

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

ENERGY XXI LTD., et al,

DEBTOR.

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**CASE NO. 16-31928
(Chapter 11)**

**Jointly Administered
Judge David R. Jones**

**OFFICIAL COMMITTEE OF EQUITY SECURITY
HOLDERS' EMERGENCY MOTION TO COMPEL DOCUMENT
PRODUCTION FROM BDO USA, LLP**

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

IF YOU OBJECT TO THE REQUESTED RELIEF, A RESPONSE SHOULD BE FILED IMMEDIATELY. THE MOTION WILL BE SET FOR A HEARING ON OCTOBER 18, 2016 AT 9:00 A.M.

**TO THE HONORABLE DAVID JONES,
UNITED STATES CHIEF BANKRUPTCY JUDGE**

COMES NOW the Official Committee of Equity Security Holders, ("Equity Committee") and respectfully files this Motion to Compel Production of Documents from BDO USA LLP ("Motion to Compel").

In support of the Motion to Compel, the Equity Committee respectfully states as follows:

Factual Background

1. On September 26, 2016, the Equity Committee served a subpoena duces tecum on BDO USA LLP with a copy of the order related to the discovery in this matter found at Document No. 861. *See, Exhibit A.*

2. BDO responded objecting to the discovery and claiming an accountant-client privilege under the Texas Occupations Code Section 901.457 which prevents production without the Debtors' agreement. *See, Exhibit B.*

3. Counsel for the Equity Committee and BDO have conferred and have not been able, as of this date, to reach an agreement on the production of the records. The Equity Committee has not received a response to its proposal to limit an initial review of documents to an electronic search subject to specific search terms prior to the filing of this motion.

4. The Equity Committee will continue to work with BDO on trying to reach an agreement, but files this motion now so that parties have notice prior to the October 18, 2016 hearing. A status conference which includes discovery issues is scheduled for October 18, 2016.

5. BDO was the auditor for Energy XXI and is retained as an estate professional as its auditor to audit the consolidated financial statements including operations, stockholders' equity (deficit) and cash flows. *See, Doc. No. 404 generally and 404, p. 15.* In the application to employ BDO, the Debtors acknowledged that BDO was retained to provide Energy XXI with: an Integrated Audit of Consolidated Financial Statements and Internal Control Over Financial Report of the Company; quarterly reviews; services associated with SEC reporting; performing an Employee Benefit Plan Audit; and, services related to bankruptcy accounting matters. *See, Doc. No. 237, p 5-6.*

6. Energy XXI has retained BDO as its certifying accountant since December 1, 2014 as reported in its Form 8k dated December 1, 2014.

7. The Equity Committee and creditors have identified inconsistencies in the financial records, testimony and pleadings filed by the Debtors, including but not limited to the repurchased bonds, employee stock purchase plan, intercompany claims, asset values, reporting of reserves, number of shareholders, etc. which all relate to the potential objections to the confirmation of the proposed Plan.

8. The BDO documents are also highly relevant for the factual investigation necessary in determining what claims may exist against various parties which the Debtors propose to release in the Plan given the inconsistencies in other discovery productions which has been identified, including but not limited to: i) any potential shareholder derivative claims; ii) whether the repurchased bonds were deemed cancelled or extinguished by the Debtors; iii) whether the handling of the ESPP gives rise to claims which the Debtors propose to release; iv) whether the Disclosure Statement and Plan are consistent with the financial records provided to BDO; v) whether there were any accounting irregularities which would give rise to claims; etc.

Law and Argument

9. There is no accountant-client privilege that allows for withholding the production of the records. As Judge Pitman of the United States District Court for the Western District of Texas recently opined:

In Texas, accountant-client communications are confidential, but not privileged. See *In re Patel*, 218 S.W.3d 911, 920 n.6 (Tex. App.—Corpus Christi 2007, no pet.). Moreover, even if [BDO] were correct in its reading of Texas law, this is a federal question case and, accordingly, federal privilege law governs. See *Doe v. City of San Antonio*, 2014 U.S. Dist. LEXIS 161434, 2014 WL 6390890, at *1. There is no federal accountant-client privilege. e.g., *Couch v. U.S.*, 409 U.S. 322, 335, 93 S. Ct. 611, 34 L. Ed. 2d 548 (1973); *DAC Surgical Partners P.A. v. United Healthcare Servs., Inc.*, No. 4:11-CV-1355, 2014 U.S. Dist. LEXIS 18768, 2014 WL 585750, at *4 (S.D. Tex. Feb. 14, 2014).

Cantu v. TitleMax, Inc., 2015 U.S. Dist. LEXIS 139406, *15 (W.D. Tex. Oct. 9, 2015).

10. Rule 501 of the Federal Rules of Evidence provides that federal common law governs privileges in cases where federal law supplies the rule of decision, while state privilege law governs in civil cases involving "a claim or defense for which state law supplies the rule of decision." Fed.R.Evid. 501.

11. While the court may look to state law for guidance in applying the requirements of Section 1129, the confirmation of the Plan is a core Bankruptcy matter and governed by federal law. Accordingly, federal law on privileges applies to the discovery propounded on BDO.

PRAYER

The Equity Committee requests that the Court grant the Motion to Compel and require BDO to produce the requested records by no later than October 21, 2016 and further prays for such other relief as may be fair and equitable or appropriate.

DATED: October 16, 2016

Respectfully submitted,

HOOVER SLOVACEK LLP

By: /s/ Deirdre Carey Brown

EDWARD L. ROTHBERG

State Bar No. 17313990

Email: rothberg@hooverslovacek.com

Deirdre Carey Brown

State Bar No. 24049116

Email: brown@hooverslovacek.com

Galleria Tower II

5051 Westheimer, Suite 1200

Houston, Texas 77056

Telephone: 713.977.8686

Facsimile: 713.977.5395

**ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF EQUITY SECURITY
HOLDERS**

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2016, a true and correct copy of the foregoing Equity Committee's Motion to Compel was served by the Court's ECF notification system to the parties listed below at the email addresses listed below and a copy was emailed to BDO's counsel Eli Burris at eli.burris@dlapiper.com

Charles A Beckham, Jr on behalf of Interested Party AlixPartners, LLP
beckhamc@haynesboone.com, kenneth.rusinko@haynesboone.com

Bradley Benoit on behalf of Witness HSIN-CHI aka NOBU SU SU
brad.benoit@bgllp.com, ana.falcon@bgllp.com

Robert Andrew Black on behalf of Interested Party Vantage Drilling Company, Inc.
andrew.black@nortonrosefulbright.com

