Section 67(1) **Form 3.5 (Scot)**

The Insolvency Act 1986

Notice of Receiver's report

S67(1)

Pursuant to section 67(1) of the Insolvency Act 1986

For official use

		1

Insert names of persons to whom notice is to be given under section 67(1)

To (a) The Registrar of Companies

Company number

SC071400

Name of company

Insert name of company

Proven Energy Limited (in receivership)

Insert name(s) and address(es) of receivers

We, Blair Carnegie Nimmo and Gerard Anthony Friar

of KPMG LLP
191 West George Street
Glasgow G2 2LJ
United Kingdom

Joint Receivers of the company attach a copy of our report to creditors.

Signed [signature] Dated 14 December 2011

Presentor's name, address and reference (if any)

KPMG LLP
191 West George Street
Glasgow
G2 2LJ
United Kingdom

THURSDAY
S0O7K5B4
SCT 15/12/2011 #109
COMPANIES HOUSE

SADR05 / Jul 2002

KPMG

Proven Energy Limited
(in receivership)

Joint Receivers' report to creditors pursuant to Section 67 of the Insolvency Act 1986

14 December 2011

KPMG LLP

14 December 2011

This report contains 19 pages

gp/gaf/982

Note: About this Report

This Report has been prepared by Blair Carnegie Nimmo and Gerard Anthony Friar, the Joint Receivers of Proven Energy Limited solely to comply with their statutory duty to report to creditors under Section 67 of the Insolvency Act 1986, and for no other purpose. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.

This Report has not been prepared in contemplation of it being used, and is not suitable to be used, to inform any investment decision in relation to the debt of or any financial interest in Proven Energy Limited

Any estimated outcome for creditors included in this Report is illustrative only and cannot be relied upon as guidance as to the actual outcome for creditors.

Any person that chooses to rely on this Report for any purpose or in any context other than under Section 67 of the Insolvency Act 1986 does so at its own risk. To the fullest extent permitted by law, the Joint Receivers do not assume any responsibility and will not accept any liability in respect of this Report to any such person.

Blair Carnegie Nimmo and Gerard Anthony Friar are authorised to act as insolvency practitioners by the Institute of Chartered Accountants of Scotland.

The Joint Receivers act as agents for Proven Energy Limited and contract without personal liability. The appointments of the Joint Receivers are personal to them and, to the fullest extent permitted by law, KPMG LLP does not assume any responsibility and will not accept any liability to any person in respect of this Report or the conduct of the Receivership.

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Appendices

1 Introduction

We, Blair Carnegie Nimmo and Gerard Anthony Friar of KPMG LLP, were appointed Joint Receivers of Proven Energy Limited ("the Company") on 16 September 2011 ("the date of appointment").

Following a request by the Company's directors, we were appointed by Clydesdale Bank Plc ("the Bank") under its bond and floating charge dated 26 September 2001 and registered at Companies House on 2 October 2001.

In accordance with Section 67 of the Insolvency Act 1986 we set out below our report to the creditors of the Company.

A copy of this report will be laid before a meeting of the Company's creditors to be held at KPMG LLP, 191 West George Street, Glasgow, G2 2LJ on 14 December 2011 at 10am.

2 Statutory and other information

A summary of the statutory and other relevant information relating to the Company is set out in Appendix 2.

3 Background and events leading up to the appointment

3.1 Background

The Company was established in 1980 and initially operated as a manufacturer of bespoke precision engineering products. In 1985, Gordon Proven (the Company's founder) designed the Company's first wind turbine and from the early nineties, the sale, design and manufacturing of small wind turbines became the Company's sole focus.

In recent years, the Company manufactured three models of small wind turbines (the P7, P11 and P35-2) from its owned premises in Stewarton, North Ayrshire. The Company also operated a sales, administration and finance office from leased premises in East Kilbride. At the date of appointment, the Company employed c.75 members of staff across the two locations.

