storage Agreements: a "Customer Event of Default" includes "failure by Customer to pay any undisputed amount due to Provider under this Agreement within ten (10) business days after the date of a written notice from Provider that Customer has failed to pay such amount when due." See PetroLama Storage Agreements at ¶15.2.

18. In accordance with the PetroLama Storage Agreements, Keyera requested in the Notice of Customer Event of Default that PetroLama cure its defaults by (1) providing a letter of credit in favor of Keyera as required by Article 12 of the PetroLama Storage Agreements within 10 days; and (2) paying its overdue Storage Fees within 10 business days.

19. PetroLama did not then, or thereafter, cure its defaults; it has made no payments of any Storage Fees to Keyera, nor has it provided the requisite letter of credit.

20. On or about October 13, 2021, Keyera sent a supplemental Notice of Customer Event of Default informing PetroLama that it had materially breached certain obligations under each PetroLama Storage Agreement by having failed to make payments for Storage Fees owed for July 2021 and August 2021, totaling \$946,693.55, and by having failed to provide adequate financial assurances as required under the PetroLama Storage Agreements.

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21. At all material times, despite the Customer Event of Default and PetroLama's material breach of the PetroLama Storage Agreements, Keyera made good faith efforts to arrange a commercial resolution of the issues with PetroLama.

22. On July 8, 2022, Keyera again sent a demand letter to PetroLama concerning the continuing material breach.

23. As noted in that second default notice, "Although PetroLama has availed itself of crude storage services at the [Wildhorse] Terminal, no Storage Fees have been paid from July 2021 through May 2022," resulting in a total past due amount of \$7,089,193.55.

24. The amount past due continues to increase each month, and as of the date of this filing, PetroLama has paid no past due Storage Fees.

25. The PetroLama Storage Agreements expressly incorporate into their terms the Terminal Rules for the Wildhorse Terminal as may from time to time be amended, which provide, among other things, at ¶ 21 for a warehouse lien in favor of Keyera with respect to Product stored by PetroLama at the Wildhorse Terminal:

OPERATOR'S LIEN. Customer [*i.e.*, PetroLama] hereby acknowledges Operator's [*i.e.*, Keyera's] statutory lien rights on Customer's Product under Section 7-209 of the Uniform Commercial Code as well as Operator's other lien rights at law or in equity. In connection therewith, Customer agrees that Operator's monthly invoices constitute a bill of lading and a warehouse receipt and set forth the location where Customer's Product is stored, the date of receipt of Product, the applicable Fees for storage and/or terminalling and a general description of Customer's Product.

26. PetroLama failed to respond to Keyera's July 8th demand letter or to cure or correct its defaults under the PetroLama Storage Agreements.

27. Pursuant to ¶ 21 of the Terminal Rules, as incorporated into the PetroLama Storage Agreements, Keyera has a contractual and statutory warehouse lien on the Product stored in tanks 201, 202, 204, 214, and 216 at the Wildhorse Terminal.

B. BB Energy's Interest

28. BB Energy also trades crude oil and is another customer of Keyera's at the Wildhorse Terminal.

29. Under a separate Crude Oil Storage Agreement made effective June 15, 2018, with Keyera (the "BB Energy Storage Agreement"), BB Energy has contracted for the right to store as much as 1,000,000 barrels of Product serviced through tanks 203 and 206 at the Wildhorse Terminal.

30. On November 30, 2021, after Keyera's two Notices of Customer Event of Default were transmitted to PetroLama, and while the material breach of the PetroLama Storage Agreements was ongoing, PetroLama sent written notice to Keyera that "BB Energy purchased and owns the crude oil currently stored in PetroLama Energy Canada Inc. tanks located at the Wildhorse Terminal in Cushing, Ok." The letter went on to identify the tanks and approximate holdings as follows:

Tank # 216	~47,050 bbls Heavy
Tank # 214	~44,400 bbls Heavy
Tank # 204	~33,650 bbls Heavy
Tank # 202	~60,550 bbls Heavy
Tank # 201	~84,500 bbls Light
Terminal Line Fill	~4,600 bbls Heavy
Heavy Total =	~190,000 bbls
Light Total =	~84,500 bbls

(the "Crude Storage Notice").

31. A copy of the Crude Storage Notice was also transmitted to representatives, one or more, of BB Energy on that same date.

32. At no time material to the claims asserted in this action did Keyera ever receive, or did PetroLama or BB Energy deliver, any formal, contract-compliant transfer documentation that purported to transfer title in and to the Disputed Oil, as defined herein, from PetroLama to BB Energy as may have been authorized under the Storage Agreements or the Terminal Rules.

33. In receipt of the Crude Storage Notice, Keyera was informed that the crude oil sitting in PetroLama's tanks at the Wildhorse Terminal had putatively been purchased by BB Energy but remained in PetroLama's possession, and was entrusted to PetroLama and its possession, for storage purposes in PetroLama's assigned tanks at the Wildhorse Terminal.

34. Invoices for Storage Fees for the crude oil stored in PetroLama's assigned tanks at the Wildhorse Terminal, one or more, which were agreed to constitute warehouse receipts under the PetroLama Storage Agreements, were issued by Keyera and delivered to PetroLama with respect to the crude oil stored in its assigned tanks at the Wildhorse Terminal, both before and after receipt of the Crude Storage Notice ("Invoices").

35. Such Invoices were never paid, and the crude oil stored in PetroLama's assigned tanks serves as security for the payment of Keyera's warehouse lien against such Product.

36. The crude oil remains in the PetroLama-assigned tanks at the Wildhorse Terminal, and its proper disposition is the subject of this suit.

C. *Storage Agreement Terms*

37. Section 10.1 of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

Title: Custody. Customer must have good and merchantable title to all Product delivered to the Terminal by it or on its behalf. Provider

A.R.

may reject any deliver of Customer's Product that Provider reasonable determines may be involved in litigation or involved in a title dispute. Title to the Product stored and/or handled hereunder will always remain with Customer.

38. Section 10.2 of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

Transfers of Product. Customer may transfer title to Customer's Product via a title transfer request to another Customer at the Terminal with sufficient storage capacity. Customer's title transfer request shall be an executed document that indicates the party to which the transfer is to be made, the amount of Product to be transferred, its location and grade, and a warranty statement of unencumbered title to the Product to be transferred. Notwithstanding the above, Provider shall be under no obligation to recognize intrasystem transfers....

39. Section 15.2(b) of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

If a Customer Event of Default as defined in Section 15.2(a) occurs:

(i) Provider may suspend the performance of all or any part of the Terminal Services for so long as the breach continues...

40. Section 5(a) of the Additional Terms and Conditions attached to and made part of the PetroLama Storage Agreements and the BB Energy Storage Agreement provides in applicable part:

Linefill and Tank Bottoms. Customer shall be responsible for providing sufficient Product to maintain all minimum tank operating levels and linefill inventory associated with the tankage and related piping within the Terminal.

41. Paragraph 5 of the Terminal Rules then provides in applicable part:

Crude Oil Nominations

Customer shall submit its crude oil nomination which shall include its good faith estimate of crude oil volumes for the months of receipt into, or delivery out of tank storage in its crude oil nomination to

Operator by 2:00PM Central time on the 25th day of the month preceding the month of delivery or receipt at Wildhorse Terminal....

If Operator determines, acting in a commercially reasonable manner, that it can accommodate the crude oil nomination, the crude oil nomination will be accepted. If Operator determines, acting in a commercially reasonable manner, that it cannot accommodate the crude oil nomination or the crude oil nomination is otherwise not acceptable, or Operator is unable to confirm the crude oil nomination with the applicable connecting carrier pipelines, the crude oil nomination will be rejected and sent back to Customer, with reasons for the rejection and, if applicable, instructions to resubmit a revised crude oil nomination.

...

Customer shall ensure that crude oil nominations do not result in the tank exceeding its maximum/minimum working volume, except for an intentional tank roof landing as permitted herein.

42. Paragraph 7 of the Terminal Rules provides, concerning Receipt and Delivery Batches: "For avoidance of doubt, Operator reserves the right to restrict deliveries to and from Wildhorse Terminal in the event such deliveries would result in Customer's tank being over-filled or the tank roof ending up below its low working level (unless for an intentional roof landing as permitted herein)."

D. *Conditions Precedent*

43. All conditions precedent, if any, required to bring this suit and the claims herein have occurred or have been waived.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Breach of Contract

(PetroLama)

44. All allegations contained in this *Complaint* are fully incorporated herein.

45. The PetroLama Storage Agreements are valid and enforceable contracts.

46. PetroLama breached the PetroLama Storage Agreements by: (1) failing to post the required letters of credit for 9 months' Storage Fees in favor of Keyera; and (2) failing to pay any Storage Fees to Keyera from July 2021 to present.

47. PetroLama's breach has caused damage to Keyera, and as of the date of filing, the past due Storage Fees, for services rendered by Keyera at the Wildhorse Terminal from July 2021 to July 2022, owed by PetroLama to Keyera total \$8,454,193.55.

48. PetroLama's breach has further caused future damages to Keyera in that the contractual terms of the PetroLama Storage Agreements were for a 6-year term and a 4-year term, respectively, each subject to an annual fee escalation of 2%, meaning the total value of the contracts, of which Keyera has been wrongfully deprived, is approximately \$41,704,364.32, plus such consequential and incidental damages or losses.

49. Further, as a result of PetroLama's breach of the PetroLama Storage Agreements, Keyera has found it necessary to employ an attorney to enforce its legal rights, and Keyera seeks recovery of its attorneys' fees and expenses pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

SECOND CLAIM FOR RELIEF
Declaratory Judgment
(PetroLama and BB Energy)

50. All allegations contained in this *Complaint* are fully incorporated herein.

51. An actual controversy exists between the parties concerning the rights, titles, interests and priorities in and to the approximately 125,701 barrels of Product presently stored in the PetroLama tanks 202, 204, 214, and 216 and held as linefill at the Wildhorse Terminal (the "Disputed Oil").

52. The Disputed Oil was delivered to the Wildhorse Terminal in accordance with PetroLama's obligations to provide linefill and tank bottoms.

53. Prior to the time of delivery of the Crude Storage Notice to Keyera and BB Energy, PetroLama had triggered a Customer Event of Default and Keyera was entitled to exercise all applicable remedies, including without limitation enforcement or foreclosure of its warehouse lien in, to and covering such Disputed Oil.

54. The Disputed Oil was in the possession of PetroLama at the time of delivery of the Crude Storage Notice to Keyera and BB Energy, and notwithstanding the Crude Storage Notice, the Disputed Oil remained in the possession of PetroLama, and such possession was further entrusted to PetroLama by BB Energy with the power to continue to store the same in PetroLama's assigned tanks at the Wildhorse Terminal with the express permission and authority of BB Energy, with the express knowledge that warehouse liens would be issued with respect to such Disputed Oil stored there.

55. No payment for Storage Fees relative to the Disputed Oil has ever been made to Keyera either prior to or after delivery of the Crude Storage Notice, and pursuant to the PetroLama Storage Agreements and applicable law, Keyera holds, is entitled to assert, and has asserted its valid contractual and statutory warehouse lien in and to the Disputed Oil pursuant to Section 7.209 of the Texas Business and Commerce Code.

56. Keyera has had and continues to have possession of the tanks holding the Disputed Oil and all of the Disputed Oil therein, and its perfected warehouse lien in and to the Disputed Oil, to secure payment of all Storage Fees plus any allowable expenses incurred in respect thereof, constitutes a valid, first and prior interest in and to the Disputed Oil, superior to all other rights, titles or interests therein.

57. PetroLama and BB Energy claim or may claim some right, title or interest in and to the Disputed Oil that may be alleged to conflict with the rights, titles and interests of Keyera therein or the claimed priority of its interest in and to the Disputed Oil, creating a controversy concerning those matters for which a judicial declaration is sought in this *Complaint*.

58. Pursuant to Section 2.710 of the Texas Business and Commerce Code, Keyera has or will shortly after the filing of this lawsuit deliver notice of sale of the Disputed Oil to PetroLama and BB Energy, specifically noting such sale shall be subject to the declaration, by this Court, of the rights, titles, and interests of the parties in and to the Disputed Oil and the respective priorities thereof.

59. Keyera, therefore, requests the Court take judicial cognizance of this action and render a declaratory judgment in Keyera's favor and against PetroLama and BB Energy, determining:

- a. Keyera holds a valid statutory and/or contractual warehouse lien in and to the Disputed Oil; *and*
- b. Keyera's warehouse lien in the Disputed Oil is superior and prior to any rights, titles and/or interests claimed in the same by PetroLama or BB Energy in the amount of and to the extent of the unpaid indebtedness owed by PetroLama to Keyera under the PetroLama Storage Agreements; *and*
- c. Keyera is legally authorized to assert, enforce and foreclose its warehouse lien in and to the Disputed Oil pursuant to § 7.210 Texas Business and Commerce Code, and any and all other applicable laws, via either public or private sale, and to retain the proceeds of such sale to satisfy its warehouse lien stemming from PetroLama's past-due and future contractual balances

A.R.

owed for Storage Fees and any other allowable expenses incurred in connection with the storage of the Disputed Oil under the PetroLama Storage Agreements; *and*

- d. Either PetroLama and/or BB Energy shall have the right to redeem such Disputed Oil within a time set by the Court with respect to the intended private or public sale of the same to enforce and foreclose Keyera's warehouse lien.

60. Further, Keyera requests such other or further declarations from the Court as may be deemed necessary and just to effect the foregoing requested relief.

THIRD CLAIM FOR RELIEF
Judicial Foreclosure of Warehouse Lien against Disputed Oil
(PetroLama and BB Energy)

61. All allegations contained in this *Complaint* are fully incorporated herein.

62. Pleading alternatively in connection with the Second Claim for Relief, Keyera respectfully requests the Court authorize judicial foreclosure of Keyera's warehouse lien by directing or appointing the appropriate authority to sell the Disputed Oil pursuant to Section 7.210 of the Texas Business and Commerce Code, subject to the affect of and full value of Keyera's warehouse lien therein, provide all necessary notices attendant to such sale, and report the sale of the Disputed Oil for Keyera's benefit in accordance with applicable law and procedure.