Jason Lee Boland on behalf of Interested Party Vantage Drilling Company, Inc.
jason.boland@nortonrosefulbright.com

Deirdre Carey Brown on behalf of Interested Party F3 Capital
brown@hooverslovacek.com,
rodriguez@hooverslovacek.com; deirdrecbrown@yahoo.com; brown.hsllp@gmail.com; bankruptcy1@hooverslovacek.com

Deirdre Carey Brown on behalf of Interested Party Hsin-Chi Su

brown@hooverslovacek.com,
rodriguez@hooverslovacek.com; deirdrecbrown@yahoo.com; brown.hsllp@gmail.com; bankruptcy1@hooverslovacek.com

Deirdre Carey Brown on behalf of Plaintiff Hsin Chi Su

brown@hooverslovacek.com,
rodriguez@hooverslovacek.com; deirdrecbrown@yahoo.com; brown.hsllp@gmail.com; bankruptcy1@hooverslovacek.com

Deirdre Carey Brown on behalf of Witness HSIN-CHI aka NOBU SU SU

brown@hooverslovacek.com,
rodriguez@hooverslovacek.com; deirdrecbrown@yahoo.com; brown.hsllp@gmail.com; bankruptcy1@hooverslovacek.com

Robert Bernard Bruner on behalf of Interested Party Vantage Drilling Company, Inc.

bob.bruner@nortonrosefulbright.com

James S Carr on behalf of Attorney Co-Counsel for the Official Committee of Unsecured Creditors of TMT USA Shipmanagement LLC, et al.

KDWBankruptcyDepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com

James S Carr on behalf of Creditor Official Committee of Unsecured Creditors of TMT USA Shipmanagement LLC, et al.

KDWBankruptcyDepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com

James S Carr on behalf of Creditor Committee Official Committee of Unsecured Creditors of TMT Procurement Corporation, et al.

KDWBankruptcyDepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com

James S Carr on behalf of Plaintiff Official Committee of Unsecured Creditors of TMT Procurement Corporation, et al.

KDWBankruptcyDepartment@kelleydrye.com; MVicinanza@ecf.inforuptcy.com

Annie E Catmull on behalf of Interested Party Hsin-Chi Su

catmull@hooverslovacek.com,
bankruptcy1@hooverslovacek.com; catmull.hs@gmail.com; ray@hooverslovacek.com

Annie E Catmull on behalf of Plaintiff Hsin Chi Su

catmull@hooverslovacek.com,
bankruptcy1@hooverslovacek.com; catmull.hs@gmail.com; ray@hooverslovacek.com

Annie E Catmull on behalf of Witness HSIN-CHI aka NOBU SU SU

catmull@hooverslovacek.com,
bankruptcy1@hooverslovacek.com; catmull.hs@gmail.com; ray@hooverslovacek.com

George Michael Chalos on behalf of Interested Party H. Clarkson & Co. Ltd.
bsparkman@chaloslaw.com

Jason Gary Cohen on behalf of Debtor A Duckling Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor A Handy Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor A Ladybug Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor A Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor B Handy Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor B Max Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor B Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor C Handy Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor C Ladybug Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor C Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor D Ladybug Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor D Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor E Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor G Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor Great Elephant Corporation

jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor H Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor New Flagship Investment Co Ltd
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor RoRo Line Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor TMT Procurement Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Debtor Ugly Duckling Holding Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Defendant F Elephant, Inc.
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Plaintiff B Max Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Plaintiff B Whale Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Jason Gary Cohen on behalf of Plaintiff C Handy Corporation
jason.cohen@bracewelllaw.com, Meghan.olsen@bracewelllaw.com

Eli Omar Columbus on behalf of Creditor Cathay United Bank
eli.columbus@haynesboone.com, kim.morzak@haynesboone.com

Eli Omar Columbus on behalf of Creditor First Commercial Bank Co., Ltd.
eli.columbus@haynesboone.com, kim.morzak@haynesboone.com

Eli Omar Columbus on behalf of Creditor Mega International Commercial Bank Co., Ltd.
eli.columbus@haynesboone.com, kim.morzak@haynesboone.com

Eli Omar Columbus on behalf of Creditor Shanghai Commercial & Savings Bank
eli.columbus@haynesboone.com, kim.morzak@haynesboone.com

Sean B Davis on behalf of Creditor First Commercial Bank Co., Ltd.
sbdavis@winstead.com, jhebert@winstead.com

Jennifer DeMarco on behalf of Creditor Hyundai Heavy Industries Co., Ltd.
jennifer.demarco@cliffordchance.com, adam.lesman@cliffordchance.com

Jennifer DeMarco on behalf of Interested Party Hyundai Mipo Dockyard Co., Ltd.
jennifer.demarco@cliffordchance.com, adam.lesman@cliffordchance.com

Jennifer DeMarco on behalf of Interested Party Hyundai Samho Heavy Industries Co., Ltd.
jennifer.demarco@cliffordchance.com, adam.lesman@cliffordchance.com

William A Durham on behalf of Creditor Lakatamia Shipping Company, Ltd.
durham@easthamlaw.com

Andrew Ehrlich on behalf of Creditor OCM Formosa
aehrlich@paulweiss.com,
emccolm@paulweiss.com; glauffer@paulweiss.com; abeaux@paulweiss.com; menakaplan@paulweiss.com; mrudnick@paulweiss.com; mnadler@paulweiss.com

Andrew Ehrlich on behalf of Creditor Oaktree Capital Management LP
aehrlich@paulweiss.com,
emccolm@paulweiss.com; glauffer@paulweiss.com; abeaux@paulweiss.com; menakaplan@paulweiss.com; mrudnick@paulweiss.com; mnadler@paulweiss.com

Anacarolina Estaba on behalf of Creditor Deutsche Bank AG, London Branch
aestaba@gardere.com

Anacarolina Estaba on behalf of Creditor Shanghai Commercial & Savings Bank
aestaba@gardere.com

Anacarolina Estaba on behalf of Debtor A Handy Corporation
aestaba@gardere.com

Anacarolina Estaba on behalf of Debtor B Handy Corporation
aestaba@gardere.com

Anacarolina Estaba on behalf of Defendant Shanghai Commercial & Savings Bank
aestaba@gardere.com

Matthew T Ferris on behalf of Creditor First Commercial Bank Co., Ltd.
matt.ferris@haynesboone.com, kim.morzak@haynesboone.com

Evan D Flaschen on behalf of Debtor TMT Procurement Corporation
evan.flaschen@bracewelllaw.com, meghan.olsen@bracewelllaw.com