From 1993 (when the Company's first commercial turbine was installed) until 2006, turnover grew steadily year on year, generating profits and gaining the Company a considerable market share and strong reputation in the small wind industry.

In 2006, a controlling shareholding in the Company was acquired by Low Carbon Accelerator ("LCA"), a niche, closed ended investment company, listed on the London Stock Exchange's Alternative Investment Market ("AIM"). LCA was established as a venture capital fund with the primary aim of investing in businesses with products and services that would reduce carbon dioxide emissions. In the five years subsequent to its initial involvement, LCA invested a total of £11.5 million in the Company through a combination of debt and equity funding.

Following LCA's acquisition, the Company embarked on an accelerated growth strategy, primarily focusing on the development of new products and in particular, the P35-2 (15kW) turbine. The Company's manufacturing capability and workforce was also greatly enhanced and the number of the Company's turbines installed worldwide rose from c.1,000 in 2006 to nearly 4,000 by 2011.

Whilst the Company's growth led to a significant increase in turnover, substantial losses were incurred from 2007 onwards, with the Company accruing c.£9 million in losses before tax over a four year period. These losses were, however, supported by LCA and the directors who deemed the high levels of product development and marketing expenditure necessary for the longer term growth of the business.

In its most recent full year accounts to 31 May 2011 (unaudited), the Company generated £9.4 million of turnover and £3.1 million of gross profit. However, after accounting for operating costs and product development expenses, a net loss before tax of £874,000 was incurred, resulting in a balance sheet with net liabilities totalling £1.4 million.

3.2 Events leading up to the Joint Receivers' appointment

On 12 September 2011, the Company's directors issued an announcement advising that a serious manufacturing defect had been identified in the Company's flagship P35-2 turbine. The defect, which was not isolated to a particular batch of stock, was deemed to be a potentially significant health and safety risk. Accordingly, the Company's directors advised all owners of P35-2 turbines to place their units on brake as soon as safely possible and to cease using the turbine until further notice.

As a consequence of the fault, the Company was unable to sell, ship or manufacture the P35-2 model, which accounted for over 75% of the Company's turnover. This had a significant and immediate adverse impact on the Company's cash-flow as invoices were unable to be presented to the Bank for payment under the Company's confidential invoice discounting ("CID") facility.

The problem was further exacerbated when the Company's main investor and shareholder, LCA, publicly withdrew its support of the Company on 14 September 2011 in an announcement to the London Stock Exchange (in line with its obligations as a quoted company). At that time, LCA also advised that it was writing off its £11.5 million investment in the Company in full.

With no further funding forthcoming from LCA or, indeed, any other source, the Company's directors resolved that formal insolvency was inevitable. Accordingly, the Company's board requested the Bank to effect a Receivership appointment. We were duly appointed as Joint Receivers on the morning of 16 September 2011.

3.3 Reasons for insolvency

The directors have provided the following reasons for the insolvency of the Company:-

- a fundamental, unanticipated manufacturing defect in the Company's flagship P35-2 model which precipitated acute cash-flow difficulties; and
- withdrawal of support from the Company's main investor and inability to secure additional ongoing funding.

The following factors had also contributed to some financial stress prior to the unexpected manufacturing defect:-

- substantial accrued losses as a consequence of significant investment in product development; and
- deferral of cash in-flows from sales due to delays in projects obtaining planning consent.

