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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE RECEIVERSHIP OF ERIKSON NATIONAL ENERGY INC.
APPLICANTS	BRITISH COLUMBIA ENERGY REGULATOR
RESPONDENTS	ERIKSON NATIONAL ENERGY INC.
DOCUMENT	**BRIEF OF LAW OF THE BRITISH COLUMBIA ENERGY REGULATOR**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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I. INTRODUCTION

1. This Brief of Law is submitted on behalf of the Applicant, the British Columbia Energy Regulator, formerly named the BC Oil and Gas Commission (the "**BCER**"), in support of its application (the "**Receivership Application**") for the appointment of Grant Thornton Limited as receiver and manager (the "**Receiver**") of Erikson National Energy Inc. ("**Erikson**") and the granting of a receivership order (the "**Receivership Order**").

2. Since Erikson's purchase of certain assets out of receivership proceedings of Ranch Energy Corporation in 2019, it has consistently failed to meet its obligations under the *Energy Resource Activities Act,* SBC 2008, c 36 ("**ERAA**") formerly named the *Oil and Gas Activities Act,* RSBC 1996, c 364 ("**OGAA**"), including but not limited to failure to complete decommissioning and address potential contamination at a frac water storage site, issues with procedures related to suspending oil and gas sites, deactivating certain of its pipelines, and failure to pay necessary security and other amounts owing to the BCER, including certain fees and levies.[1]

3. Erikson has demonstrated a history of non-compliance with BCER orders and a failure to adhere to its environmental obligations.

4. By May 1, 2024, Erikson had shut-in all of its assets and is no longer producing. Notwithstanding this shut-in, the assets of Erikson require oversight, protection, preservation and compliance with the ongoing regulatory and legislative requirements associated with the properties.[2]

5. While the BCER is a creditor of Erikson, it brings the Receivership Application in its capacity as regulator, not as a creditor.

6. It is just, convenient and appropriate that the Receiver be appointed over Erikson.

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[1] Affidavit of Michael Janzen, sworn on October 2, 2024 ["**Janzen Affidavit**"] at para 13.

[2] *Ibid* at para 45.

II. BRIEF SUMMARY OF FACTS

7. The facts relevant to the Receivership Application are set out in the Affidavit of Michael Janzen, affirmed on October 2, 2024. A summary of the key facts as they relate to the relief requested in the Receivership Application is set out below.

Background

8. The BCER is a regulatory agency with responsibilities overseeing energy resource activities, including oil and gas, and renewable geothermal operations in British Columbia. The BCER ensures compliance with environmental and safety regulations by granting permits, conducting inspections, and enforcing standards, as established by the ERAA.[3]

9. The purposes of the BCER are set out in section 4 of the ERAA and includes regulating energy resource activities in a manner that protects public safety and the environment.[4]

10. Erikson is a corporation that was incorporated pursuant to the laws of British Columbia under the *Business Corporations Act*, SBC 2002, c 57 but was continued into Alberta under the *Business Corporations Act*, RSA 2000, c B-9 (the "**ABCA**").[5]

11. Erikson operates as an oil and natural gas company with assets located in the Greater Fort Nelson and Greater Fort St. John areas of British Columbia (the "**Properties**"). Erikson's assets include a gas processing plant, frac water and water storage sites, wells, and associated pipeline and facility infrastructure.[6]

12. After acquiring the Properties through the receivership of Ranch Energy Corporation in 2019, Erikson applied for and obtained certain permits from the BCER in accordance with the ERAA, and Erikson continues to be an active permit holder that is subject to the ERAA's requirements.[7]

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[3] *Ibid* at para 3.
[4] ERAA, s 4 [**TAB 1**].
[5] Janzen Affidavit*, supra note* 1 at 4 and Exhibits "A" and "B".
[6] *Ibid* at para 5.
[7] *Ibid* at para 9, 11, and Exhibit "C".

Erikson's Non-Compliance with the ERAA and BCER Orders

13. From September 10, 2020 to April 21, 2023, the BCER issued several escalating orders to Erikson as a result of Erikson's non-compliance with the BCER's regulatory regime and its obligations under the ERAA.[8]

14. Erikson failed to comply with these BCER orders, and therefore the BCER used its authorities granted under the ERAA to undertake certain environmentally sensitive decommissioning work.