Evan D Flaschen on behalf of Plaintiff B Max Corporation
evan.flaschen@bracewelllaw.com, meghan.olsen@bracewelllaw.com

Evan D Flaschen on behalf of Plaintiff C Handy Corporation
evan.flaschen@bracewelllaw.com, meghan.olsen@bracewelllaw.com

Evan R Fleck on behalf of Interested Party CVI CVF II Lux Master Sarl

,
mprice@milbank.com; bkinney@milbank.com; araval@milbank.com; dcohen2@milbank.com; jburke@milbank.com; mbrod@milbank.com; badams@milbank.com; skhalil@milbank.com; ldoyle@milbank.com; jbrewster@milbank.com; NAAlmeida@#

William R Greendyke on behalf of Interested Party Vantage Drilling Company, Inc.
william.greendyke@nortonrosefulbright.com

Elizabeth M Guffy
eguffy@lockelord.com

Elizabeth M Guffy on behalf of Examiner Elizabeth M Guffy
eguffy@lockelord.com, eguffy@ecf.epiqsystems.com

Carrie V. Hardman on behalf of Interested Party Macquarie Bank Limited
chardman@winston.com, dcunsolo@winston.com

Paul E. Harner on behalf of Interested Party Latham & Watkins LLP
paul.harner@lw.com

John F Higgins, IV on behalf of Creditor MRMBS II LLC
jhiggins@porterhedges.com, ksteverson@porterhedges.com; emoreland@porterhedges.com

Weiting Hsu on behalf of Creditor First Commercial Bank Co., Ltd.
whsu@winstead.com, hsuweiting@alumni.utexas.net

Patrick L Hughes on behalf of Financial Advisor AlixPartners, LLP
hughesp@haynesboone.com

Patrick L Hughes on behalf of Interested Party AlixPartners, LLP
hughesp@haynesboone.com

Charles Stephen Kelley on behalf of Attorney Mayer Brown LLP
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor Bank Sinopac
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor Cathay United Bank
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor Deutsche Bank AG, London Branch
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor First Commercial Bank Co., Ltd.
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor SC Lowy Primary Investments, Ltd.
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor Shanghai Commercial & Savings Bank
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Creditor Wilmington Trust, National Association
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Charles Stephen Kelley on behalf of Defendant Mega International Commercial Bank Co., Ltd
ckelley@mayerbrown.com, sswihart@mayerbrown.com; houstonocket@mayerbrown.com

Marcy E Kurtz on behalf of Debtor TMT Procurement Corporation
marcy.kurtz@bracewelllaw.com

Marcy E Kurtz on behalf of Plaintiff C Whale Corporation
marcy.kurtz@bracewelllaw.com

Christine A March on behalf of U.S. Trustee US Trustee
christine.a.march@usdoj.gov

Peter A McLauchlan on behalf of Creditor Shanghai Commercial & Savings Bank
pmclauchlan@gardere.com, rwells@gardere.com; aestaba@gardere.com

John P Melko on behalf of Creditor Cathay United Bank
jmelko@gardere.com, koliver@gardere.com; bfriedrich@gardere.com; ggattis@gardere.com

John P Melko on behalf of Creditor First Commercial Bank Co., Ltd.
jmelko@gardere.com, koliver@gardere.com; bfriedrich@gardere.com; ggattis@gardere.com

John P Melko on behalf of Creditor Mega International Commercial Bank Co., Ltd.
jmelko@gardere.com, koliver@gardere.com; bfriedrich@gardere.com; ggattis@gardere.com

John P Melko on behalf of Creditor Shanghai Commercial & Savings Bank
jmelko@gardere.com, koliver@gardere.com; bfriedrich@gardere.com; ggattis@gardere.com

John P Melko on behalf of Debtor TMT Procurement Corporation
jmelko@gardere.com, koliver@gardere.com; bfriedrich@gardere.com; ggattis@gardere.com

John E Mitchell on behalf of Creditor Bank Sinopac
john.mitchell@akerman.com

John E Mitchell on behalf of Creditor Cathay United Bank

john.mitchell@akerman.com

John E Mitchell on behalf of Defendant Cathay United Bank

john.mitchell@akerman.com

Michael L. Nadler on behalf of Creditor Oaktree Capital Management LP

mnadler@paulweiss.com

David William Parham on behalf of Creditor Bank Sinopac

david.parham@akerman.com

David William Parham on behalf of Creditor Cathay United Bank

david.parham@akerman.com

David William Parham on behalf of Creditor Cortland Capital Market Services LLC

david.parham@akerman.com

David William Parham on behalf of Creditor First Commercial Bank Co., Ltd.

david.parham@akerman.com

David William Parham on behalf of Creditor Mega International Commercial Bank Co., Ltd.

david.parham@akerman.com

David William Parham on behalf of Creditor Shanghai Commercial & Savings Bank

david.parham@akerman.com

David William Parham on behalf of Defendant Bank Sinopac

david.parham@akerman.com

David William Parham on behalf of Defendant Cathay United Bank

david.parham@akerman.com

David William Parham on behalf of Transferee BANK OF AMERICA, N.A.

david.parham@akerman.com

Alfredo R Perez on behalf of Creditor BHP Billiton Marketing AG

alfredo.perez@weil.com, chris.lopez@weil.com; brenda.funk@weil.com; rene.olvera@weil.com

Michael Kevin Riordan on behalf of Creditor Deutsche Bank AG, London Branch

mrriordan@gardere.com, koliver@gardere.com

Michael Kevin Riordan on behalf of Creditor Shanghai Commercial & Savings Bank

mrriordan@gardere.com, koliver@gardere.com

Edward L Rothberg on behalf of Interested Party F3 Capital

rothberg@hooverslovacek.com,

ELRbankruptcy@gmail.com,ray@hooverslovacek.com;hslpbankruptcy@gmail.com

Edward L Rothberg on behalf of Interested Party Hsin-Chi Su
rothberg@hooverslovacek.com,
ELRbankruptcy@gmail.com,ray@hooverslovacek.com;hslpbankruptcy@gmail.com

Edward L Rothberg on behalf of Witness HSIN-CHI aka NOBU SU SU
rothberg@hooverslovacek.com,
ELRbankruptcy@gmail.com,ray@hooverslovacek.com;hslpbankruptcy@gmail.com

Carey D Schreiber on behalf of Creditor Cortland Capital Market Services LLC
cschreiber@winston.com, chardman@winston.com;dcunsolo@winston.com