4 Events following the appointment including realisation of the assets

4.1 Initial review

Following our appointment as Joint Receivers of the Company, a review of possible courses of action was undertaken comparing the likely outcomes from various options including, but not limited to:-

1 Trading the business for a short period while running an accelerated sales process with a view to achieving a going concern sale;

2 Retaining key staff members for a short period but without selling or manufacturing turbines while running an accelerated sales process with a view to achieving a going concern sale;

3 Making all staff redundant and marketing the business and assets for sale; or

4 Making all staff redundant and selling the remaining business and assets on a piecemeal basis.

From the outset, it was concluded that achieving a sale of substantially all of the Company's business and assets as a going concern would provide the best opportunity of maximising realisations from the Company's tangible and intangible assets. However, trading the business for any length of time was deemed unviable due to, *inter alia,* the cost of retaining all of the Company's staff and the lack of funds from which to pay them; limited stock and work in progress on hand to allow continued manufacturing; the

Receivers' inability to provide any guarantees or warranties with turbines sold (making it highly unlikely that sales would be achieved); and, crucially, the absence of a known or tested repair to resolve the defect in the P35-2 turbine.

It was, therefore, decided that option two should be pursued and that the Company's staff members who had the key engineering, design and manufacturing know-how, should be retained. This was considered critical to preserving value in the Company's intangible assets whilst also ensuring that technical staff would be on hand to answer interested parties' queries. Accordingly, and in conjunction with the Company's directors, we identified 20 members of staff deemed essential to the business who would be retained. The remaining 55 members of staff were made redundant immediately following the Receivership appointment.

Our initial strategy focused on locating and safeguarding the Company's assets whilst also implementing adequate systems and controls and marketing the Company's business and assets for sale.

We would note that the directors' advice to owners of P35-2 turbines issued prior to the Receivership appointment remains in place, and that the Health & Safety Executive have also issued advice to P35-2 owners reaffirming that at present, the P35-2 model should not be used.

4.2 Sale of business

We prepared a one page sales flyer to highlight the acquisition opportunity, detailing key facts about the Company and summary financial information. Concurrently, we also compiled a list of parties who we identified as having a potential interest in acquiring the Company's business and assets to whom the sales flyer would be circulated. The interested party list comprised:

- the Company's known competitors;
- the Company's value added reseller ("VAR") network;
- parties identified by Company management as likely to have an interest;
- KPMG's internal network; and
- investors known to acquire distressed businesses.

In total, the initial sales flyer was issued to 122 different parties, generating a significant level of interest, with over 35 parties requesting additional information. Several of these parties requested site visits to the Company's premises at Stewarton and East Kilbride, with a number also seeking meetings with us.

With the aid of the Company's retained staff, we prepared further information packs which were distributed to interested parties, in addition to responding to a number of specific information requests. We facilitated several meetings between interested parties, the Company's management and the Receivers, and organised site visits where applicable.

Due to the significant level of interest shown in the Company and the risk that asset values and the customer base would quickly erode while the Company remained non-trading, an initial closing date for indicative offers was set for 5pm on 21 September 2011. Setting an early closing date helped us to identify and differentiate between those with a serious, credible interest and those who had no real desire or ability to complete an acquisition at an acceptable level.

At the initial closing date, 11 offers were received. All of the offers which appeared to be at acceptable and attractive levels were, not unexpectedly, subject to a degree of conditionality such as due diligence, a requirement for indemnities from the Receivers and the purchaser obtaining adequate funding.

In view of the foregoing, we set a final closing date for unconditional offers of 5pm on 27 September 2011, the intention being to focus efforts on assisting the preferred bidders to remove any conditionality attaching to their offers during the interim period.

At the final closing date, in addition to the requirement that bids be at an acceptable level, two key stipulations that we set were that the purchaser must:

- provide proof of funding for the full purchase price when submitting their final offer; and

- pay a 10% non-refundable deposit immediately once their offer had been selected for exclusivity.

These requirements were deemed critical to the progression of discussions with interested parties, as meeting the requirements demonstrated the willingness and ability of the party to complete a transaction at the value they had bid and within an acceptable timescale.

At the final closing date, a total of five offers were received. On consideration of the offers, the clear front-runner providing the most favourable and certain outcome for creditors was Kingspan Renewables Limtied ("KRL"). Accordingly, following receipt of a non-refundable deposit, we entered into detailed discussions with KRL's management on the specifics of the transaction and the various contractual terms to be included in the sale and purchase agreement. After a brief and intense period of negotiation, a sale of the Company's business and certain of its assets to KRL completed on the evening of 12 October 2011, with the Company's remaining 18 employees also transferring to KRL under Transfer of Undertakings (Protection of Employment) ("TUPE") regulations.