15. On January 16, 2024, the BCER issued a costs order requiring Erikson to pay $905,976.07 (the "**Costs Order**"). The Costs Order was for Erikson to reimburse the BCER for the BCER's out of pocket expenses incurred in carrying out certain of Erikson's obligations under the BCER orders.[9]

16. In addition, Erikson has not complied with its reporting obligations to the BCER. On July 10, 2023 and June 17, 2024, the BCER issued orders for Erikson to provide certain information and documentation and to complete surveys regarding its wells. These orders were not complied with.[10]

17. The BCER has issued security orders against Erikson on September 21, 2022 and July 9, 2024.[11]

18. A list of all the outstanding orders is set out below:[12]

Order Number	Statute Order Issued Under	Date Issued
Order for Security	Section 30(1) of ERAA	July 9, 2024
Section 38 Order 2024-0067-01	Section 38(1)(c) of ERAA	June 17, 2024
Section 50 Order 2021-0054-05	Section 50(1)(c) of ERAA	January 16, 2024
Section 38 Order 2023-0062-01	Section 38(1)(c) of OGAA	July 10, 2023
Order for Security	Section 30(1) of OGAA	July 4, 2023
General Order 2021-0054-03	Section 49(1)(e) of OGAA	April 21, 2023

[8] *Ibid* at paras 14 and 15, and Exhibits "D", "E", "F", and "G".
[9] *Ibid* at paras 22 and Exhibit "I".
[10] *Ibid* at para 23 and Exhibits "J" and "K".
[11] *Ibid* at paras 24 and 29, and Exhibits "L" and "P".
[12] *Ibid* at para 30.

19. On September 24, 2024, the BCER, through its legal counsel Miller Thomson LLP, sent a demand for compliance with all the outstanding orders issued by the BCER (the "**Demand**").[13] The Demand advised that if Erikson continued to refuse to comply with the orders, that the BCER would bring an application to appoint a receiver on an urgent basis.

20. Counsel to Erikson responded to the Demand, but Erikson proposed no timeline or solutions for Erikson to come into compliance with the orders, the ERAA and the regulations.[14]

Attempts to Sell its Property and Shares

21. Since early 2023, Erikson has been marketing the Properties for sale and investment. Despite nearly two years of marketing, Erikson has been unable to find a purchaser or other investor in its business.[15]

22. More recently, Erikson and Kingscrest Acquisition Corp. ("**Kingscrest**") have been in negotiations and related discussions with the BCER regarding a potential deal that could see a significant portion of Erikson's environmental obligations that are of concern to the BCER retained by Erikson under new ownership by Kingscrest (the "**Transaction**").[16]

23. Erikson and Kingscrest continue negotiations in respect of the Transaction but it appears the parties may not be able to close the Transaction before the winter, when the Properties need to be taken over by a responsible operator.[17]

24. Kingscrest is prepared to fund the receivership proceedings in an effort to complete the Transaction.[18]

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[13] *Ibid* at para 47 and Exhibit "Q".
[14] *Ibid* at para 48 and Exhibit "R".
[15] *Ibid* at para 41.
[16] *Ibid* at para 43.
[17] *Ibid* at para 44.
[18] *Ibid* at para 46.

Notice of Intention

25. On or about October 1, 2024, on one-day's notice to the BCER, Erikson 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 "**BIA**").[19]

Appointment of a Receiver is Necessary and Appropriate

26. The BCER has lost confidence in Erikson's ability to respond to its outstanding environmental obligations. The BCER bases its loss of confidence on, among other things:[20]

    (a) Erikson's consistent failure to comply with orders issued by the BCER under the ERAA.

    (b) Erikson's failure to pay industry levies.

    (c) Erikson's failure to provide evidence of sufficient cash resources necessary for the maintenance, cleanup, decommissioning, and remediation of its dormant sites.

    (d) Erikson's inability to post required security costs.

    (e) Erikson has been unsuccessful in its attempts to sell its assets or find an investor.

    (f) Erikson's failures to take sufficient and urgent steps in order to limit the damage to the environment, whether due to a lack of technical understanding or appreciation of what is required, or due to a lack of available resources.

    (g) Erikson now being insolvent and having filed for creditor protection pursuant to the BIA.

