

2008 BCSECCOM 296

March 12, 2008

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Issuer deemed to cease to be a reporting issuer - issuer's securities are publicly traded, but not on any market in Canada - Canadian shareholders hold less than 10% of the issued and outstanding shares and will continue to receive foreign jurisdiction continuous disclosure documents

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

In the Matter of
the Securities Legislation of
British Columbia and Alberta (the Jurisdictions)

and

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

and

In the Matter of
BPI Energy Holdings, Inc. (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation (the Legislation) of the Jurisdictions that (the Requested Relief) the Filer is deemed to have ceased to be a reporting issuer.

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

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Interpretation

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

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. it was incorporated under the laws of British Columbia on August 15, 1980 as Texacana Resources Ltd., and subsequently changed its name:
 - (a) on October 15, 1981, to Unicorn Resources Ltd.,
 - (b) on November 22, 1988, to Pacific Unicorn Resources Ltd.,
 - (c) on August 20, 1992, to Biopac Industries Inc.,
 - (d) on January 18, 1995, to BPI Industries Inc., and
 - (e) on February 9, 2006, to BPI Energy Holdings, Inc.
 2. its head office is located in Solon, Ohio, its management is located in the United States, and its directors are located in the United States and Australia;
 3. its principal assets are located in Illinois;
 4. it is a reporting issuer in each of the Jurisdictions and is not a reporting issuer in any other jurisdiction in Canada, and it is not in default of any filing requirements under the Legislation other than the filing of a 51-101F1/F2/F3 for the fiscal years ended July 31, 2005, 2006 and 2007;
 5. it registered its common shares under section 12 of the United States *Securities Exchange Act of 1934* effective December 7, 2005, and its common shares were listed on the American Stock Exchange and voluntarily delisted from the TSX Venture Exchange on December 13, 2005;
 6. there is no market in Canada for its common shares and its common shares are listed only on the American Stock Exchange;
 7. its authorized share capital consists of 200,000,000 common shares without par value;
 8. as of October 31, 2007, its issued and outstanding share capital consisted of 73,618,764 common shares and it had outstanding options to acquire

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1,579,931 of its common shares and outstanding warrants to acquire 5,311,600 of its common shares; it has no other securities, including debt securities, outstanding;

9. the Filer has made a good faith investigation to confirm the identity, residency and ownership of holders of the Filer's common shares in the Jurisdictions; as a result of this investigation, not more than 7% of its beneficial shareholders are residents of Canada, and such shareholders beneficially hold not more than 3% of its issued and outstanding common shares;
10. no right to acquire common shares of the Filer on the exercise of options and warrants are beneficially held by Canadian resident shareholders;
11. it does not intend to seek public financing by way of an offering of its securities in Canada or to list its securities on any stock exchange or market in Canada; and
12. it is subject to the reporting requirements of US securities laws as a reporting issuer in the United States, and is not in default of any filing requirements under US securities laws, and has undertaken to provide all disclosure materials required by US securities laws to be delivered to its shareholders resident in the United States to its shareholders resident in Canada at the time and in the manner required by US securities laws and US market requirements.

Decision

- ¶ 4 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.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission