

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF CALGARY**

BETWEEN:

**NATIONAL BANK OF CANADA**

Plaintiff

- and -

**ACTION ENERGY INC., NORTHERN GAS MARKETING INC. and GRIFFON  
PETROLEUM INC.**

Defendants

**NOTICE OF MOTION**

**TAKE NOTICE** that an application will be made on behalf of Ernst & Young Inc. in its capacity as Receiver and Receiver and Manager (the "**Receiver**") before Madam Justice B.E.C. Romaine, in Chambers, at the Calgary Courts Centre, 601 - 5<sup>th</sup> Street S.W., in the City of Calgary, Province of Alberta on Thursday, the 5<sup>th</sup> day of November, 2009 at the hour of 9:00 o'clock in the forenoon or so soon thereafter as Counsel may be heard for:

1. An Order declaring service of notice of this application and the supporting materials to be good and sufficient, and abridging the time therefore, if necessary;
2. Relief as outlined in the proposed Order attached as Schedule "A" and in particular:
  - (a) authorizing and approving the Asset Purchase and Sale Agreement dated October 30, 2009 between the Receiver and Westfire Energy Ltd. (the "**ASA**"), and authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the ASA;

- (b) authorizing and directing the Receiver to perform or cause to be performed the covenants of the ASA substantially in accordance with its terms, subject to such amendments as the Receiver and Purchaser may approve which do not materially and adversely affect the terms herein;
  - (c) declaring that the Non-Completion Amount and the security interest granted in support thereof in the ASA are commercially reasonable and are authorized and approved; and
  - (d) authorizing the Receiver to apply for an Order vesting title to the assets subject to the ASA in the Purchaser prior to the Closing Date if the Receiver reasonably believes that the Closing will occur and a Third Party Sale is not anticipated; and
3. Granting such further and other relief as counsel may advise and this Honourable Court deems just.

**AND FURTHER TAKE NOTICE** that the grounds for this application are as follows:

- 1. On October 28, 2009, the Receiver was appointed receiver of the assets, undertakings and properties ("**Property**") of Action Energy Inc. ("**Action**") by order of Mr. Justice LoVecchio in these proceedings.
- 2. Pursuant to the Receivership Order, the Receiver is empowered and authorized to sell, convey or transfer the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court.
- 3. On October 15, 2009, Action entered into a Letter of Intent with Westfire Energy Ltd. that propose the acquisition of all of Action's oil and natural gas assets together with certain tangibles and miscellaneous interest.
- 4. Following its appointment, the Receiver negotiated and entered into the ASA which is subject to Court approval.

**AND FURTHER TAKE NOTICE** that the Receiver will rely on:

1. the Pleadings and other materials filed herein;
2. the First Report of the Receiver dated November 2, 2009, to be filed;
3. the inherent jurisdiction of the Court; and
4. such further and other material as Counsel may advise and this Honourable Court may allow.

**DATED** at the City of Calgary, in the Province of Alberta, this 2<sup>nd</sup> day of November, 2009.

**DAVIS LLP**

Per: \_\_\_\_\_

  
Larry B. Robinson Q.C.  
Solicitors for the Receiver

**TO:** The Clerk of the Court

**AND TO:** Macleod Dixon LLP  
Attention: Howard Gorman  
Counsel for the Plaintiff

**AND TO:** McCarthy Tétrault LLP  
Attention: Sean Collins  
Counsel for Defendants

**AND TO:** Burnet, Duckworth & Palmer LLP  
Attention: Doug Nishimura  
Counsel for Westfire Energy Ltd.

**SCHEDULE "A"**

Action No. 0901-16005

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Defendants

Before The Honourable Madam Justice  
B.E.C. Romaine In Chambers

) At the Courts Centre, in the City of Calgary, in  
) the Province of Alberta, on Thursday, the 5<sup>th</sup>  
) day of November, 2009.  
)

**ORDER**

**UPON** the application of Ernst & Young Inc. in its capacity as Receiver and Receiver and Manager (the “**Receiver**”) of Action Energy Inc. (“**Action**”); **AND UPON** reading the First Report of the Receiver dated November 2, 2009, filed, and the Asset Purchase and Sale Agreement dated October 30, 2009 between the Receiver and Westfire Energy Ltd. (the “**ASA**”) attached thereto; **AND UPON** hearing counsel for the Receiver and counsel for other interested parties; **AND UPON** it appearing that the ASA is in the best interests of Action and its creditors;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**Service**

5. Service of notice of this application and the supporting materials is deemed to be good and sufficient, and the time for service is abridged to the time actually given;

### Defined Terms

6. All capitalised terms not defined herein shall have the meanings defined in the First Report of the Receiver and the ASA (as applicable);

### Approval of the Transaction

7. The ASA is commercially reasonable and is hereby authorised and approved. The Receiver is hereby authorised and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the ASA.
8. The Receiver is hereby authorised and directed to perform or cause to be performed the covenants of the ASA substantially in accordance with its terms, subject to such amendments as the Receiver and the Purchaser may approve which do not materially and adversely affect the terms therein;
9. The Non-Completion Amount and the security interest granted in support thereof in the ASA are commercially reasonable and are hereby authorised and approved;
10. The Receiver shall be at liberty to apply for an Order vesting title to the assets subject to the ASA in the Purchaser prior to the Closing Date if the Receiver reasonably believes that the Closing will occur and a Third Party Sale is not anticipated;

### Miscellaneous

11. This Honourable Court hereby requests the aid and recognition of any court or administrative body in any province of Canada, the Federal Court of Canada, any administrative tribunal or other court constituted pursuant to the Parliament of Canada or any of its provinces or territories and any federal or state court or administrative body in the United States of America or any other foreign courts or any administrative body or other tribunal to act in aid of and to be complimentary to this Court in carrying out the terms of this Order;

12. The Receiver is at liberty to reapply for further advice, assistance and direction as may be necessary to give full force and effect to the terms of this Order.

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J.C.C.Q.B.A.

**ENTERED** this \_\_\_\_\_ day of November, 2009.

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Clerk of the Court of Queen's Bench

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Defendants

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**ORDER**

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**DAVIS LLP**

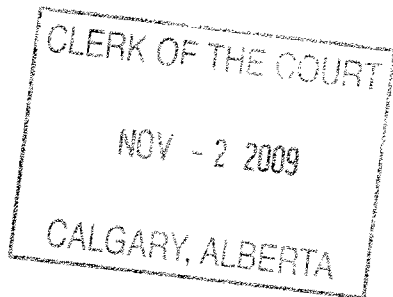
Barristers & Solicitors  
1000 - 250 2<sup>nd</sup> St. SW  
Calgary, Alberta  
T2P 0C1

**Larry B. Robinson, Q.C.**

Phone: 403.698.8715  
Fax: 403.697.6609  
File No. 38689-00001

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