27. Accordingly, the BCER is seeking the appointment of the Receiver over the Properties in order to ensure public safety, environmental protection, and conservation of energy resources.[21]

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[19] *Ibid* at para 49.
[20] *Ibid* at para 53.
[21] *Ibid* at para 54.

III. ISSUES

28. The issues before this Honourable Court are the following:

    (a) Is the BCER stayed from bringing the Receivership Application?

    (b) Is it just, convenient and appropriate to appoint the Receiver over Erikson?

IV. LAW AND ARGUMENT

The BCER is Not Stayed from Bringing the Receivership Application

29. Pursuant to section 69(1) of the BIA, on the filing of a notice of intention under section 50.4 of the BIA by an insolvent person, no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution, or other proceedings "*for the recovery of a claim provable in bankruptcy*".[22]

30. The stay provided by section 69 of the BIA does not affect a regulatory body's investigation in respect of an insolvent person or an action, suit or proceeding that is taken in respect of the insolvent person by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.[23]

31. The BCER is not bringing this Receivership Application to enforce a monetary judgement, but is bringing the Receivership Application due to Erikson's lack of compliance with its obligations under the ERAA.

32. The Supreme Court of Canada in *Orphan Well Association v Grant Thornton Ltd* ("***Redwater***") commented on instances when a regulator is advancing a claim provable in bankruptcy as a creditor, or whether it is simply enforcing a regulatory obligation.

> [135] Based on the analysis in *Northern Badger*, it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims". I do not intend to suggest, however, that a regulator will be a creditor only where it acts exactly as the province did in *Abitibi*. There may very well be situations in which a regulator's actions fall somewhere between those in *Abitibi* and those in

[22] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ["**BIA**"] at s 69 (1)(a) [**TAB 2**].

[23] Ibid at s 69.6(2) [**TAB 2**].

> the instant case. Notably, unlike some previous cases, the Regulator has performed no environmental work itself. I leave such situations to be addressed in future cases in which there are full factual records. Here, it is clear that the Regulator is seeking to enforce Redwater's public duties, whether by issuing the Abandonment Orders or by maintaining the LMR requirements. The Regulator is not a creditor within the meaning of the *Abitibi* test. [Emphasis added] [24]

33. The Court of Appeal of Yukon in *Yukon (Government of) v Yukon Zinc Corporation* provided further clarity on when a claim is provable in bankruptcy. That Court found that for there to be a provable claim, there must have been a debt or liability to a creditor by reason of an obligation incurred before the date of bankruptcy.[25] The Court found that a requirement to post security does not create a debt.[26]

34. In these circumstances, the BCER is acting to prevent the Orphan Site Reclamation Fund from bearing the full cost of an insolvent energy resource company with a long history of failing to comply with its statutory and regulatory obligations.

35. If this Honourable Court finds that the BCER is subject to the stay of proceedings, the BCER seeks a declaration that the stay be lifted nunc pro tunc.

36. This Honourable Court may lift a stay of proceedings if it determines that (a) the regulator is likely to be materially prejudiced by the continuance of the stay; or (b) it is equitable on other grounds that the stay be lifted.[27]

37. The BCER will be materially prejudiced if the stay of proceedings is not lifted. Erikson is insolvent, its wells are shut-in such that it does not have cash flow, and it has already run a lengthy sales and solicitation process that did not lead to a transaction. The Transaction with Kingscrest is the only viable deal that sees the significant portion of Erikson's environmental liabilities assumed by a new, solvent, licensee.

38. If the Transaction does not proceed, the BCER may be required to expend resources to decommission, remediate and protect Erikson's assets. Erikson's dormant, inactive and marginal liability is currently $54,400,000.28 This liability will likely need to be assumed

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[24] *Orphan Well Association v Grant Thornton Ltd,* 2019 SCC 5 ["***Redwater***"] at para 135 [**TAB 3**].

[25] *Yukon (Government of) v. Yukon Zinc Corporation*, 2021 YKCA 2 at para 59 [**TAB 4**].

[26] *Ibid* at para 62 [**TAB 3**]**.**

[27] BIA, *supra note* 22 at s 69.4 [**TAB 2**].

