

Clerk's Stamp

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25-2332610
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COURT QUEEN'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF MANITOK ENERGY INC.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF RAIMOUNT ENERGY CORP.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF CORINTHIAN OIL CORP.

APPLICANT TANTALUS ENERGY CORP.

RESPONDENT EMBER RESOURCES LTD.

DOCUMENT **APPLICATION BY TANTALUS ENERGY CORP.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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File No. A158569

Attention: Tom Cumming / Caireen E. Hanert

NOTICE TO RESPONDENT: EMBER RESOURCES LTD.

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

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

Date: Wednesday, May 1, 2019
Time: 10:00 am
Where: Calgary Courts Centre, 601 – 5th Street SW
Before Whom: The Honourable Mr. Justice Jones

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

Remedy claimed or sought:

1. The Applicant Tantalus Energy Corp. ("**Tantalus**") seeks the following relief:
 - (a) A declaration that:
 - (i) Until the completion of the Purchase and Sale Agreement dated November 23, 2018 between Alvarez & Marsal Canada Inc. as Receiver of Manito Energy Inc. (the "**Receiver**") and Tantalus (the "**Tantalus PSA**"), Manito Energy Inc. is the legal and beneficial owner certain pipeline segments (the "**Disputed Pipelines**"), which are defined in paragraph 1.1(s) of the Tantalus PSA as the "Disputed Ember Assets"; and
 - (ii) After the completion of the Tantalus PSA, Tantalus is the legal and beneficial owner of the Disputed Pipelines;
 - (b) An order directing Ember Resources Ltd. ("**Ember**") to pay forthwith the amount determined to be owing by Ember by the Alberta Energy Regulator ("**AER**") for usage of the Disputed Pipelines from March 2, 2017 to the date of determination as a result of the common carrier and common processor applications brought by Tantalus or the Receiver;
 - (c) An order permitting set off of any amounts determined by the AER to be owing by the estate of Manito Energy Inc. ("**Manitok**") or Tantalus, or both, as the case may be, from any amounts owed by Ember under paragraph 1(b) hereof;
 - (d) An order directing Ember to pay interest on the amounts determined by the AER under paragraph 1(b) hereof pursuant to the *Judgment Interest Act*, RSA 2000, cJ-1, as amended;
 - (e) Costs of the proceedings in relation to the Disputed Pipelines, inclusive of the Application filed by Ember on September 11, 2018 and the Amended and Restated Application filed by Ember on February 1, 2019, on a solicitor and own client basis, or such other enhanced basis as may be deemed appropriate; and

- (f) Such further and other relief as may be sought by Tantalus and which this Honourable Court may deem appropriate.

Grounds for making this application:

PART 1 – DISPUTED PIPELINES OWNERSHIP ISSUE

2. In or about February 2017, Manitok became aware that Encana Corporation (“**Encana**”) was selling its assets in the Bruce Farms Alberta area (the “**Bruce Farms Assets**”). Manitok was interested in purchasing the Bruce Farms Assets, and closed the purchase with Encana on March 1, 2017. The Bruce Farms Assets included the Disputed Pipelines.
3. Manitok did not learn of Ember’s purported claim to the Disputed Pipelines until after closing the purchase and sale of the Bruce Assets. It was only after the AER approved the transfer of the licenses in relation to the Bruce Farms Assets, including the Disputed Pipelines, to Manitok from Encana, on or about April 26, 2017, that Ember notified Manitok that it had submitted a Request for Regulatory Appeal of the Licence Transfer to the AER.
4. Ember made its Request for Regulatory Appeal on the basis that it, and not Manitok, was the owner of the Disputed Pipelines. Ember claimed that:
 - (a) Ember had purchased the Disputed Pipelines as part of a transaction between Ember and Encana that closed January 15, 2015 (the “**Ember PSA**”);
 - (b) Encana had made a mistake in excluding the Disputed Pipelines from the Ember PSA and subsequently to selling same to Manitok;
 - (c) Licenses for the Disputed Pipelines had been “retained by Encana in error”; and
 - (d) The transfer of the licenses to Manitok may prejudice Ember’s future ability to produce in the area.
5. As part of its submissions to the AER in response to Ember’s Request for Regulatory Appeal, Encana submitted that:
 - (a) The Disputed Pipelines were specifically excluded from the Ember PSA, and in fact are each identified in the Schedule to the Ember PSA listing assets that were specifically excluded from the purchase and sale transaction and that were being retained by Encana;
 - (b) In February 2017, Encana provided Ember with a list of specific assets it wished to sell that included the Disputed Pipelines;
 - (c) Ember declined to purchase the Bruce Farms Assets, including the Disputed Pipelines, and did not assert an ownership interest in respect of any of the Bruce Farms Assets until after the AER transferred the related licences to Manitok, more than two and a half years after closing the transaction contemplated by the Ember PSA; and

- (d) As of March 2, 2017, Manitok was the owner of the Disputed Pipelines as part of its purchase of the Bruce Farms Assets.
6. When Encana offered to sell the Bruce Farm Assets to Ember, Ember did not review the list of Bruce Farms Assets.
 7. On January 10, 2018, Manitok filed a Notice of Intention to Make a Proposal pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**NOI**”).
 8. On February 20, 2018, Justice Horner granted an order terminating the NOI and putting Manitok into receivership.
 9. On January 17, 2019, Justice Romaine granted a Sale Approval and Vesting Order, approving the sale of specified Manitok assets, including the Disputed Pipelines (collectively, the “**Manitok Assets**”) to Tantalus (the “**Sale Order**”). The Sale Order provided a process to determine the ownership of the Disputed Pipelines.
 10. As of the date of the filing of the within Application, the Tantalus PSA has not closed.
 11. The Disputed Pipelines are a key part of Tantalus’ operational plans for the Manitok Assets. If Tantalus is determined to be the owner of the Disputed Pipelines:
 - (a) Tantalus plans to reverse the flow direction of one of the Disputed Pipelines and to connect four oil wells into that same pipeline as soon as approval is granted by the AER. These changes will accommodate over 500 boe/day (40% oil) of additional production; and
 - (b) Tantalus will file common carrier and common processing applications with the AER for a determination of the amounts owing by Ember for its use of the Disputed Pipelines from March 2, 2017 to the date of determination.

PART 2 – OUTSTANDING POST-RECEIVERSHIP OPERATING CHARGES ISSUE

12. The appropriate venue for a determination of the applicable operating and gas handling charges is the AER.

Material or evidence to be relied on:

13. Affidavit of Gregory Vavra sworn January 17, 2019, filed;
14. Affidavit of Gregory Vavra sworn February 15, 2019, filed;
15. Pleadings and Reports of the Receiver filed in the within proceedings; and
16. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

17. Rules 1.2, 1.3, 1.4 and 6.3 of the *Alberta Rules of Court*, AR 124/2010; and

18. Such further and other rules as counsel may advise and this Honourable Court may permit.

Applicable Acts and regulations:

19. *Oil and Gas Conservation Act*, RSA 2000, c O-6, as amended; and

20. Such further and other Acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

21. None.

How the application is proposed to be heard or considered:

22. In person.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.