

# **2003 BCSECCOM 800**

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief from continuous disclosure requirements for a post-arrangement corporation that will issue exchangeable securities under an arrangement

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 85(1), 91 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, 149, 184

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC AND NOVA SCOTIA**

**AND**

## **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

## **IN THE MATTER OF ENTERRA ENERGY CORP., ENTERRA ACQUISITION CORP., BIG HORN RESOURCES LTD., ENTERRA SASK LTD., ENTERRA ENERGY TRUST, ENTERRA ENERGY COMMERCIAL TRUST, ENTERRA EXCHANGE CO LTD. AND ENTERRA ENERGY PARTNER CORP.**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (collectively, Decision Makers) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec and Nova Scotia (Jurisdictions) has received an application made on behalf of Enterra Energy Corp. (Enterra) in connection with a proposed plan of arrangement (Arrangement) involving Enterra, Enterra Acquisition Corp. (AcquisitionCo), Big Horn Resources Ltd. (Big Horn), Enterra Sask Ltd. (Enterra Sask), Enterra Energy Trust (Trust), Enterra Energy Commercial Trust (Commercial Trust), Enterra ExchangeCo Ltd. (ExchangeCo), Enterra Energy Partner Corp. (PartnerCo) and the shareholders of Enterra (Shareholders) for a decision under the securities legislation of the Jurisdictions (Legislation) that certain disclosure requirements contained in the Legislation, as they apply to the successor to AcquisitionCo upon its amalgamation with Enterra, Big Horn and Enterra Sask. (New Enterra) will not apply to New Enterra;

## 2003 BCSECCOM 800

2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (System) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Québec Securities Commission Notice 14-101;
4. AND WHEREAS Enterra has represented to the Decision Makers that:
  - 4.1 Enterra (formerly Westlinks Resources Ltd.) was organized on June 30, 1998 by the statutory amalgamation of Temba Resources Ltd and PTR Resources Ltd. under the provisions of the *Business Corporations Act* (Alberta) (ABCA);
  - 4.2 the head office of Enterra is located at Calgary, Alberta;
  - 4.3 the common shares of Enterra (Enterra Shares) are listed and posted for trading on the Toronto Stock Exchange (TSX) and The Nasdaq Stock Market, Inc. (Nasdaq);
  - 4.4 Enterra is a reporting issuer or the equivalent in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Ontario and Nova Scotia, and has filed, in each such province, all the information that it has been required to file as a reporting issuer and is not in default of the securities legislation in any of these jurisdictions;
  - 4.5 the Trust is an open-end, unincorporated trust governed by the laws of Alberta and created pursuant to a trust indenture dated October 24, 2003 between Enterra and Olympia Trust Company, as trustee;
  - 4.6 the head office of the Trust is located at Calgary, Alberta;
  - 4.7 the Trust intends to make application to list the trust units of the Trust (Trust Units) on each of the TSX and Nasdaq;
  - 4.8 AcquisitionCo, prior to completion of the Arrangement, will be incorporated under the ABCA and is being established for the purpose of participating in the Arrangement, including creating and issuing common and preferred shares, series A exchangeable shares (Exchangeable Shares), and series A notes, as required to implement the Arrangement;