We would note that during the sales process, no party came forward with a detailed or tested fix to resolve the issues with the P35-2 turbine.

4.3 Other asset realisations

Following completion of the sale to KRL, the Company's principal remaining asset was its trade debtors. Recoveries from trade debtors at this stage are uncertain, however, every effort will be made to pursue all outstanding balances while it is remains economical to do so.

5 Joint Receivers' receipts and payments account

In accordance with Statement of Insolvency Practice 7 (Scotland) a copy of the Joint Receivers' receipts and payments account from the date of appointment to 22 November 2011 is set out in Appendix 2.

6 Amounts payable to secured creditors, preferential creditors and the floating chargeholder

6.1 Secured lenders

The standard securities granted in favour of the Bank by the Company are detailed in Figure 1.

Figure 1: Standard securities

Security dated	Security registered	Subject
21 November 2001	4 December 2001	Cottage, Wardhead Park, Stewarton, title number AYR198311
21 November 2001	4 December 2001	Land at Wardhead Park, Stewarton, title number AYR19549
21 November 2001	4 December 2001	A735, Stewarton, title number AYR1639

Source: Companies House and Company records

In addition to the standard securities above, the Company also granted a security in favour of the Bank over its book debts. The Bank's claim against the Company as at the date of appointment amounted to c.£1.43 million. To date, the Bank has been provided with interim distributions of £157,000 under its standard securities and £793,000 under its floating charge. It should be noted that interest and charges continue to accrue on the remaining balance.

6.2 Preferential creditors

As previously noted, 18 of the Company's staff transferred to KRL under TUPE regulations, which assisted in reducing the level of preferential creditors. Staff who were made redundant have preferential claims as set out in Figure 2 below. At this stage, these figures are best estimates and may be subject to change depending on the final level of claims received.

Figure 2: Preferential creditors

	£000
Arrears of wages and salary	42
Arrears of holiday pay	81
Unpaid pension deductions	5
	128

Source: Company records and Joint Receivers' estimates

6.3 Floating charge

As previously noted, the Bank holds a bond and floating charge over all the business and assets of the Company dated 26 September 2001 and registered at Companies House on 2 October 2001. An interim distribution of £793,000 has been provided under the Bank's floating charge and further distributions may be made as and when funds allow. At present, it should be noted that interest and charges continue to accrue on the Bank's remaining debt of £480,000.

7 Summary of and commentary upon the statement of affairs

A summary of the directors' statement of affairs is attached at Appendix 2.

We would comment on the directors' statement of affairs as follows:-

- the directors have estimated that the Company's freehold land and buildings will realise £350,000. As noted in the Joint Receivers' receipts and payments account in Appendix 2, the Company's freehold land and buildings were sold for £160,000, in line with an independent third party valuation obtained;
- patents, trademarks and goodwill have been estimated to realise £1.2 million. As set out in Appendix 2, actual realisations from these assets totalled £1.3 million;

- no provision has been made for interest and charges which continue to accrue on the Bank's debt.

- no provision has been made for the costs of asset realisation or the costs of the Receivership.

8 Dividend prospects for creditors

The Bank's floating charge was granted prior to 15 September 2003, therefore s.176A is not applicable and there will be no Prescribed Part of the Company's net property available for unsecured creditors.

Although the directors' statement of affairs assumes a potential surplus of £344,000 (8.26p in the £1) for unsecured creditors, taking into account our comments above, we consider it is likely that the preferential creditors will be paid in full and the Bank will receive a significant recovery under its floating charge. Unfortunately, we presently estimate that there will be a shortfall to the Bank under its floating charge and accordingly, we do not anticipate any recovery for unsecured creditors.

