

## Headnote

Multilateral Instrument 11-102 *Passport System – National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions* – Dual application – Issuer bid – Modified Dutch auction – Application for relief from the requirement to take up and pay for shares on a *pro rata* basis and the related disclosure requirements for the issuer bid circular (Section 2.26 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* and Item 8 of Form 62-104F2 *Issuer Bid Circular*) – Application for relief from the requirement that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the issuer first takes up all Shares deposited under the Offer and not withdrawn (Section 2.32 of NI62-104).

## Applicable Legislative Provisions

National Instrument 62-104 *Take-Over Bids and Issuer Bids*, sections 2.26 and 6.1 and subsection 2.32(4)

**Citation: Re Frontera Energy Corporation, 2022 ABASC 100**

**Date: 20220722**

In the Matter of  
the Securities Legislation of  
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Frontera Energy Corporation (the **Filer**)

## Decision

## Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that, in connection with the proposed purchase by the Filer of a portion of its outstanding common shares (the **Shares**) pursuant to a formal issuer bid (the **Offer**), the Filer be exempt, subject to the conditions set forth herein, from the following requirements in the Legislation (the **Exemption Sought**):

- (a) the requirement in Section 2.26 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) to take up and pay for Shares deposited pursuant to the Offer proportionately according to the number of Shares deposited by each holder of Shares (a **Shareholder**) (the **Proportionate Take Up Requirement**);
- (b) the requirement in Item 8 of Form 62-104F2 *Issuer Bid Circular* (**Form 62-104F2**) to provide disclosure of the proportionate take up and payment of Shares under the

Offer in the Filer's issuer bid circular (the **Circular**) (the **Proportionate Take Up Disclosure Requirement**); and

- (c) the requirement in Section 2.32(4) of NI 62-104 that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the issuer first takes up all Shares deposited under the Offer and not withdrawn (the **Extension Take Up Requirement**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and NI 62-104 have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. The Filer is a corporation governed by the *Business Corporations Act* (British Columbia).
2. The head office of the Filer is located in Calgary, Alberta. The registered office of the Filer is located in Vancouver, British Columbia.
3. The Filer is a reporting issuer in each of the provinces of Canada and the Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) under the trading symbol "FEC". The Filer is not in default of any requirement of the securities legislation in any of the jurisdictions in which it is a reporting issuer.
4. The Filer's authorized share capital consists of: (a) an unlimited number of Shares with no par value; and (b) an unlimited number of preferred shares with no par value. As of June 9, 2022, there were 92,982,495 Shares and no preferred shares issued and outstanding. The Offer will not include any offer for the purchase of any of the preferred shares.
5. On June 9, 2022, the closing price of the Shares on the TSX was \$13.58. On the basis of this closing price, on such date the Shares had an aggregate market value of approximately \$1,262,702,282.10 (on a non-diluted basis).

6. As at June 9, 2022, The Catalyst Capital Group Inc. (**Catalyst**) beneficially owned 34,775,609 Shares (approximately 37.40% of the issued outstanding Shares) and Gramercy Funds Management LLC (**Gramercy**) exercised control or direction over 10,601,732 Shares (approximately 11.40% of the issued and outstanding Shares), which in the aggregate represented approximately 48.80% of the issued and outstanding Shares.
7. Catalyst has advised the Filer that it will not be depositing any Shares pursuant to the Offer. Gramercy has advised the Filer that its current intention is not to deposit Shares pursuant to the Offer, however such intention is subject to market conditions and other factors and Gramercy reserves the right without notice to revisit its investment decision.
8. The Offer reflects the offer of the Filer to purchase that number of Shares having an aggregate maximum purchase price of up to \$65,000,000 (the **Specified Maximum Dollar Amount**).
9. The purchase price payable per Share (the **Purchase Price**) will be determined by the Filer through a modified “Dutch auction” procedure in the manner described below, but will not be less than \$11.00 and not more than \$13.00 per Share (the **Price Range**).
10. The Offer commenced on June 24, 2022 and will expire at 11:59 p.m. (Eastern time) on July 29, 2022 unless withdrawn, extended or varied by the Filer (the **Expiration Date**).
11. The board of directors of the Filer (the **Board**) has determined that the Offer is in the best interests of the Filer.
12. The Filer will fund the purchase of Shares pursuant to the Offer, together with fees and expenses of the Offer, using available cash on hand. In any event, the Offer will not be conditional upon the receipt of any financing.
13. Shareholders wishing to tender to the Offer will be able to do so in one of three ways:
  - (a) by making an auction tender pursuant to which the tendering Shareholders agree to tender a specified number of Shares at a specified price per Share (an **Auction Price**) within the Price Range (an **Auction Tender**);
  - (b) by making a purchase price tender pursuant to which the tendering Shareholders do not specify a price per Share, but rather agree to have a specified number of Shares purchased at the Purchase Price (a **Purchase Price Tender**); or
  - (c) by making a proportionate tender pursuant to which the tendering Shareholders agree sell to the Filer, at the Purchase Price, a number of Shares that will result in them maintaining their respective proportionate equity ownership in the Filer following completion of the Offer (a **Proportionate Tender**).
14. Shareholders may deposit some of their Shares pursuant to an Auction Tender and deposit different Shares pursuant to a Purchase Price Tender. Shareholders who tender Shares in an Auction Tender and/or a Purchase Price Tender cannot tender Shares in a Proportionate Tender. Shareholders may not deposit the same Shares pursuant to more than one method

