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December 29, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102 - *Continuous Disclosure Obligations*, s. 13.1 - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that it has issued certain securities other than exchangeable shares, securities issued to its parent company, or debt securities to certain investors; the additional securities were preference shares issued to one person in connection with services provided under an arrangement

Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers Annual and Interim Filings*, s.4.5 - An issuer wants relief from the requirements in Parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

National Instrument 58-101 - *Disclosure of Corporate Governance Practices*, s.3.1 - An exchangeable share issuer wants an exemption from NI 58-101 - The issuer is an exchangeable share issuer that complies with all of the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that it has issued certain securities other than exchangeable shares, securities issued to its parent company, or debt securities to certain investors; the additional securities were preference shares issued to one person in connection with services provided under an arrangement

Securities Act, s. 91 – insider reporting requirements - An issuer wants relief from the requirement to file insider reports for its insiders - The issuer is an exchangeable security issuer that cannot rely on the exemption in National Instrument 51-102 Continuous Disclosure Obligations because it does not comply with all of the conditions for continuous disclosure relief in NI 51-102; as a result, its insiders cannot rely on the insider reporting exemptions in NI 51-102; the issuer has been granted discretionary relief from NI 51-102 requirements

National Instrument 55-102 – *System for Electronic Disclosure by Insiders*, s.6.1 - An issuer wants relief from the requirement to file an issuer profile supplement and an issuer event report - The issuer has applied for and received an exemption from the requirement to file insider reports for all of its insiders

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Securities Act, s. 171 – revocation of a previous decision - An issuer wants a previous decision revoked - Since the previous relief was granted the issuer has become subject to NI 51-102 in additional jurisdictions and continuous disclosure requirements under other national and multilateral instruments; a replacement order will update and consolidate all the issuer's continuous disclosure relief

Applicable British Columbia Provisions

National Instrument 51-102- *Continuous Disclosure Obligations*, s. 13.1

Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers Annual and Interim Filings*, s.4.5

National Instrument 58-101 - *Disclosure of Corporate Governance Practices*, s.3.1

Securities Act, R.S.B.C. 1996, c. 418, s. 91 – insider reporting requirements

National Instrument 55-102 – *System for Electronic Disclosure by Insiders*, s.6.1

Securities Act, R.S.B.C. 1996, c. 418, s. 171 – revocation of a previous decision

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia and Newfoundland and Labrador, Yukon, Northwest
Territories and Nunavut
(the Jurisdictions)

and

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

and

In the Matter of
Duke Energy Corporation (Duke Energy), Spectra Energy Corp. (Spectra Energy)
and Duke Energy Canada Exchangeco Inc. (Exchangeco,
and together with Duke Energy and Spectra Energy, the Filers)

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 Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

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- 1.1 except in the Northwest Territories, an exemption from the application of the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) pursuant to section 13.1 of NI 51-102;
 - 1.2 an exemption from Multilateral Instrument 52-109 *Certification of Disclosure in Issuers Annual and Interim Filings* (MI 52-109) pursuant to section 4.5 of MI 52-109;
 - 1.3 except in British Columbia, an exemption from Multilateral Instrument 52-110 *Audit Committees* (MI 52-110) pursuant to section 8.1 of MI 52-110;
 - 1.4 except in the Northwest Territories, an exemption from National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) pursuant to section 3.1 of NI 58-101;
 - 1.5 except in the Northwest Territories, an exemption from the Insider Reporting Requirement contained in the Legislation;
 - 1.6 except in the Northwest Territories, an exemption from National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* (NI 55-102) pursuant to section 6.1 of NI 55-102; and
 - 1.7 a revocation of the Initial Decision and the Amended Decision,
(collectively, the Requested Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications:
 - 2.1 the Alberta Securities Commission is the Principal Regulator for this application; and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are otherwise defined in this decision. Additional terms are defined below:
 - 3.1 “Amended Decision” means the August 25, 2005 MRRS decision document in respect of Duke Energy et al (2005 ABASC 733);

