

Action No.: 0801-08510

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

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF  
SEMCANADA CRUDE COMPANY, SEMCAMS ULC, SEMCANADA  
ENERGY COMPANY, A.E. SHARP LTD., CEG ENERGY OPTIONS, INC.,  
3191278 NOVA SCOTIA COMPANY and 1380331 ALBERTA ULC

**APPLICANTS**

**TWENTY-FIRST REPORT OF THE MONITOR**

**ERNST & YOUNG INC.**

**AUGUST 26, 2009**

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MONITOR**

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## INTRODUCTION

1. On July 22, 2008, SemCanada Crude Company (“SemCanada Crude”) and SemCAMS ULC (“SemCAMS”) both sought and obtained protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, (the “CCAA”) pursuant to two orders of this Honourable Court dated July 22, 2008 (the “Initial Orders”).
2. On July 30, 2008, the SemCanada Group (as defined below) obtained an Order (the “Amended and Restated Initial Order”) which:
  - a) consolidated the CCAA proceedings of SemCanada Crude and SemCAMS;
  - b) continued under the CCAA, the proceedings of SemCanada Energy Company (“SemEnergy”), A.E. Sharp Ltd. (“AES”) and CEG Energy Options, Inc. (“CEG”) commenced by them on July 24, 2008 under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3 (“BIA”) and then consolidated them with the within proceeding; and
  - c) granted CCAA protection to two affiliated companies being 3191278 Nova Scotia Company (“319”) and 1380331 Alberta ULC (“138”). SemEnergy, AES and CEG (collectively, the “SemCanada Energy Companies”), along with 138 and 319, are collectively referred to as the “SemEnergy Group”.

SemCanada Crude, SemCAMS and the SemEnergy Group are collectively known as the “SemCanada Group”.
3. Pursuant to the Amended and Restated Initial Order, Ernst & Young Inc. was appointed monitor of the SemCanada Group (the “Monitor”).

4. The purpose of this twenty-first report (the “Twenty-First Report”) of Ernst & Young Inc. in its capacity as the Monitor of the SemCanada Group is to provide this Honourable Court with:
  - (a) a brief update on the status of the ongoing restructuring of SemCAMS, SemCanada Crude and the SemCanada Energy Companies;
  - (b) a brief update on the U.S. Proceedings of SemGroup, L.P. and the potential impact of recent U.S. events on the restructuring timeline for SemCAMS, SemCanada Crude and the SemCanada Energy Companies; and
  - (c) comments on SemCAMS’ application to further amend paragraph 11 (a) of the Amended and Restated Initial Order to increase the permitted capital expenditures of SemCAMS from \$46.6 million to \$47.5 million.
5. Capitalized terms not defined in this Twenty-First Report are as defined in the Amended and Restated Initial Order, and the previous reports issued by the Monitor. All references to dollars are in Canadian currency unless otherwise noted.

## **TERMS OF REFERENCE**

6. In preparing this Twenty-First Report, the Monitor has relied upon unaudited financial information, company records and discussions with management of the SemCanada Group. The Monitor has not performed an audit, review or other verification of such information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants (“CICA”) Handbook has not been performed. Future orientated financial information relied upon in this report is based on management’s assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.

## BACKGROUND

### **SemGroup, L.P.**

7. SemGroup, L.P. (“SemGroup”) and certain of its direct and indirect subsidiaries in the U.S. (collectively, SemGroup or the “US Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the U.S. Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware on July 22, 2008 and October 22, 2008 (the “US Proceedings”). With the exception of the chapter 11 case filed by SemGroup Holdings, L.P., the chapter 11 cases of the U.S. Debtors have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the U.S. Federal Rules of Bankruptcy Procedure.
8. As discussed in the Twentieth Report, SemGroup has taken material steps towards completing its restructuring and in that regard has filed a number of documents with the US Bankruptcy Court. An overview and update of SemGroup’s restructuring is provided below.

Information concerning the US Debtors’ restructuring can be found at <http://www.kccllc.net/semgroup>.

### **SemCanada Group**

#### *Overview*

9. The SemCanada Group is comprised of three separate and distinct operating businesses:
  - SemCanada Crude, whose business consists of crude oil marketing and blending. SemCanada Crude’s business remains viable and profitable;
  - SemEnergy Group, whose business was gas marketing including the purchase and sale of gas to certain of its four subsidiaries as

well as to SemCAMS. SemEnergy Group has ceased all operations and is in the process of collecting outstanding receivables and reconciling various claims filed pursuant to the Claims Process Order; and

- SemCAMS, whose business consists of ownership interests in large gas processing facilities located in Alberta, as well as agreements to operate these facilities. SemCAMS' business remains viable and profitable.

10. Further background on the SemCanada Group is contained in the materials filed in the applications pursuant to which the Initial Orders and the Amended and Restated Initial Order were made, all of which have been posted by the Monitor on its website at <http://www.ey.com/ca/Semcanadagroup>.