Carey D Schreiber on behalf of Interested Party Macquarie Bank Limited
cschreiber@winston.com, chardman@winston.com;dcunsolo@winston.com

Brendetta Anthony Scott on behalf of Interested Party F3 Capital
scott@hooverslovacek.com,
welborn@hooverslovacek.com,bankruptcy1@hooverslovacek.com,Scott.hslp@gmail.com

Brendetta Anthony Scott on behalf of Interested Party Hsin-Chi Su
scott@hooverslovacek.com,
welborn@hooverslovacek.com,bankruptcy1@hooverslovacek.com,Scott.hslp@gmail.com

Rosa A. Shirley on behalf of Creditor Bank Sinopac
rosa.shirley@bakermckenzie.com, julia.rogic@bakermckenzie.com

Rosa A. Shirley on behalf of Creditor Cathay United Bank
rosa.shirley@bakermckenzie.com, julia.rogic@bakermckenzie.com

Rosa A. Shirley on behalf of Creditor Cortland Capital Market Services LLC
rosa.shirley@bakermckenzie.com, julia.rogic@bakermckenzie.com

Rosa A. Shirley on behalf of Creditor Deutsche Bank AG, London Branch
rosa.shirley@bakermckenzie.com, julia.rogic@bakermckenzie.com

Clinton R. Snow on behalf of Creditor Shanghai Commercial & Savings Bank
csnow@gardere.com

US Trustee
USTPRegion07.HU.ECF@USDOJ.GOV

David R Walker on behalf of Creditor The Shipping Corporation of India
david.walker@roystonlaw.com, robin.gilpin@roystonlaw.com

Kevin Patrick Walters on behalf of Creditor COSCO Manning Cooperation, Inc.

kevin.walters@roystonlaw.com, sylvia.cooper@roystonlaw.com

Greg Michael Wilkes on behalf of Creditor MRMBS II LLC

greg.wilkes@nortonrosefulbright.com

Eric R Wilson on behalf of Attorney Kelley Drye & Warren LLP

BankruptcyDepartment@kelleydrye.com;MVicinanza@ecf.inforuptcy.com

Craig A Wolfe on behalf of Attorney Co-Counsel for the Official Committee of Unsecured Creditors of TMT USA Shipmanagement LLC, et al.

kdwbankruptcydepartment@kelleydrye.com

Craig A Wolfe on behalf of Creditor Official Committee of Unsecured Creditors of TMT USA Shipmanagement LLC, et al.

kdwbankruptcydepartment@kelleydrye.com

Craig A Wolfe on behalf of Creditor Committee Official Committee of Unsecured Creditors of TMT Procurement Corporation, et al.

kdwbankruptcydepartment@kelleydrye.com

William Alfred Wood, III on behalf of Debtor A Duckling Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor A Handy Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor A Ladybug Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor A Whale Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor B Handy Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor B Max Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor B Whale Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor C Handy Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor C Ladybug Corporation

Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor C Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor D Ladybug Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor D Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor E Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor F Elephant Inc.
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor G Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor Great Elephant Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor H Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor New Flagship Investment Co Ltd
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor RoRo Line Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor TMT Procurement Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Debtor Ugly Duckling Holding Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Defendant F Elephant, Inc.
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff A Duckling Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff B Handy Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff C Handy Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff C Ladybug Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff C Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff E Whale Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff F Elephant Corporation
Trey.Wood@bracewelllaw.com

William Alfred Wood, III on behalf of Plaintiff F Elephant Inc.
Trey.Wood@bracewelllaw.com

Mark Allan Worden on behalf of Interested Party Vantage Drilling Company, Inc.
mworden@fulbright.com

By: Deirdre Carey Brown
DEIRDRE CAREY BROWN

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

ENERGY XXI LTD., et al,

DEBTOR.

§
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§

**CASE NO. 16-31928
(Chapter 11)**

**Jointly Administered
Judge David R. Jones**

**ORDER GRANTING OFFICIAL COMMITTEE OF EQUITY SECURITY
HOLDERS' EMERGENCY MOTION TO COMPEL DOCUMENT
PRODUCTION FROM BDO USA, LLP**

The Official Committee of Equity Security Holders' Emergency Motion to Compel Document Production from BDO USA, LLP ("Motion") is hereby GRANTED.

BDO USA LLP shall produce all records responsive to the Subpoena Duces Tecum attached as Exhibit A to the Motion by no later than October 21, 2016 at 5:00 p.m.

Signed: October __, 2016.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT

Southern District of Texas

In re ENERGY XXI, Ltd., et al

Debtor

(Complete if issued in an adversary proceeding)

Case No. 16-31928

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: BDO USA LLP 2929 Allen Parkway, 20th Floor, Houston Texas 77019

(Name of person to whom the subpoena is directed)

☒ Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Schedule A

PLACE
Hoover Slovacek LLP, 5051 Westheimer, Suite 1200, Houston, Texas 77056
ATTN: Deirdre Carey Brown

DATE AND TIME **October 5, 2016 at 9:00 a.m.**

☐ Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 26, 2016

CLERK OF COURT

OR

/s/ Deirdre Carey Brown

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing Official Committee of Equity Security Holders, who issues or requests this subpoena, are: Deirdre Carey Brown, Hoover Slovacek LLP, 5051 Westheimer, Suite 1200, Houston, Texas 77056; brown@hooverslovacek.com; 713.735.4196

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT A

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____ .

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

NOTE

The Bankruptcy Court has issued an Order regarding discovery and limiting the time for response to document requests. Please see attached. Doc. No. 861.

DEFINITIONS

1. Each reference to a corporation, partnership, joint venture, unincorporated association, government agency or other fictitious person shall be deemed to include each and all of its subsidiaries, affiliates, predecessors and successors, and with respect to each of such entities, its officers, directors, shareholders, employees, partners, limited partners, representatives, agents, accountants, attorneys and any other person who acted on its behalf.

2. Each reference to a natural person shall be deemed to include that person's agents, attorneys and any other person who acted on that person's behalf.

3. References to the singular shall include the plural and references to the plural shall include the singular; the conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive; and the present tense shall include the past tense and the past tense shall include the present tense.

4. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

5. "Affiliate" of any specified Person means any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.

6. “Alternative Restructuring Transaction” means any proposed, contemplated, or considered alternative to the restructuring transactions contemplated by the Proposed RSA.

7. “Any,” “all” and “each” shall be construed broadly, and shall mean each, any and all as necessary to bring within the scope of the discovery request all responses that otherwise could be construed to be outside of its scope.

8. “Asset” means movable, immovable or real property of any kind.