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- 3.2 “Arrangement” means an arrangement under section 192 of the *Canada Business Corporations Act* pursuant to which the share capital of Exchangeco will be reorganized to change the Exchangeable Shares into two new classes of exchangeable shares;
- 3.3 “Callco” means Duke Energy Canada Call Co.;
- 3.4 “Circular” means the information circular of Exchangeco mailed to holders of Exchangeable Shares (as defined below) and filed with Canadian securities regulatory authorities in each of the provinces and territories of Canada on November 17, 2006;
- 3.5 “Continuous Disclosure Requirements” means the requirements contained in the Legislation to issue a press release and file a report upon the occurrence of a material change, to file with the Decision Makers and deliver to its security holders an annual report, where applicable, and interim and annual financial statements, to file and deliver an information circular, to file interim and annual management’s discussion and analysis of the financial condition and results of operation of Exchangeco and, where applicable, to file an annual information form;
- 3.6 “Distribution” means the distribution of the Spectra Energy Common Shares (as defined below) to holders of Duke Energy Common Shares (as defined below) by way of a dividend in kind;
- 3.7 “Duke Energy Certifications” means certifications by the Chief Executive Officer and Chief Financial Officer of Duke Energy as required by Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002;
- 3.8 “Duke Energy Common Shares” means shares of common stock, par value \$0.001, of Duke Energy;
- 3.9 “Duke Energy Exchangeable Share Provisions” means the rights, privileges, conditions and restrictions attaching to the Duke Energy Exchangeable Shares (as defined below);
- 3.10 “Duke Energy Exchangeable Shares” means the non-voting exchangeable shares in the capital of Exchangeco which, when issued, will be exchangeable on a one-for-one basis for Duke Energy Common Shares;

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- 3.11 “Exchangeable Shares” means the issued and outstanding non-voting exchangeable shares in the capital of Exchangeco;
- 3.12 “Exchangeco Preference Shares” means the issued and outstanding non-voting Series 1 Preference shares in the capital of Exchangeco;
- 3.13 “Initial Decision” means the February 26, 2002 MRRS decision document in respect of Duke Energy et al ((2002), 25 OSCB 1384);
- 3.14 “Initial Transaction” means the business combination of Duke Energy and Westcoast (as defined below) by way of plan of arrangement effective March 14, 2002;
- 3.15 “Insider Reporting Requirement” means the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider’s direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements in connection therewith;
- 3.16 “NYSE” means the New York Stock Exchange;
- 3.17 “SEC” means the United States Securities and Exchange Commission;
- 3.18 “Spectra Energy” means Spectra Energy Corp, a Delaware corporation which is currently a wholly-owned subsidiary of Duke Energy and which will, upon completion of the Distribution and related transactions, own Duke Energy’s natural gas business in the United States and Canada;
- 3.19 “Spectra Energy Common Shares” means shares of common stock, par value \$0.001, of Spectra Energy;
- 3.20 “Spectra Energy Exchangeable Share Provisions” means the rights, privileges, conditions and restrictions attaching to the Spectra Energy Exchangeable Shares;
- 3.21 “Spectra Energy Exchangeable Shares” means the non-voting exchangeable shares in the capital of Exchangeco which will, when issued, be exchangeable on a one-for-one basis for Spectra Energy Common Shares;
- 3.22 “Spectra Energy Support Agreement” means the support agreement to be entered into by Spectra Energy, Exchangeco and Calco;

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- 3.23 “Spectra Energy Voting and Exchange Trust Agreement” means the voting and exchange trust agreement to be entered into by Spectra Energy, Exchangeco and a trustee;
- 3.24 “Support Agreement” means the support agreement between Duke Energy, Callco and Exchangeco dated March 14, 2002, and entered into in connection with the Initial Transaction;
- 3.25 “U.S. Marketplace” means an exchange registered as a ‘national securities exchange’ under section 6 of the 1934 Act or the Nasdaq Stock Market;
- 3.26 “Voting and Exchange Trust Agreement” means the voting and exchange trust agreement between Duke Energy, Exchangeco and a trustee dated March 14, 2002, and entered into in connection with the Initial Transaction; and
- 3.27 “Westcoast” means Westcoast Energy Inc.