#### **SEMCANADA GROUP RESTRUCTURING UPDATE**

11. On August 7, 2009, this Honourable Court granted the Canadian Creditors' Meeting Order, which, *inter alia*:
  - a) accepted the CAMS Plan, the Crude Plan and Energy Distribution Plan (collectively, along with related documents and as may be varied in accordance with the terms of the Canadian Creditors' Meeting Order, the "CCAA Plans") for filing;
  - b) authorized SemCAMS, SemCanada Crude and the SemCanada Energy Companies (collectively, the "SemDebtors") to circulate their respective CCAA Plans in the form presented by the SemDebtors to their respective Affected Creditors for the purposes of allowing the Affected Creditors to vote on the CCAA Plans;
  - c) permitted the SemDebtors to each call, hold and conduct a meeting of certain of their respective unsecured creditors (collectively, the "Canadian

Creditors' Meetings") to consider and vote on a resolution to approve each CCAA Plan, as applicable to each SemDebtor; and

- d) approved the procedures to be followed with respect to the calling and conduct of the Canadian Creditors' Meetings.
12. The SemDebtors set September 10, 2009 as the date for their Canadian Creditors' Meetings to be held (at varying start times) at the offices of their Canadian legal counsel, Osler, Hoskin and Harcourt LLP, in Calgary, Alberta. The Meeting Materials were finalized by the Monitor to reflect the forgoing.
13. The Monitor complied with the Canadian Creditors' Meetings Order by:
- a) posting electronic copies of the Mailing Materials (including the applicable Notice to Ordinary Creditors) for the SemDebtors on the Website;
  - b) sending the applicable Mailing Materials on August 12, 2009, by regular pre-paid mail to each known Ordinary Creditor of the SemDebtors that had a Proven Claim or a Disputed Claim;
  - c) sending the applicable Mailing Materials on August 12, 2009, via courier to the Secured Lenders' agent's Canadian legal counsel, Stikeman Elliot LLP;
  - d) publishing the applicable Notice to Ordinary Creditors for each SemDebtor (regarding the general particulars of their respective Canadian Creditors' Meeting) in the *Globe and Mail (National Edition)*, the *Edmonton Journal* and the *Calgary Herald* on August 13, 2009 and August 14, 2009; and
  - e) sending a copy of the Mailing Materials to any Person claiming to be an Ordinary Creditor of any of the SemDebtors within three Court Days of being contacted by such Person.
14. On or about August 19, 2009, the SemCanada Group was advised by SemGroup's U.S. legal counsel that certain producer creditors in the U.S. Proceedings obtained leave to appeal a decision granted on June 19, 2009 by the US

Bankruptcy Court concerning the limit of producer liens over the property of various affiliates of SemGroup and accordingly, the U.S. Court of Appeals (Third Circuit) scheduled a hearing for the appeal on October 7, 2009. SemCanada Group was further advised that the Official Producers' Committee ("OPC") brought an application (the "Adjournment Application") to continue or adjourn (pending the forgoing appeal) the confirmation hearing of the Second Amended Plan of Reorganization (the "U.S. Plan") that was scheduled for hearing on September 16, 2009. The Monitor understands that the timing of the US Bankruptcy Court hearing of the OPC Adjournment Application has not been set, however, the OPC has requested the application be heard prior to September 16, 2009. Consequently, depending on the outcome of the OPC's Adjournment Application there may be an extended delay in the reorganization of SemGroup's business and affairs. Meanwhile, on August 25, 2009, the US Debtors filed the Third Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (the "Amended US Plan") and the Disclosure Statement for the Third Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code (the "Disclosure Statement"). A US Bankruptcy Court hearing on the Disclosure Statement is scheduled for September 24, 2009, and a hearing regarding confirmation of the Amended US Plan is scheduled for October 26, 2009.

15. The Monitor is currently reviewing the Amended US Plan and notes that there are numerous revisions. Generally, these revisions relate to settlement of certain claims including 503(b)(9) claims and US state law lien claims.
16. In addition, the Monitor has specifically reviewed the estimated recovery to the US General Unsecured Claims and notes that this recovery has increased from 2.09% to 2.91%.
17. As discussed in the Twentieth Report, the CCAA Plans are subject to conditions precedent requiring that implementation of each of the plans must take effect on the same date as the implementation of the US Plan, to allow the SemCanada



Group to exit CCAA protection contemporaneously with the US Debtors emerging from the US Proceedings. Consequently, any delays in the U.S. Proceedings will cause similar delays in these CCAA Proceedings.

18. The SemDebtors notified the Monitor, the Service List and this Honourable Court on the status of the U.S. Proceedings and the potential for delays in both insolvency proceedings on August 19, 2009. As the timetable for the U.S. Proceedings has been revised as a result of the filing of the Amended US Plan and may be subject to further delay as a result of the Adjournment Application and/or the appeal (or otherwise), the SemDebtors may bring an application to further amend the CCAA Plans and amend the Canadian Creditors' Meetings Order to coordinate with any revised timetable in the U.S. Proceedings and any further amendments to the U.S. Plan.

