



ENTERED  
03/01/2016

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                           |   |                         |
|---------------------------|---|-------------------------|
| In re:                    | § | Chapter 11              |
|                           | § |                         |
| BLACK ELK ENERGY OFFSHORE | § | Case No.: 15-34287 (MI) |
| OPERATIONS, LLC           | § |                         |
|                           | § |                         |

**ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTOR TO ENTER INTO THE MONTCO SERVICES AGREEMENT AND (II) GRANTING RELATED RELIEF**

Upon the motion dated February 7, 2016 (the "Motion") of Black Elk Energy Offshore Operations, LLC ("Black Elk") as debtor and debtor in possession (collectively, the "Debtor") in the above-captioned case (the "Case") for interim and final orders under sections 105, 361, 362, 363(c), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") seeking, among other things, approval of the Debtor's entry into the Amended and Restated Turnkey Service Agreement (the "Montco Services Agreement") by and between the Debtor and Montco Oilfield Contractors, LLC ("Montco"), a copy of which is attached as **Exhibit A** hereto; due and proper notice of the hearing on the Motion having been given by the Debtor and upon the record made by the Debtor at the hearing, and all objections to the entry of this Order having been overruled, withdrawn or resolved pursuant to the terms of this Order, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion and the relief requested therein was served by the Debtor on (a) counsel for the Committee; (b) the U.S. Trustee; (c) all parties who have requested notice in this Case; (d) all parties who have asserted liens against the Debtor's assets as part of this Case, (e) all parties reflected in the Debtor's books and records as having and/or asserting a lien against the Debtor's assets; and (f) all registered ECF users appearing in the Case as of February 7, 2016. The notice given by the Debtor of the Motion, the relief requested therein, and the Final Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c), and the Local Rules, and no further notice of the relief sought at the hearing is necessary or required.

3. *Approval of Motion in Part.* The relief requested in the Motion is approved in part as described herein. Except as otherwise expressly provided in this Order, any objection to the entry of this Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits.

4. *Findings Regarding the Montco Services Agreement.*

- (a) Good cause has been shown for the entry of this Final Order.
- (b) Entry into the Montco Services Agreement is necessary for the Debtor to satisfy those certain plugging and abandonment obligations and liabilities of the Debtor and/or its subsidiaries, in connection with the plugging and abandonment of wells and decommissioning oil and gas platforms, pipelines, other facilities and site clearances (the "P&A Obligations") and cooperate fully with local, state and federal laws that require it to decommission certain oil and gas installations. The terms of the Montco Services Agreement were negotiated at arm's length and made on an informed basis, and the Debtor believes that entry into the Montco

Services Agreement is in the best interests of the Debtor, its creditors, and its estate.

5. *Binding Effect; Successors and Assigns.* The Montco Services Agreement shall be binding upon the parties to such agreement, and the provisions of this Order, including all findings herein, shall be binding upon all parties in interest in the Case, including, without limitation, Montco and the Debtor, and each of their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor, an examiner with expanded powers appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor), shall inure to the benefit of Montco and the Debtor and their respective successors and assigns, and shall not be amended or modified in any subsequent case, order (including any dismissal order) or plan, absent the mutual written consent of the Debtor, Montco and Argonaut.

6. *Reservation of Rights of Department of Interior.* Notwithstanding any other provision of this Order or any of its implementing documents, including, without limitation, the Montco Services Agreement, nothing in this Order shall limit or affect in any way the rights of the Department of the Interior with respect to the Debtor's decommissioning obligations, including bonding obligations, associated with the Debtor's interest in all of its federal oil and gas leases and any rights of use and easement on the Outercontinental Shelf except as may be expressly agreed to by the Department of the Interior. Nothing in this Order shall limit or affect in any way the Debtor's ability to meet its decommissioning obligations except as may be expressly agreed to by the Department of the Interior. For the avoidance of doubt, no provision of this Order is intended to release or limit, and this Order does not release or limit, co-lessees, prior lessees or other parties that are, or may become, jointly and severally liable with the Debtor

for decommissioning obligations under any federal oil and gas leases on the Outercontinental Shelf. For the further avoidance of doubt, no provision of this Order is intended to release or limit, and does not release or limit, any surety from its obligations under any bonds posted in favor of the Bureau of Ocean Energy Management (“BOEM”) or the United States, whether included in the Montco Services Agreement approved by this Order or not, until such time as the applicable bond may be approved for reduction or cancellation by BOEM after meeting all legal and regulatory obligations required for same. All rights of the Department of the Interior to object to any future sale, transfer, rejection, abandonment or other disposition of any federal oil and gas leases and any rights of use and easement on the Outercontinental Shelf in which the Debtor has an interest, and the properties associated with such leases or rights of use and easement, are expressly preserved. All rights of the United States under 11 U.S.C. § 362(b)(4), 28 U.S.C. § 959(b) or any other applicable laws or regulations are expressly preserved.

7. *Limitation of Liability.* With respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive, Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), and except as expressly provided for in the Montco Services Agreement, Montco shall have no liability to any third party nor shall Montco be deemed to be in control of the operations of the Debtor or to be acting as a “controlling person,” “responsible person” or “owner or operator”, or owe any fiduciary duty to the Debtor, its creditors or its bankruptcy estates, and Montco’s relationship with the Debtor shall not constitute nor be deemed to constitute a joint venture or partnership the Debtor. Any and all payments or proceeds remitted to Montco pursuant to the provisions of this Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

8. *Further Provisions.* Notwithstanding anything in this Order or the Montco Services Agreement, including paragraph 1.2.3 therein or any exhibit thereto, nothing shall affect, impair or limit in any way the rights of any non-Debtor third party with regard to (a) any bonds or escrows of any kind or nature, or (b) (i) that certain 9019 settlement approved by the *Order Granting Joint Emergency Motion of JAB Energy and Merit Energy Company, LLC, to Compel Assumption of Certain Plugging and Abandonment Agreements in Order to Comply with Regulations, Bridging Agreement, and 2015 Plugging and Abandonment Plan* [Doc. No. 230], or (ii) the *Order Approving a Settlement and Compromise Under Federal Rule of Bankruptcy Procedure* [Doc. No. 368]. For the avoidance of doubt, nothing in this Order or the Montco Services Agreement or any exhibit thereto shall require any non-Debtor third party to cancel, release, reduce or modify any bond or escrow, or constitute consent to any of the foregoing. Nothing herein shall modify or affect that certain Project Clear Horizon Contract between Montco and the Debtor, and all rights are reserved thereunder.

9. *Budget.* The Debtor is authorized to continue use of cash pursuant to the Interim DIP Order [Doc. No. 651] (the “Interim Order”) and the Budget attached hereto as **Exhibit B**. Notwithstanding Paragraph 12(a) of the Interim Order or the “Case Milestones” set forth in the DIP Credit Agreement, the Debtor shall obtain an order of the Bankruptcy Court approving a Final Order (as defined in the Interim Order) on or prior to March 18, 2016. Notwithstanding Paragraph 12(b) of the Interim Order or the “Case Milestones” set forth in the DIP Credit Agreement, the Debtor shall file a Plan (as defined in the Interim Order) and accompanying disclosure statement on or prior to March 22, 2016.

10. *Effectiveness.* This Order shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Order.

3-1-16

  
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**Marvin Isgur**  
**UNITED STATES BANKRUPTCY JUDGE**