

COURT FILE NUMBER S-174308

COURT SUPREME COURT OF BRITISH COLUMBIA

JUDICIAL CENTRE VANCOUVER REGISTRY

PLAINTIFF INDUSTRIAL ALLIANCE INSURANCE AND FINANCIAL SERVICES INC.

DEFENDANTS WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., AND WEDGEMOUNT POWER INC.

DOCUMENT **THIRD REPORT OF THE COURT APPOINTED RECEIVER AND MANAGER OF WEDGEMOUNT POWER LIMITED PARTNERSHIP, WEDGEMOUNT POWER (GP) INC., AND WEDGEMOUNT POWER INC.**

**DATED JULY 30, 2020**

**PREPARED BY DELOITTE RESTRUCTURING INC.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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## APPENDICES

Appendix "A" – Receiver's Statement of Receipts and Disbursements for the period from  
May 12, 2017 to May 31, 2020

## INTRODUCTION

- 1) Pursuant to an Order (the "**Receivership Order**") of the Supreme Court of British Columbia (the "**Court**") dated May 12, 2017 (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver and manager (the "**Receiver**"), without security, of all assets, undertakings and properties of Wedgemount Power Limited Partnership ("**Wedgemount LP**"), Wedgemount Power (GP) Inc. ("**Wedgemount GP**") and Wedgemount Power Inc. ("**Wedgemount Power**") (collectively, the "**Wedgemount Entities**"). The Court proceedings in which the Receiver was appointed are referred to herein as the "**Receivership Proceedings**".
- 2) The Receivership Order was granted pursuant to an application by Industrial Alliance Insurance and Financial Services Inc. ("**IA**") in which IA stated that it was owed approximately \$21,951,066 by Wedgemount LP at the Date of Receivership. IA holds various registered security over all of Wedgemount LP's and Wedgemount GP's present and after-acquired real and personal property, along with various other corporate and personal guarantees (collectively, the "**IA Security**").
- 3) On March 29, 2018, the Receiver issued its First Report to Court (the "**First Report**"). The First Report was filed in response to the application of British Columbia Hydro and Power Authority ("**BCH**") filed on January 19, 2018 (the "**BCH Lift Stay Application**") seeking leave of the Court to lift the stay of proceedings pursuant to the Receivership Order and exercise BCH's termination rights under the EPA (as that term is defined in paragraph 19 of this Report). The First Report was also filed to, among other things, support the Receiver's application filed on April 3, 2018 (the "**Receiver's April 3 Application**") for a declaration that BCH was not entitled to terminate the EPA on the basis of any ground or fact then existing.
- 4) A confidential supplement to the First Report dated March 29, 2018 (the "**First Confidential Report**") was filed in support of the Receiver's April 3 Application and was sealed in the Court file. The First Confidential Report provided, among other things, an overview of the offers received following Phase II of the Receiver's sale process for the assets of the Wedgemount Entities.
- 5) On December 5, 2019, the Receiver filed its Second Report to Court (the "**Second Report**"). The Second Report provided an overview of the outcome of the BCH Lift Stay Application and the Receiver's April 3 Application, and information to support the Receiver's application filed on December 5, 2019 (the "**Receiver's December 5 Application**") for an order approving the transaction (the "**Concord Transaction**") contemplated by the Amended Concord APA (as that term is defined in paragraph 25 of this Report).
- 6) A confidential supplement to the Second Report dated December 5, 2019 (the "**Second Confidential Report**") was filed in support of the Receiver's December 5 Application and was sealed in the Court file. The Second Confidential Report provided, among other things, an overview of the offers received following the final bid procedure in the Receiver's sale process for the assets of the Wedgemount Entities.
- 7) On December 12, 2019, the Court granted an Order (the "**Vesting Order**") approving the Concord Transaction.

- 8) This is the Receiver's third report to the Court (the "**Third Report**" or "**this Report**"). Unless otherwise provided, all capitalized terms used but not defined in this Third Report are as defined in the Receivership Order.
- 9) The Receivership Order, together with the notices to creditors, the First Report and Second Report have been posted on the Receiver's website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/wedgemount.aspx>. The Third Report will also be posted to the Receiver's website after it has been filed with the Court.

