

# 2002 BCSECCOM 263

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – relief from the requirement to reconcile to Canadian GAAP certain financial statements included in an information circular that were prepared in accordance with U.S. GAAP

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c.418, s. 119

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA,  
SASKATCHEWAN, ONTARIO, QUÉBEC, AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF ENSERCO ENERGY SERVICE COMPANY INC.

AND

IN THE MATTER OF NABORS INDUSTRIES, INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of the Provinces of British Columbia, Alberta, Saskatchewan, Ontario, Québec, and Newfoundland and Labrador (the "Jurisdictions") has received an application from Enserco Energy Service Company Inc. (the "Applicant or Enserco") for a decision ("the Decision") under the securities legislation of the Jurisdictions (the "Legislation") that the Applicant be exempt from the following requirements with respect to Nabors Industries, Inc. ("Nabors") in the management information circular (the "Circular") to be sent to Enserco's Securityholders (as defined below):

(a) the requirement that historical financial statements of Nabors prepared in accordance with United States generally accepted accounting principles ("U.S. GAAP") be accompanied by a note to explain and quantify the effect of material differences between Canadian generally accepted accounting principles ("Canadian GAAP") and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP;

(b) the requirement that Nabors auditor's report disclose any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian GAAP; and

(c) the requirement that Nabors management's discussion and analysis of operating results and financial position ("Nabors MD&A") provide a restatement of those parts of the Nabors MD&A that would read differently if the Nabors MD&A were based on statements prepared in accordance with Canadian GAAP and the requirement that the Nabors MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP

(collectively, the "GAAP Reconciliation Requirements").

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AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicant has represented to the Decision Makers that:

1. In connection with the proposed combination of Nabors and Enserco (the "Transaction") pursuant to an acquisition agreement (the "Acquisition Agreement") dated February 25, 2002 between Nabors and Enserco, Enserco intends to mail the Circular to Enserco Securityholders (as defined below) on or about March 25, 2002, which Circular will seek, among other things, Enserco Securityholder approval of the plan of arrangement under section 192 of the Canada Business Corporations Act involving Nabors and Enserco (the "Arrangement"). Subject to satisfying all closing conditions (including obtaining the requisite Enserco Securityholders' approval and regulatory approvals), the parties anticipate that the Transaction will be completed on or about April 24, 2002 (the "Closing Date").;
2. The Transaction is to be effected pursuant to the Arrangement, which will be carried out under section 192 of the CBCA. The effect of the Arrangement will be to provide holders (the "Enserco Shareholders") of common shares of Enersco ("Enserco Common Shares") (other than Enserco Common Shares held by dissenting shareholders (the "Dissenting Shareholders") or by Nabors) with cash or exchangeable shares (the "Exchangeable Shares") of a newly formed Canadian subsidiary corporation of Nabors to be incorporated prior to the Closing Date ("Exchangeco"), in exchange for their Enserco Common Shares. The exchange of Enserco Common Shares for Exchangeable Shares will be based on an exchange ratio (the "Exchange Ratio") determined based on the 10 day weighted average trading price of Nabors Common Shares during the trading period ending three business days prior to the closing of the Transaction and a predetermined currency exchange ratio. The Enserco Common Shares will be transferred to and acquired by Exchangeco, which upon formation will be an indirect wholly-owned subsidiary of Nabors, such that upon completion of the Transaction, Nabors will own indirectly all of the Enserco Common Shares;
3. Nabors is incorporated under the laws of the state of Delaware. Nabors corporate headquarters are located at 515 West Greens Road, Suite 1200, Houston, Texas, 77067;
4. As of February 25, 2002, Nabors' authorized capital consisted of: i) 400,000,000 shares of common stock ("Nabors Common Shares"), par value U.S.\$0.10 per share, ii) 10,000,000 shares of preferred stock, par value \$0.10 per share, issuable in series ("Nabors Preferred Shares"), and iii) 8,000,000 shares of class B stock, par value \$0.10 per share ("Nabors Class B Shares"). The Nabors Common Shares are fully participating voting shares. As of February 22, 2002, there were 140,958,467 Nabors Common Shares, nil Nabors Preferred Shares and nil Nabors Class B Shares issued and outstanding. As of February 22, 2002, out of a total of 2447 total registered holders of Nabors Common Shares, 9 holders were resident in Canada holding 1,744 Nabors Common Shares in aggregate, representing approximately 0.0017% of the total number of issued and outstanding Nabors Common Shares;
5. As of February 22, 2002, there were 45,258,089 Nabors Common Shares reserved for issuance pursuant to Nabors stock option plans;
6. The Nabors Common Shares are listed on the American Stock Exchange (the "AMEX") under the symbol "NBR";
7. Nabors is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act"). Nabors is not and does not intend to become a "reporting issuer" or the equivalent in any province or territory of Canada. To the extent that, as a result of the

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consummation of the Transaction, Nabors would, pursuant to the securities laws of any jurisdiction in Canada, be deemed to be a reporting issuer or the equivalent, Nabors will seek and expects to obtain orders deeming it not be to be a reporting issuer or the equivalent in such jurisdictions

8. Enserco was formed on November 17, 1988 pursuant to the amalgamation of Bonus Petroleum Corp. and Bonus Resources Ltd. The company changed its name to Bonus Resource Services Corp. on June 6, 1996 and changed its name to Enserco Energy Service Company Inc. on May 3, 2001;