of tender or pursuant to an Auction Tender at more than one price. Shareholders who tender Shares in a Proportionate Tender may not tender Shares in an Auction Tender or a Purchase Price Tender.

15. Any Shareholder who owns fewer than 100 Shares and tenders all of such Shareholder's Shares pursuant to an Auction Tender at an Auction Price at or below the Purchase Price or pursuant to a Purchase Price Tender will be considered to have made an "Odd Lot Tender".
16. The Filer will determine the Purchase Price based on the Auction Prices and the number of Shares specified in valid Auction Tenders and Purchase Price Tenders (considered for purposes of determining the Purchase Price to have been tendered at the minimum price per Share offered). The Purchase Price will be the lowest price that enables the Filer to purchase that number of Shares tendered pursuant to valid Auction Tenders and Purchase Price Tenders having an aggregate purchase price not to exceed an amount (the **Auction Tender Limit Amount**) equal to:
  - (a) the Specified Maximum Dollar Amount, less
  - (b) the product of:
    - (i) the Specified Maximum Dollar Amount; and
    - (ii) a fraction, the numerator of which is the aggregate number of Shares owned by Shareholders making valid Proportionate Tenders, and the denominator of which is the aggregate number of Shares outstanding at the time of expiry of the Offer.
17. If the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount, the Filer will purchase at the Purchase Price all Shares so deposited pursuant to Auction Tenders at or below the Purchase Price and Purchase Price Tenders.
18. If the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders (at Auction Prices at or below the Purchase Price) and Purchase Price Tenders is greater than the Auction Tender Limit Amount, the Filer will purchase a portion of the Shares so deposited pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders, determined as follows:
  - (a) first, the Filer will purchase all such Shares tendered by Shareholders pursuant to Odd Lot Tenders; and
  - (b) second, the Filer will purchase on a *pro rata* basis that portion of such Shares having an aggregate purchase price, based on the Purchase Price, equal to
    - (i) the Auction Tender Limit Amount, less

- (ii) the aggregate amount paid by the Filer for Shares tendered pursuant to Odd Lot Tenders, in each of the cases set forth in clauses (a) and (b) of this paragraph, at the Purchase Price.
- 19. The Filer will purchase at the Purchase Price that portion of the Shares deposited by Shareholders making valid Proportionate Tenders that results in each tendering Shareholder maintaining their proportionate Share ownership following completion of the Offer (the **Proportionate Take Up**).
- 20. The number of Shares that the Filer will purchase pursuant to the Offer and the aggregate Purchase Price will vary depending on whether the aggregate Purchase Price payable in respect of Shares required to be purchased pursuant to Auction Tenders (at or below the Purchase Price) and Purchase Price Tenders (the **Auction Tender Purchase Amount**) is equal to or less than the Auction Tender Limit Amount. If the Auction Tender Purchase Amount is equal to the Auction Tender Limit Amount, the Filer will purchase Shares pursuant to the Offer for an aggregate Purchase Price equal to the Specified Maximum Dollar Amount. If the Auction Tender Purchase Amount is less than the Auction Tender Limit Amount, the Filer will purchase proportionately fewer Shares in the aggregate, with a proportionately lower aggregate purchase price.
- 21. All Shares purchased by the Filer pursuant to the Offer (including Shares tendered at Auction Prices at or below the Purchase Price) will be purchased at the Purchase Price. Shareholders will receive the Purchase Price in cash. All Auction Tenders, Purchase Price Tenders and Proportionate Tenders will be subject to adjustment to avoid the purchase of fractional Shares. All payments to Shareholders will be subject to deduction of applicable withholding taxes.
- 22. The Purchase Price will be denominated in Canadian dollars and the payment of amounts owing to Shareholders whose Shares are taken up under the Offer will be made in Canadian dollars. However, Shareholders may elect to receive the Purchase Price in United States dollars by indicating that in the letter of transmittal for the Offer. The exchange rate that will be used to convert payments from Canadian dollars into U.S. dollars will be the rate available from the depositary and foreign exchange service provider under the Offer, on the date on which the funds are converted, which rate will be based on the prevailing market rate on such date.
- 23. All Shares tendered to the Offer and not taken up by the Filer will be returned to the appropriate Shareholders.
- 24. Until expiry of the Offer, all information about the number of Shares tendered and the prices at which the Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.
- 25. Shareholders who do not accept the Offer will continue to hold the same number of Shares held before the Offer and, assuming Shares are validly tendered to the Offer, their proportionate Share ownership will increase following completion of the Offer.