### **Purpose of the Third Report**

- 10) The purpose of this Third Report is as follows:
  - a) To report on the closing of the Concord Transaction; and
  - b) To support the Receiver's application filed July 30, 2020 for an order approving and authorizing the Receiver to pay the IA Distribution (as that term is defined in paragraph 53 of this Report).
- 11) This Third Report has also been filed to provide the Court with an update on the Receiver's activities since the Second Report and the Receiver's receipts and disbursements from the Date of Receivership to May 31, 2020.
- 12) The Receiver anticipates that its discharge application will be made in or around October 2020, depending on the Receiver's progress in relation to the remaining matters to be completed in the Receivership Proceedings. The Receiver proposes to wait until its discharge application to seek the Court's approval of its fees and activities.

### **Terms of Reference**

- 13) In preparing this Report, the Receiver has relied upon unaudited financial and other information prepared by the Wedgemount Entities' former directors, the books and records of the Wedgemount Entities, and discussions with former directors and consultants.
- 14) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of this information.
- 15) All dollar amounts in this Third Report are in Canadian dollars, unless otherwise indicated.

### **BACKGROUND**

- 16) Wedgemount LP is a privately owned limited partnership established in the Province of British Columbia ("**BC**") and was the owner and developer of a partly-constructed 5.4 megawatt run-of-river hydro power facility located on Wedgemount Creek, near Whistler, BC (the "**Project**").
- 17) Wedgemount GP is incorporated in the Province of BC and is the general partner of Wedgemount LP. Wedgemount GP was set-up to manage the day-to-day operations of

the Project once it had been completed and commissioned pursuant to an Operating Management Agreement among the Wedgemount Entities dated March 25, 2015.

- 18) Pursuant to the Operating Management Agreement, Wedgemount Power was retained as the manager to assist Wedgemount GP with respect to the day-to-day operations of the Project.
- 19) The Project was developed with the intention that it would generate electricity that would then be sold to BCH. Wedgemount LP, by its general partner Wedgemount GP, and BCH entered into an Electricity Purchase Agreement dated March 6, 2015 (the "**EPA**"). The Project is to be connected to the BCH grid by way of a process and infrastructure referred to as "interconnection".
- 20) Certain parts of the Project infrastructure are located on Crown land, including the intake, penstock and portions of the interconnection. Other sections of the interconnection are located on unresolved Crown lands that are designated as a cultural heritage area of the Squamish Nation.
- 21) The Project's powerhouse and certain portions of the interconnection are located on the WedgeWoods residential subdivision, which was developed and originally owned by 28165 Yukon Inc. ("**Yukon**").
- 22) Prior to the Date of Receivership, Wedgemount LP had experienced permitting difficulties and cost issues associated with determining an economic and technically feasible route for the interconnection. These problems led to significant Project development delays, additional costs and potential environmental risks related to the integrity of the temporary diversion channel and drainage control on the Project site.
- 23) Despite efforts to refinance the Project, negotiations between Wedgemount LP and IA broke down in April of 2017. On May 9, 2017, IA commenced an action to appoint a receiver over the Wedgemount Entities to ensure environmental risks at the Project site were properly managed and to protect the value of the assets for all the creditors of the Wedgemount Entities.
- 24) Subsequently, on May 12, 2017, the Honourable Mr. Justice Steeves granted the Receivership Order.

## **CLOSING OF THE CONCORD TRANSACTION**

- 25) As set out in the Second Report, on November 18, 2019, the Receiver entered into an asset purchase agreement (the "**Concord APA**") with Concord Wedgemount Creek General Partnership acting through its general partners 11739484 Canada Inc. and 11739522 Canada Inc. (collectively, the "**Purchaser**"), as amended by the amending agreement dated December 5, 2019 (together with the Concord APA, the "**Amended Concord APA**").
- 26) Pursuant to the Amended Concord APA, the Purchaser agreed to purchase, and the Receiver agreed to sell, all of the Wedgemount Entities' right, title, and interest in and to the Project, free and clear of all encumbrances (other than certain permitted encumbrances), for cash consideration of \$12,750,000 plus applicable taxes (the "**Purchase Price**").
- 27) During the period between execution of the Amended Concord APA and closing of the Concord Transaction, the Receiver continued to liaise with the Ministry of Forests,

Lands and Natural Resource Operations (“**MFLNRO**”) in relation to the Receiver’s application for an offer of tenure for section 2 of the interconnection (a condition precedent to closing of the Concord Transaction). On December 5, 2019 the Receiver received the offer of tenure.