9. “Bankruptcy Code” means title 11 of the United States Code, and all provisions thereof.

10. “Bankruptcy Case” means the Debtors’ jointly administered chapter 11 cases, captioned *In re Energy XXI, Ltd, et al*, Case No. 16-31928, pending in the United States Bankruptcy Court for the Southern District of Texas.

11. “Board” means any board of directors, managers, or comparable supervisory body, or any group or committee with the responsibility of, among other things, governing Debtors or overseeing the activities and operations of Debtors.

12. “Chapter 11 Cases” means the chapter 11 cases, commenced by the Debtors in the United States Bankruptcy Court for the Southern District of Texas on April 14, 2016.

13. “Claim” shall mean any claim against a Debtor as defined in section 101(5) of the Bankruptcy Code.

14. “Communication” shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise) including, without limitation, all discussions, dialogues, conversations, interviews, negotiations, cablegrams, mailgrams, telegrams, telexes, cables, correspondence, facsimiles, electronic mail, or other forms of written or verbal interchange, however transmitted, including reports, notes, memoranda, lists, agenda, proposals, opinions and other Documents and records of communication.

15. “Concerning,” “referencing,” “in connection with,” “relating to,” and “referring to” shall be construed to mean, without limitation, relating to, referring to, describing, evidencing, constituting, discussing, supporting, pertaining to, containing, analyzing, evaluating, studying, recording, showing, memorializing, reporting on, commenting on, mentioning, reviewed in conjunction with, setting forth, contradicting, refuting, considering, or recommending, in whole or in part.

16. “Debtors” means, collectively, means all or each of Anglo-Suisse Offshore Pipeline Partners, LLC (9562), Delaware EPL of Texas, LLC (9562), Energy Partners Ltd., LLC (9562), Energy XXI GOM, LLC (0027), Energy XXI Gulf Coast, Inc. (8595), Energy XXI Holdings, Inc. (1638), Energy XXI, Inc. (2108), Energy XXI Leasehold, LLC (8121), Energy XXI Ltd (9286), Energy XXI Natural Gas Holdings, Inc. (7517), Energy XXI Offshore Services, Inc. (4711), Energy XXI Onshore, LLC (0308), Energy XXI Pipeline, LLC (5863), Energy XXI Pipeline II, LLC (8238), Energy XXI Services, LLC (3999), Energy XXI Texas Onshore, LLC (0294), Energy XXI USA, Inc. (8552), EPL of Louisiana, L.L.C. (9562), EPL Oil & Gas, Inc. (9562), EPL Pioneer Houston, Inc. (9749), EPL Pipeline, L.L.C. (1048), M21K, LLC (3978), MS Onshore, LLC (8573), Natural Gas Acquisition Company I, LLC (0956), Nighthawk, L.L.C. (9562), and Soileau Catering, LLC (2767), and any advisors, agents, attorneys, accountants, consultants, officers, directors, employees, experts, investment bankers, representatives, and other persons acting, or who have acted, on behalf of the foregoing entities or individuals referenced in this definition, including Vinson & Elkins LLP, PJT Partners LP and Opportune LLP.

17. “Director” means any present or former director of the Debtors or the Non-Debtors.

18. “Disclosure Statement” means the *Disclosure Statement for the Debtors’ Proposed Joint Chapter 11 Plan of Reorganization*, attached as Exhibit A to the Order [Dkt. 805].

19. “Document” is used in the broadest sense and means any communication, written, typed, printed, graphic or recorded matter of any kind or character, however produced or reproduced; any electronically or magnetically recorded matter of any kind or character, however produced or reproduced; and any other matter of any kind or character constituting a recording upon any medium by any means of communication or representation. The foregoing includes, but is not limited to, all originals, including drafts, masters, duplicates or copies of: papers, conversations, letters, correspondence, memoranda, summaries, messages, voice mail messages, e-mail messages, Communications, data, databases, minutes, notes, transcripts, statements, circulars, manuals, treatises, books, notebooks, catalogs, pamphlets, flyers, advertisements of any kind, books of account, ledgers, balance sheets, bank deposit slips, bank checks, canceled checks, wire transfers, financial Documents of any kind, files, diaries, diary entries, telephone logs, appointment books, desk or other calendars and similar records of any kind, sound or visual recordings on film, tape, disc, drum, wire or other medium, transcriptions of the foregoing, photographs, sketches, diagrams, drawings, microfilm or microfiche, agreements, contracts, teletype, telegrams, cables, memorials or oral Communications, whether by telephone or face-to-face, notices, bulletins, polls, surveys, findings of fact, observations of facts or circumstances, reports, studies, tables, statistics, pleadings, objects, any data, information or statistics contained within any data storage modules, tapes, discs or other memory device or other information retrievable from storage systems, including but not limited to computer generated reports and print-outs. The term “Document” also includes data compilations or databases, including metadata, from which information can be obtained, and translated, if necessary, through detection devices in a reasonably usable form. If any Document has been modified by the addition of notations or otherwise, or has been prepared in multiple copies which are not identical, each modified copy or non-identical copy is a separate “Document.”

20. “Including” shall mean including, without limitation, or in any way qualifying, limiting or restricting the foregoing.

21. “Person” means a natural person or any corporation, partnership, association, joint venture, firm, or other business enterprise or legal entity, and includes both the singular and the plural.

22. “Petition Date” means April 14, 2016.

23. “PJT” means PJT Partners LP.

24. “Plan” means the Debtors’ Proposed Joint Chapter 11 Plan of Reorganization attached as Exhibit A to the Disclosure Statement.

25. “You” or “your” means BDO USA LLP, and his agents, advisors, affiliates, agents, attorneys, accountants, consultants, officers, employees, experts, investment bankers, representatives.

INSTRUCTIONS

1. Pursuant to Federal Rules of Bankruptcy Procedure and Federal Rule of Civil Procedure, these requests for production shall be deemed continuing in nature so as to require you to file supplementary responses if you obtain new or different information up to and including the time of trial of this action.

2. You are to produce the original and all non-identical copies, including all drafts, of each Document requested. If you are not able to produce the original of any Document, please produce the best available copy and all non-identical copies, including drafts.

3. When Documents, data, knowledge, or information in your possession are requested, such request includes the knowledge of your attorneys, accountants, agents, representatives, and experts, and any professional employed or retained by you, concerning any of the facts or issues involved in this bankruptcy.