9 Directors' conduct

We are required by Rules 3 and 4 of the Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996 to submit a report or a return to the Insolvency Service (part of the Government's Department for Business Innovation & Skills) on the conduct of any person who has been a director or shadow director of the Company at any time in the three years immediately preceding our appointment.

We would be grateful to receive any comments that unsecured creditors or any other party may wish to make in order to assist in our investigations into the Company's affairs and in our preparation of comments for submission to the Insolvency Service. Such comments, if required, can be treated in the strictest confidence.

BC Nimmo
KPMG LLP
191 West George Street
Glasgow
G2 2LJ

14 December 2011

Appendix 1

Statutory and other information

Incorporation

The Company was incorporated on 9 May 1980.

Registered office and trading address

The Company's former registered office was situated at:

Wardhead Park
Stewarton
Ayrshire
KA3 5LH

As part of the Receivership process, the registered office has been changed to:-

c/o KPMG LLP
191 West George Street
Glasgow
G2 2LJ

The Company also operated from leased premises at:

The Torus Building
Rankine Avenue
Scottish Enterprise Technology Park
East Kilbride
G75 0QF

Company number

The company number is SC071400

Directors

The directors at the date of receivership are set out in Figure 3. Other directors during the three years prior to the date of Receivership are set out in Figure 4.

Figure 3 : Directors

Name	Date appointed
Gordon Proven	15 October 1988
Andrew Affleck	21 January 2009
Chris Simpson	29 May 2009
Paul Aston	29 April 2010
Stephen Mahon	19 July 2011

Source: Companies House

Figure 4 : Former directors

Name	Date appointed	Date resigned
Susanne Proven	15 October 1988	20 October 2009
Andrew McMullan	1 March 2007	27 June 2009
Jonathan Nowill	5 April 2007	26 May 2011
Mark Shorrock	19 November 2008	21 January 2009

Source: Companies House

Company secretary

The company secretary at the date of receivership was WJM Secretaries Limited.

Share capital

The authorised share capital is 60,100 Ordinary Shares of £1 each and 7,300,000 A Ordinary Shares of £1 each.

The issued and called up share capital is 60,100 Ordinary Shares of £1 each and 7,300,000 A Ordinary Shares of £1 each. The Company's shareholders are set out in Figure 5, below.

Figure 5 : Shareholders

	Number of shares held
Ordinary shareholders	
Geoffrey Proven	2,647
Susanne Proven	13,319
Graeme Sutherland	32
Richard Caldow	2,237
Stephen Irving	3
Graeme Stalker	32
Peter Hughes	59
David Jolly	5
Gordon Proven	18,032
Low Carbon Accelerator Limited	5,714
Paul Aston	5,548
Scott Fergus	1,387
Steve McMahon	3,467
Jonathan Nowill	3,467
Paul Johnston	1,387
Chris Simpson	2,774
	60,110
Ordinary A shareholders	
Low Carbon Accelerator Limited	6,600,000
Gordon Proven	350,000
Susanne Proven	350,000
	7,300,000

Source: Companies House

Auditors

The auditors were:

BDO LLP
4 Atlantic Quay
70 York Street
Glasgow
G2 8JX

Financial information

Summaries of the Company's most recent available financial information are set out at Figures 6, 7, and 8, below.

Figure 6 : Profit and loss accounts

	Year to 31 May 2011 £000 (Unaudited)	Year to 31 May 2010 £000 (Audited)	17 months to 31 May 2009 £000 (Audited)
Turnover	9,374	5,849	8,845
Gross profit	3,103	385	745
Administrative expenses	(3,977)	(3,401)	(4,926)
Net (loss) before tax	(874)	(2,699)	(4,297)

Source: Company records and Companies House

Figure 7 : Balance sheets

	As at 31 May 2011 £000 (Unaudited)	As at 31 May 2010 £000 (Audited)	As at 31 May 2009 £000 (Audited)
Fixed assets	894	919	918
Current assets	3,343	2,321	2,711
	4,237	3,240	3,629
Liabilities	(5,626)	(3,937)	(3,747)
Net (liabilities)	(1,389)	(697)	(118)

Source: Company records and Companies House

Note: Movement in net liabilities is not in line with P&L result due to additional shares issued

Figure 8 : Other financial information

	Year to 31 May 2011 £000 (Unaudited)	Year to 31 May 2010 £000 (Audited)	17 months to 31 May 2009 £000 (Audited)
Directors' remuneration	Not available	372	359
Dividends paid	-	-	-

Source: Company records and Companies House

Appendix 2

Joint Receivers' receipts and payments account

Statement of affairs		From 16/09/2011 to 23/11/2011	From 16/09/2011 to 23/11/2011
	Fixed charge assets		
350,000	Freehold property	160,000	160,000
14,000	Motor vehicles	-	-
182,000	Book debts	2,250	2,250
		162,250	162,250
	Fixed charge creditors		
(1,432,000)	Bank - fixed charge	157,000	157,000
		(157,000)	(157,000)
	Asset realisations		
40,000	Plant & machinery	67,000	67,000
5,000	Furniture & equipment	-	-
	Motor vehicles	20,000	20,000
125,000	Stock	200,000	200,000
4,000	Loans & advances	-	-
1,200,000	IP/Goodwill	1,303,000	1,303,000
18,000	Cash at bank	-	-
	Petty cash	302	302
	Rates refunds	1,678	1,678
	Bank interest, gross	11	11
		1,591,992	1,591,992
	Cost of realisations		
	Specific bonds	295	295
	Travel	147	147
	Receivers' fees	160,000	160,000
	Receivers' expenses	190	190
	Payroll agent	1,350	1,350
	Agents'/Valuers' fees	5,495	5,495
	Legal fees	31,953	31,953
	Site Security	4,614	4,614
	Life assurance premium	230	230
	Heat & light	88	88
	Storage costs	750	750
	Statutory advertising	396	396
	Rent	11,461	11,461
	Insurance of assets	1,528	1,528
	Wages & salaries	52,817	52,817
	Bank charges	384	384

	IT costs	909	909
		(272,606)	(272,606)
	Preferential creditors		
(62,000)	Employees' wage arrears	-	-
(100,000)	Employees' holiday pay	-	-
		-	-
	Floating charge creditors		
	Bank - floating charge	793,000	793,000
		(793,000)	(793,000)
	Unsecured creditors		
(4,505,000)	Trade & expense	-	-
		-	-
	Distributions		
(7,360,000)	Ordinary shareholders	-	-
		-	-
(11,521,000)		**531,636**	**531,636**
	Represented by		
	VAT receivable		43,359
	Floating charge current		488,277
			531,636

Appendix 3

Directors' estimated statement of affairs as at 16 September 2011

	Book value £000	Estimated to realise £000
Assets specifically secured		
Land and buildings	432	350
Trade debtors	2,465	182
Motor vehicles	20	14
	2,917	546
Less: Due to the Bank		(1,432)
Estimated (deficiency) c/fwd to floating charge claim		(886)
Assets not specifically secured		
Leasehold improvements	27	-
Plant, machinery and vehicles	318	40
Furniture, fittings and equipment	60	5
Stock	677	125
Loans and advances	89	4
Cash at Bank	18	18
Patents, trademarks and goodwill	22	1,200
		1,392
Preferential creditors		(162)
Estimated assets available to floating chargeholder		**1,230**
Bank (shortfall) brought down		(886)
Estimated surplus as regards floating chargeholder		**344**
Unsecured creditors		(4,505)
Estimated (deficiency) as regards creditors		**(4,161)**
Issued and called up share capital		(7,360)
Estimated (deficiency) as regards members		**(11,521)**