- 28) Pursuant to the terms of the Amended Concord APA, closing of the Concord Transaction (“**Closing**”) was subject to the Purchaser entering into a financing arrangement with IA and was scheduled to occur on the fifth business day following the date of the approval and vesting order with respect to the transaction (being December 19, 2019), or as otherwise agreed upon by the Receiver and Purchaser.
- 29) The Purchaser experienced difficulties in obtaining course of construction and testing/commissioning insurance coverage for the Project. This led to a delay of Closing.
- 30) The Purchaser and IA held various discussions related to the insurance requirements necessary to enter into a credit agreement for financing of the Concord Transaction. The Receiver understands that the Purchaser and IA entered into an agreement related to certain insurance matters. This agreement allowed the financing to proceed, and did not impact the Amended Concord APA in any way.
- 31) Following discussions between the Purchaser and the Receiver, and owing to the delayed Closing, the Purchaser agreed to increase the Purchase Price to cover all holding costs of the Project from January 14, 2020 onwards.
- 32) The Concord Transaction closed on February 28, 2020, including the assignment of the EPA (among other agreements) to the Purchaser. Proceeds of \$11,774,157 were paid to the Receiver (i.e. the Purchase Price, less \$1,000,000 deposit previously paid, plus \$24,157 in closing cost adjustments).
- 33) On March 26, 2020, the Receiver submitted the final statement of adjustments to the Purchaser. In April 2020, \$1,461 was paid by the Purchaser in full and final satisfaction of all amounts owing under the Concord Amended APA.

## **RECEIVERS ACTIVITIES SINCE THE SECOND REPORT**

- 34) In addition to closing the Concord Transaction, the Receiver has, among other things:
  - a) Held discussions with BCH related to certain amendments to the Project construction milestone dates pursuant to the Distribution Generator Interconnection Agreement;
  - b) Liaised with the Lil’wat Nation and the Squamish Nation regarding the status of the Concord Transaction and assignment of the Squamish-Lil’wat IBA;
  - c) Provided the required notices to certain stakeholders of the Project, pursuant to the terms of the Amended Concord APA;
  - d) Corresponded with MFLNRO and entered into an amendment agreement related to fees payable in respect of the licence of occupation covering the area in which most of the Project assets are located (including the penstock and intake);
  - e) Arranged for the payment of outstanding property taxes for the Project to the Minister of Finance;

- f) Arranged for the extension of insurance coverage for the Project up to the closing date of the Concord Transaction;
- g) Reviewed vendor claims made pursuant to the *Builders Lien Act* related to certain holdback monies held by the Receiver;
- h) Oversaw the activities of consultants in monitoring the Project and undertaking certain care and maintenance activities; and
- i) Attended to various statutory matters, including filing of Goods and Services Tax ("**GST**") returns.

## **CREDITORS AND SECURED CHARGES**

- 35) IA is the principal secured creditor of the Wedgemount Entities, and was owed \$16,000,000 in principal at the Date of Receivership pursuant to a credit agreement (the "**Credit Agreement**") dated June 30, 2015 among Wedgemount LP, IA and Travelers Capital Corporation (as agent), and pursuant to a construction loan note dated June 30, 2015.
- 36) In August 2019, IA advanced a further \$500,000 to the Receiver to fund the ongoing Receivership Proceedings and development of the Project. Accordingly, IA is now owed \$16,500,000 ("**IA Principal Amount**") plus interest, which continues to accrue. IA has also directly funded certain protective disbursements to preserve the value of the Project.
- 37) The Receiver's independent legal counsel, McMillan LLP ("**McMillan**"), has performed an independent review of the validity and enforceability of the IA Security and has advised that it is valid and enforceable and ranks in priority to the unsecured creditors of the Wedgemount Entities (the "**Security Opinion**").
- 38) As discussed below, the Receiver proposes to make an interim distribution to IA in the amount of \$12,000,000. While the Receiver does anticipate receiving some additional amounts, these amounts (together with the proposed interim distribution) will not be sufficient to satisfy the IA Principal Amount in full.
- 39) IA has advised the Receiver that as at September 30, 2017, it was owed a further \$5.6 million in relation to a make whole (prepayment) fee pursuant to the Credit Agreement. The validity and enforceability of this prepayment fee has not been fully considered by the Receiver, and is not expected to be relevant given the deficit IA will suffer in respect of the IA Principal Amount.
- 40) In addition to IA (and the beneficiaries of the Court-ordered charges granted in these Receivership Proceedings), the following parties have, or have asserted, secured claims against the Wedgemount Entities:
  - a) Yukon, Paradise Investment Trust and Sunny Paradise Holdings Inc. (collectively, the "**Yukon Parties**") are the holders of a security interest in certain personal property of Wedgemount Power, in respect of which a financing statement was registered in the British Columbia Personal Property Registry (the "**PPR**") on March 20, 2013. Yukon was the original owner of lands on which certain portions of the Project (including the powerhouse) are located. By subordination agreement dated June 30, 2015, the Yukon Parties subordinated their security to the IA Security;