FOURTH CLAIM FOR RELIEF
Indemnification
(PetroLama)

63. All allegations set forth in this *Complaint* are fully incorporated herein.

64. Section 16.1 of the Storage Agreements provides in applicable part:

Parties' Obligation to Indemnify and Hold Harmless. Each Party shall indemnify, defend, and hold harmless the other Party, its

respective parents, subsidiaries, Affiliates, successors and assigns and each of their officers, directors, managers, equity holders, employees and agents (the “**Indemnitees**”) from any Claims or Losses to the extent resulting from the indemnifying Party’s breach of any representation, warranty or covenant contained in this Agreement.

65. As a result of PetroLama’s contractual breaches of the Storage Agreement, BB Energy may assert or has asserted claims against Keyera concerning the Disputed Oil.

66. Keyera is entitled to indemnity and to recover from PetroLama all losses, including attorneys’ fees, expenses, and costs of defense, sustained by Keyera, if any, to BB Energy.

PRAYER FOR RELIEF

WHEREFORE, Keyera prays the Court will grant judgment in its favor and against PetroLama and BB Energy in accordance with the allegations herein, and specifically that Keyera be awarded:

1. judgment for damages in Keyera’s favor and against PetroLama in an amount determined at trial, but in no event less than the sums alleged herein, plus any and all consequential and incidental losses to which Keyera is deemed entitled;
2. a declaratory judgment in Keyera’s favor and against PetroLama and BB Energy as set forth above, finding Keyera’s warehouse lien in and to the Disputed Oil to be valid, prior and superior to any other rights, titles and interests therein, including those of PetroLama and BB Energy, and specifically authorizing Keyera’s public or private sale of the Disputed Oil pursuant to Section 7.210 of the Texas Business and Commerce Code to enforce and foreclose that warehouse lien to the extent determined by the Court;

3. alternatively, an order authorizing, in Keyera's favor and against PetroLama and BB Energy, the judicial foreclosure of Keyera's warehouse lien as against the Disputed Oil;
4. an assessment in Keyera's favor and against PetroLama and, to the extent allowed by law, BB Energy, of pre-judgment interest at the maximum amount allowed by law;
5. an assessment in Keyera's favor and against PetroLama of post-judgment interest at the maximum amount allowed by law;
6. an assessment in Keyera's favor of all of its attorneys' fees, expenses, consequential and incidental damages including the costs incurred in the bringing of this action; and
7. the provision in Keyera's favor and against Defendants of such other and further relief, at law or in equity, to which Keyera may be justly entitled.

Respectfully submitted,

s/ David H. Herrold

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**Attorneys for the Plaintiff,
KEYERA ENERGY INC.**

United States District Court
Southern District of Texas

ENTERED

August 30, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Keyera Energy Inc.
Plaintiff,

v.

BB Energy USA LLC, et al.
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NO. 4:22-cv-02919

**ORDER FOR CONFERENCE AND
DISCLOSURE OF INTERESTED PARTIES**

1. Counsel and all parties appearing pro se shall appear for an initial pretrial and scheduling conference before

Magistrate Judge Andrew M Edison

December 14, 2022, at 09:00 AM

by video

United States Courthouse

2. Within fifteen days from receipt of this order, counsel shall file with the clerk a certificate listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded. If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.
3. NOTICE TO PARTIES ASSERTING FEDERAL JURISDICTION IN DIVERSITY CASES: Under 28 U.S.C. § 1332 there must be complete diversity between plaintiffs and defendants. Complete diversity requires that all persons on one side of the controversy be citizens of different states from all persons on the other side. The party asserting federal jurisdiction in a diversity action has the burden to demonstrate that there is complete diversity. The citizenship of limited liability entities is determined by the citizenship of their members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). When members of a limited liability entity are themselves entities or associations, citizenship must be traced through however many layers of members there are until arriving at the entity that is not a limited liability entity and identifying its citizenship status. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 (5th Cir. 2009). If the Complaint or Notice of Removal filed in this action does not show the citizenship of all limited liability entities, the plaintiff (if initiating the action in federal court) or the

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defendant (if removing the action from state court) is ORDERED to file an amended complaint or notice of removal, respectively, within twenty days from the entry of this order. The failure to allege facts establishing complete diversity of citizenship may result in dismissal or remand of this action by the court on its own initiative without further notice.

4. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 90 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 90 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.
5. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel and all parties appearing pro se shall prepare and file, not less than 10 days before the scheduling conference, a joint discovery/case management plan containing the information required on the attached form.
6. The court will enter a scheduling order and may rule on any pending motions at the scheduling conference.
7. Counsel and all parties appearing pro se who file or remove an action must serve a copy of this order with the summons and complaint or the notice of removal.
8. Unless proceeding pro se, each party must be represented by an attorney who has knowledge of the facts and authority to bind the party at the scheduling conference.
9. Prior to the scheduling conference, counsel and all parties appearing pro se shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference advise the court of the results of their discussions.
10. A person proceeding pro se is bound by the requirements imposed upon counsel in this Order.
11. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

Court's Procedures: Information on the court's practices and procedures and how to reach court personnel may be obtained at the Clerk's website at www.txs.uscourts.gov or from the intake desk of the Clerk's office.

By Order of the Court

A.R.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Keyera Energy Inc.	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 4:22-cv-02919
	§	
BB Energy USA LLC, et al.	§	
Defendant.	§	

**JOINT DISCOVERY/CASE MANAGEMENT PLAN
under Rule 26(f) of the
Federal Rules of Civil Procedure**

(Please restate the instruction before furnishing the responsive information.)

1. State where and when the conference among the parties required by Rule 26(f) of the Federal Rules of Civil Procedure was held, and identify the counsel who attended for each party, including name, address, bar number, phone and fax numbers, and email addresses.
2. List the cases related to this one that are pending in any state or federal court with the case number and court, and state how they are related.
3. Briefly describe what this case is about.
4. Specify the allegation of federal jurisdiction.
5. Name the parties who disagree with the plaintiff's jurisdictional allegations and state their reasons.
6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
7. List anticipated interventions.
8. Describe class-action issues.
9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

A.R.

10. Describe the proposed agreed discovery plan, including:
 - a. responses to all the matters raised in Rule 26(f), including any agreements (and disputes) concerning electronic discovery;
 - b. when and to whom the plaintiff anticipates it may send interrogatories;
 - c. when and to whom the defendant anticipates it may send interrogatories;
 - d. of whom and by when the plaintiff anticipates taking oral depositions;
 - e. of whom and by when the defendant anticipates taking oral depositions;
 - f. (i) the date experts for plaintiff (or party with the burden of proof on an issue) will be designated and their reports provided to opposing party;
(ii) the date experts for defendant will be designated and their reports provided to opposing party;
 - g. list of expert depositions the plaintiff (or party with the burden of proof on an issue) anticipates taking and their anticipated completion date (*see* Rule 26(a)(2)(B) (expert report)); and
 - h. list of expert depositions the defendant (or opposing party) anticipates taking and their anticipated completion date (*see* Rule 26(a)(2)(B) (expert report)).
11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
12. Specify the discovery beyond initial disclosures that has been undertaken to date.
13. State the date the planned discovery can reasonably be completed.
14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.
15. Describe what each party has done or agreed to do to bring about a prompt resolution of this dispute.
16. From the attorneys' discussion with their client(s), state the alternative dispute resolution techniques that are reasonably suitable.
17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.
18. State whether a jury demand has been made and if it was made on time.

A.R.

19. Specify the number of hours it will take to try this case (including jury selection, presentation of evidence, counsel's opening statements and argument, and charging the jury).
20. List pending motions that could be ruled on at the initial pretrial conference.
21. List other motions pending.
22. Indicate other matters peculiar to this case, including but not limited to traditional and electronic discovery issues, that deserve the special attention of the court at the conference.
23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.
24. List the names, bar numbers, addresses, email addresses, and telephone numbers of all counsel.

Counsel for Plaintiff(s)

Date

Counsel for Defendant(s)

Date

A.R.

This is **Exhibit "B"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

Direct Line: (403)571-1053
Email: nicholsonc@jssbarristers.ca
Assistant - Sarah Sklar (403)571-0739
File No: 15378.001

BY EMAIL (RZahara@mltaikins.com)

September 13, 2022

Mr. Ryan Zahara
MLT Aikins LLP
2100 Livingston Place, 222 3rd Avenue SW
Calgary, T2P 0B4

Dear Mr. Zahara:

Re: In the Matter of the Notice of Intention ("NOI") of Petrolama Energy Canada Inc. ("Petrolama") to make a proposal under s. 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA"); Court file no. B201 851343 (the "Insolvency Proceedings")

And Re: Keyera Energy Inc. ("Keyera"), a Delaware and Texas company v. BB Energy USA LLC ("BB"), a Curacao and/or United Arab Emirates company; PetroLama, a Canadian company; Court file no. 4:22cv2919 (the "Complaint")

As you know, we act for Petrolama in the Insolvency Proceedings. Petrolama filed its NOI on July 27, 2022 and since that date, for a period of 30 days thereafter, a stay of proceedings ("**Stay**") was automatically in place pursuant to s. 69 the BIA.

As you also know, Petrolama brought an application on notice to Keyera returnable in the Alberta Court of Queen's Bench - now the Court of King's Bench (the "**Alberta Court**") - on August 10, 2022 to, among other things, effect an extension of the Stay. You requested to be added to the Service List and appeared in the Alberta Court at the application on behalf of Keyera.

As you are aware, on August 10, 2022, an Order (the "**Stay Extension Order**") was granted to, among other things, extend the Stay until 11:59 pm on October 10, 2022.

We confirm that Petrolama was served with the attached Complaint which is stated on its face to have been filed on August 26, 2022. It contains a claim by Keyera against Petrolama which is provable in bankruptcy.

It is Petrolama's position that:

1. Through its actions, including participation in the Insolvency Proceedings as noted above, even purportedly without prejudice to any rights it has in the USA, Keyera has attorned to the jurisdiction of the Alberta Court, including under the BIA;

A.B.

2. Particularly in light of the fact that Petrolama has neither assets nor operations in the USA the Stay and its extension effected pursuant to the Stay Extension Order are not territorially limited and they affect and bind Keyera by preventing it from commencing or continuing any action or proceeding for the recovery of a claim provable in bankruptcy which includes the Complaint; and
3. The filing of the Complaint in the face of the Stay and the Stay Extension Order is invalid.

Accordingly, we require that Keyera immediately withdraw the Complaint against Petrolama.

Alternatively, Petrolama seeks Keyera's agreement that the Complaint shall be immediately stayed at this stage without the need of further steps being taken by Petrolama. We also seek confirmation from Keyera that it will participate and make its claim in the Insolvency Proceedings and agree to be bound by them.

If Petrolama does not receive a favourable response to the foregoing from you by **12:00 noon MST on September 15, 2022**, Petrolama will have no choice but to, among other things, proceed with a Chapter 15 filing in the United States under the US Bankruptcy Code and will be claiming the costs of same against Keyera.



Yours truly,
Jensen Shawa Solomon Duguid Hawkes LLP



Christa Nicholson KC

Partner

CN:ss

Encl.

cc: David H. Herrold (dherrold@burkebog.com), attorneys for Keyera regarding the Complaint
Kelly Bourassa (kelly.bourassa@blakes.com) and James Reid (james.reid@blakes.com) , counsel for Alvarez
& Marsal Canada Inc. in their capacity as Proposal Trustee
Orest Konowalchuk (okonowalchuk@alvarezandmarsal.com); Cassie Riglin
(criglin@alvarezandmarsal.com); and Jill Strueby (jstrueby@alvarezandmarsal.com), Proposal Trustee
Angad Bedi (bedia@jssbarristers.ca)
Client

This is **Exhibit "C"** referred to in the Affidavit of Paul Farley Josyln, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

AMENDMENT TO INTERIM FINANCING TERMS

THIS AGREEMENT is dated September 17, 2022 between:

884304 ALBERTA LTD., a corporation incorporated and existing under the laws of Alberta (hereinafter referred to as the "**Interim Lender**")

- and -

PETROLAMA ENERGY CANADA INC., a corporation incorporated and existing under the laws of Alberta (hereinafter referred to as the "**Borrower**" or the "**Company**")

WHEREAS on July 27, 2022, the Company filed a notice of intention to make a proposal (the "**NOI**") pursuant to section 50.4(1) of the BIA (as defined herein) with the official receiver (as defined in the BIA);

AND WHEREAS the Company entered into Interim Financing Terms with the Interim Lender which are attached as Exhibit "4" to the Affidavit of Paul Farley Joslyn, filed August 4, 2022 (the "**Interim Financing Terms**");

AND WHEREAS the Company and the Interim Lender wish to change the definition of "Interim Financing" to increase the same by adding a further US \$75,000;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT IN CONSIDERATION of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Unless otherwise expressly provided in this Agreement, capitalized terms will have the same meaning as ascribed to them in the Interim Financing Terms.

1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles, Sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

1.3 Article References

Unless the contrary intention appears, references in this Agreement to an Article, Section, subsection, paragraph or Schedule by number or letter or both refer to the Article, Section, subsection, paragraph or Schedule, respectively, bearing that designation in this Agreement.

1.4 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

ARTICLE 2 AMENDMENTS

2.1 General

All terms of the Interim Financing Terms shall remain in full force and effect and unamended except as expressly set forth herein and supplemented hereby.

2.2 Section 5

The definition of "**Interim Facility**" in Section 5 of the Interim Financing Terms is hereby amended by replacing "\$300,000" with "\$300,000 plus US \$75,000".

2.3 Section 6

For greater certainty, the definition of "**Interim Financing Credit Documentation**" in Section 6 of the Interim Financing Terms shall be understood and construed to include this Agreement.

2.4 Section 7.1

The definition of "**Funding Conditions**" in Section 7.1 of the Interim Financing Terms shall be expanded to add the following:

"11. With respect only to any Interim Advance pertaining to the US \$75,000 the Court shall have issued a further Order on or before September 28, 2022 satisfactory to the Interim Lender approving this Agreement and increasing the Interim Lender Charge by US \$75,000."

2.5 Schedule "A"

The following definition shall be added to Schedule "A" of the Interim Financing Terms:

"US \$" means the lawful money of the United States of America.

ARTICLE 3 GENERAL PROVISIONS

3.1 Entire Agreement

This Agreement supersedes all other agreements, documents, writings and verbal understandings between the Parties relating to the subject matter hereof and expresses the entire agreement of the Parties with respect to the subject matter hereof.