9. Enserco's authorized capital consists of an unlimited number of Enserco Common Shares. As of February 25, 2002, 26,179,861 Enserco Common Shares were issued and outstanding;

10. As of February 25, 2002, there were 55 registered Enserco Shareholders in Canada holding 19,293,907 Enserco Common Shares, representing approximately 74% of the total number of issued and outstanding Enserco Common Shares;

11. As of February 25, 2002, 821,130 options were outstanding under the Enserco stock option plan and other option agreements ("Enserco Options"), all of which Enserco Options were held by residents in Canada, except for 31,250 options. As of February 25, 2002, 500,000 warrants ("Enserco Warrants") exercisable to acquire Enserco Commons Shares at an exercise price of \$9.50 per Enserco Common Share were outstanding and held by United States persons;

12. The Enserco Common Shares are listed on the Toronto Stock Exchange (the "TSE") under the symbol "ERC";

13. Enserco is a "reporting issuer" or the equivalent in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec;

14. Enserco is currently eligible to file under National Instrument 44-101 – "Short Form Prospectus Distributions";

15. Prior to the Special Meeting (as defined below), Enserco will apply under section 192 of the CBCA for an interim order (the "Interim Order") of the Court of Queen's Bench of Alberta (the "Court") which order will specify, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Special Meeting and the completion of the Arrangement;

16. A special meeting (the "Special Meeting") of the Enserco Shareholders, holders of Enserco Options ("Enserco Optionholders") and the holders of Enserco Warrants (together with Enserco Shareholders and Enserco Optionholders, the "Enserco Securityholders") is anticipated to be held on or about April 24, 2002 at which Enserco will seek the requisite Enserco Securityholder approval (which, pursuant to the Interim Order, is expected to be 66 2/3% of the votes attached to the Enserco Common Shares, Enserco Options and Enserco Warrants, voting as one class, represented at the Special Meeting) for the special resolution approving the Arrangement;

17. In connection with the Special Meeting and pursuant to the Interim Order, Enserco will mail on or about March 25, 2002 to each Enserco Securityholder (i) a notice of special meeting, (ii) a form of proxy, and (iii) the Circular. While a final determination on the issue has not presently been made by Enersco, if not included in the mailout of the Circular and other materials, Enserco will subsequently mail to each Enserco Shareholder a letter of transmittal and election form by which Enserco Shareholders will be entitled to elect the consideration to be received in exchange for their Enserco Common Shares. The Circular will be prepared in accordance with OSC Rule

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54-501, except with respect to any relief granted therefrom, and will contain disclosure of the Transaction and the business and affairs of each of Nabors and Enserco;

18. The Circular will contain the following financial statements:

(a) audited annual financial statements of Nabors for each of the three fiscal years ended December 31, 1999, December 31, 2000 and December 31, 2001, together with balance sheets as at the end of such periods and the auditor's reports thereon, all in accordance with U.S. GAAP; and

(b) audited annual financial statements of Enserco for the fiscal year ended December 31, 2001, together with balance sheet as at the end of such period and the auditor's report thereon, all in accordance with Canadian GAAP.;

19. Following approval by the Enserco Securityholders of the special resolution approving the Arrangement, receipt of all required consents and regulatory approvals and issuance by the Court of a favourable final order, and subject to the satisfaction of all other closing conditions specified in the Acquisition Agreement, Enserco will effect the Arrangement by filing Articles of Arrangement;

20. It is expected that upon consummation of the Arrangement or shortly thereafter the Enserco Common Shares will be delisted from the TSE;

21. Nabors is making an application to the AMEX in order that the Nabors Common Shares issued pursuant to the Arrangement, and the Nabors Common Shares issuable on exercise of the Replacement Warrants, be listed for trading on the AMEX. Nabors is also making an application to the TSE in order that the Exchangeable Shares be listed for trading on the TSE;

22. Upon completion of the Arrangement, assuming that all the Enserco Shareholders elect to exchange their Enserco Common Shares for Nabors Common Shares issuable pursuant to the Arrangement, and assuming an Exchange Ratio of 0.2673 (based on the relative prices of Enserco Common Shares and Nabors Common Shares on February 25, 2002, and based on the Bank of Canada noon exchange rate for U.S. dollars on that date of 1.6016), it is expected that beneficial holders of Nabors Common Shares resident in Canada (calculated based upon the number of registered Enserco Shareholders and registered holders of Nabors Common Shares who are resident Canadians as of the above-mentioned dates) will hold Exchangeable Shares or Nabors Common Shares representing approximately 4.7% of the issued and outstanding Nabors Common Shares (including Nabors Common Shares issuable on conversion of the Exchangeable Shares);

23. If Nabors becomes a reporting issuer in any of the Jurisdictions, it will be able to satisfy its continuous disclosure obligations using financial statements prepared in accordance with U.S. GAAP by relying on Part 15 of National Instrument 71-101 - The Multijurisdictional Disclosure System.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker;

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;

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THE DECISION of the Decision Makers under the Legislation is that the GAAP Reconciliation Requirements shall not apply in connection with the disclosure pertaining to Nabors in the Circular.

DATED March 15, 2002.

Agnes Lau