- b) Her Majesty the Queen in right of the Province of British Columbia (the "**Province**") is the holder of security interests in the personal property of Wedgemount LP, notices of which were registered in the PPR on May 11, 2017. McMillan has advised the Receiver that, pursuant to section 30.1(3) of the *Taxation (Rural Area) Act*, IA's security ranks ahead of the Province's charge as IA's security interest was registered before the date the Province's claim was registered in the PPR; and
- c) WorkSafeBC has indicated that it is owed \$1,120 by Wedgemount GP (the "**WorkSafe BC Claim**"). The Receiver is in the process of reviewing the nature of the WorkSafeBC Claim and intends to hold this amount, pending resolution of the claim.

### **Holdback Accounts**

- 41) Shortly after the Date of Receivership, the Receiver arranged for the transfer to the Receiver of balances held in four holdback accounts related to certain construction contracts entered into by the Wedgemount Entities prior to the Date of Receivership. The accounts held balances totalling \$578,155.
- 42) The Receiver was contacted by four contractors requesting the release of monies held in the respective holdback accounts. Following a review of the contractors' claims made pursuant to the *Builders Lien Act*, the Receiver has made payment in full of the balances held in three of the four holdback accounts (including accrued interest) and a partial payment to Glacier Creek Contracting Ltd. ("**Glacier Creek**") in respect of the fourth account.
- 43) The balance remaining in the Glacier Creek holdback account amounts to approximately \$51,028 (the "**Glacier Creek Holdback**") and relates to a performance holdback pursuant to Glacier Creek's construction contract with the Wedgemount Entities. The Receiver continues to hold this amount, pending resolution of Glacier Creek's entitlement to these funds.

### **Unsecured Creditors**

- 44) As at the Date of Receivership, the available books and records of Wedgemount LP reported unsecured creditors with claims of approximately \$6.2 million.
- 45) Given that IA, the secured creditor, will suffer a shortfall on the IA Principal Amount, the Receiver has not reviewed the claims of the unsecured creditors. The Receiver has, however, provided ad-hoc updates on the status of the Receivership Proceedings to certain unsecured creditors as and when it has been contacted.

### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

- 46) Attached as Appendix "**A**" to this Report is a Statement of Receipts and Disbursements reflecting the administration of the Receivership Proceedings for the period from the Date of Receivership to May 31, 2020.
- 47) As at May 31, 2020, the Receiver's gross receipts amounted to \$16,658,804, primarily relating to the cash on hand at the Date of Receivership in the amount of \$2,543,670, the balances in the holdback accounts of \$578,215, the Project sale proceeds of \$12,750,000, and additional funding provided by IA in the amount of \$500,000.



- 48) During the same period, the Receiver has made disbursements totalling \$4,368,752 including, among other items, engineering and environmental consulting fees, BCH interconnection design and planning costs, a contribution towards the costs for the relocation of certain fibre optic lines, the cost of the intake construction works, road remediation, powerhouse winterization, legal fees and the Receiver's fees.
- 49) The Receiver has invoiced and been paid \$836,624 in fees and costs (before taxes) covering the period from the Date of Receivership to December 31, 2019. The Receiver has incurred additional fees and costs for the period to May 31, 2020 amounting to \$16,754 (before taxes) which have not yet been paid.
- 50) The Receiver has disbursed \$481,900 to McMillan in fees and costs (before taxes) covering the period from July 21, 2018 to January 31, 2020. McMillan has incurred additional fees and costs for the period to May 31, 2020 amounting to \$13,044 (before taxes) which have not yet been paid.
- 51) In addition, the Receiver has disbursed \$68,861 to Gowling WLG LLP in respect of legal fees and costs (before taxes). The legal services provided by Gowling WLG LLP to the Receiver relate to the initial stages of the Receivership Proceedings prior to the involvement of McMillan as the Receiver's independent counsel.
- 52) The net cash balance held by the Receiver at May 31, 2020 was \$12,239,024 (excluding the Glacier Creek Holdback).