#### **INCREASE IN SEMCAMS ALLOWABLE CAPITAL EXPENDITURES**

19. Paragraph 11 (a) of the Amended and Restated Initial Order states that capital expenditures shall not exceed \$46.6 million in aggregate for SemCAMS, without further order of the Court (the "Allowable SemCAMS Capital Expenditures"). SemCAMS' capital expenditures relate to the Redwillow Project and other ongoing projects ("Other Capital Projects").
20. SemCAMS' capital expenditures will remain within the existing Allowable SemCAMS Capital Expenditures limit until about September 4, 2009. SemCAMS expects to incur an additional \$900,000 in capital expenditures (the "Additional Capital Expenditures") thereafter to October 31, 2009, causing total capital expenditures to be in excess of the current limit authorized by the Amended and Restated Initial Order.
21. For reasons discussed in the Monitor's Eighteenth Report to this Honourable Court dated June 23, 2009, SemCAMS began to ramp-down the Redwillow Project in an orderly and financially prudent manner in May 2009. SemCAMS' concurrent discussions with the anchor producers of the Redwillow Project in

- efforts to negotiate mutually-acceptable terms upon which to defer the completion of the project to 2011 were unsuccessful, resulting in SemCAMS choosing to repudiate its agreements with the anchor producers on July 31, 2009.
22. SemCAMS has incurred a majority of the capital costs that it initially estimated would need to be incurred in order to fully ramp-down the Redwillow Project, leaving approximately \$550,000 in capital expenditures left to be incurred to October 31, 2009. (The remaining Redwillow Project capital costs exclude approximately \$705,000 in estimated reclamation costs which SemCAMS Management previously anticipated would be incurred before September 30, 2009; given the current status of the Redwillow Project, it is unlikely that these expenditures will be undertaken by SemCAMS until after the 2009 winter season).
  23. The remaining Redwillow Project capital expenditures and a portion of the proposed Other Capital Projects (discussed below) to be incurred to October 31, 2009 will be absorbed under the existing Allowable SemCAMS Capital Expenditures limit due to the additional room provided by the deferral of certain capital expenditures previously contemplated by SemCAMS (discussed below).
  24. The Monitor reviewed the proposed capital expenditures for Other Capital Projects to be incurred by SemCAMS to October 31, 2009. A vast majority of these capital expenditures represent continuing required capital costs to operate the SemCAMS facilities on an efficient and safe basis. Given the short-term pricing environment for natural gas, SemCAMS re-prioritized certain prior capital expenditures (unrelated to the Redwillow Project) scheduled for completion on or before August 3, 2009, resulting in a majority of the such capital costs being deferred until later in the 2009 calendar year. A vast majority of the proposed capital expenditures for Other Capital Projects relate to the completion of these deferred capital expenditures.
  25. A portion of the remaining proposed capital expenditures for Redwillow and the Other Capital Projects were projected to be spent by SemCAMS in its revised

CCAA cash flow projections to October 2, 2009 (filed by SemCAMS in support of its application for an order granting a further stay extension, which was granted by this Honourable Court on May 28, 2009). Based on its preliminary review of updated draft cash flow projections beyond October 2, 2009 (as prepared by SemCAMS), the Monitor is of the view that SemCAMS will have sufficient cash flow to October 31, 2009 with which to meet all of its capital expenditure payment obligations if the increase in the Allowable SemCAMS Capital Expenditures limit being requested by SemCAMS, and recommended by the Monitor below, is granted.

26. The Monitor believes that SemCAMS should continue with the ramp-down of the Redwillow Project, as currently scheduled, in order to re-focus its resources on its facilities and related base business of SemCAMS. In addition, the Other Capital Projects are required in order to maintain and preserve the value of SemCAMS. The Monitor believes that the overall value of SemCAMS will be negatively affected if the Other Capital Projects contemplated above are not continued.

## **RECOMMENDATION**

27. The Monitor recommends the Allowable SemCAMS Capital Expenditures limit be increased by \$900,000, from \$46.6 million to \$47.5 million.

All of which is respectfully submitted this 26<sup>th</sup> day of August 2009.

**ERNST & YOUNG INC.**  
**in its capacity as Court Appointed**  
**Monitor of the SemCanada Group**



Neil Narfason, CA•CIRP, CBV  
 Senior Vice-President



Rick Kanabar, CMA, CIRP  
 Vice-President

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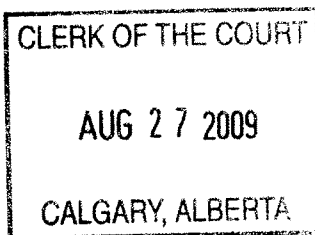
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