3.2 Time of Essence

Time shall be of the essence in this Agreement.

3.3 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Laws of Canada applicable therein, and the Parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

3.4 Severability

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a) the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

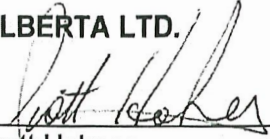
3.5 Counterparts

This Agreement may be executed by facsimile or other electronic signature and in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

884304 ALBERTA LTD.

By: 
Per: Scott Holmes
Title: Director

PETROLAMA ENERGY CANADA INC.

By: _____
Per: Paul Joslyn
Title: Chief Financial Officer

A.R.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

884304 ALBERTA LTD.

By: _____
Per: Scott Holmes
Title: Director

PETROLAMA ENERGY CANADA INC.

By:  _____
Per: Paul Joslyn
Title: Chief Financial Officer

A.R

This is **Exhibit "D"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
4300 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB Canada T2P 5C5

Main: 403 266 9000
Fax: 403 266 9034
www.stikeman.com

Jakub Maslowski
Direct: +1 403 724 9465
jmaslowski@stikeman.com

September 7, 2022
File No.: 137023.1010

By E-mail

Alvarez & Marsal Canada ULC
Suite 1110, 250 – 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk, Cassie Riglin and
Jill Strueby

Blake, Cassels & Graydon LLP
Suite 3500, 855 - 2 St. SW
Calgary, AB T2P 4J8

Attention: Kelly Bourassa and James Reid

Jensen Shawa Solomon Duguid Hawkes LLP
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

Attention: Christa Nicholson, QC and Angad Bedi

Dear Mesdames and Sir:

RE: **Notice of Intention to Make A Proposal Under s. 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "NOI") of Petrolama Energy Canada, Inc. ("Petrolama")**
Alberta Court of Queen's Bench File No. 25-2851343

We have been retained by Phillips 66 Gulf Coast Properties LLC ("**P66**") in respect of the above-referenced NOI of Petrolama. We kindly ask to be added to the service list and that any materials related to this NOI be directed to our attention.

We write to provide further context to the Terminal Services Agreement dated August 20, 2018 between Petrolama and P66 (the "**TSA**") and extensions to same, as well as notice of a cash collateral agreement between the parties pursuant to which P66 is a secured creditor.

As you are likely aware, the parties' obligations under the TSA were initially suspended pursuant to a letter agreement dated March 10, 2021 (the "**Letter Agreement**"). The Letter Agreement has since been amended four (4) times, most recently on June 30, 2022 (the "**Fourth Amendment**"), to extend the suspension of the parties' obligations under the TSA until August 31, 2022. Attached for your reference are the Letter Agreement and Fourth Amendment.

Contemporaneous with the execution of the Letter Agreement, Petrolama and P66 entered into a cash collateral agreement dated March 10, 2021 (the "**Cash Collateral Agreement**"), a copy of which is attached.

Pursuant to the Cash Collateral Agreement, Petrolama provided P66 with a first priority security interest in USD\$800,000.00 (the "**Funds**") to secure Petrolama's past and future obligations under the TSA, which obligations resumed on September 1, 2022 with the expiry of the Fourth Amendment. The Funds were delivered to and held by P66 pursuant to the terms of the Cash Collateral Agreement.

Petrolama has not resumed the performance of its obligations under the TSA as required by the Letter Agreement and Fourth Amendment, and appears to have no intention of doing so in the future given that it is proposing to repudiate the TSA in this NOI proceeding. Further, P66 has no intention of granting any further extensions to the Letter Agreement.

In light of the foregoing, P66 proposes offsetting the Funds it holds as first priority security holder from the total amount of its claim, which we can advise is equal to the Minimum Revenue (Tank Lease Fee Only) for the remaining term of the TSA (September 1, 2022 – October 31, 2024) in the amount of USD\$7,070,962.30¹. Further particulars will be provided in P66's Proof of Claim.

Should you have any questions or would like to discuss, please feel free contacting the undersigned.

Yours truly,

STIKEMAN ELLIOTT LLP



Jakub Maslowski

cc: Phillips 66 Gulf Coast Properties LLC
Attn: Candace S. Schiffman, Senior Counsel (via email)

Encls.

¹ This amount is not adjusted for the 2023 and 2024 calendar years, as permitted under Section 4.02 of the TSA.

This is **Exhibit "E"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

CASH COLLATERAL AGREEMENT

Cash Collateral Agreement made as of this 10th day of March 2021 by and between Phillips 66 Gulf Coast Properties, LLC ("P66") and Petrolama Energy Canada, Inc. ("Customer"), individually a party and collectively, the parties.

WHEREAS, the Parties previously entered into that certain Terminal Services Agreement, dated August 20, 2018 ("TSA") and as part of the TSA Customer secured its obligations with the tank heels to Customer's product located at P66's facility;

WHEREAS, contemporaneously with the execution of this Cash Collateral Agreement, the Parties are entering into a Suspension Agreement to temporarily suspend the obligations of both parties as stated in the TSA ("Suspension Agreement");
Agreement

WHEREAS, during the term of the Suspension Agreement, Customer will not own the product located at P66's facility and according Customer will not have provided during this period Performance Assurance as required under the TSA; and accordingly P66 is requiring that Customer post cash collateral to provide assurances that Customer will resume performance upon the conclusion of the Suspension Agreement;


In consideration of the mutual terms and conditions hereinafter set forth, the parties agree:

1. Customer shall deliver US Dollars by wire transfer of immediately available funds ("Funds") in an amount no less than US\$200,000. Such transfer of Funds shall be made no later than 5 p.m. Prevailing Central Time on April 2, 2021.
2. Customer grants to P66 a first priority security interest in all Funds provided by Customer pursuant to this agreement to secure all present and future obligations of Customer under the TSA. P66 shall have the free and unrestricted right to use and dispose of all Funds it holds, subject only to its obligations to return such if and when so required under this agreement. Customer shall have no authority to designate the management or investment alternatives for Funds posted to P66 in accordance with this agreement.
3. P66 is authorized and may, in its sole discretion and without prior written notice to Customer, apply the Funds posted hereunder or any portion thereof against any indebtedness Customer may owe to P66 in accordance with the terms of the TSA, whether during the term of the Suspension Agreement or thereafter. In the event P66 applies Funds held, such application shall not be construed as a waiver of any of P66's rights or remedies with respect to amounts due and owing from Customer.
4. This agreement and P66's right to hold Funds hereunder, shall terminate three business days after the and redelivery of tank heels into the Terminal by Customer, as determined by P66, following the termination of the Suspension Agreement.
5. This agreement is in addition to, supplements and forms a part of all terms governing the TSA, and shall be incorporated into the terms of the TSA. A failure to provide Funds hereunder shall be either a failure to provide credit support, however described in the terms

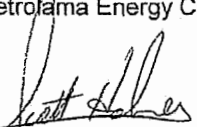
of the TSA, or a failure to pay, and in such event, P66 may exercise all rights and remedies of a non-defaulting party pursuant to such TSA.

IN WITNESS WHEREOF, P66 and Customer execute this Cash Collateral Agreement as of the day and year first above written.

Phillips 66 Gulf Coast Properties, LLC
By its Agent, Phillips 66 Company

JSK

By: **GRAHAM FISHER**
MANAGING DIRECTOR
~~Customer's Tax ID:~~

PetroLama Energy Canada Inc.


By: **Scott Holmes**
President
PetroLama Energy Canada Inc.

A.R.

This is **Exhibit "F"** referred to in the Affidavit of Paul Farley Josyln, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

FORM 44.1


Notice by Debtor to Disclaim or Resiliate an Agreement
(Section 65.11 of the *Bankruptcy and Insolvency Act* (Canada) (the "Act"); Rule 94.1)

To Alvarez & Marsal Canada Inc., Proposal Trustee, and Keyera Energy Inc., party to the Agreements (as hereinafter defined)

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of Petrolama Energy Canada Inc. (the "Debtor") was filed under subsection 50.4 of the Act on the 27th day of July, 2022
2. Pursuant to subsection 65.11(1) of the Act, the Debtor hereby gives you notice of its intention to disclaim or resiliate the following agreements (hereinafter the "Agreements"):
Crude Oil Storage Agreement made effective as of May 14, 2018 by and between Keyera Energy Inc., as operator and Petrolama Energy Canada Inc.
Crude Oil Storage Agreement made effective as of May 15, 2018 by and between Keyera Energy Inc., as operator and Petrolama Energy Canada Inc.
3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the Agreements may, with notice to the other parties to the Agreements and the trustee, apply to the Court for an order that the one or more of the Agreements are not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the Agreements will become effective on the 16th day of October, 2022 (being 30 days after the date on which this notice has been given).


Dated at Hamburg, Germany, this 15th day of Sept, 2022.



Petrolama Energy Canada Inc.

The Proposal Trustee approves the proposed disclaimer or resiliation.

Dated at Calgary, Alberta, this 15th day of September, 2022



Licensed Insolvency Trustee

This is **Exhibit "G"** referred to in the Affidavit of Paul Farley Josyln, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

FORM 44.1

Notice by Debtor to Disclaim or Resiliate an Agreement
(Section 65.11 of the *Bankruptcy and Insolvency Act* (Canada) (the "Act"); Rule 94.1)

To Alvarez & Marsal Canada Inc., Proposal Trustee, and Phillips 66 Gulf Coast Properties LLC, party to the Agreement
(as hereinafter defined)

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of Petrolama Energy Canada Inc. (the "Debtor") was filed under subsection 50.4 of the Act on the 27th day of July, 2022.
2. Pursuant to subsection 65.11(1) of the Act, the Debtor hereby gives you notice of its intention to disclaim or resiliate the following agreement (hereinafter the "Agreement"):
Terminal Services Agreement by and between Phillips 66 Gulf Coast Properties LLC and Petrolama Energy Canada Inc. for terminal services in Nederland, Texas made and entered into as of August 20, 2018 including any amendments or extensions to same
3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the Agreement may, with notice to the other parties to the Agreement and the Proposal Trustee, apply to the Court for an order that the Agreement is not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the Agreement will become effective on the 16th day of October, 2022 (being 30 days after the date on which this notice has been given).

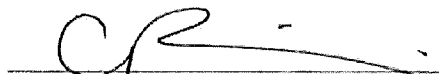
Dated at Hamburg, Germany, this 15th day of Sept, 2022



Petrolama Energy Canada Inc.

The Proposal Trustee approves the proposed disclaimer or resiliation.

Dated at Calgary, Alberta, this 15th day of September, 2022



Licensed Insolvency Trustee

This is **Exhibit "H"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022



A Commissioner for Oaths in and for Alberta

Angad Bedi
Barrister & Solicitor

Sales and Investment Solicitation Process – Division 1 Proposal
Acquisition Opportunity: Petrolama Energy Canada Inc.
North American Energy business, participating in an extraction project in Texistepec, Mexico



PETROLAMA
Energy Canada Inc.

Bid Deadline: September 23, 2022



Acquisition Opportunity

About Petrolama Energy Canada Inc.

Petrolama Energy Canada Inc. ("**Petrolama**" or the "**Company**"), is a Calgary based oil and gas energy company.

In April 2019, the Company started a new project in Mexico with two US based companies: Lago Energy Corp. and Deep Blue Petroleum LLC. The project contemplates using Deep Blue Petroleum's technology to extract residue waste material from a long-standing pool or lagoon in Texistepec, Mexico that is on site from prior years of significant mining (the "**Mexico Project**").

Throughout 2019 and 2020, the Company invested in the Mexico Project with a goal to ship residue material to US Gulf Coast refineries as feedstock. It is estimated that there will be 4 million barrels of the residue material recovered.

A Commodities Sales/Purchase Agreement the ("**Agreement**") was entered into in 2019, and subsequently amended in 2021, which allows Petrolama to sell the crude oil extracted from the residue materials and pay the proceeds to the service providers, suppliers and financiers who have contributed to the Mexico Project pursuant to a waterfall payment structure as outlined in the Agreement. Pursuant to the Agreement, Petrolama has the potential to collect marketing fees from the sale of each barrel and has the potential to further collect a portion of the residual proceeds of sales pursuant to the Agreement.

In addition to the Mexico Project, Petrolama has a deferred tax asset of approximately \$1.5 million which was created on the 2020 and 2021 tax returns.

Division 1 Proposal

On July 27, 2022, Petrolama Canada Energy Inc. filed a Notice of Intention to Make a Proposal, pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* and Alvarez & Marsal Canada Inc. ("**A&M**") was named as the Proposal Trustee. Furthermore, the Court of Queen's Bench of Alberta (the "**Court**") granted an order (the "**Order**") approving a sales and investment solicitation process ("**SISP**") and a stalking horse proposal as the "Stalking Horse Bid" thereunder on August 10, 2022.

The SISP allows A&M and the Company to solicit further offers for the Company or assets of the Company that may be superior to the "Stalking Horse Bid", including its deeming of the Stalking Horse Proposal to be, among other things, a Qualified Bid. Further information regarding the SISP can be found on the following page or on A&M's website at www.alvarezandmarsal.com/petrolama.

Acquisition Highlights



\$9.25 million USD of invested capital in the Mexico Project



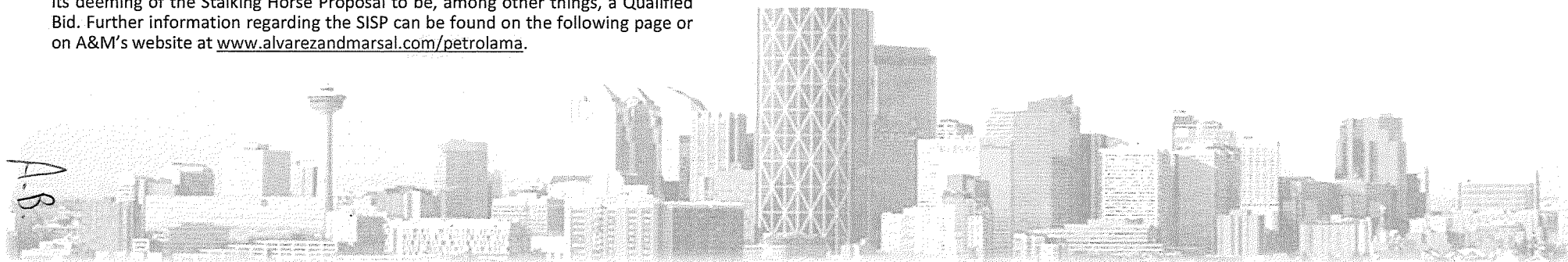
Proceeds received from the sale of potentially over 4 million barrels of residue materials



Potential gross profit to Petrolama of over \$18.0 million USD under the Commodities Sale/Purchase Agreement



Deferred Tax Asset of approximately \$1.5 million



A-B.