#### **PROPOSED DISTRIBUTION TO IA**

- 53) Subject to Court approval, the Receiver proposes to make an interim distribution to IA in the amount of \$12,000,000 (the "**IA Distribution**"). This leaves a balance on hand of approximately \$207,000 (excluding the Glacier Creek Holdback) after payment of the Receiver's and McMillan's outstanding fees to May 31, 2020.

#### **REMAINING MATTERS TO BE COMPLETED IN THE RECEIVERSHIP PROCEEDINGS**

- 54) Subject to the Court approving the IA Distribution, the remaining matters to be completed by the Receiver include:
  - a) recovery of security deposits owing by MFLNRO to Wedgemount LP in the amount of \$20,000;
  - b) dealing with certain GST matters;
  - c) dealing with the Glacier Creek Holdback;
  - d) review of the WorkSafeBC Claim;
  - e) payment of a final distribution to IA upon the conclusion of the Receivership Proceedings; and
  - f) other administrative matters incidental to the Receivership Proceedings, including the filing of the Receiver's report pursuant to section 246(3) of the BIA.

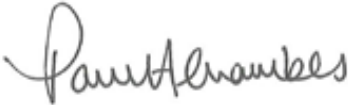
## **CONCLUSIONS AND RECOMMENDATIONS**

55) Based on the foregoing, the Receiver respectfully requests that the Court grant an Order approving and authorizing the Receiver to pay the IA Distribution.

All of which is respectfully submitted at Vancouver, BC this 30<sup>th</sup> day of July, 2020.

### **DELOITTE RESTRUCTURING INC.**

In its capacity as Court-Appointed Receiver and Manager of Wedgemount Power Limited Partnership, Wedgemount Power (GP) Inc., and Wedgemount Power Inc., and not in its personal capacity

A handwritten signature in cursive script that reads "Paul Chambers".

Per: Paul Chambers, CIRP, LIT  
Senior Vice-President

## Appendix "A"

### Receiver's Statement of Receipts and Disbursements for the period from May 12, 2017 to May 31, 2020

Description	Wedgemount Power Limited Partnership	Wedgemount Power (GP) Inc.	Wedgemount Power Inc.	Total
<b>Receipts</b>				
Cash in bank	\$ 2,543,670	\$ -	\$ -	\$ 2,543,670
Advance from secured creditor	500,000	-	-	500,000
Trust funds (holdback accounts)	578,215	-	-	578,215
Recoverable expenses	-	70	70	140
Sale proceeds	12,749,900	-	-	12,749,900
Land and buildings	100	-	-	100
Bank account transfers	12,434	-	-	12,434
Contribution to project holding costs	24,157	-	-	24,157
GST/Tax refunds	165,726	-	-	165,726
Interest	84,602	-	-	84,602
<b>Total receipts</b>	<b>16,658,804</b>	<b>70</b>	<b>70</b>	<b>16,658,944</b>
<b>Disbursements</b>				
Filing fees to Receiver General	70	70	70	210
Bank charges	378	-	-	378
Contractor services:				
Forestry and crown tenure consulting	80,115	-	-	80,115
Engineering consulting	902,458	-	-	902,458
Environmental consulting	18,721	-	-	18,721
Construction works and site remediation/winterization	285,620	-	-	285,620
BC Hydro interconnection costs	297,358	-	-	297,358
TELUS line relocation cost contribution	172,750	-	-	172,750
MFLNRO licence fees and security deposit	12,423	-	-	12,423
Payment of trust funds (holdback accounts)	542,636	-	-	542,636
GST/PST paid	194,875	-	-	194,875
Insurance	107,581	-	-	107,581
Receiver's fees	836,624	-	-	836,624
Legal fees	550,761	-	-	550,761
Property taxes	334,367	-	-	334,367
Bank account transfers	12,986	-	-	12,986
Misc. disbursements	19,028	-	-	19,028
<b>Total disbursements</b>	<b>4,368,752</b>	<b>70</b>	<b>70</b>	<b>4,368,892</b>
<b>Excess of receipts over disbursements</b>	<b>\$ 12,290,052</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 12,290,052</b>
<b>Represented by:</b>				
Cash in bank	12,239,024	-	-	12,239,024
Holdback accounts	51,028	-	-	51,028
<b>Cash in bank</b>	<b>\$ 12,290,052</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 12,290,052</b>