

2004 BCSECCOM 111

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – issuer deemed to be no longer a reporting issuer under the Act – one registered and beneficial owner of issuer’s shares – issuer has notes listed on an exchange

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, ALBERTA, SASKATCHEWAN, ONTARIO, NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR

AND

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

AND

IN THE MATTER OF CALPINE CANADA ENERGY FINANCE II ULC

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia and Newfoundland and Labrador (the “Jurisdictions”) has received an application from Calpine Canada Energy Finance II ULC (the “Corporation” or the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) deeming the Filer to have ceased to be a reporting issuer in the Jurisdictions;
2. 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;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions;
4. AND WHEREAS the Filer has represented to the Decision Makers that:
 - 4.1 the Corporation was incorporated as an unlimited liability company under the laws of Nova Scotia in July 2001 and its head office is located in Halifax, Nova Scotia;

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- 4.2 the Corporation is a reporting issuer in each of the Jurisdictions as a result of filing the Prospectus (as defined below) on September 21, 2001;
- 4.3 the Corporation is indirectly a wholly-owned subsidiary of Calpine Corporation (“Calpine”), a Delaware company, and is a direct wholly-owned subsidiary of Calpine Canada Resources Ltd., an Alberta corporation. The Corporation was incorporated to be a special purpose finance subsidiary. Its primary business is to engage in financing activities to raise funds for the business operations of Calpine and its subsidiaries, and it has no other operations;
- 4.4 Calpine Canada Resources Ltd. is the sole registered and beneficial owner of all of the issued and outstanding equity securities of the Corporation and the only outstanding debt securities of the Corporation are the Notes (as defined below);
- 4.5 on September 21, 2001, the Corporation filed a Canadianized version of a base shelf prospectus (the “Prospectus”), prepared in accordance with U.S. securities laws and filed as part of a registration statement with the Securities and Exchange Commission pursuant to the United States Securities Act of 1933, in order to qualify the offering in Canada of non-convertible senior debt securities to be fully and unconditionally guaranteed by Calpine;
- 4.6 the Prospectus was filed in accordance with the provisions of National Instrument 71-101 – The Multijurisdictional Disclosure System (“NI 71-101”) and was part of a larger shelf offering by Calpine and Calpine Canada Energy Finance ULC (“Energy Finance”) that included equity and debt securities of Calpine as well as debt securities of Energy Finance;
- 4.7 in October 2001, the Corporation issued £200,000,000 8 7/8% Senior Notes Due October 15, 2011 and €175,000,000 8 3/8% Senior Notes Due October 15, 2008, (collectively, the “Notes”) which Notes were fully and unconditionally guaranteed by Calpine. The Notes were offered outside of Canada pursuant to a prospectus supplement dated October 11, 2001 filed with the SEC;
- 4.8 the Notes are held in a book-based system maintained by European depositories and, based on an investigation through ADP, Calpine is not aware of any beneficial holders of Notes resident in Canada;

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- 4.9 the Notes are listed for trading on the Luxembourg Stock Exchange and no securities of the Corporation are listed or traded on any exchange or market in Canada;
- 4.10 on October 24, 2001, the Alberta Securities Commission, on behalf of the local securities regulatory authority or regulator in each of the Jurisdictions and Manitoba issued an MRRS decision document (the “2001 Decision”) providing continuous disclosure relief to the Corporation and Energy Finance (collectively, the “FinanceCos”). The 2001 Decision allows the public disclosure of Calpine as a “U.S. issuer” under NI 71-101 to satisfy the continuous disclosure obligations of the FinanceCos with the exception that the FinanceCos must issue press releases in Canada and file material change reports upon the occurrence of a material change in relation to the FinanceCos;
- 4.11 the Corporation does not intend to seek public financing in Canada by way of an issue of securities in reliance upon the Prospectus or otherwise and neither Energy Finance nor Calpine intend to seek public financing in Canada by way of an issue of securities in reliance upon the Prospectus; and
- 4.12 the Corporation is not in default of the securities legislation of any province of Canada;
- 5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
- 6. AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;
- 7. The Decision of the Decision Makers under the Legislation is that the Filer cease to be a reporting issuer in the Jurisdictions.

DATED at the City of Calgary in the Province of Alberta this 12TH day of February, 2004.

Patricia M. Johnston
Director, Legal Services & Policy Development