Additional Information



Next Steps

A&M is conducting the SISP in accordance with the Court Order dated August 10, 2022. The respective SISP documents can be found on the Proposal Trustee's website: www.alvarezandmarsal.com/petrolama.

Per the SISP, any interested party must abide by the following:

- **Purchase Price:** Must be a "Superior Offer" as defined in the SISP
- **Bid Deadline:** 5:00pm (Calgary Time) on **September 23, 2022**
 - In the event that no Qualified Bid other than the Stalking Horse Proposal is received by the Bid Deadline, then (a) the Stalking Horse Proposal will be deemed to be the Successful Bid; (b) the Stalking Horse Bidder shall be deemed to be the Successful Bidder, and (c) the Company and the Proposal Trustee shall take all necessary steps to complete the Stalking Horse Proposal and the transactions provided for therein
 - In the event that the Proposal Trustee determines that one or more Qualified Bids constitutes a Superior Offer, the Proposal Trustee may approach all Qualified Bidders to submit a highest and best offer. The Proposal Trustee shall select the highest or best Qualified Bid, notify that party as soon as practicable and seek court approval of same.
- The Court approved SISP includes a Court approved Stalking Horse Proposal, a copy of the Stalking Horse Proposal is available for review on the Proposal Trustee's website.
- The Stalking Horse Proposal contemplates a transaction whereby the proposed purchaser becomes the sole shareholder of the Company in exchange for providing funding under the NOI proceedings and making a proposal to the creditors of the Company to share in the Company's profits generated from under the Agreement.
- Petrolama Energy Canada Inc. and/or its assets are being offered on an "**as is where is**" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Proposal Trustee whatsoever.

Interested parties who wish to pursue a potential acquisition are required to execute a Non-Disclosure Agreement, which is available upon request, in order to receive access to additional information. Please contact a representative of the Proposal Trustee listed below for further information.

A&M reserves the right at any time to amend or terminate these sale procedures, to decline an interested party the ability to participate in the process, to terminate the discussions with any or all interested parties, to reject any or all offers, or to negotiate with any party with respect to a possible transaction.

Alvarez & Marsal
Bow Valley Square 4
Suite 1100, 250 6th Ave SW
Calgary, Alberta T2P 3H7

Stephen Oosterbaan
Associate
Calgary | 403.538.7555
soosterbaan@alvarezandmarsal.com

Jill Strueby
Senior Director
Calgary | 403.538.7529
jstrueby@alvarezandmarsal.com

Cassie Riglin
Senior Vice President
Calgary | 403.538.7519
criglin@alvarezandmarsal.com

Orest Konowalchuk
Senior Vice President
Calgary | 403.538.4736
okonowalchuk@alvarezandmarsal.com

COURT FILE NUMBER

B201 851343

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

Clerk's Stamp

PLAINTIFF

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, OF
PETROLAMA ENERGY CANADA INC.

CERTIFICATE OF REMOTE COMMISSIONING

TAKE NOTICE that this Certificate certifies that I, Angad Bedi was the commissioner signing the Affidavit of Paul Farley Joslyn in this Action on 18th day of September, 2022 and that as commissioner, I was satisfied that the remote commissioning process was necessary because it was impossible or unsafe, for medical reasons related to the current COVID-19 pandemic, for the deponent, Paul Farley Joslyn and I to be physically present together.

Angad Bedi

A Commissioner for Oaths in and for Alberta

Form 49

[Rule 13.19]

Clerk's Stamp

COURT FILE NUMBER B201 851343

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL UNDER SECTION 50.4(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, OF
PETROLAMA ENERGY CANADA INC.

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

Christa Nicholson KC/ Angad Bedi
Tel: 403 571 1053/403 571 1527
Fax: 403 571 1528
nicholsonc@jssbarristers.ca / bedia@jssbarristers.ca
File: 15378.001

AFFIDAVIT OF PAUL FARLEY JOSLYN
SWORN ON SEPTEMBER 18, 2022

I, PAUL FARLEY JOSLYN, of Calgary, Alberta, make oath and SWEAR THAT:

1. I am the Chief Financial Officer of Petrolama Energy Canada Inc. (the "**Company**" or "**Petrolama**"). The facts stated in this Affidavit are based on my personal knowledge of the Company and its business and affairs, and my review of its books and records. In each case where I have relied upon information from others, I have stated the source of such information.

2. Unless otherwise expressly indicated in this Affidavit, all capitalized terms used herein and not otherwise defined shall have the meanings used in the Affidavit I swore on August 2, 2022 (the "**First Affidavit**"), including the Sales and Investment Solicitation Process ("**SISP**") which is attached and marked as Exhibit "3" to the First Affidavit.
3. This Affidavit is sworn in support of an application returnable on September 28, 2022 (the "**Application**") before the Court of King's Bench of Alberta (the "**Court**") for an Order:
 - (a) Abridging the time for service of the Application and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
 - (b) Authorizing and empowering, but not requiring, Alvarez & Marsal Canada Inc. (the "**Proposal Trustee**"), or, alternatively, the Company, to act as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada;
 - (c) Authorizing the Foreign Representative to apply for foreign recognition and approval of these proceedings, if and as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 ("**Chapter 15 Proceedings**");
 - (d) Authorizing an increase in the Interim Financing Terms to increase the Interim Facility and the Interim Lender Charge by US \$75,000;
 - (e) Authorizing an increase in the Administration Charge in the amount recommended by the Proposal Trustee in its forthcoming Second Report of the Proposal Trustee (the "**Second Report**"), to be filed;
 - (f) Approving receipt and application of the sum of US \$800,000 (the "**Funds**") by Phillips 66 Gulf Coast Properties LLC ("**P66**") which it holds to reduce its provable claim;
 - (g) Pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"); extending the time by which the Company may file a proposal to its creditors for a 45 day period from the date following the current deadline such that the Company may file a proposal up to and including 11:59 pm (local Calgary time) on November 14, 2022 or such other date as this Court may order (the "**Extension**"); and
 - (h) Such further and other relief as the Company requests and this Court may grant;
(collectively, the "**Relief Sought**").



Keyera Texas Lawsuit Against Petrolama

4. Keyera Energy Inc. ("**Keyera**") commenced proceedings against Petrolama (and BB Energy USA LLC ("**BB**") in the United States District Court for the Southern District of Texas (the "**Texas Court**") on August 26, 2022 (the "**Keyera Lawsuit**").
5. Petrolama became aware of the Keyera Lawsuit on September 1, 2022 when it was served on the Company.
6. The "Summons in a Civil Action" (the "**Summons**") served with the Keyera Lawsuit states that Keyera must respond within 21 days after service has been effected.
7. Attached hereto and collectively marked as **Exhibit "A"** is a copy of the Keyera Lawsuit and the Summons.
8. The Keyera Lawsuit relates to the affairs of Petrolama. The Company asserts that the oil that is the subject of the Keyera Lawsuit (the "**Oil**") is not owned by and has never been owned by Petrolama such that, in Petrolama's view, the Keyera Lawsuit does not relate to the property of Petrolama.
9. The Company is aware that BB commenced proceedings against Keyera in Oklahoma in relation to the Oil but did not sue Petrolama.
10. The Company, through its counsel, has been in without prejudice discussions with Keyera and BB, including in relation to the subject matter of the Keyera Lawsuit.
11. It is the Company's position that the Keyera Lawsuit is, *inter alia*, invalid because it was filed with knowledge of and subsequent to the initial stay of proceedings in place in these proceedings on account of the filing by the Company of a Notice of Intention to file Proposal pursuant to section 50.4 (1) of the BIA on July 27, 2022 and after Keyera had participated in and attorned to them.
12. As a result of the Keyera Lawsuit, Petrolama may need to respond to the extent possible with a special appearance court filing in the Texas Court without prejudice to all of its rights, including to contest jurisdiction etc., or begin Chapter 15 Proceedings. It may be that failure to do so could undermine and frustrate the Company's ability to restructure its business to the detriment of the Company and its stakeholders.
13. Attached hereto and marked as **Exhibit "B"** is a copy of the letter (the "**Letter**") dated September 13, 2022 from Petrolama's counsel (redacted to exclude without prejudice aspects) to Keyera's Canadian counsel which accurately sets forth the primary substance of Petrolama's position regarding the Keyera Lawsuit.
14. Since sending the Letter, I am advised by counsel for Petrolama, Christa Nicholson KC, that she and Canadian counsel for Keyera have been in without prejudice discussions with a view to addressing the Keyera Lawsuit, including the requirement for Petrolama to



respond by September 22, 2022. Petrolama's hope is that it can avoid having to file proceedings in the Texas Court as noted above or Chapter 15 Proceedings.

15. Dealing with this matter has caused Petrolama to incur further expenses than were initially contemplated and further expenses will need to be incurred if Petrolama determines it must take any proceedings in the United States. (Given the circumstances, the Company intends to seek reimbursement of same from Keyera as stated in the Letter).

Foreign Representative

16. If it becomes necessary for Petrolama to file Chapter 15 Proceedings, it seeks:
 - (a) The Court's authorization and empowerment, but not the requirement, for the Proposal Trustee or, alternatively, the Company, to act as the Foreign Representative under sections 268 and 269 of the BIA in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada; and
 - (b) This Court's authorization for the Foreign Representative to apply for foreign recognition and approval of these proceedings, if and as necessary, in any jurisdiction outside of Canada, including in the United States.

Increase to the Interim Facility and the Interim Lender Charge

17. In light of the Keyera Lawsuit, given the potential for additional expenses to be incurred beyond what was originally contemplated, Petrolama as entered into an Amendment of the Interim Financing Terms with 884304, Alberta Ltd., as the Interim Lender, dated September 17, 2022(the "**Amendment**"). Attached hereto and marked as **Exhibit "C"** is a copy of the Amendment.
18. Petrolama seeks:
 - (a) Approval of the Amendment, including its increase of the Interim Facility by US \$75,000 thereunder; and
 - (b) An increase in the amount secured by the Interim Lender Charge to a maximum of CDN \$300,000 plus a further US \$75,000;(collectively, the "**Interim Lending Increase**").
19. The Interim Lender has indicated that absent the approval of the Interim Lending Increase, it is not willing to advance further funds to finance the Restructuring Process.
20. I believe the Amendment is fair and reasonable in the circumstances, having regard to, among other things: (a) the Keyera Lawsuit and associated costs; and (b) the likelihood



that the Interim Lending Increase will enhance the prospects of a viable proposal to the Company's stakeholders.

Increase to Administration Charge

21. As a result of the Keyera Lawsuit, counsel to the Company, the Proposal Trustee and the Proposal Trustee's counsel (the "**Administrative Professionals**") have now been engaged to complete additional work that was not contemplated at the time the initial Cash Flow Forecast was created.
22. I am currently working with the Proposal Trustee to create a new and updated cash flow forecast (the "**Updated Forecast**"). The Proposal Trustee will append the Updated Forecast to its Second Report.
23. In the Second Report it is expected that the Proposal Trustee will recommend increasing the amount secured by the Administration Charge (the "**Administration Increase**").
24. It is the view of the Company that the Administration Increase and the work of the Administrative Professionals will be necessary to fund Petrolama through the Restructuring Process.

P66 and the Funds

25. On September 7, 2022, Petrolama's counsel received a letter from P66's counsel, a copy of which is attached hereto and marked as **Exhibit "D"** (the "**P66 Letter**"). Since receiving the P66 Letter, Petrolama's counsel and P66's counsel have been working together to address the matters in the P66 Letter.
26. The P66 Letter refers to a Cash Collateral Agreement dated March 10, 2021 (the "**Cash Collateral Agreement**"). Attached hereto and marked as **Exhibit "E"** is a copy of the Cash Collateral Agreement.
27. Petrolama advanced the Funds to P66 under the Cash Collateral Agreement. The Cash Collateral Agreement states that P66 shall have "free and unrestricted right to use and dispose of all Funds it holds". It has always been the perspective of Petrolama that the Funds were the property of P66 and has treated the Funds as if they were already owned by P66.
28. P66 wishes to apply to Funds to reduce the amount of its provable claim. The Company and Proposal Trustee do not oppose this use of the Funds.

Form 44.1 (of the BIA) Notices re Disclaiming Contracts

29. On September 15, 2022, Petrolama sent to each of Keyera and P66 a Notice in Form 44.1 (the "**Notices**") pursuant to section 65.11 of the BIA disclaiming the agreements referred



to therein, copies of which are attached hereto and marked as **Exhibit "F"** and **Exhibit "G"**, respectively. The Notices indicate that they were approved by the Proposal Trustee.

Sales Process

30. On August 10, Justice K.M. Horner granted an Order (the "**Initial Extension Order**"), which, *inter alia*, extended the period within which the Company is required to file a proposal to its creditors with the Official Receiver under subsection 62(1) of the BIA to 11:59 pm (local Calgary time) on October 10, 2022 and approved the Sales and Solicitation Process (the "**SISP**").
31. Pursuant to the Initial Extension Order, the Proposal Trustee and Company began the SISP on August 12, 2022 and a teaser was circulated. Attached hereto and marked as **Exhibit "H"** is a copy of the teaser.
32. The Bid Deadline is September 23, 2022.
33. The SISP contemplates:
 - (a) The following steps if the Stalking Horse Bid is the Successful Bid:
 - (i) Filing the Stalking Horse Proposal and mailing the Creditor Package by October 3, 2022;
 - (ii) Holding a Creditor Meeting to vote on the Stalking Horse Proposal by October 26, 2022;
 - (iii) Applying to this Honourable Court for approval of Stalking Horse Bid by October 26, 2022; and
 - (iv) Closing the Stalking Horse Transaction and implementing the Stalking Horse Proposal by November 1, 2022; and
 - (b) The following steps if a Superior Offer is the Successful Bid:
 - (i) Applying to this Honourable Court for approval of the Successful Bid by October 12, 2022; and
 - (ii) Determining any further steps based on the structure of the Successful Bid.