## **2003 BCSECCOM 800**

- 4.9 AcquisitionCo will be a wholly-owned subsidiary of the Commercial Trust and, following completion of the Arrangement, will be an indirect wholly-owned subsidiary of the Trust;
- 4.10 the head office of AcquisitionCo will be located at Calgary, Alberta;
- 4.11 the Arrangement, which is described in detail in the information circular dated October 24, 2003 (Information Circular) which has been mailed to the Shareholders in connection with the special meeting of Shareholders to be held for purposes of approving the Arrangement (Meeting), will be effected by way of a plan of arrangement pursuant to section 193 of the ABCA, which will require:
  - 4.11.1 approval by not less than two-thirds of the votes cast by the holders of Enterra Shares (present in person or represented by proxy) at the Meeting, and
  - 4.11.2 approval of the Court of Queen's Bench of Alberta;
- 4.12 the purpose of the Arrangement, in essence, is to convert Enterra from a corporate entity to a trust, being Enterra Energy Trust, which will distribute a portion of its cash flow to holders of the Trust Units;
- 4.13 the Arrangement will result, through a series of transactions, in Shareholders (other than non-resident Shareholders, certain financial institutions, certain tax-exempt Shareholders, and dissenting Shareholders), at their election, ultimately receiving for their Enterra Shares, as of the effective date of the Arrangement, either Trust Units, Exchangeable Shares (together with all ancillary rights relating to such shares), or a combination of both;
- 4.14 the Arrangement will also result in Enterra, Big Horn, Enterra Sask and AcquisitionCo being amalgamated to form New Enterra;
- 4.15 the Exchangeable Shares issued in connection with the Arrangement will provide holders of Exchangeable Shares with a security having economic rights and voting attributes which are, as nearly as practicable, equivalent to those of the Trust Units into which the Exchangeable Shares are exchangeable from time to time;
- 4.16 except as required by applicable law and in connection with proposed changes to the rights, privileges, restrictions and conditions attaching to

## 2003 BCSECCOM 800

the Exchangeable Shares, the Exchangeable Shares will not have voting rights with respect to New Enterra;

4.17 upon completion of the Arrangement, and as a result of the operation of certain applicable provisions of the Legislation, New Enterra will become a reporting issuer or equivalent in the Jurisdictions;

4.18 a reporting issuer or equivalent in the Jurisdictions is required to:

4.18.1 issue a news release and file a report upon the occurrence of a material change;

4.18.2 where applicable, file an annual report;

4.18.3 where applicable, file interim financial statements and audited annual financial statements and deliver such statements to the security holders of New Enterra;

4.18.4 where applicable, file and deliver an information circular (together with other required proxy solicitation materials) or make an annual filing in lieu of filing an information circular;

4.18.5 where applicable, file an annual information form and provide management's discussion and analysis of financial condition and results of operations;

(collectively, the Continuous Disclosure Requirements);

4.19 upon becoming a reporting issuer or equivalent in the Jurisdictions New Enterra will be subject to the Continuous Disclosure Requirements;

4.20 the value of both the Exchangeable Shares and the Trust Units is entirely dependent on the assets and operation of the Trust and accordingly the information relevant to a holder of Exchangeable Shares is information relating to the Trust rather than information relating to New Enterra;

4.21 the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation; and

4.22 the Information Circular discloses that application will be made to relieve New Enterra from the Continuous Disclosure Requirements;

## 2003 BCSECCOM 800

5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the Decision);
6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
7. THE DECISION of the Decision Makers under the Legislation is that the Continuous Disclosure Requirements shall not apply to New Enterra for so long as:
  - 7.1 the Trust is a reporting issuer in Québec and at least one of the other jurisdictions listed in Appendix B of Multilateral Instrument 45-102 *Resale of Securities* and is an electronic filer under National Instrument 13-101 SEDAR;
  - 7.2 the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units in accordance with the Continuous Disclosure Requirements;
  - 7.3 the Trust complies with the applicable requirements of the TSX, or such other market or exchange on which the Trust Units may be quoted or listed, in respect of making public disclosure of material information on a timely basis;
  - 7.4 New Enterra issues a news release and files a report with the Decision Makers upon the occurrence of a material change in respect of the affairs of New Enterra that is not also a material change in the affairs of the Trust;
  - 7.5 the Trust includes in all future mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise insert explaining the reason for the mailed material being solely in relation to the Trust and not in relation to New Enterra, such insert to include a reference to the economic equivalency between the Exchangeable Shares and Trust Units and a reference to the right of a holder of Exchangeable Shares to direct the exercise, at meetings of holders of Trust Units, of voting rights attributable to such Exchangeable Shares;
  - 7.6 the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of New Enterra; and

## **2003 BCSECCOM 800**

- 7.7 New Enterra does not issue any preferred shares or debt obligations other than to its affiliates or to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED at the City of Calgary in the Province of Alberta this 26<sup>th</sup> day of November, 2003

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair