

COURT FILE NUMBER 1401-05914  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANT CP ENERGY MARKETING LP  
RESPONDENT KYOTO FUELS CORPORATION  
DOCUMENT SUPPLEMENTAL REPORT OF THE RECEIVER

MAY 1, 2015

ADDRESS FOR SERVICE AND  
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## INTRODUCTION

1. On April 30, 2014, the Court of Queen's Bench of Alberta ("Court") issued an order ("Initial Order") granting Kyoto Fuels Corporation ("Kyoto" or the "Company") protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA") (the "CCAA Proceedings"). Ernst & Young Inc. ("EY") was appointed monitor ("Monitor") under the Initial Order.
2. The Initial Order was granted upon the application of T&E Ventures Inc. ("T&E"), a secured creditor of Kyoto.
3. Kyoto's CCAA Proceedings were terminated and on May 29, 2014, the Court issued a Receivership Order appointing EY as Receiver (the "Receiver") of the property, assets, and undertakings (the "Property") of Kyoto.
4. The Receivership Order authorized the Receiver, *inter alia*, to carry on the business of Kyoto, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to Court approval for transactions in excess of \$500,000 individually and \$1,000,000 in aggregate and to make such arrangements or agreements as deemed necessary by the Receiver. The Receivership Order also authorized the Receiver to borrow up to \$600,000 by way of Receiver's Certificates which amount was subsequently increased to \$850,000 by order of this Honourable Court granted October 24, 2014.
5. The Sales process undertaken by the Receiver for the Kyoto plant was outlined in both the Receiver's Second Report dated January 21, 2015 and the Third Report dated April 23, 2015.
6. One of the unsuccessful offerors, 1886792 Alberta Ltd. ("188"), is seeking an adjournment of the Receiver's application to this Honourable Court for approval of the sale of the Kyoto plant to 1866768 Alberta Ltd. ("186"), or alternatively 188 wishes to establish a bidding process for the Kyoto plant.
7. The purpose of this supplemental report of the Receiver (the "Supplemental Report") is to provide this Honourable Court with additional details in respect of the Kyoto plant sale process.

## TERMS OF REFERENCE

8. In developing the Receiver's Supplemental Report, the Receiver has relied upon unaudited financial information previously prepared by Kyoto's management, Kyoto's books and records and discussions with its former management. 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 Monitor expresses no opinion or other form of assurance in respect of the information. Future orientated financial information relied upon in this report is based on assumptions regarding future events and actual results achieved will vary from this information and the variations may be material.
9. Unless otherwise noted all currency references in this Supplemental Report are in Canadian dollars.

10. Capitalized terms not defined in this Supplemental Report are as defined in the Receivership Order or in previous reports.
11. This Supplemental Report should be read in conjunction with the Third Report of the Receiver dated April 24, 2015.

#### **KYOTO PLANT SALE PROCESS**

12. As the Receiver has previously reported, it undertook a thorough sales process for the Kyoto assets and on January 27, 2015, this Honourable Court approved the Pelican Sale Transaction and granted a sale approval and vesting order. Pelican was unable to conclude its purchase (the reasons therefore were set out in the Receiver's Third Report) and consequently the Pelican Sale Transaction was terminated.
13. Avison Young, the Receiver's real estate agent, in addition to contacting parties who previously indicated an interest in the Kyoto assets, actively solicited new offers for the Kyoto plant (the "Second Sale Process") upon the Pelican Sale Transaction terminating.
14. The Monitor set out in its Third Report dated April 23, 2015 a summary of the Second Sale Process that was undertaken in respect of the Kyoto assets. 186 submitted its offer to the Receiver on April 8, 2015. As there were expressions of interest from two other parties, the Receiver set a deadline of April 10, 2015 for the other two interested parties to submit their best offers.
15. 188 contacted the Receiver on April 10, 2015 requesting that the Receiver provide one additional business day for it to submit its offer. 188 submitted its offer on April 13, 2015.
16. It was made clear to the interested parties that all offers were to be unconditional other than the requirement for Court approval and were to include a deposit of not less than 10% of the purchase price.
17. The offer submitted by 188, although higher than the 186 offer, contained a financing condition. The Receiver was concerned that 188 may not be able to waive its financing condition and accordingly did not want to risk losing the unconditional offer that it had received from 186. The Receiver accordingly was not in a position to accept the conditional 188 offer.
18. The Receiver spoke with Avison Young and requested Avison Young approach 186 to assess whether 186 would be willing to increase its offer. Avison Young and the Receiver had advised 188, before it presented its final offer, that the Receiver had received another offer. Approaching 186 and providing it the same opportunity to present, or in this case re-submit an offer, is a typical procedure in the real estate industry.
19. The Receiver consulted with the Senior Secured Lenders prior to contacting Avison Young. The receivership administration had experienced a previous false start with Pelican, where the sale could not close. The Senior Secured Lenders and the Receiver wanted certainty of closing a sale and the unconditional offer from 186 provided more certainty than the 188 conditional offer.

20. Avison Young advises it approached 186, indicated there was a significantly higher conditional offer and asked 186 what was "it willing to do". 186 advised it was willing to increase its unconditional offer to \$3.0 million which the Receiver accepted.
21. The sale process was not a sealed bid type of process or a tender process. This type of process was completed previously in this administration and did not result in a sale. The Kyoto assets were listed for sale through a real estate agent, the terms and conditions of sale were made known to interested parties, an unconditional offer was favoured and received, and the Receiver negotiated with an offeror to obtain the best deal for the benefit of the receivership estate's stakeholders. In the Receiver's view, a conditional offer is not comparable to an unconditional offer. There was no reason for the Receiver to continue discussions with the conditional offeror, following their final offer being received and the conditionality of it at that time.

## CONCLUSION

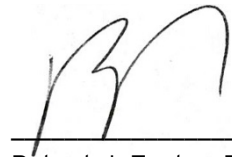
22. In the Receiver's view the sale process undertaken by the Receiver was fair and reasonable. 188 was provided with accommodation by the Receiver in extending the time for it to submit an offer; however, it was unable to submit an unconditional offer. 186 provided the best offer pursuant to the Second Sale Process, there would appear certainty of closing and accordingly the Receiver recommends that this Honourable Court grant an order approving the 186 Sale Transaction.

\* \* \*

All of which is respectfully submitted this 1<sup>st</sup> day of May, 2015.

### ERNST & YOUNG INC.

in its capacity as Receiver and Manager of Kyoto Fuels Corporation  
and not in its personal or corporate capacity



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Robert J. Taylor, FCA•CIRP, CFE  
Senior Vice-President