Extension

34. The Extension is necessary in order to complete the steps in the SISP and advance a proposal. In order to continue to work toward the formulation and filing of a proposal, as further discussed above, the Company requires an extension, pursuant to section 50.4(9)



of the BIA, of the time period within which it may file a proposal to its creditors as outlined in the Relief Sought.

35. In this regard:

- (a) Having regard to what is set out above, the Company has acted and is acting in good faith and with due diligence both in the period prior to the granting of the Initial Order and in the period following the granting of the Initial Order;
- (b) The Company will likely be able to make a viable proposal through either the Stalking Horse Proposal or, if a Superior Offer is advanced in the SISP, by way of implementation of such Superior Offer; and
- (c) The expectation in the Stalking Horse Proposal is that if the Mexico Project is successfully advanced by Petrolama, its creditors have the opportunity to be paid their pro rata share of the Net Creditor Recovery Amounts (as defined in the Stalking Horse Proposal which is Schedule B to the Arrangement Agreement attached and marked as Exhibit "2" to the First Affidavit) as Proceeds are received by Petrolama, all as more particularly outlined in Article 6.6 of the Stalking Horse Proposal. The total Net Creditor Recovery Amounts could be as high as approximately \$9,000,000 USD. The alternative to filing a proposal is an assignment into bankruptcy by which Petrolama's creditors will receive nothing. As a result, no creditor will be materially prejudiced by the granting of the Relief Sought.

The deponent was not physically present before the Commissioner, but was linked with the Commissioner utilizing video technology and the process described in the *Notice to the Profession and Public: Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the Covid-19 Pandemic* was utilized.

SWORN BEFORE ME

on 18 day of September, 2022.

A Commissioner for Oaths in and for Alberta



PAUL FARLEY JOSLYN



This is **Exhibit "A"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



Service of Process Transmittal Summary

TO: Scott Holmes
PetroLama Energy Canada Inc.
715-5th Ave SW Ste 330
Calgary, AB T2P 2X6

RE: Process Served in Texas

FOR: PetroLama Energy Canada Inc. (Domestic State: AB)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Re: KEYERA ENERGY INC // To: PetroLama Energy Canada Inc.

CASE #: 422CV02919

NATURE OF ACTION: Monies Due and Owing - Services Rendered

PROCESS SERVED ON: C T Corporation System, Dallas, TX

DATE/METHOD OF SERVICE: By Process Server on 09/01/2022 at 03:18

JURISDICTION SERVED: Texas

ACTION ITEMS: SOP Papers with Transmittal, via UPS Worldwide Saver
Image SOP
Email Notification, Scott Holmes sholmes@petrolama.com

REGISTERED AGENT CONTACT: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201
877-467-3525
SmallBusinessTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Thu, Sep 1, 2022
Server Name: ernesto Herrera

Entity Served	PETROLAMA ENERGY CANADA INC.
Case Number	4-22-cv-2919
Jurisdiction	TX

Inserts		



EMHP5C4418

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas



9/1/22

KEYERA ENERGY INC.,

Plaintiff(s)

v.

PETROLAMA ENERGY CANADA INC., and
BB ENERGY USA LLC,

Defendant(s)

Civil Action No. H-22-2919

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PETROLAMA ENERGY CANADA INC.
c/o its Registered Service Agent in Texas:
CT Corporation System
1999 Bryan Street, Suite 900
Dallas, TX 75201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David H. Herrold and Scott K. Koelker, BURKE BOGDANOWICZ PLLC, 1201 Elm Street, Suite 4000, Dallas, TX 75270.

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: August 29, 2022



Nathan Ochsner, Clerk of Court

s/ Rhonda Moore-Konieczny
Signature of Clerk or Deputy Clerk

[Handwritten signature]

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEYERA ENERGY INC.,

Plaintiff,

vs.

PETROLAMA ENERGY CANADA INC.,
AND BB ENERGY USA LLC,

Defendants.

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Civil Action No. 4:22-cv-2919

COMPLAINT

Plaintiff KEYERA ENERGY INC., for its cause of action against Defendants PETROLAMA ENERGY CANADA INC., and BB ENERGY USA LLC, hereby alleges and states as follows:

PARTIES

1. Plaintiff KEYERA ENERGY INC. ("Keyera") is a Delaware corporation with its principal place of business in Houston, Texas.
2. Defendant PETROLAMA ENERGY CANADA INC. ("PetroLama") is incorporated in Alberta, Canada and has its principal place of business in Calgary, Alberta, Canada. PetroLama may be served through its Texas registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
3. Defendant BB ENERGY USA LLC ("BB Energy") is a Delaware limited liability company. BB Energy is a wholly owned subsidiary of BB Energy Holdings N.V., which is a foreign corporation organized under the laws of Curaçao and with its principal place of business

in Curaçao. BB Energy may be served through its Texas registered agent: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), (2), and/or (3), given that the parties are entirely diverse and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

5. The citizenships of the parties are **Delaware** and **Texas** (Keyera) *versus* **Canada** (PetroLama) and **Curaçao** and/or **United Arab Emirates** (BB Energy). As to the citizenship of the parties, Keyera would specifically allege and show:

- a. Keyera Energy Inc. Keyera is a corporation. Pursuant to 28 U.S.C. § 1332(c): “a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” Keyera is incorporated in the State of Delaware. Keyera’s principal place of business is in Houston, Texas. *See Hertz Corp. v. Friend*, 559 U.S. 77, 81 (2010) (principal place of business is “nerve center” where “the corporation’s high-level officers direct, control, and coordinate the corporation’s activities.”). Keyera is therefore a citizen of **Delaware and Texas** for diversity jurisdiction purposes.
- b. PetroLama Energy Canada Inc. PetroLama is a foreign corporation. It is incorporated in Alberta, Canada. Similarly, PetroLama’s principal place of business is in Calgary, Alberta, Canada. PetroLama is therefore a citizen of its foreign state, **Canada**, for diversity jurisdiction purposes.

- c. BB Energy USA LLC. BB Energy is a Delaware limited liability company. It is jurisdictionally irrelevant that BB Energy was formed in Delaware because the “citizenship of an LLC is determined by the citizenship of each of its members.” *See Greenwich Ins. Co. v. Capso Indus. Inc.*, 934 F.3d 419, 422 (5th Cir. 2019). BB Energy is a wholly owned subsidiary of BB Energy Holdings N.V. An “N.V.” abbreviation is for the Dutch phrase *naamloze vennootschap*, and is a common business structure in Dutch or Dutch-influenced nations. An N.V. entity is most like a domestic public company or corporation. An N.V. should be treated by this Court, and has been treated by other courts,¹ for diversity citizenship purposes as a corporation. BB Energy Holdings N.V. is incorporated in Curaçao. Its “nerve center” principal place of business is also within Curaçao or alternatively, on information and belief, Dubai, United Arab Emirates.² BB Energy is therefore, for diversity jurisdiction purposes, a citizen of **Curaçao and/or Dubai**.

6. This Court has personal jurisdiction over PetroLama and BB Energy as both are registered to do business within the State of Texas and subjected themselves to the jurisdiction of

¹ *See, e.g., Stockton v. CNH Indus. Am., LLC*, No. 16-CV-464-GKF-PJC, 2016 WL 11430713 (N.D.Okla. Sept. 29, 2016)(noting that the N.V. defendant “was *incorporated* under the laws of the Netherlands as a naamloze vennootschap, and other federal courts have treated Netherlands N.V.’s as corporations for the purposes of diversity jurisdiction analysis”); *De Wit v. KLM Royal Dutch Airlines, N.V.*, 570 F.Supp. 613, 616 (S.D.N.Y. 1983)(finding KLM to be a “Dutch corporation”); *BouMatic, LLC v. Idento Operations, BV*, 759 F.3d 790, 791 (7th Cir. 2014) (similar B.V. corporation). The Internal Revenue Service similarly treats N.V. entities as corporations for taxation purposes. *See* 26 C.F.R. § 301.7701-2(b)(8)(i).

² BB Energy Holdings N.V.’s business address is listed as “Van Engelenweg 23, Curaçao” on Page 62 of BB Energy’s 2022 Brochure available online at <https://www.bbenergy.com/brochure/mobile/index.html>. On information and belief, if BB Energy contends its principal place of business is not in Curaçao, Keyera alternatively alleges that it would then be in Dubai, United Arab Emirates, which is the worldwide business office of the ultimate parent company, BB Energy Group Holding Ltd., at DIFC, Emirates Financial Towers, South Tower, Unit S2102, Level 21, P.O. Box 340808, Dubai– UAE.

courts within Texas. This Court further has personal jurisdiction because both have either conducted a substantial amount of business in Texas, have or recently had offices and employees within the State of Texas, have purposefully availed themselves of the rights, benefits, and obligations of conducting business in Texas, have continuous, systematic contacts with Texas, and are otherwise at home and constitutionally subject to personal jurisdiction within the State of Texas. Further, PetroLama has also contractually agreed to submit to the personal jurisdiction of state or federal courts within Harris County, Texas in one or more of the contracts underlying this matter.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c). Specifically, as to both PetroLama and BB Energy, for § 1391 venue purposes, under (c)(2) both are defendant entities with the capacity to sue and be sued in their common names and therefore reside “in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question;” Because each are corporate entities with locations appearing within this judicial district, venue is proper under 28 U.S.C. § 1391(b)(1). Alternatively, if the Defendants contend they are non-residents of this district, then under Section 1391(c)(3) they are considered non-residents in the United States and therefore may be sued in any judicial district, including this judicial district. Finally, PetroLama has also contractually agreed to venue within this district in one or more of the contracts underlying this matter.

FACTUAL BACKGROUND

8. Keyera is the operator of the Wildhorse Terminal in Cushing, Oklahoma (“Wildhorse Terminal”).

9. The Wildhorse Terminal is a new-build crude oil storage and blending facility that includes 12 above-ground tanks with a working storage capacity of 4.5 million barrels. Operations at Wildhorse Terminal commenced on or about July 20, 2021 (the "Operational Date").

A. *PetroLama's Default*

10. PetroLama's business primarily focuses on trading crude oil throughout the United States and Canada.

11. On May 14, 2018, Keyera and PetroLama entered into that certain Crude Oil Storage Agreement for Keyera to provide 1,000,000 barrels of working storage capacity to PetroLama for a term of 6 years from the Operational Date.

12. On May 15, 2018, Keyera and PetroLama entered into a second Crude Oil Storage Agreement for Keyera to provide another 1,000,000 barrels of working storage capacity to PetroLama for a term of 4 years from the Operational Date. (For all material purposes here and unless otherwise expressly noted, the terms of the two Crude Oil Storage Agreements are identical and they are collectively referred to as the "PetroLama Storage Agreements.") PetroLama's 2,000,000 barrels of Customer Capacity is reserved in tanks 201, 202, 204, 214, and 216 at the Wildhorse Terminal.

13. Under the PetroLama Storage Agreements: "The storage fee shall be thirty-five cents (\$0.35) per working Barrel per month (the "Storage Fee") and shall be applied to the entire Customer Capacity and payable regardless of the volume of Product received or delivered pursuant to this Agreement." See PetroLama Storage Agreements at ¶ 5.1.

14. Shortly after the Operational Date, PetroLama commenced storing some crude oil at the Wildhorse Terminal under its 2,000,000 barrels of Customer Capacity.

15. However, PetroLama never paid its Storage Fees despite storing crude at the Wildhorse Terminal, and despite Keyera's monthly invoices to PetroLama.

16. On September 2, 2021, Keyera sent PetroLama a Notice of Customer Event of Default which detailed, among other things, two breaches by PetroLama of the PetroLama Storage Agreements: (1) failure to provide a letter of credit in favor of Keyera for 9 months of Storage Fees as required by Article 12 of the PetroLama Storage Agreements; and (2) failure to pay the Storage Fees that were then due, i.e., pro-rated Storage Fees for July 2021 (\$264,193.55).

17. Under the PetroLama Storage Agreements: a "Customer Event of Default" includes "failure by Customer to pay any undisputed amount due to Provider under this Agreement within ten (10) business days after the date of a written notice from Provider that Customer has failed to pay such amount when due." See PetroLama Storage Agreements at ¶15.2.

18. In accordance with the PetroLama Storage Agreements, Keyera requested in the Notice of Customer Event of Default that PetroLama cure its defaults by (1) providing a letter of credit in favor of Keyera as required by Article 12 of the PetroLama Storage Agreements within 10 days; and (2) paying its overdue Storage Fees within 10 business days.

19. PetroLama did not then, or thereafter, cure its defaults; it has made no payments of any Storage Fees to Keyera, nor has it provided the requisite letter of credit.

20. On or about October 13, 2021, Keyera sent a supplemental Notice of Customer Event of Default informing PetroLama that it had materially breached certain obligations under each PetroLama Storage Agreement by having failed to make payments for Storage Fees owed for July 2021 and August 2021, totaling \$946,693.55, and by having failed to provide adequate financial assurances as required under the PetroLama Storage Agreements.

21. At all material times, despite the Customer Event of Default and PetroLama's material breach of the PetroLama Storage Agreements, Keyera made good faith efforts to arrange a commercial resolution of the issues with PetroLama.

22. On July 8, 2022, Keyera again sent a demand letter to PetroLama concerning the continuing material breach.

23. As noted in that second default notice, "Although PetroLama has availed itself of crude storage services at the [Wildhorse] Terminal, no Storage Fees have been paid from July 2021 through May 2022," resulting in a total past due amount of \$7,089,193.55.

24. The amount past due continues to increase each month, and as of the date of this filing, PetroLama has paid no past due Storage Fees.

25. The PetroLama Storage Agreements expressly incorporate into their terms the Terminal Rules for the Wildhorse Terminal as may from time to time be amended, which provide, among other things, at ¶ 21 for a warehouse lien in favor of Keyera with respect to Product stored by PetroLama at the Wildhorse Terminal:

OPERATOR'S LIEN. Customer [*i.e.*, PetroLama] hereby acknowledges Operator's [*i.e.*, Keyera's] statutory lien rights on Customer's Product under Section 7-209 of the Uniform Commercial Code as well as Operator's other lien rights at law or in equity. In connection therewith, Customer agrees that Operator's monthly invoices constitute a bill of lading and a warehouse receipt and set forth the location where Customer's Product is stored, the date of receipt of Product, the applicable Fees for storage and/or terminalling and a general description of Customer's Product.