26. The Filer may elect to extend the Offer without first taking up all the Shares deposited and not withdrawn under the Offer if the aggregate Purchase Price for Shares validly tendered pursuant to Auction Tenders and Purchase Price Tenders is less than or equal to the Auction Tender Limit Amount. Under the Extension Take Up Requirement contained in Section 2.32(4) of NI 62-104, an offeror may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all the securities deposited and not withdrawn under the issuer bid.
27. As the determination of the Purchase Price requires that all Auction Prices and the number of Shares deposited pursuant to both Auction Tenders and Purchase Price Tenders be known and taken into account, the Filer will be unable to take up the Shares deposited and not withdrawn under the Offer as of the Expiration Date prior to extending the Offer because the Purchase Price will not and cannot be known as additional Auction Tenders and Purchase Price Tenders may be made during the extension period that will impact the calculation of the Purchase Price. Accordingly, the Exemption Sought is required in connection with an extension of the Offer to enable the Filer to make a final determination regarding the Purchase Price, taking into account all Shares tendered prior to the Expiration Date and those tendered during any extension period.
28. The Filer will not extend the Offer if all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date, and the aggregate Purchase Price of the Shares validly tendered and not withdrawn is equal to or greater than the Specified Maximum Dollar Amount.
29. The Filer intends to rely on the exemption from the formal valuation requirements applicable to issuer bids under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) set out in subsection 3.4(b) of MI 61-101 (the **Liquid Market Exemption**).
30. There was a “liquid market” for the Shares, as such term is defined in MI 61-101, as of the date of the making of the Offer because the test in Subsection 1.2(1)(a) of MI 61-101 was satisfied based on:
  - (a) the Shares having been traded on the TSX for the twelve month period prior to the date the Offer is publicly announced; and
  - (b) the trading of the Shares on the TSX during the twelve month period prior to the announcement date of the Offer exceeding the minimum outstanding common share and common share trading volume and market value requirements set forth in Subsection 1.2(1)(a) of MI 61-101.
31. In addition, the Board has voluntarily obtained a liquidity opinion (the **Liquidity Opinion**) in accordance with Section 1.2 of MI 61-101 from BMO Nesbitt Burns Inc. confirming that, as of the date the Offer is publicly announced, based on and subject to customary qualifications, assumptions and restrictions set out therein, (i) a liquid market for the Shares exists and (ii) it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of Shares who do not tender to the Offer that is not materially

less liquid than the market that existed at the time of the making of the Offer. A copy of the Liquidity Opinion is attached to the Circular.

32. Based on the liquid market test set out above and the Liquidity Opinion, the Filer has determined that it is reasonable to conclude that, following the completion of the Offer, there will be a market for holders of Shares who do not tender their Shares pursuant to the Offer that is not materially less “liquid” than the market that existed at the time of the making of the Offer.
33. The Filer has disclosed in the Circular relating to the Offer the following information:
  - (a) the mechanics for the take up of and payment for Shares as described herein;
  - (b) that, by tendering Shares at the lowest price in the Price Range under an Auction Tender or by tendering Shares under a Purchase Price Tender or a Proportionate Tender, a Shareholder can reasonably expect that the Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified herein;
  - (c) that the Filer has applied for the Exemption Sought;
  - (d) the manner in which any extension of the Offer will be communicated to Shareholders;
  - (e) that Shares deposited pursuant to the Offer may be withdrawn at any time prior to the Shares being taken up by the Filer;
  - (f) if known after reasonable inquiry, the name of every person named in Item 11 of Form 62-104F2 who has accepted or intends to accept the Offer and the number of Shares in respect of which the person has accepted or intends to accept the Offer;
  - (g) the facts supporting the Filer’s reliance on the Liquid Market Exemption and the Liquidity Opinion; and
  - (h) except to the extent exemptive relief is granted pursuant to the Exemption Sought, the disclosure prescribed by applicable securities laws for issuer bids.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make this decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

- (a) the Filer takes up and pays for Shares deposited pursuant to the Offer and not withdrawn, in each case, in the manner described herein; and
- (b) the Filer is eligible to rely on the Liquid Market Exemption.

*“original signed by”*  
Timothy Robson  
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