4. Each request herein extends to all Documents and Communications in the possession, custody or control of you or anyone acting on your behalf. A Document is deemed to be in your possession, custody, or control if it is in your physical custody, or if it is in the physical custody of any other person and you: (1) own such Document in whole or in part; (2) have a right, by contract, statute or otherwise, to use, inspect, examine or copy such Document on any terms; (3) have an understanding, express or implied, that you may use, inspect, examine, or copy such Document on any terms; or (4) as a practical matter, have been able to use, inspect, examine, or copy such Document when you sought to do so. If any requested Document was, but no longer is, in your control, state the disposition of each such Document.

5. In responding to each request, you are to review and search all relevant files of appropriate entities and persons.

6. All Document requests shall be deemed to include requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the Documents.

7. Notwithstanding anything else to the contrary herein, each word, term or phrase is intended to have the broadest meaning permitted under the Federal Rules and the Bankruptcy Rules.

8. To the extent that you deem or consider any request to be ambiguous, you should construe the request to require the fullest and most complete disclosure of all information and requested Documents.

9. The Documents responsive to this request shall be produced in such a fashion as to indicate clearly the (i) identity of the party making such production and (ii) the identity of the file from which the Documents were produced.

10. Electronic documents shall be produced consistent with the file formats the Debtors have been using whether via the Merrill data room or via zip files. Native emails and spreadsheets shall be provided when responsive to the requests.

11. The Documents responsive to this request shall be produced as they have been kept in the usual course of business or shall be organized and labeled to correspond with the enumerated categories in this request.

12. If there are no Documents responsive to a particular Request, please state so in writing.

13. If after exercising due diligence to secure them, you cannot provide some or any of the requested Documents, so state and provide all Documents to the extent possible, specifying the reason for your inability to produce the remainder of the Documents, and stating whatever information or knowledge you have concerning each Document not produced.

14. If any requested Document or other Document potentially relevant to this action is subject to destruction under any Document retention or destruction program, the Document should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this action or unless otherwise permitted by the Court.

15. If an objection is made to any request, state your objection and the ground or grounds with particularity in your written response. If an objection is made only to part of the request, identify that part in your written response and state your objection and the ground(s).

16. An objection or claim of privilege directed to part of a request does not constitute an excuse for failure to respond to the parts of a request for which no objection or claim of privilege is made. No part of any Request should be left unanswered merely because an objection is interposed to another part of the Request. If a partial or incomplete answer is provided, You shall state that the answer is partial or incomplete.

DOCUMENT REQUESTS

1. All documents concerning services You completed for the Debtors, including without limitation, correspondence of any nature, work papers, contracts, agreements, time records, billings, and notes for the Debtors' Fiscal Year 2015 and Fiscal Year 2016.
2. All communications between or among You and any of the Debtors' representatives or attorneys related to the Debtors' financials, including without limitation all e-mail communications, texts, or other electronic communications and notes for the period February 1, 2014 to present.
3. All documents provided to you from the Debtors including but not limited to the General Ledger, journal entry, supporting documents for journal entries for Fiscal Year 2015 and Fiscal Year 2016.
4. All monthly, quarterly and/or annual financial statements for each individual Debtor separately, as well as and/or including but not limited to general ledgers, balance sheets, accounts receivable report, account payable reports; the consolidated EPL financial statements; and the consolidated Energy XXI LTD financial statements for the period January 1, 2015 to present.
5. All work papers for financial reports or audits prepared or being prepared for the Debtors for Fiscal Year 2015 and FY 2016, including but not limited to audit work papers, draft audits, management representative letters, open item reports or schedules, subsequent event notes, or spreadsheets.
6. All drafts of any SEC reports you have for the Debtors for the period January 1, 2016 to present.
7. Copies of any tax returns you have for the Debtors for 2015 including the supporting schedules and worksheets.
8. All copies of contracts you have for any of the consultants paid for by the Debtors and any 1099's you have which were issued by the Debtors in 2015.
9. Any appraisals or valuations you have regarding any of the Debtors assets.
10. Copies of your invoices to the Debtors for the period January 1, 2015 to present.
11. Copies of any budgets, drill schedules, and/or long range plans that you were provided for any of the Debtors between January 1, 2015 and present.



ENTERED
07/26/2016

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In re:	Case No. 16-31928
ENERGY XXI LTD, <i>et al.</i> ,	Chapter 11
Debtors.	Jointly Administered

CONFIRMATION HEARING SCHEDULING ORDER

WHEREAS, on July 15, 2016, the Court entered an *Order (A) Approving the Disclosure Statement and Form and Manner of Service Related Thereto, (B) Setting Dates for the Objection Deadline and hearing Related to Confirmation of the Plan, and (C) Granting Related Relief* [Docket No. 805] ("Disclosure Statement Order");

WHEREAS, the Court set September 6, 2016 at 4:00 pm central as the deadline for objections to confirmation of the Plan¹ or proposed modifications to the Plan, and September 13, 2016 at 9:00 am for the commencement of the Confirmation Hearing;

WHEREAS, the Plan proposed by the Debtors is supported by the ad hoc committee of second lien noteholders of the 11% Senior Secured Second Lien Notes due 2020 (the "Ad Hoc Committee of Second Lien Holders") (collectively, with the Debtors, the "Plan Supporters");

WHEREAS, certain other parties in interest have actively participated and advised the Debtors as of this date that they intend to conduct discovery in connection with the Confirmation Hearing, and will more than likely object to the confirmation of the Plan. They include: the Official Committee of Unsecured Creditors, Delaware Trust Company (as Indenture Trustee), the Ad Hoc Group of EPL Unsecured Noteholders, Wilmington Trust, National Association (as Indenture Trustee), the Ad Hoc Group of EGC Unsecured Noteholders, Wilmington Savings Fund Society, FSB and the Official Committee of Equity Security Holders (collectively, with the Debtors and the Ad Hoc Committee of Second Lien Holders, the "Participating Parties").

WHEREAS, the Participating Parties have agreed that it is in the best interests of these proceedings to establish certain deadlines related to the Confirmation Hearing, and to be subject to this order. The Court agrees that the proposed deadlines are in the best interests of the estates, and orders as follows:

IT IS HEREBY ORDERED that the Participating Parties adhere to the following deadlines:

¹ Capitalized terms not defined herein are as defined in the Disclosure Statement Order.