26. PetroLama failed to respond to Keyera's July 8th demand letter or to cure or correct its defaults under the PetroLama Storage Agreements.

27. Pursuant to ¶ 21 of the Terminal Rules, as incorporated into the PetroLama Storage Agreements, Keyera has a contractual and statutory warehouse lien on the Product stored in tanks 201, 202, 204, 214, and 216 at the Wildhorse Terminal.

B. BB Energy's Interest

28. BB Energy also trades crude oil and is another customer of Keyera's at the Wildhorse Terminal.

29. Under a separate Crude Oil Storage Agreement made effective June 15, 2018, with Keyera (the "BB Energy Storage Agreement"), BB Energy has contracted for the right to store as much as 1,000,000 barrels of Product serviced through tanks 203 and 206 at the Wildhorse Terminal.

30. On November 30, 2021, after Keyera's two Notices of Customer Event of Default were transmitted to PetroLama, and while the material breach of the PetroLama Storage Agreements was ongoing, PetroLama sent written notice to Keyera that "BB Energy purchased and owns the crude oil currently stored in PetroLama Energy Canada Inc. tanks located at the Wildhorse Terminal in Cushing, Ok." The letter went on to identify the tanks and approximate holdings as follows:

Tank # 216	~47,050 bbls Heavy
Tank # 214	~44,400 bbls Heavy
Tank # 204	~33,650 bbls Heavy
Tank # 202	~60,550 bbls Heavy
Tank # 201	~84,500 bbls Light
Terminal Line Fill	~4,600 bbls Heavy
Heavy Total =	~190,000 bbls
Light Total =	~84,500 bbls

(the "Crude Storage Notice").

31. A copy of the Crude Storage Notice was also transmitted to representatives, one or more, of BB Energy on that same date.

32. At no time material to the claims asserted in this action did Keyera ever receive, or did PetroLama or BB Energy deliver, any formal, contract-compliant transfer documentation that purported to transfer title in and to the Disputed Oil, as defined herein, from PetroLama to BB Energy as may have been authorized under the Storage Agreements or the Terminal Rules.

33. In receipt of the Crude Storage Notice, Keyera was informed that the crude oil sitting in PetroLama's tanks at the Wildhorse Terminal had putatively been purchased by BB Energy but remained in PetroLama's possession, and was entrusted to PetroLama and its possession, for storage purposes in PetroLama's assigned tanks at the Wildhorse Terminal.

34. Invoices for Storage Fees for the crude oil stored in PetroLama's assigned tanks at the Wildhorse Terminal, one or more, which were agreed to constitute warehouse receipts under the PetroLama Storage Agreements, were issued by Keyera and delivered to PetroLama with respect to the crude oil stored in its assigned tanks at the Wildhorse Terminal, both before and after receipt of the Crude Storage Notice ("Invoices").

35. Such Invoices were never paid, and the crude oil stored in PetroLama's assigned tanks serves as security for the payment of Keyera's warehouse lien against such Product.

36. The crude oil remains in the PetroLama-assigned tanks at the Wildhorse Terminal, and its proper disposition is the subject of this suit.

C. Storage Agreement Terms

37. Section 10.1 of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

Title: Custody. Customer must have good and merchantable title to all Product delivered to the Terminal by it or on its behalf. Provider

may reject any deliver of Customer's Product that Provider reasonable determines may be involved in litigation or involved in a title dispute. Title to the Product stored and/or handled hereunder will always remain with Customer.

38. Section 10.2 of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

Transfers of Product. Customer may transfer title to Customer's Product via a title transfer request to another Customer at the Terminal with sufficient storage capacity. Customer's title transfer request shall be an executed document that indicates the party to which the transfer is to be made, the amount of Product to be transferred, its location and grade, and a warranty statement of unencumbered title to the Product to be transferred. Notwithstanding the above, Provider shall be under no obligation to recognize intrasystem transfers....

39. Section 15.2(b) of the PetroLama Storage Agreements and the BB Energy Storage Agreement all provide in relevant part as follows:

If a Customer Event of Default as defined in Section 15.2(a) occurs:

(i) Provider may suspend the performance of all or any part of the Terminal Services for so long as the breach continues...

40. Section 5(a) of the Additional Terms and Conditions attached to and made part of the PetroLama Storage Agreements and the BB Energy Storage Agreement provides in applicable part:

Linefill and Tank Bottoms. Customer shall be responsible for providing sufficient Product to maintain all minimum tank operating levels and linefill inventory associated with the tankage and related piping within the Terminal.

41. Paragraph 5 of the Terminal Rules then provides in applicable part:

Crude Oil Nominations

Customer shall submit its crude oil nomination which shall include its good faith estimate of crude oil volumes for the months of receipt into, or delivery out of tank storage in its crude oil nomination to

Operator by 2:00PM Central time on the 25th day of the month preceding the month of delivery or receipt at Wildhorse Terminal....

If Operator determines, acting in a commercially reasonable manner, that it can accommodate the crude oil nomination, the crude oil nomination will be accepted. If Operator determines, acting in a commercially reasonable manner, that it cannot accommodate the crude oil nomination or the crude oil nomination is otherwise not acceptable, or Operator is unable to confirm the crude oil nomination with the applicable connecting carrier pipelines, the crude oil nomination will be rejected and sent back to Customer, with reasons for the rejection and, if applicable, instructions to resubmit a revised crude oil nomination.

...

Customer shall ensure that crude oil nominations do not result in the tank exceeding its maximum/minimum working volume, except for an intentional tank roof landing as permitted herein.

42. Paragraph 7 of the Terminal Rules provides, concerning Receipt and Delivery Batches: "For avoidance of doubt, Operator reserves the right to restrict deliveries to and from Wildhorse Terminal in the event such deliveries would result in Customer's tank being over-filled or the tank roof ending up below its low working level (unless for an intentional roof landing as permitted herein)."

D. *Conditions Precedent*

43. All conditions precedent, if any, required to bring this suit and the claims herein have occurred or have been waived.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Breach of Contract
(PetroLama)**

44. All allegations contained in this *Complaint* are fully incorporated herein.

45. The PetroLama Storage Agreements are valid and enforceable contracts.

46. PetroLama breached the PetroLama Storage Agreements by: (1) failing to post the required letters of credit for 9 months' Storage Fees in favor of Keyera; and (2) failing to pay any Storage Fees to Keyera from July 2021 to present.

47. PetroLama's breach has caused damage to Keyera, and as of the date of filing, the past due Storage Fees, for services rendered by Keyera at the Wildhorse Terminal from July 2021 to July 2022, owed by PetroLama to Keyera total \$8,454,193.55.

48. PetroLama's breach has further caused future damages to Keyera in that the contractual terms of the PetroLama Storage Agreements were for a 6-year term and a 4-year term, respectively, each subject to an annual fee escalation of 2%, meaning the total value of the contracts, of which Keyera has been wrongfully deprived, is approximately \$41,704,364.32, plus such consequential and incidental damages or losses.

49. Further, as a result of PetroLama's breach of the PetroLama Storage Agreements, Keyera has found it necessary to employ an attorney to enforce its legal rights, and Keyera seeks recovery of its attorneys' fees and expenses pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.

SECOND CLAIM FOR RELIEF
Declaratory Judgment
(PetroLama and BB Energy)

50. All allegations contained in this *Complaint* are fully incorporated herein.

51. An actual controversy exists between the parties concerning the rights, titles, interests and priorities in and to the approximately 125,701 barrels of Product presently stored in the PetroLama tanks 202, 204, 214, and 216 and held as linefill at the Wildhorse Terminal (the "Disputed Oil").

52. The Disputed Oil was delivered to the Wildhorse Terminal in accordance with PetroLama's obligations to provide linefill and tank bottoms.

53. Prior to the time of delivery of the Crude Storage Notice to Keyera and BB Energy, PetroLama had triggered a Customer Event of Default and Keyera was entitled to exercise all applicable remedies, including without limitation enforcement or foreclosure of its warehouse lien in, to and covering such Disputed Oil.

54. The Disputed Oil was in the possession of PetroLama at the time of delivery of the Crude Storage Notice to Keyera and BB Energy, and notwithstanding the Crude Storage Notice, the Disputed Oil remained in the possession of PetroLama, and such possession was further entrusted to PetroLama by BB Energy with the power to continue to store the same in PetroLama's assigned tanks at the Wildhorse Terminal with the express permission and authority of BB Energy, with the express knowledge that warehouse liens would be issued with respect to such Disputed Oil stored there.

55. No payment for Storage Fees relative to the Disputed Oil has ever been made to Keyera either prior to or after delivery of the Crude Storage Notice, and pursuant to the PetroLama Storage Agreements and applicable law, Keyera holds, is entitled to assert, and has asserted its valid contractual and statutory warehouse lien in and to the Disputed Oil pursuant to Section 7.209 of the Texas Business and Commerce Code.

56. Keyera has had and continues to have possession of the tanks holding the Disputed Oil and all of the Disputed Oil therein, and its perfected warehouse lien in and to the Disputed Oil, to secure payment of all Storage Fees plus any allowable expenses incurred in respect thereof, constitutes a valid, first and prior interest in and to the Disputed Oil, superior to all other rights, titles or interests therein.

57. PetroLama and BB Energy claim or may claim some right, title or interest in and to the Disputed Oil that may be alleged to conflict with the rights, titles and interests of Keyera therein or the claimed priority of its interest in and to the Disputed Oil, creating a controversy concerning those matters for which a judicial declaration is sought in this *Complaint*.

58. Pursuant to Section 2.710 of the Texas Business and Commerce Code, Keyera has or will shortly after the filing of this lawsuit deliver notice of sale of the Disputed Oil to PetroLama and BB Energy, specifically noting such sale shall be subject to the declaration, by this Court, of the rights, titles, and interests of the parties in and to the Disputed Oil and the respective priorities thereof.

59. Keyera, therefore, requests the Court take judicial cognizance of this action and render a declaratory judgment in Keyera's favor and against PetroLama and BB Energy, determining:

- a. Keyera holds a valid statutory and/or contractual warehouse lien in and to the Disputed Oil; *and*
- b. Keyera's warehouse lien in the Disputed Oil is superior and prior to any rights, titles and/or interests claimed in the same by PetroLama or BB Energy in the amount of and to the extent of the unpaid indebtedness owed by PetroLama to Keyera under the PetroLama Storage Agreements; *and*
- c. Keyera is legally authorized to assert, enforce and foreclose its warehouse lien in and to the Disputed Oil pursuant to § 7.210 Texas Business and Commerce Code, and any and all other applicable laws, via either public or private sale, and to retain the proceeds of such sale to satisfy its warehouse lien stemming from PetroLama's past-due and future contractual balances

owed for Storage Fees and any other allowable expenses incurred in connection with the storage of the Disputed Oil under the PetroLama Storage Agreements; *and*

- d. Either PetroLama and/or BB Energy shall have the right to redeem such Disputed Oil within a time set by the Court with respect to the intended private or public sale of the same to enforce and foreclose Keyera's warehouse lien.

60. Further, Keyera requests such other or further declarations from the Court as may be deemed necessary and just to effect the foregoing requested relief.

THIRD CLAIM FOR RELIEF

**Judicial Foreclosure of Warehouse Lien against Disputed Oil
(PetroLama and BB Energy)**

61. All allegations contained in this *Complaint* are fully incorporated herein.

62. Pleading alternatively in connection with the Second Claim for Relief, Keyera respectfully requests the Court authorize judicial foreclosure of Keyera's warehouse lien by directing or appointing the appropriate authority to sell the Disputed Oil pursuant to Section 7.210 of the Texas Business and Commerce Code, subject to the affect of and full value of Keyera's warehouse lien therein, provide all necessary notices attendant to such sale, and report the sale of the Disputed Oil for Keyera's benefit in accordance with applicable law and procedure.

FOURTH CLAIM FOR RELIEF

**Indemnification
(PetroLama)**

63. All allegations set forth in this *Complaint* are fully incorporated herein.

64. Section 16.1 of the Storage Agreements provides in applicable part:

Parties' Obligation to Indemnify and Hold Harmless. Each Party shall indemnify, defend, and hold harmless the other Party, its

respective parents, subsidiaries, Affiliates, successors and assigns and each of their officers, directors, managers, equity holders, employees and agents (the "**Indemnitees**") from any Claims or Losses to the extent resulting from the indemnifying Party's breach of any representation, warranty or covenant contained in this Agreement.

65. As a result of PetroLama's contractual breaches of the Storage Agreement, BB Energy may assert or has asserted claims against Keyera concerning the Disputed Oil.

66. Keyera is entitled to indemnity and to recover from PetroLama all losses, including attorneys' fees, expenses, and costs of defense, sustained by Keyera, if any, to BB Energy.

PRAYER FOR RELIEF

WHEREFORE, Keyera prays the Court will grant judgment in its favor and against PetroLama and BB Energy in accordance with the allegations herein, and specifically that Keyera be awarded:

1. judgment for damages in Keyera's favor and against PetroLama in an amount determined at trial, but in no event less than the sums alleged herein, plus any and all consequential and incidental losses to which Keyera is deemed entitled;
2. a declaratory judgment in Keyera's favor and against PetroLama and BB Energy as set forth above, finding Keyera's warehouse lien in and to the Disputed Oil to be valid, prior and superior to any other rights, titles and interests therein, including those of PetroLama and BB Energy, and specifically authorizing Keyera's public or private sale of the Disputed Oil pursuant to Section 7.210 of the Texas Business and Commerce Code to enforce and foreclose that warehouse lien to the extent determined by the Court;

3. alternatively, an order authorizing, in Keyera's favor and against PetroLama and BB Energy, the judicial foreclosure of Keyera's warehouse lien as against the Disputed Oil;
4. an assessment in Keyera's favor and against PetroLama and, to the extent allowed by law, BB Energy, of pre-judgment interest at the maximum amount allowed by law;
5. an assessment in Keyera's favor and against PetroLama of post-judgment interest at the maximum amount allowed by law;
6. an assessment in Keyera's favor of all of its attorneys' fees, expenses, consequential and incidental damages including the costs incurred in the bringing of this action; and
7. the provision in Keyera's favor and against Defendants of such other and further relief, at law or in equity, to which Keyera may be justly entitled.

