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JUDICIAL CENTRE  
OF CALGARY

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COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF ENDURANCE ENERGY LTD.

DOCUMENT **SECOND REPORT OF FTI CONSULTING CANADA INC., IN  
ITS CAPACITY AS MONITOR OF ENDURANCE ENERGY  
LTD.**

**June 14, 2016**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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## INTRODUCTION

1. On May 30, 2016, Endurance Energy Ltd. (“Endurance” or the “Applicant”) sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to an order granted by this Honourable Court (the "Initial Order").
2. The Initial Order granted, *inter alia*, a stay of proceedings against the Applicant until and including June 29, 2016 (the "Initial Stay Period"), and appointing FTI Consulting Canada Inc. as monitor (the “Monitor”). The proceedings commenced by the Applicant under the CCAA will be referred herein as the “CCAA Proceedings”.
3. Also on May 30, 2016, this Honourable Court granted an order (the “Sale Process Order”) which, *inter alia*, approved a sale process (the “Sale Process”) as set out in the Sale Process Order.

## PURPOSE

4. The purpose of this second report of the Monitor (the “Second Report”) is to provide to this Honourable Court the Monitor’s comments with respect to the following:
  - (a) activities of the Monitor since the granting of the Initial Order;
  - (b) comments on the Applicant’s cash position and draws under the interim loan (the “Interim Loan”) provided by WP Private Equity XI Inc. (the “Interim Lender”); and
  - (c) the proposed revisions to the Sale Process.

## TERMS OF REFERENCE

5. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicant, the Applicant's books and records, certain financial information prepared by the Applicant and discussions with various parties, including senior management ("Management") of the Applicant (collectively the "Information"). Except as described in this report, the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
6. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook. Future oriented financial information reported or relied on in preparing this report is based on Management's assumptions regarding future events and actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined herein have the meaning defined in the previous reports of the Monitor, the Initial Order or other Orders issued in these CCAA Proceedings.
8. Further background and information regarding the Applicants and these CCAA proceedings can be found on the Monitor's website at <http://cfcanada.fticonsulting.com/endurance>.

**ACTIVITIES OF THE MONITOR SINCE THE GRANTING OF THE INITIAL ORDER**

9. Pursuant to the Initial Order, the Monitor:
- (a) arranged for the publication of a notice containing the information prescribed under the CCAA in the Globe and Mail (National Edition) on June 9, 2016;
  - (b) made a copy of the Initial Order and other materials available on the Monitor's website;
  - (c) sent, in a prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000; and
  - (d) prepared a list of the names and addresses of creditors and the estimated amounts of those claims, and made such list publicly available on the Monitor's website.
10. The Monitor has also performed the following tasks pursuant to the Initial Order:
- (a) attended various meetings with respect to the Sale Process;
  - (b) engaged in discussions with various stakeholders and creditors; and
  - (c) advised the Applicant with respect to the preparation of the its cash flow statement and reporting required by the Interim Lender.

## COMMENTS ON THE APPLICANT'S CASH POSITION

11. To date, the Applicant has received USD \$3.0 million from the Interim Lender. The majority of the Applicant's disbursements to date relate to payroll, critical suppliers and contract operators.
12. The Applicant has managed to continue to operate in the normal course; however, based on discussions with management, the Monitor understands that current cash on hand (cash that remains from the draws under the Interim Loan) will likely be exhausted by approximately June 17, 2016 for services that have been rendered to Endurance since the date of the Initial Order.

## SALE PROCESS

### The Original Sale Process

13. The Sale Process outlined in the Sale Process Order (the "Original Sale Process") contemplated a 7-week process with a Binding Bid Deadline of July 18, 2016. The Sale Process Order also included the Interim Lender having a right of first refusal (the "ROFR") and that the Applicant's existing syndicate of secured lenders (the "Lenders") and Interim Lender would have the ability to credit bid. The Monitor expressed concerns over the unprecedented nature of the ROFR and the potential chilling effect that the ROFR and the Lenders' right to credit bid may have on the Sale Process.
14. On June 8, 2016, this Honourable Court decided as follows:
  - (a) reduced the Administration Charge to \$1.5 million;
  - (b) included the fees of the Lenders' advisors in the Administration Charge;

- (c) refused to approve the ROFR included in the Interim Facility Commitment Letter; and
  - (d) in the event a sale process proceeded (despite the non-approval of the ROFR):
    - (i) approved BMO Nesbitt Burns Inc. ("BMO") as Endurance's financial advisor;
    - (ii) approved BMO's fees being included in the Administration Charge;
    - (iii) excluded the \$1.5 million being held in trust by the Applicant's legal counsel from the stay of proceedings;
    - (iv) removed the Interim Lender's legal counsel's fees from the Administration Charge; and
    - (v) ordered a one-week extension of the Sale Process.
15. Since the granting of the Initial Order and the decision of the Court on June 8, 2016, the Applicant and BMO have continued to implement the Sale Process including populating the virtual data room (the "VDR"), launching the VDR on or about June 6, 2016 and contacting potential purchasers.
16. The opportunity was posted on BMO's proprietary global oil & gas opportunities system which reaches approximately 500 companies in North America and 300 international companies (over 2,500 individuals). BMO has had direct contact with 64 parties with potential interest in Endurance's assets.

## Revised Sale Process (elimination of ROFR, addition of Auction Process)

17. Since the granting of the Initial Order, the Applicant, the Monitor, the Interim Lender, the Lenders and the parties' respective counsel have engaged in several discussions in order to attempt to come to agreement with respect to the procedures as set out in the Sale Process.
18. The Monitor has been aware that the Lenders have objected to various aspects of the Sale Process including the Interim Lender's requirement to participate in the Sale Process (originally through the ROFR) and the potential chilling effect that this participation may have on the process. The Interim Lender has taken the position that it is only willing to fund certain limited amounts under the Interim Facility (currently USD \$3.0 million has been advanced to the Applicant) until all the various issues have been definitively settled with respect to the Sale Process.
19. The Monitor understands that over the past several days, the Applicant and the Interim Lender have agreed to the following substantive amendments to the Sale Process (the "Revised Sale Process"):
  - (a) eliminating the ROFR in favour of the Interim Lender;
  - (b) providing the Lenders and Interim Lender the ability to credit bid ("Credit Bid") during the Sale Process<sup>1</sup>;
  - (c) establishing an auction process (the "Auction Process") in the event that more than one Qualified Bids are received by the Binding Bid Deadline (as defined and discussed below); and

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<sup>1</sup> The Monitor understands that the Lenders are still determining whether they will submit a Credit Bid in the Sale Process, or whether they will commit to not doing so.

- (d) allowing the Applicant to elect to sell its Alberta assets separately from the Auction Process if a suitable transaction is obtained.
20. The Monitor understands that the Lenders remain opposed to the Revised Sale Process due to the ability of the Interim Lender to credit bid and the inclusion of the Auction Process, which the Lenders believe will chill the Sale Process, as discussed in further detail below.

### **Overview of the Revised Sale Process**

21. The Monitor has provided a summary of the Revised Sale Process below.
22. The Revised Sale Process is proposed to be conducted under the oversight of the Monitor such that the Applicant will:
- (a) prepare marketing materials (now completed);
  - (b) update a data room (VDR opened on June 9, 2016);
  - (c) solicit interest from parties to enter into non-disclosure agreements and begin analyzing the transaction alternatives (in progress);
  - (d) have parties submit initial non-binding expressions of interest (“EOIs”) on or about June 24, 2016 (the “Non-binding Bid Deadline”);
23. After receipt of any EOIs, parties would enter into a second process phase to conduct further detailed due diligence and have such parties submit binding offers together with their proposed form of transaction documents (the “Binding Bid”) by 11:59 p.m. Mountain Daylight Time on July 25, 2016 (the “Binding Bid Deadline”).



24. The Binding Bid Deadline cannot be changed without the prior consent of the Monitor, the Interim Lender and the Lenders or alternatively, by further order of the Court.
25. The Interim Lender shall be permitted to Credit Bid in an amount equal to the funds advanced under the Interim Facility (or such lesser amount) plus the cash component of the Credit Bid. To be valid, the Credit Bid must include sufficient cash to satisfy all Court-ordered Charges that rank in priority to the Credit Bid.
26. The Revised Sale Process requires that, by the Non-binding Bid Deadline (June 24, 2016), the Interim Lender must give written notice of its intention to submit a Credit Bid. If such written notice is not received from the Interim Lender by the Non-binding Bid Deadline, the Interim Lender will be precluded from subsequently submitting a Credit Bid later in the Revised Sale Process. If such notice is received from the Interim Lender, the Interim Lender may submit a Credit Bid at any time prior to the Binding Bid Deadline.
27. The Monitor understands that the Lenders continue to determine whether they will (directly or indirectly through any affiliates) submit a credit bid in the Sale Process. If the Lenders choose not to credit bid, they will be entitled to be consulted throughout the Sale Process and will have full access to, on a confidential basis, copies of all bidder information, including but not limited to, bidder solicitation materials, EOIs, Binding Offers, Qualified Bids, Successful Bids (as defined below) and any definitive agreement(s) in connection therewith, together with weekly updates from the Applicant or its advisors.
28. In the Revised Sale Process, a "Qualified Bid" is a bid that includes:
  - (a) duly executed transaction documents;
  - (b) a blackline to the template transaction document;

