

# ALBERTA SECURITIES COMMISSION

## REVOCATION ORDER

Under the securities legislation of Alberta and Ontario (the Legislation)

Citation: Re Eagle Energy Inc., 2020 ABASC 197

Date: 20201229

### Eagle Energy Inc.

#### Background

1. Eagle Energy Inc. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of Alberta (the **Principal Regulator**) and Ontario (each a **Decision Maker**) on 6 May 2020.
2. The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) for an order revoking the FFCTO.
3. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

#### Interpretation

4. Terms defined in National Instrument 14-101 *Definitions* or in National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

#### Representations

5. This decision is based on the following facts represented by the Issuer:
  - (a) The Issuer is a corporation existing under the *Business Corporations Act* (Alberta) (the **ABCA**) formed pursuant to an amalgamation on January 27, 2016.
  - (b) The Issuer's head office is located in Calgary, Alberta.
  - (c) The Issuer is a reporting issuer in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (collectively, the **Reporting Jurisdictions**).
  - (d) White Oak Global Advisors, LLC (the **Creditor**) is a limited liability company formed under the laws of Delaware. It is an investment advisor registered with the U.S. Securities and Exchange Commission specializing in providing secured loans to support the growth and financing needs of small and medium enterprises.

- (e) EEI HoldCo, LLC (**EEI**) is a limited liability company formed under the laws of Delaware. It is indirectly owned by certain funds and accounts managed by the Creditor. EEI was formed by the Creditor for the purposes of being the direct sole shareholder of the Issuer upon completion of the Reorganization (as defined below).
- (f) On 19 November 2019, on the application of the Creditor, which was the Issuer's main lender and secured creditor, the Honourable Justice R.A. Neufeld of the Alberta Court of Queen's Bench (the **Court**) granted an order (the **Receivership Order**) appointing FTI Consulting Canada Inc. (the **Receiver**) as receiver and manager of the Issuer's current and future assets, undertakings and properties.
- (g) The common shares of the Issuer were delisted from the TSX Venture Exchange on 2 December 2019. As a result, no securities of the Filer are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
- (h) The Receiver acted as receiver and manager of the Issuer from the date of the Receivership Order until the completion of the Reorganization (the **Receivership Period**).
- (i) Pursuant to an approval of engagement and sale process order of the Court dated 19 February 2020, the Receiver was authorized and directed to implement a sale process in respect of the Issuer and its subsidiaries (the **Sale Process**).
- (j) The FFCTO was issued by the Decision Makers on 6 May 2020 due to the failure of the Issuer to file (a) its annual audited financial statements; (b) its annual management's discussion and analysis; and (c) certification of annual filings, for the year ended 31 December 2019 (the **Annual CD Materials**).
- (k) During the Receivership Period, the Issuer had no directors and was unable to prepare, certify and file the Annual CD Materials or any further financial statements or any continuous disclosure documents required by applicable securities legislation (the **Subsequent Filings**, and together with the Annual CD Materials, the **Filings**) when they became due.
- (l) On 29 May 2020, the Issuer filed a proposal (the **Proposal**) pursuant to Part III Division I of the *Bankruptcy and Insolvency Act* (Canada) (the **BIA**), which contemplated, among other things, the compromise and settlement of claims by unsecured creditors of the Issuer and the reorganization of the share capital of the Issuer (the **Reorganization**) involving, *inter alia*, the:

- (i) filing of articles of reorganization pursuant to section 192 of the ABCA to amend the articles of the Issuer to provide for the authorization of two classes of shares in the capital of the Issuer: Class A common shares (**Class A Shares**) and Class B redeemable shares (**Class B Shares**) and the re-designation of each previously issued and outstanding common share of the Issuer into one Class B Share;
  - (ii) redemption and cancellation of all of the issued and outstanding Class B Shares for nil consideration; and
  - (iii) issuance of 10,000 Class A Shares (the **Trade**) to EEI for settlement of the Creditor's secured creditor claim against the Issuer to the extent of the value of its credit bid in the Sale Process, namely as to CA\$21,000,000.
- (m) Under the provisions of the BIA, only creditors are entitled to vote on a proposal unless ordered by the Court and holders of equity are not entitled to any payment unless all claims that are not equity claims are first paid in full.
- (n) On 10 June 2020, a meeting of the unsecured creditors of the Issuer (the **Meeting**) was held to consider and vote on the Proposal, and at the Meeting, the unsecured creditors voted 98.4% in favour of the Proposal.
- (o) The Proposal provided that only a limited portion of the claims of the Issuer's unsecured creditors would be satisfied. Accordingly, the holders of the former common shares of the Issuer were not entitled to vote in respect of the Proposal or receive any consideration under the Reorganization.
- (p) On 15 June 2020, the Issuer received a partial revocation order of the FFCTO in Alberta (the **Partial Revocation Order**) solely to permit the Trade.
- (q) The Partial Revocation Order was granted solely to permit the Trade in Alberta in connection with the Proposal and Reorganization, subject to certain conditions.
- (r) The Issuer has satisfied every condition of the Partial Revocation Order.
- (s) On 26 June 2020, the final order in respect of the Proposal was granted by the Court and the Reorganization was completed on 30 June 2020.
- (t) Following the Reorganization, the Filer has fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total worldwide.
- (u) EEI is the sole holder of all outstanding Class A Shares. No other securities of the Issuer are outstanding as a result of the Reorganization. The prior holders of common shares of the Issuer ceased to have any economic interest in the Issuer upon completion of the Reorganization.

- (v) The Issuer's constating documents contain limitations on the number of shareholders permitted and restrictions on transfer in order to qualify it as a "private issuer" for the purposes of National Instrument 45-106 *Prospectus Exemptions*.
- (w) The Issuer is not in default of any of its obligations under securities legislation in any jurisdiction as of the date hereof, other than the obligation to file the Filings, all of which became due after the appointment of the Receiver.
- (x) The preparation and filing of the Filings to restore the Issuer's outstanding continuous disclosure record would be unduly costly and burdensome and would serve no purpose, since the Issuer is wholly-owned by EEI and no other party has an interest in the Issuer or the restoration of its outstanding continuous disclosure record. Further, it would not be practicable because the Issuer was in receivership at the time the Filings became due.
- (y) The Issuer has applied for and expects to be granted concurrently with this revocation order, a decision that the Issuer has ceased to be a reporting issuer in each of the provinces of Canada. If that decision is granted, the Issuer will not be a reporting issuer in any jurisdiction in Canada and will not be subject to the requirement to maintain a public disclosure record.
- (z) Following completion of the Reorganization, the Issuer will comply with its obligations under the ABCA in respect of annual shareholder meetings.

**Order**

6. Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Makers to make the decision.
7. The decision of the Decision Maker under the Legislation is that the FFCTO is revoked, as it applies to the Issuer.

29 December 2020

"original signed by"

Timothy Robson

Manager, Legal

Corporate Finance

Alberta Securities Commission