July 26, 2016	Participating Parties to serve additional Confirmation Hearing written discovery (including document requests and interrogatories) to other Participating Parties
July 29, 2016	Debtors to complete production of documents in response to previously served written requests in connection with the Disclosure Statement
August 8, 2016	Plan Supporters produce expert reports Debtors to respond to interrogatories and complete production of documents in response to document requests served in connection with the Confirmation Hearing
August 22, 2016	Objecting Participating Parties to identify issues that experts will opine on at the Confirmation Hearing
August 23, 2016	Status conference with Court
August 26, 2016	Objecting Participating Parties produce any expert reports All fact depositions to be completed (except for any witnesses who have not been deposed and are identified on August 30, 2016 by the Debtors as witnesses)
August 30, 2016	Participating Parties identify witnesses for Confirmation Hearing
September 2, 2016	Plan Supporters produce rebuttal expert reports
September 8, 2016	Deadline to complete depositions of experts

IT IS HEREBY FURTHER ORDERED any written responses and objections to written discovery propounded upon Participating Parties are due no later than three (3) business days after being served with such written discovery. Participating Parties agree to accept service of any discovery or discovery responses via electronic transmission.

IT IS HEREBY FURTHER ORDERED that Participating Parties shall undertake reasonable efforts to serve written discovery upon third parties by July 29, 2016, but may issue reasonable supplemental/additional written requests to third parties after July 29, 2016 (or to other Participating Parties) based on information discovered after such date, with the dates for any objections, responses or productions to be set by agreement of the parties or further order of the Court. The discovery response deadlines for third party discovery is shortened to seven (7) days without any prejudice to third parties to request an enlargement of time if warranted. Any request to enlarge the response period should be filed within three (3) days of receipt of the

discovery. Participating Parties shall provide notice of this Order in the discovery requests sent to third parties.

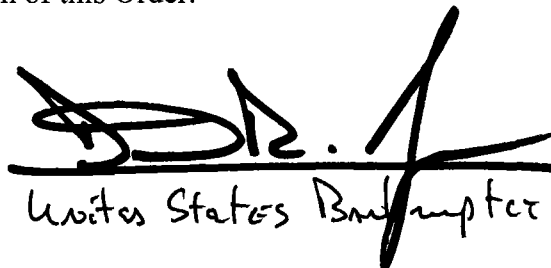
IT IS HEREBY FURTHER ORDERED that, notwithstanding anything to the contrary contained herein, the Debtors shall furnish copies of all ballots and any other documents concerning the vote on the Plan by September 7, 2016, and any depositions of the balloting agent or otherwise regarding voting issues may occur at any time on or before September 12, 2016.

IT IS HEREBY FURTHER ORDERED that any dispute with regard to discovery conducted under this order that cannot be resolved after a good faith consultation may be presented to the Court by a letter filed by the Participating Party seeking relief. Unless otherwise agreed to by the disputing parties, any response to the letter shall be made by letter to the Court filed within two (2) business days after service of the initial letter submission. Without leave of the Court, no letter shall exceed five (5) pages in length and no additional submissions are permitted.

IT IS HEREBY FURTHER ORDERED that any and all deadlines set forth herein may extended or modified by agreement of all Participating Parties, or by Court order. The Participating Parties reserve the right to seek the adjournment of the Confirmation Hearing, extension of the Objection Deadline or any deadlines set forth herein.

IT IS HEREBY FURTHER ORDERED that this Court retains jurisdiction over all matters arising from or related to the implementation of this Order.

7-25-2016


United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

Southern District of Texas

In re ENERGY XXI, Ltd., et al

Debtor

*(Complete if issued in an adversary proceeding)*Case No. 16-31928Chapter 11

Plaintiff

v.

Adv. Proc. No. _____

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)To: BDO USA LLP 2929 Allen Parkway, 20th Floor, Houston Texas 77019*(Name of person to whom the subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: **See attached Schedule A**

PLACE Hoover Slovacek LLP, 5051 Westheimer, Suite 1200, Houston, Texas 77056 ATTN: Deirdre Carey Brown	DATE AND TIME October 5, 2016 at 9:00 a.m.
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☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE	DATE AND TIME
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The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: September 26, 2016

CLERK OF COURT

OR

/s/ Deirdre Carey BrownSignature of Clerk or Deputy ClerkAttorney's signature

The name, address, email address, and telephone number of the attorney representing Official Committee of Equity Security Holders, who issues or requests this subpoena, are: Deirdre Carey Brown, Hoover Slovacek LLP, 5051 Westheimer, Suite 1200, Houston, Texas 77056; brown@hooverslovacek.com; 713.735.4196

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: BDO USA LLP
on *(date)* 09/26/2016.

☒ I served the subpoena by delivering a copy to the named person as follows: BDO USA LLP by and through its
authorized person, Kari Cashion at 2929 Allen Parkway 20th Floor Houston, TX 77019 personally in hand
on *(date)* 09/26/2016; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ 0.00.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true and correct.

Date: 09/29/2016



Server's signature

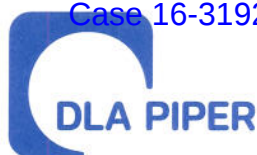
Paul Nolen, Private Process Server

Printed name and title

VeriServe Solutions, Inc.
5847 San Felipe St., Suite 1700 Houston, TX 77057

Server's address

Additional information concerning attempted service, etc.:



DLA Piper LLP (US)
1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
www.dlapiper.com

Eliot T. Burriss
Eli.Burriss@dlapiper.com
T 214.743.4514
F 972.813.6261

October 5, 2016

VIA CERTIFIED MAIL AND E-MAIL

Deidre Carey Brown
Hoover Slovacek LLP
5051 Westheimer, Suite 1200
Houston, TX 77056

**Re: Case No. 16-31928; In Re: *Energy XXI, Ltd., et al.* in the U.S. Bankruptcy Court,
Southern District of Texas**

Dear Counsel:

Enclosed please find Non-Party BDO USA, LLP's ("BDO") Objections and Responses to Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (Or Adversary Proceeding) in the above-referenced matter.

In light of the unreasonably short period of time BDO was provided to respond, and the exceptionally broad scope of the subpoena, BDO is not in a position to produce documents at this time. BDO, however, is willing to meet and confer with you in an effort to determine if there is an appropriately tailored request for documents that is proportional to the needs of the case and avoids imposing undue burden and expense on BDO.

Please contact me at your earliest convenience to discuss.

Very truly yours,



Eliot T. Burriss

ETB:tdd
Enclosure

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	CASE NO. 16-31928
	§	
ENERGY XXI, LTD., ET AL.,	§	CHAPTER 11
	§	
Debtors.	§	

**NON-PARTY BDO USA LLP'S OBJECTIONS AND RESPONSES
TO SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION,
OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY
CASE (OR ADVERSARY PROCEEDING)**

TO: Deidre Carey Brown, Hoover Slovacek LLP, 5051 Westheimer, Suite 1200, Houston,
Texas 77056.