[28] Janzen Affidavit, *supra note* 1 at para 36.

by the Orphan Site Reclamation Fund if the Transaction does not proceed and Erikson cannot find another purchaser of its assets, or in this case someone to assume its liabilities.

39. There are equitable grounds to lift any stay of proceedings, if applicable to the BCER. The BCER needs to appoint the Receiver for the benefit of the public and the environment. The Receivership Application is brought in respect of the BCER's mandate to protect public safety and the environment. The BCER does not stand to benefit financially from the Receivership Application but the public does.

It is Just and Convenient to Appoint a Receiver

40. It is appropriate for the Court to appoint professionals to step in and oversee any environmental protection while preserving the business to the extent possible. Erikson's natural resource business has always been subject to its license obligations, which include the requirement to repair damage to the environment caused by its activities, and the requirement to submit to the oversight of the BCER.

41. As the Supreme Court of Canada notes in Redwater, after having reaped the benefits of its licenses, Erikson must also comply with the obligations imposed by the licensing regime, including compliance with the BCER orders.[29] Erikson's failure to adhere to its obligations necessitates the appointment of the Receiver.

42. Pursuant to section 99(a) of the ABCA, this Court, on an application by an interested person (such as the BCER), may make any order it thinks fit, including, the appointment of a receiver.[30]

43. This Honourable Court also has jurisdiction to grant the Receivership Order pursuant to section 13(2) of the Judicature Act, which provides:[31]

> An order in the nature of a mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it appears to the Court to be just or convenient that the order should

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[29] *Redwater, supra note* 24 at para 157 [**TAB 3**].

[30] ABCA at s 99(a) [**TAB 5**].

[31] *Judicature Act,* RSA 2000 c J-2 [“***Judicature Act***”] at s 13(2) [**TAB 6**].

> be made, and the order may be made either unconditionally or on any terms and conditions the Court thinks just. [Emphasis added] [32]

44. With respect to the request to grant the Receivership Order over the Properties located in British Columbia, section 39 of the *Law and Equity Act* similarly provides:[33]

> 39 (1) An injunction or an order in the nature of mandamus may be granted or a receiver or receiver manager appointed by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that the order should be made. [Emphasis added]

45. Both the *Judicature Act* and *Law and Equity Act* require that the appointment of a receiver be either just or convenient.

46. This Court in *Higgerty* added detail to the test to appoint a receiver under the Judicature Act at section 13(2) as follows:

> [25] A receivership order "should not be lightly granted": [Citations]. The court must carefully balance the rights of both the applicant and the respondent as justice and convenience can only be established by considering and balancing the position of both parties: [Citation]. When considering the issue of whether a receiver and manager should be appointed, the court should: (i) explore whether there are other remedies that could serve to protect the interests of the application; (ii) balance the rights of both the Applicants and the other stakeholders (including the secured and unsecured creditors); and, (iii) consider the effect of granting the Draft Receivership Order: [Citations]. [34]

47. There are no commercially reasonable remedies that can serve to protect the interests of the BCER aside from either orphaning the Properties, in which case they will need to be cleaned up and decommissioned from the Orphan Site Reclamation Fund, or the appointment of the Receiver, who can then close the Transaction, thus minimizing the Properties that will be orphaned.

48. The benefit of the Receivership Order is bestowed on the public, and ultimately all stakeholders.

49. A wide array of factors should be taken into consideration when considering the appointment of a receiver and manager.[35] Courts in Alberta also look to the factors set out

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[32] Judicature Act at s 13(2) [**TAB 6**], *Law Society of Alberta v Higgerty*, 2023 ABKB 499 ["***Higgerty***"] at para 24 [**TAB 7**]; *Servus Credit Union Ltd. v Proform Management Inc*, 2020 ABQB 316 at para 65 [**TAB 8**].

[33] *Law and Equity Act*, RSBC 1996, c 253 at s 39(1) [**TAB 9**].

[34] *Higgerty, supra note* 32 at para 25 [**TAB 7**].

[35] *Ibid* at para 26 [**TAB 7**].

in *Paragon*[36] to aid in the "just or convenient" analysis, which factors include, among others:

(a) Whether irreparable harm might be caused if no order is made, although it is not essential to establish irreparable harm if a receiver is not appointed;

(b) The need for protection or safeguarding of the assets;

(c) The nature of the property;

(d) The balance of convenience to the parties;

(e) The consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently;

(f) The effect of the order upon the parties;

(g) The conduct of the parties; and

(h) The goal of facilitating the duties of the receiver.

