

2006 BCSECCOM 243

February 24, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - *Securities Act* s. 169 - Confidentiality - An issuer wants to keep certain information in material contracts confidential - The record provides intimate financial, personal or other information; the disclosure of the information would be detrimental to the person affected by having it disclosed; the information would be of limited value to any investment decision by the public

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 169

In the Matter of
the Securities Legislation
of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador,
Yukon, the Northwest Territories and Nunanvut (the “Jurisdictions”)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Skypower Wind Energy Fund LP
(the “Partnership”)

MRRS Decision Document

Background

The local securities regulatory authority or regulator (each a “Decision Maker”) in each of the Jurisdictions has received an application from the Partnership for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that

- (a) certain portions of two material contracts, namely
 - i. the Turbine Supply Agreement between and among SkyPower Corp. (“SkyPower”) and General Electric Canada and General Electric

2006 BCSECCOM 243

Company (collectively “GE”) dated as of November 30, 2005 (the “Turbine Supply Agreement”); and

- ii. the Operations and Maintenance Agreement by and between SkyPower and GE dated as of November 30, 2005 (the “O&M Agreement” and, together with the Turbine Supply Agreement, the “Agreements”)

be held in confidence for an indefinite period by the Decision Makers, to the extent permitted by law;

- (b) the Partnership be permitted to replace the existing versions of the Agreements currently filed on the System for Electronic Document Analysis and Retrieval (“SEDAR”) with versions of the Agreements in which provisions containing commercially sensitive pricing information have been redacted; and
- (c) the application as well as any decision document issued in respect thereof, other than the unredacted copies of the Agreements, be held in confidence for sixty days following the date of the decision document, to the extent permitted by law (collectively, the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

This decision is based on the following facts represented by the Partnership:

- 1.1 The Partnership is a limited partnership established under the laws of the Province of Ontario. The Partnership has been established to invest primarily in common shares, including flow-through shares, of Terrawinds Resources Corp., a Canadian corporation that intends to construct and operate test wind turbines and, if successful, construct and operate additional wind turbines to create a 201 MW wind energy project near Rivière-du-Loup, Québec (the “Facility”).

2006 BCSECCOM 243

- 1.2 The Partnership is a reporting issuer, or the equivalent, in each of the provinces and territories of Canada that provides for a reporting issuer regime, and is not in default of any requirements under the Legislation.
- 1.3 On December 19, 2005, the Partnership filed a prospectus dated December 16, 2005 (the "Prospectus") in each of the provinces and territories of Canada in connection with the initial public offering of limited partnership units ("Units") of the Partnership.
- 1.4 On December 23, 2005, the Partnership issued \$77,240,840 worth of Units in connection with the completion of its initial public offering. The proceeds of the offering are being used to fund the development and construction of the Facility. The development and construction of the Facility necessarily includes the purchase, operation and maintenance of wind turbines pursuant to the terms of the Agreements. GE is the key supplier in respect of the development and construction of the Facility.
- 1.5 The Agreements contain certain commercial pricing information that is highly sensitive.
- 1.6 The Partnership, at GE's request, had previously agreed that it would request an exemption from the requirement in the Legislation to file material contracts with the Prospectus in order to be permitted to file redacted versions of the Agreements on SEDAR at the time of filing the Prospectus to remove this commercially sensitive pricing information.
- 1.7 The Partnership inadvertently failed to request this exemption prior to filing the Agreements. Non-redacted versions of the Agreements were inadvertently substituted for redacted versions and included with the SEDAR filing package filed with the Prospectus.
- 1.8 The Partnership believes that continued public access to the non-redacted versions of the Agreements would be prejudicial to the interests of the Partnership and that it would be in the best interest of its relationship with GE to replace the non-redacted versions of the Agreements filed on SEDAR with redacted versions. Accordingly, the Partnership has requested that it be permitted to replace the existing versions of the Agreements currently filed on SEDAR with versions of the Agreements in which provisions containing commercially sensitive pricing information have been redacted.
- 1.9 In connection with this application, the Partnership has filed redacted versions of the Agreements (the Redacted Agreements) which are identical

2006 BCSECCOM 243

to the Agreements except that the commercially sensitive information has been removed.

- 1.10 The information redacted from the Redacted Agreements does not contain information in relation to the Partnership or securities of the Partnership that would be material to an investor.
- 1.11 As a result of the Agreements being filed and made public on SEDAR, the Agreements have also been made publicly available on LIVEDGAR. Counsel to the Partnership has been advised by a representative at Global Securities Information, Inc., the administrator of the LIVEDGAR service, that LIVEDGAR will update after the non-redacted versions of the Agreements are removed from SEDAR and replaced with the redacted forms.
- 1.12 As a result of the Agreements being filed and made public on SEDAR, the Agreements have also been disseminated to subscribers of the SEDAR-SCRIBE service. Counsel to the Partnership has been advised by representatives of CDS Inc., the administrator of the SEDAR-SCRIBE service, that instructions will be sent to subscribers of the SEDAR-SCRIBE service to delete these versions of the Agreements from their own files. Counsel to the Partnership has been advised that subscribers of the SEDAR-SCRIBE service are contractually bound to follow these instructions.

Decision

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the Filer files on SEDAR a copy of the Redacted Agreements that will be made public by the Decision Makers and posted on www.sedar.com.

Paul M. Moore, Q.C.

Robert L. Shirriff, Q.C.