Respectfully submitted,

s/ David H. Herrold

DAVID H. HERROLD
ATTORNEY-IN-CHARGE
Texas Bar No. 24107029
S.D. Texas Bar No. 3542296
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ALEXIA NICOLOULIAS

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anicoloulas@burkebog.com

With the law firm of:
BURKE BOGDANOWICZ PLLC
1201 Elm Street, Suite 4000
Dallas, TX 75270
Tel/Fax 214.888.2824

**Attorneys for the Plaintiff,
KEYERA ENERGY INC.**

ENTERED

August 30, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Keyera Energy Inc.
Plaintiff,

v.

BB Energy USA LLC, et al.
Defendant.

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CIVIL ACTION NO. 4:22-cv-02919

**ORDER FOR CONFERENCE AND
DISCLOSURE OF INTERESTED PARTIES**

1. Counsel and all parties appearing pro se shall appear for an initial pretrial and scheduling conference before

**Magistrate Judge Andrew M Edison
December 14, 2022, at 09:00 AM**

by video

United States Courthouse

2. Within fifteen days from receipt of this order, counsel shall file with the clerk a certificate listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded. If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.
3. NOTICE TO PARTIES ASSERTING FEDERAL JURISDICTION IN DIVERSITY CASES: Under 28 U.S.C. § 1332 there must be complete diversity between plaintiffs and defendants. Complete diversity requires that all persons on one side of the controversy be citizens of different states from all persons on the other side. The party asserting federal jurisdiction in a diversity action has the burden to demonstrate that there is complete diversity. The citizenship of limited liability entities is determined by the citizenship of their members. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008). When members of a limited liability entity are themselves entities or associations, citizenship must be traced through however many layers of members there are until arriving at the entity that is not a limited liability entity and identifying its citizenship status. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 (5th Cir. 2009). If the Complaint or Notice of Removal filed in this action does not show the citizenship of all limited liability entities, the plaintiff (if initiating the action in federal court) or the

defendant (if removing the action from state court) is ORDERED to file an amended complaint or notice of removal, respectively, within twenty days from the entry of this order. The failure to allege facts establishing complete diversity of citizenship may result in dismissal or remand of this action by the court on its own initiative without further notice.

4. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 90 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 90 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.
5. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel and all parties appearing pro se shall prepare and file, not less than 10 days before the scheduling conference, a joint discovery/case management plan containing the information required on the attached form.
6. The court will enter a scheduling order and may rule on any pending motions at the scheduling conference.
7. Counsel and all parties appearing pro se who file or remove an action must serve a copy of this order with the summons and complaint or the notice of removal.
8. Unless proceeding pro se, each party must be represented by an attorney who has knowledge of the facts and authority to bind the party at the scheduling conference.
9. Prior to the scheduling conference, counsel and all parties appearing pro se shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference advise the court of the results of their discussions.
10. A person proceeding pro se is bound by the requirements imposed upon counsel in this Order.
11. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

Court's Procedures: Information on the court's practices and procedures and how to reach court personnel may be obtained at the Clerk's website at www.txs.uscourts.gov or from the intake desk of the Clerk's office.

By Order of the Court



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Keyera Energy Inc.
Plaintiff,

v.

BB Energy USA LLC, et al.
Defendant.

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CIVIL ACTION NO. 4:22-cv-02919

JOINT DISCOVERY/CASE MANAGEMENT PLAN
under Rule 26(f) of the
Federal Rules of Civil Procedure

(Please restate the instruction before furnishing the responsive information.)

1. State where and when the conference among the parties required by Rule 26(f) of the Federal Rules of Civil Procedure was held, and identify the counsel who attended for each party, including name, address, bar number, phone and fax numbers, and email addresses.
2. List the cases related to this one that are pending in any state or federal court with the case number and court, and state how they are related.
3. Briefly describe what this case is about.
4. Specify the allegation of federal jurisdiction.
5. Name the parties who disagree with the plaintiff's jurisdictional allegations and state their reasons.
6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.
7. List anticipated interventions.
8. Describe class-action issues.
9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.



10. Describe the proposed agreed discovery plan, including:
 - a. responses to all the matters raised in Rule 26(f), including any agreements (and disputes) concerning electronic discovery;
 - b. when and to whom the plaintiff anticipates it may send interrogatories;
 - c. when and to whom the defendant anticipates it may send interrogatories;
 - d. of whom and by when the plaintiff anticipates taking oral depositions;
 - e. of whom and by when the defendant anticipates taking oral depositions;
 - f. (i) the date experts for plaintiff (or party with the burden of proof on an issue) will be designated and their reports provided to opposing party;
(ii) the date experts for defendant will be designated and their reports provided to opposing party;
 - g. list of expert depositions the plaintiff (or party with the burden of proof on an issue) anticipates taking and their anticipated completion date (*see* Rule 26(a)(2)(B) (expert report)); and
 - h. list of expert depositions the defendant (or opposing party) anticipates taking and their anticipated completion date (*see* Rule 26(a)(2)(B) (expert report)).
11. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.
12. Specify the discovery beyond initial disclosures that has been undertaken to date.
13. State the date the planned discovery can reasonably be completed.
14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.
15. Describe what each party has done or agreed to do to bring about a prompt resolution of this dispute.
16. From the attorneys' discussion with their client(s), state the alternative dispute resolution techniques that are reasonably suitable.
17. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.
18. State whether a jury demand has been made and if it was made on time.



19. Specify the number of hours it will take to try this case (including jury selection, presentation of evidence, counsel's opening statements and argument, and charging the jury).
20. List pending motions that could be ruled on at the initial pretrial conference.
21. List other motions pending.
22. Indicate other matters peculiar to this case, including but not limited to traditional and electronic discovery issues, that deserve the special attention of the court at the conference.
23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.
24. List the names, bar numbers, addresses, email addresses, and telephone numbers of all counsel.

Counsel for Plaintiff(s)

Date

Counsel for Defendant(s)

Date



This is **Exhibit "B"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



Direct Line:
Email:
Assistant - Sarah Sklar
File No:

(403)571-1053
nicholsonc@jssbarristers.ca
(403)571-0739
15378.001

BY EMAIL (RZahara@mltaikins.com)

September 13, 2022

Mr. Ryan Zahara
MLT Aikins LLP
2100 Livingston Place, 222 3rd Avenue SW
Calgary, T2P 0B4

Dear Mr. Zahara:

Re: In the Matter of the Notice of Intention ("NOI") of Petrolama Energy Canada Inc. ("Petrolama") to make a proposal under s. 50.4(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (the "BIA"); Court file no. B201 851343 (the "Insolvency Proceedings")

And Re: Keyera Energy Inc. ("Keyera"), a Delaware and Texas company v. BB Energy USA LLC ("BB"), a Curacao and/or United Arab Emirates company; PetroLama, a Canadian company; Court file no. 4:22cv2919 (the "Complaint")

As you know, we act for Petrolama in the Insolvency Proceedings. Petrolama filed its NOI on July 27, 2022 and since that date, for a period of 30 days thereafter, a stay of proceedings ("**Stay**") was automatically in place pursuant to s. 69 the BIA.

As you also know, Petrolama brought an application on notice to Keyera returnable in the Alberta Court of Queen's Bench - now the Court of King's Bench (the "**Alberta Court**") - on August 10, 2022 to, among other things, effect an extension of the Stay. You requested to be added to the Service List and appeared in the Alberta Court at the application on behalf of Keyera.

As you are aware, on August 10, 2022, an Order (the "**Stay Extension Order**") was granted to, among other things, extend the Stay until 11:59 pm on October 10, 2022.

We confirm that Petrolama was served with the attached Complaint which is stated on its face to have been filed on August 26, 2022. It contains a claim by Keyera against Petrolama which is provable in bankruptcy.

It is Petrolama's position that:

1. Through its actions, including participation in the Insolvency Proceedings as noted above, even purportedly without prejudice to any rights it has in the USA, Keyera has attorned to the jurisdiction of the Alberta Court, including under the BIA;



2. Particularly in light of the fact that Petrolama has neither assets nor operations in the USA the Stay and its extension effected pursuant to the Stay Extension Order are not territorially limited and they affect and bind Keyera by preventing it from commencing or continuing any action or proceeding for the recovery of a claim provable in bankruptcy which includes the Complaint; and
3. The filing of the Complaint in the face of the Stay and the Stay Extension Order is invalid.

Accordingly, we require that Keyera immediately withdraw the Complaint against Petrolama.

Alternatively, Petrolama seeks Keyera's agreement that the Complaint shall be immediately stayed at this stage without the need of further steps being taken by Petrolama. We also seek confirmation from Keyera that it will participate and make its claim in the Insolvency Proceedings and agree to be bound by them.

If Petrolama does not receive a favourable response to the foregoing from you by **12:00 noon MST on September 15, 2022**, Petrolama will have no choice but to, among other things, proceed with a Chapter 15 filing in the United States under the US Bankruptcy Code and will be claiming the costs of same against Keyera.



Yours truly,
Jensen Shawa Solomon Duguid Hawkes LLP



Christa Nicholson KC

Partner

CN:ss

Encl.

cc: David H. Herrold (dherrold@burkebog.com), attorneys for Keyera regarding the Complaint
Kelly Bourassa (kelly.bourassa@blakes.com) and James Reid (james.reid@blakes.com), counsel for Alvarez & Marsal Canada Inc. in their capacity as Proposal Trustee
Orest Konowalchuk (okonowalchuk@alvarezandmarsal.com); Cassie Riglin (criglin@alvarezandmarsal.com); and Jill Strueby (jstrueby@alvarezandmarsal.com), Proposal Trustee
Angad Bedi (bedi@jssbarristers.ca)
Client

This is **Exhibit "C"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



AMENDMENT TO INTERIM FINANCING TERMS

THIS AGREEMENT is dated September 17, 2022 between:

884304 ALBERTA LTD., a corporation incorporated and existing under the laws of Alberta (hereinafter referred to as the "**Interim Lender**")

- and -

PETROLAMA ENERGY CANADA INC., a corporation incorporated and existing under the laws of Alberta (hereinafter referred to as the "**Borrower**" or the "**Company**")

WHEREAS on July 27, 2022, the Company filed a notice of intention to make a proposal (the "**NOI**") pursuant to section 50.4(1) of the BIA (as defined herein) with the official receiver (as defined in the BIA);

AND WHEREAS the Company entered into Interim Financing Terms with the Interim Lender which are attached as Exhibit "4" to the Affidavit of Paul Farley Joslyn, filed August 4, 2022 (the "**Interim Financing Terms**");

AND WHEREAS the Company and the Interim Lender wish to change the definition of "Interim Financing" to increase the same by adding a further US \$75,000;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT IN CONSIDERATION of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

Unless otherwise expressly provided in this Agreement, capitalized terms will have the same meaning as ascribed to them in the Interim Financing Terms.

1.2 Interpretation Not Affected by Headings

The division of this Agreement into Articles, Sections, subsections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

1.3 Article References

Unless the contrary intention appears, references in this Agreement to an Article, Section, subsection, paragraph or Schedule by number or letter or both refer to the Article, Section, subsection, paragraph or Schedule, respectively, bearing that designation in this Agreement.

1.4 Currency

Unless otherwise stated, all references in this Agreement to sums of money are expressed in lawful money of Canada.

ARTICLE 2 AMENDMENTS

2.1 General

All terms of the Interim Financing Terms shall remain in full force and effect and unamended except as expressly set forth herein and supplemented hereby.

2.2 Section 5

The definition of "**Interim Facility**" in Section 5 of the Interim Financing Terms is hereby amended by replacing "\$300,000" with "\$300,000 plus US \$75,000".

2.3 Section 6

For greater certainty, the definition of "**Interim Financing Credit Documentation**" in Section 6 of the Interim Financing Terms shall be understood and construed to include this Agreement.

2.4 Section 7.1

The definition of "**Funding Conditions**" in Section 7.1 of the Interim Financing Terms shall be expanded to add the following:

"11. With respect only to any Interim Advance pertaining to the US \$75,000 the Court shall have issued a further Order on or before September 28, 2022 satisfactory to the Interim Lender approving this Agreement and increasing the Interim Lender Charge by US \$75,000."

2.5 Schedule "A"

The following definition shall be added to Schedule "A" of the Interim Financing Terms:

"US \$" means the lawful money of the United States of America.

ARTICLE 3 GENERAL PROVISIONS

3.1 Entire Agreement

This Agreement supersedes all other agreements, documents, writings and verbal understandings between the Parties relating to the subject matter hereof and expresses the entire agreement of the Parties with respect to the subject matter hereof.

3.2 Time of Essence

Time shall be of the essence in this Agreement.

3.3 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Province of Alberta and the Laws of Canada applicable therein, and the Parties hereto irrevocably attorn to the jurisdiction of the courts of the Province of Alberta.

3.4 Severability

If any one or more of the provisions or parts thereof contained in this Agreement should be or become invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions or parts thereof contained herein shall be and shall be conclusively deemed to be, as to such jurisdiction, severable therefrom and:

- (a) the validity, legality or enforceability of such remaining provisions or parts thereof shall not in any way be affected or impaired by the severance of the provisions or parts thereof severed; and
- (b) the invalidity, illegality or unenforceability of any provision or part thereof contained in this Agreement in any jurisdiction shall not affect or impair such provision or part thereof or any other provisions of this Agreement in any other jurisdiction.

Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

3.5 Counterparts

This Agreement may be executed by facsimile or other electronic signature and in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument.

[Signature page follows]




IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

884304 ALBERTA LTD.

By: 
Per: Scott Holmes
Title: Director

PETROLAMA ENERGY CANADA INC.

By: _____
Per: Paul Joslyn
Title: Chief Financial Officer




IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

884304 ALBERTA LTD.

By: _____
Per: Scott Holmes
Title: Director

PETROLAMA ENERGY CANADA INC.