50. The factors set out in *Paragon* are not intended to be a checklist, but rather a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.

51. Applying the *Paragon* factors, it is both just and convenient for this Court to appoint the Receiver over Erikson.

Irreparable Harm

52. Irreparable harm will occur if the Receiver is not appointed over Erikson and the Receivership Order is not granted for the following reasons:

(a) As winter and freezing temperatures approach, certain assets that require protection, preservation and winterization need to be dealt with. In order to avoid orphaning the Properties to the Orphan Site Reclamation Fund, a Receiver can

[36] *Paragon Capital Corporation Ltd v Merchants & Traders Assurance Co,* 2002 ABQB 430 ["***Paragon***"] at para 27 [**TAB 10**].

close the Transaction to minimize industry or the public bearing the decommissioning and clean-up costs associated with the Properties.

(b) In the absence of the Receiver, it is very unlikely the Transaction will close and any further sales process that Erikson seeks to pursue in an insolvency proceeding is unlikely to produce better results than the Transaction.

(c) Erikson is insolvent and the BCER or any other stakeholders will not be able to recover the costs that are being incurred in dealing with Erikson's statutory and regulatory obligations.

Need for Protection or Safeguarding of the Assets

53. Erikson does not have the financial resources or expertise to do what is required to be done to preserve its assets while complying with its obligations under the ERAA.

54. Erikson has no operations and cash flow, and has now filed for creditor protection under the BIA. It clearly does not have sufficient resources to manage the Properties.

55. There is an immediate need for the safeguarding of the Properties. The appointment of a Receiver is the most efficient and expedient way to safeguard the Properties in a way that ensures that risk is mitigated.

The Nature of the Properties

56. The Properties consist of certain well sites, pipelines, and environmentally sensitive lands, among other things.

57. The current situation is untenable. Erikson has failed to undertake the decommissioning work that is required and it continues to neglect the BCER orders.

The Balance of Convenience Supports the Appointment of the Receiver

58. There is no prejudice to Erikson's stakeholders by the appointment of the Receiver. The balance of convenience favours appointing the Receiver to manage, protect and preserve Erikson's remaining assets.

59. The BCER was patient in allowing Erikson to run multiple lengthy sales and solicitation processes that were ultimately unsuccessful. A further sales process in an NOI proceeding is unlikely to result in any better deal than the Transaction.

60. With the closing of the Transaction there is a benefit to Erikson and its stakeholders. There will be the assumption of the majority of the Properties to a party capable and willing to manage the environmental obligations.

61. It is entirely appropriate for the Court to appoint professionals to step in and oversee any environmental protection while working to close the Transaction. Erikson's natural resource business has always been subject to its permits, including the obligation to repair damage to the environment caused by its activities and the requirement to submit to the oversight of the BCER.

Court Appointment is Appropriate

62. It is appropriate to pursue the Transaction which will see the majority of the Properties owned and managed by a solvent and responsible operator. This outweighs any caution that the Court may otherwise consider in determining whether to grant the proposed Receivership Order.

63. The proposed Receiver will report to the Court and stakeholders to ensure transparency and orderliness.

64. As set out above, Erikson has shown a history of non-compliance with BCER orders.

65. The BCER has been patient with Erikson. With winter approaching, and the Transaction counterparty indicating that time is of the essence to close the Transaction imminently, there is no longer time for Erikson to run a fresh sales process in the hopes of finding a different purchaser or investor.

VI. RELIEF REQUESTED

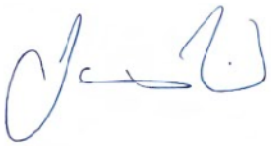
66. The proposed Receivership Order is urgently required to close the Transaction, which will mitigate the number of Properties that will go to the Orphan Site Reclamation Fund.

67. The relief sought will benefit the broader community of both economic and environmental stakeholders. There are no reasonable alternatives acceptable to the BCER in the

circumstances. Accordingly, the appointment of the proposed Receiver is just, convenient and appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3rd DAY OF October 2024.

MILLER THOMSON LLP

Per: 

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