- (c) written evidence of a firm, irrevocable financial commitment for all required funding or financing;
  - (d) a cash deposit of 10% of the purchase price; and
  - (e) no remaining conditions other than approval of this Honourable Court
29. If, after the Binding Bid Deadline, there is one or more Qualified Bid, then the Applicant, in consultation with BMO and the Monitor will determine if an "Auction Process" will be conducted.
30. In the event that an Auction Process is conducted, it will be conducted in the following manner:
- (a) the Auction Process shall be conducted based on such reasonable procedural rules as determined by the Applicant in consultation with BMO and the Monitor;
  - (b) BMO will invite Qualified Bidders, by a common deadline to be established, to submit an improved bid;
  - (c) the invitation will include a copy of the Qualified Bid(s) which the Applicant believes is the highest or otherwise best Qualified Bid(s) (the "Starting Bid"); and
  - (d) BMO, after consultation with the Company and the Monitor will conduct one more round of the Auction Process until a successful bidder is determined (the "Successful Bidder").

31. Following the Binding Bid Deadline, and any Auction Process that is conducted, the Applicant may complete such steps to finalize and complete the transaction(s) with the Successful Bidder(s) (the "Successful Bid(s)").

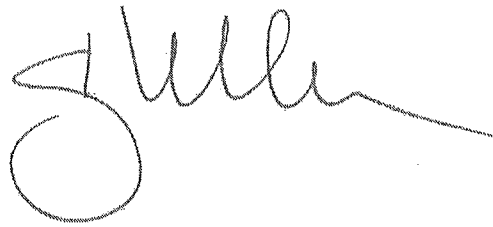
#### **MONITOR'S COMMENTS ON THE REVISED SALE PROCESS**

32. The Interim Lender and Applicant are supportive of the Revised Sale Process, including the Auction Process. However the Lenders have expressed concerns over this process. The Lenders are of the opinion that the Auction Process will provide a chilling effect on the Sale Process and discourage potential bidders from entering the process.
33. The Monitor has reviewed the June 14, 2016 affidavit of Mr. Clinton Roberts, a Senior Vice President with PricewaterhouseCoopers Inc. ("PWC"), who stated that "foreign investors view sale processes involving ongoing negotiations the norm and are disinclined to participate in auctions which are perceived as uncertain and confusing".
34. The Monitor has also reviewed the Affidavit of Mr. Mark Caiger, Managing Director of BMO, sworn on June 14, 2016, who stated that the "Revised Sale Process is reasonable, fair and transparent in the circumstances" and that the "Revised Sale Process is a properly designed price discovery process in which parties who wish to acquire the assets will participate".

35. The Monitor has the following comments and views with respect to the Revised Sale Process proposed by the Applicant:
- (a) the concepts of: (i) an auction after receiving binding bids; and (ii) a credit bid, are concepts that have been approved in other CCAA proceedings, including proceedings in Alberta. Furthermore, the auction concept is used extensively in U.S. insolvency proceedings. Accordingly, unlike the ROFR, the Monitor does not view the Auction Process as unusual or unprecedented;
  - (b) given that the amount projected to be loaned to the Applicant by the Interim Lender is relatively small compared to the amount outstanding to the Lenders, the possibility of a credit bid by the Interim Lender would not be expected to chill the process; and
  - (c) the Monitor is not of the view that an auction process in itself would cause a chill on the sale process. Furthermore, the Applicant has retained an experienced financial advisor (BMO) who has considerable experience in the sale of distressed companies and assets and whose role will include explaining to potential bidders the overall Revised Sale Process, including the Auction Process, to ensure there is no confusion in the process.
36. Accordingly, the Monitor believes the Revised Sale Process, including the Auction Process, is fair and reasonable in the circumstances.

All of which is respectfully submitted this 14<sup>th</sup> day of June, 2016.

FTI Consulting Canada Inc.,  
in its capacity as Monitor of Endurance Energy  
Ltd.

A handwritten signature in black ink, appearing to read 'Deryck Helkaa', written over a horizontal line.

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Deryck Helkaa  
Senior Managing Director,  
FTI Consulting Canada Inc.