Non-party BDO USA LLP ("BDO"), by its undersigned counsel, DLA Piper LLP (US), hereby submits its objections and responses to Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (Or Adversary Proceeding) (the "Subpoena") as follows:

I.
GENERAL OBJECTIONS

Pursuant to Federal Rule of Bankruptcy Procedure 9016 and Federal Rule of Civil Procedure 45, BDO serves these written objections and responses to the document requests in the Subpoena ("Requests"). The following general objections are incorporated by reference into BDO's responses to each and every Request below:

1. The following responses are based on information available as of the date of these responses. Further discovery, independent investigation, and analysis may lead to the discovery of additional information and documents, supply additional facts, and add meaning to known facts, as well as establish entirely new facts and contentions, all of which may lead to additions

to, changes to, or variations from the information in these responses. Accordingly, BDO will supplement the responses to the requests, as necessary, in accordance with the Federal Rules of Bankruptcy Procedure.

2. BDO objects to the Subpoena on the grounds that the date and place specified for production are unreasonable. BDO specifically objects to the subpoena on the basis that it failed to provide BDO with a reasonable time to respond.

3. BDO objects to the Subpoena to the extent that it seeks to elicit information subject to and protected by the accountant-client privilege, attorney-client privilege, the attorney work-product doctrine, or other applicable privileges or discovery exemptions. Nothing contained in these responses is intended to be or should be construed as a waiver of the accountant-client privilege, attorney-client privilege, the attorney work-product protection, the right to privacy, or any other applicable privilege, protection, or doctrine.

4. BDO objects to the Subpoena on the basis that the information sought is confidential, proprietary, and subject to Section 901.457 of the Texas Occupations Code and Energy XXI, Ltd. has not authorized the production of any information by BDO.

5. BDO objects to the Subpoena to the extent that it seeks information that is not relevant to the subject matter of this action and is not proportional to the needs of this case.

6. BDO objects generally to the Subpoena on the grounds that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive, and the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

7. BDO objects to the Subpoena to the extent that it seeks information not within the possession, custody, or control of BDO. Any response or objection to the Subpoena does not necessarily mean that any documents exist or are in the possession, custody, or control of BDO that are responsive to any specific category of documents demanded by the Subpoena.

8. These responses are made solely for the purpose of discovery in this action.

9. BDO objects to the Subpoena to the extent that it seeks the production of documents for time periods other than those at issue in the underlying action.

10. Any inadvertent production of any document shall not be deemed or construed as a waiver of any rights or privileges, and BDO reserves the right to demand that Respondent or any other person in possession of such a document return to it any such document, and all copies thereof, and that Respondent or any such other person destroy any materials that contain information derived from any such document.

11. The objections set forth above are hereby incorporated in each objection and response set forth below, as if fully set forth therein, and shall be deemed to be continuing even though not specifically referred to. No such objection is waived by BDO responding to a request in whole or in part.

II.

OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents concerning services You completed for the Debtors, including without limitation, correspondence of any nature, work papers, contracts, agreements, time records, billings, and notes for the Debtors' Fiscal Year 2015 and Fiscal Year 2016.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 2:

All communications between or among You and any of the Debtors' representatives or attorneys related to the Debtors' financials, including without limitation all email communications, texts, or other electronic communications and notes for the period February 1, 2014 to present.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome. BDO objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request to the extent it seeks the production of privileged information.

DOCUMENT REQUEST NO. 3:

All documents provided to you from the Debtors including but not limited to the General Ledger, journal entry, supporting documents for journal entries for Fiscal Year 2015 and Fiscal Year 2016.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information. BDO further objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 4:

All monthly, quarterly and/or annual financial statements for each individual Debtor separately, as well as and/or including but not limited to general ledgers, balance sheets, accounts receivable report, account payable reports; the consolidated EPL financial statements; and the consolidated Energy XXI LTD financial statements for the period January 1, 2015 to present.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome. BDO further objects to this request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 5:

All work papers for financial reports or audits prepared or being prepared for the Debtors for Fiscal Year 2015 and FY 2016, including but not limited to audit work papers, draft audits, management representative letters, open item reports or schedules, subsequent event notes, or spreadsheets.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome, and is duplicative of prior requests. BDO further objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 6:

All drafts of any SEC reports you have for the Debtors for the period January 1, 2016 to present.

RESPONSE:

BDO objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 7:

Copies of any tax returns you have for the Debtors for 2015 including the supporting schedules and worksheets.

RESPONSE:

BDO objects to this request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained

from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 8:

All copies of contracts you have for any of the consultants paid for by the Debtors and any 1099's you have which were issued by the Debtors in 2015.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information. BDO further objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties.

DOCUMENT REQUEST NO. 9:

Any appraisals or valuations you have regarding any of the Debtors assets.

RESPONSE:

BDO objects to this Request on the grounds that it is overly broad and unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information. BDO further objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

DOCUMENT REQUEST NO. 10:

Copies of your invoices to the Debtors for the period January 1, 2015 to present.

RESPONSE:

BDO objects to this Request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information. BDO further objects to this Request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties.

DOCUMENT REQUEST NO. 11:

Copies of any budgets, drill schedules, and/or long range plans that you were provided for any of the Debtors between January 1, 2015 and present.

RESPONSE:

BDO objects to this Request on the grounds that it is vague and ambiguous in that it fails to specify with reasonable particularity the documents to be produced. BDO further objects to this Request on the grounds that it is overly broad and unduly burdensome, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible information. BDO further objects to this request on the basis that it seeks documents and information in the possession, custody, or control of the parties to the litigation, and the documents can be obtained from the parties. BDO further objects to this request on the grounds that it seeks documents and information that constitute proprietary, confidential, and trade secret information.

Dated: October 5, 2016

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Eliot Burriss

Eliot Burriss
State Bar No. 24040611
eli.burriss@dlapiper.com
Nicole Figueroa
State Bar No. 24069716
nicole.figueroa@dlapiper.com

1717 Main Street, Suite 4600
Dallas, Texas 75201-4629
Phone: (214) 743-4500
Fax: (214) 743-4545

ATTORNEYS FOR BDO USA LLP

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October 2016, a true and correct copy of the foregoing document has been served on the following parties by and through their counsel of record via certified mail and email.

/s/ Eliot Burriss

Eliot Burriss