By:  _____
Per: Paul Joslyn
Title: Chief Financial Officer



This is **Exhibit "D"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
4300 Bankers Hall West
888 - 3rd Street S.W.
Calgary, AB Canada T2P 5C5

Main: 403 266 9000
Fax: 403 266 9034
www.stikeman.com

Jakub Maslowski
Direct: +1 403 724 9465
jmaslowski@stikeman.com

September 7, 2022
File No.: 137023.1010

By E-mail

Alvarez & Marsal Canada ULC
Suite 1110, 250 – 6th Avenue SW
Calgary, AB T2P 3H7

Attention: Orest Konowalchuk, Cassie Riglin and
Jill Strueby

Blake, Cassels & Graydon LLP
Suite 3500, 855 - 2 St. SW
Calgary, AB T2P 4J8

Attention: Kelly Bourassa and James Reid

Jensen Shawa Solomon Duguid Hawkes LLP
800, 304 - 8 Avenue SW
Calgary, Alberta T2P 1C2

Attention: Christa Nicholson, QC and Angad Bedi

Dear Mesdames and Sir:

RE: **Notice of Intention to Make A Proposal Under s. 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "NOI") of Petrolama Energy Canada, Inc. ("Petrolama")
Alberta Court of Queen's Bench File No. 25-2851343**

We have been retained by Phillips 66 Gulf Coast Properties LLC ("P66") in respect of the above-referenced NOI of Petrolama. We kindly ask to be added to the service list and that any materials related to this NOI be directed to our attention.

We write to provide further context to the Terminal Services Agreement dated August 20, 2018 between Petrolama and P66 (the "TSA") and extensions to same, as well as notice of a cash collateral agreement between the parties pursuant to which P66 is a secured creditor.

As you are likely aware, the parties' obligations under the TSA were initially suspended pursuant to a letter agreement dated March 10, 2021 (the "**Letter Agreement**"). The Letter Agreement has since been amended four (4) times, most recently on June 30, 2022 (the "**Fourth Amendment**"), to extend the suspension of the parties' obligations under the TSA until August 31, 2022. Attached for your reference are the Letter Agreement and Fourth Amendment.

Contemporaneous with the execution of the Letter Agreement, Petrolama and P66 entered into a cash collateral agreement dated March 10, 2021 (the "**Cash Collateral Agreement**"), a copy of which is attached.

Pursuant to the Cash Collateral Agreement, Petrolama provided P66 with a first priority security interest in USD\$800,000.00 (the "**Funds**") to secure Petrolama's past and future obligations under the TSA, which obligations resumed on September 1, 2022 with the expiry of the Fourth Amendment. The Funds were delivered to and held by P66 pursuant to the terms of the Cash Collateral Agreement.

Petrolama has not resumed the performance of its obligations under the TSA as required by the Letter Agreement and Fourth Amendment, and appears to have no intention of doing so in the future given that it is proposing to repudiate the TSA in this NOI proceeding. Further, P66 has no intention of granting any further extensions to the Letter Agreement.

In light of the foregoing, P66 proposes offsetting the Funds it holds as first priority security holder from the total amount of its claim, which we can advise is equal to the Minimum Revenue (Tank Lease Fee Only) for the remaining term of the TSA (September 1, 2022 – October 31, 2024) in the amount of USD\$7,070,962.30¹. Further particulars will be provided in P66's Proof of Claim.

Should you have any questions or would like to discuss, please feel free contacting the undersigned.

Yours truly,

STIKEMAN ELLIOTT LLP



Jakub Maslowski

cc: Phillips 66 Gulf Coast Properties LLC
Attn: Candace S. Schiffman, Senior Counsel (via email)

Encls.

¹ This amount is not adjusted for the 2023 and 2024 calendar years, as permitted under Section 4.02 of the TSA.



This is **Exhibit "E"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



CASH COLLATERAL AGREEMENT

Cash Collateral Agreement made as of this 10th day of March 2021 by and between Phillips 66 Gulf Coast Properties, LLC ("P66") and Petrolama Energy Canada, Inc. ("Customer"), individually a party and collectively, the parties.

WHEREAS, the Parties previously entered into that certain Terminal Services Agreement, dated August 20, 2018 ("TSA") and as part of the TSA Customer secured its obligations with the tank heels to Customer's product located at P66's facility;

WHEREAS, contemporaneously with the execution of this Cash Collateral Agreement, the Parties are entering into a Suspension Agreement to temporarily suspend the obligations of both parties as stated in the TSA ("Suspension Agreement");
Agreement

WHEREAS, during the term of the Suspension Agreement, Customer will not own the product located at P66's facility and according Customer will not have provided during this period Performance Assurance as required under the TSA; and accordingly P66 is requiring that Customer post cash collateral to provide assurances that Customer will resume performance upon the conclusion of the Suspension Agreement;

In consideration of the mutual terms and conditions hereinafter set forth, the parties agree:


1. Customer shall deliver US Dollars by wire transfer of immediately available funds ("Funds") in an amount no less than US\$200,000. Such transfer of Funds shall be made no later than 5 p.m. Prevailing Central Time on April 2, 2021.
2. Customer grants to P66 a first priority security interest in all Funds provided by Customer pursuant to this agreement to secure all present and future obligations of Customer under the TSA. P66 shall have the free and unrestricted right to use and dispose of all Funds it holds, subject only to its obligations to return such if and when so required under this agreement. Customer shall have no authority to designate the management or investment alternatives for Funds posted to P66 in accordance with this agreement.
3. P66 is authorized and may, in its sole discretion and without prior written notice to Customer, apply the Funds posted hereunder or any portion thereof against any indebtedness Customer may owe to P66 in accordance with the terms of the TSA, whether during the term of the Suspension Agreement or thereafter. In the event P66 applies Funds held, such application shall not be construed as a waiver of any of P66's rights or remedies with respect to amounts due and owing from Customer.
4. This agreement and P66's right to hold Funds hereunder, shall terminate three business days after the and redelivery of tank heels into the Terminal by Customer, as determined by P66, following the termination of the Suspension Agreement.
5. This agreement is in addition to, supplements and forms a part of all terms governing the TSA, and shall be incorporated into the terms of the TSA. A failure to provide Funds hereunder shall be either a failure to provide credit support, however described in the terms




of the TSA, or a failure to pay, and in such event, P66 may exercise all rights and remedies of a non-defaulting party pursuant to such TSA.

IN WITNESS WHEREOF, P66 and Customer execute this Cash Collateral Agreement as of the day and year first above written.

Phillips 66 Gulf Coast Properties, LLC
By its Agent, Phillips 66 Company

justin

By: GRAHAM FISHER
MANAGING DIRECTOR
~~Customer's Tax ID:~~

PetroLama Energy Canada Inc.


By: Scott Holmes
President
PetroLama Energy Canada Inc.



This is **Exhibit "F"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



FORM 44.1

Notice by Debtor to Disclaim or Resiliate an Agreement
(Section 65.11 of the *Bankruptcy and Insolvency Act* (Canada) (the "Act"); Rule 94.1)

To Alvarez & Marsal Canada Inc., Proposal Trustee, and Keyera Energy Inc., party to the Agreements (as hereinafter defined)

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of Petrolama Energy Canada Inc. (the "Debtor") was filed under subsection 50.4 of the Act on the 27th day of July, 2022.
2. Pursuant to subsection 65.11(1) of the Act, the Debtor hereby gives you notice of its intention to disclaim or resiliate the following agreements (hereinafter the "Agreements"):
Crude Oil Storage Agreement made effective as of May 14, 2018 by and between Keyera Energy Inc., as operator and Petrolama Energy Canada Inc.
Crude Oil Storage Agreement made effective as of May 15, 2018 by and between Keyera Energy Inc., as operator and Petrolama Energy Canada Inc.
3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the Agreements may, with notice to the other parties to the Agreements and the trustee, apply to the Court for an order that the one or more of the Agreements are not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the Agreements will become effective on the 16th day of October, 2022 (being 30 days after the date on which this notice has been given).

Dated at Hamburg, Germany, this 15th day of Sept, 2022.


Petrolama Energy Canada Inc.

The Proposal Trustee approves the proposed disclaimer or resiliation.

Dated at Calgary, Alberta, this 15th day of September, 2022


Licensed Insolvency Trustee

This is **Exhibit "G"** referred to in the Affidavit of Paul Farley Josyln, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



FORM 44.1

Notice by Debtor to Disclaim or Resiliate an Agreement
(Section 65.11 of the *Bankruptcy and Insolvency Act* (Canada) (the "Act"); Rule 94.1)

To Alvarez & Marsal Canada Inc., Proposal Trustee, and Phillips 66 Gulf Coast Properties LLC, party to the Agreement
(as hereinafter defined)

TAKE NOTICE THAT:

1. A notice of intention to make a proposal in respect of Petrolama Energy Canada Inc. (the "Debtor") was filed under subsection 50.4 of the Act on the 27th day of July, 2022.
2. Pursuant to subsection 65.11(1) of the Act, the Debtor hereby gives you notice of its intention to disclaim or resiliate the following agreement (hereinafter the "Agreement"):
Terminal Services Agreement by and between Phillips 66 Gulf Coast Properties LLC and Petrolama Energy Canada Inc. for terminal services in Nederland, Texas made and entered into as of August 20, 2018 including any amendments or extensions to same
3. Pursuant to subsection 65.11(3) of the Act, within 15 days after the date on which this notice is given, any party to the Agreement may, with notice to the other parties to the Agreement and the Proposal Trustee, apply to the Court for an order that the Agreement is not to be disclaimed or resiliated.
4. Pursuant to subsection 65.11(6) of the Act, if no application for an order is made in accordance with subsection 65.11(3) of the Act, the disclaimer or resiliation of the Agreement will become effective on the 16th day of October, 2022 (being 30 days after the date on which this notice has been given).

Dated at Hamburg, Germany, this 15th day of Sept, 2022


Petrolama Energy Canada Inc.

The Proposal Trustee approves the proposed disclaimer or resiliation:

Dated at Calgary, Alberta, this 15th day of September, 2022


Licensed Insolvency Trustee



This is **Exhibit "H"** referred to in the Affidavit of Paul Farley Joslyn, sworn before me on September 18, 2022

A Commissioner for Oaths in and for Alberta



Sales and Investment Solicitation Process – Division 1 Proposal
Acquisition Opportunity: Petrolama Energy Canada Inc.
North American Energy business, participating in an extraction project in Texistepec, Mexico



PETROLAMA
Energy Canada Inc.

Bid Deadline: September 23, 2022



Acquisition Opportunity

About Petrolama Energy Canada Inc.

Petrolama Energy Canada Inc. ("**Petrolama**" or the "**Company**"), is a Calgary based oil and gas energy company.

In April 2019, the Company started a new project in Mexico with two US based companies: Lago Energy Corp. and Deep Blue Petroleum LLC. The project contemplates using Deep Blue Petroleum's technology to extract residue waste material from a long-standing pool or lagoon in Texistepec, Mexico that is on site from prior years of significant mining (the "**Mexico Project**").

Throughout 2019 and 2020, the Company invested in the Mexico Project with a goal to ship residue material to US Gulf Coast refineries as feedstock. It is estimated that there will be 4 million barrels of the residue material recovered.

A Commodities Sales/Purchase Agreement (the "**Agreement**") was entered into in 2019, and subsequently amended in 2021, which allows Petrolama to sell the crude oil extracted from the residue materials and pay the proceeds to the service providers, suppliers and financiers who have contributed to the Mexico Project pursuant to a waterfall payment structure as outlined in the Agreement. Pursuant to the Agreement, Petrolama has the potential to collect marketing fees from the sale of each barrel and has the potential to further collect a portion of the residual proceeds of sales pursuant to the Agreement.

In addition to the Mexico Project, Petrolama has a deferred tax asset of approximately \$1.5 million which was created on the 2020 and 2021 tax returns.

Division 1 Proposal

On July 27, 2022, Petrolama Canada Energy Inc. filed a Notice of Intention to Make a Proposal, pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act* and Alvarez & Marsal Canada Inc. ("**A&M**") was named as the Proposal Trustee. Furthermore, the Court of Queen's Bench of Alberta (the "**Court**") granted an order (the "**Order**") approving a sales and investment solicitation process ("**SISP**") and a stalking horse proposal as the "Stalking Horse Bid" thereunder on August 10, 2022.

The SISP allows A&M and the Company to solicit further offers for the Company or assets of the Company that may be superior to the "Stalking Horse Bid", including its deeming of the Stalking Horse Proposal to be, among other things, a Qualified Bid. Further information regarding the SISP can be found on the following page or on A&M's website at www.alvarezandmarsal.com/petrolama.

Acquisition Highlights



\$9.25 million USD of invested capital in the Mexico Project



Proceeds received from the sale of potentially over 4 million barrels of residue materials



Potential gross profit to Petrolama of over \$18.0 million USD under the Commodities Sale/Purchase Agreement



Deferred Tax Asset of approximately \$1.5 million

Handwritten signature or initials.



Additional Information

Next Steps

A&M is conducting the SISP in accordance with the Court Order dated August 10, 2022. The respective SISP documents can be found on the Proposal Trustee's website: www.alvarezmarsal.com/petrolama.

Per the SISP, any interested party must abide by the following:

- **Purchase Price:** Must be a "Superior Offer" as defined in the SISP
- **Bid Deadline:** 5:00pm (Calgary Time) on **September 23, 2022**
 - In the event that no Qualified Bid other than the Stalking Horse Proposal is received by the Bid Deadline, then (a) the Stalking Horse Proposal will be deemed to be the Successful Bid; (b) the Stalking Horse Bidder shall be deemed to be the Successful Bidder, and (c) the Company and the Proposal Trustee shall take all necessary steps to complete the Stalking Horse Proposal and the transactions provided for therein
 - In the event that the Proposal Trustee determines that one or more Qualified Bids constitutes a Superior Offer, the Proposal Trustee may approach all Qualified Bidders to submit a highest and best offer. The Proposal Trustee shall select the highest or best Qualified Bid, notify that party as soon as practicable and seek court approval of same.
- The Court approved SISP includes a Court approved Stalking Horse Proposal, a copy of the Stalking Horse Proposal is available for review on the Proposal Trustee's website.
- The Stalking Horse Proposal contemplates a transaction whereby the proposed purchaser becomes the sole shareholder of the Company in exchange for providing funding under the NOI proceedings and making a proposal to the creditors of the Company to share in the Company's profits generated from under the Agreement.
- Petrolama Energy Canada Inc. and/or its assets are being offered on an "as is where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Proposal Trustee whatsoever.

Interested parties who wish to pursue a potential acquisition are required to execute a Non-Disclosure Agreement, which is available upon request, in order to receive access to additional information. Please contact a representative of the Proposal Trustee listed below for further information.

A&M reserves the right at any time to amend or terminate these sale procedures, to decline an interested party the ability to participate in the process, to terminate the discussions with any or all interested parties, to reject any or all offers, or to negotiate with any party with respect to a possible transaction.



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