Representations

- 4. This decision is based on the following facts represented by the Filers:
 - 4.1 Duke Energy and Westcoast completed the Initial Transaction in March 2002. Pursuant to the Initial Transaction, holders of Westcoast common shares who were resident in Canada could elect to receive Exchangeable Shares. Each Exchangeable Share is exchangeable at any time up to the eighth anniversary of the closing of the Initial Transaction for Duke Energy Common Shares on a one-for-one basis.
 - 4.2 In connection with the Initial Transaction, the Initial Decision provided that:
 - 4.2.1 Exchangeco be exempt from the Continuous Disclosure Requirements; and
 - 4.2.2 each insider of Exchangeco and its successors and Exchangeco be exempt from the Insider Reporting Requirements and from the requirements to file insider profiles under NI 55-102.
 - 4.3 In March of 2004, NI 51-102 came into force and replaced the Continuous Disclosure Requirements from which Exchangeco received exemptive relief under the Initial Decision. In addition, MI 52-109 came into force implementing requirements for annual and interim certificates

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from Chief Executive Officers and Chief Financial Officers to be filed with the Decision Makers and MI 52-110 came into force implementing requirements concerning the roles and responsibilities of audit committees.

- 4.4 In June of 2005, NI 58-201 came into force implementing requirements for the disclosure of corporate governance practices.
- 4.5 In connection with the implementation of the requirements in NI 51-102, MI 52-109, MI 52-110 and NI 58-201, the Amended Decision provided that:
 - 4.5.1 subject to the conditions contained in the Amended Decision and except for in British Columbia, Exchangeco be exempt from the requirements of MI 52-109 and MI 52-110; and
 - 4.5.2 except for in Nunavut and the Northwest Territories, Exchangeco be exempt from the requirements of NI 51-102 and NI 58-101.
- 4.6 On June 27, 2006, Duke Energy announced that it would effect an in specie distribution by way of dividend to the holders of Duke Energy Common Shares of all of the Spectra Energy Common Shares.
- 4.7 It is not intended that Spectra Energy will list the Spectra Energy Common Shares on any stock exchange in Canada. It is not intended that Spectra Energy will become a reporting issuer in any province or territory of Canada other than in the Province of Quebec.
- 4.8 In order to allow holders of Exchangeable Shares to participate in the Distribution on an equivalent basis to the holders of Duke Energy Common Shares, holders of Exchangeable Shares approved, by the requisite majority at a special meeting of such holders, the Arrangement.
- 4.9 Each Exchangeable Share will be exchanged for one Duke Energy Exchangeable Share and a fraction of one Spectra Energy Exchangeable Share. In connection with the Arrangement and the Distribution, Exchangeco will become an indirect wholly-owned subsidiary of Spectra Energy.
- 4.10 The current Voting and Exchange Trust Agreement and the current Support Agreement will be amended and restated to become the Duke Energy Voting and Exchange Trust Agreement and the Duke Energy

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Support Agreement, respectively, and will only be applicable to the Duke Energy Exchangeable Shares. In addition, Spectra Energy, Exchangeco and a trustee will enter into the Spectra Energy Voting Exchange Trust Agreement and Spectra Energy, Exchangeco and Callco will enter into the Spectra Energy Support Agreement, both of which will only be applicable to the Spectra Energy Exchangeable Shares.

- 4.11 Exchangeco is currently a subsidiary of Callco and Callco is an indirect wholly-owned subsidiary of Duke Energy. In connection with the Distribution, Callco will become an indirect wholly-owned subsidiary of Spectra Energy and Exchangeco will remain a subsidiary of Callco.
- 4.12 As these changes will be implemented pursuant to the Arrangement, they will not come into effect until the Distribution, expected to occur on January 1, 2007, occurs.
- 4.13 Duke Energy is not a reporting issuer under the securities laws of any province or territory of Canada except in the Province of Quebec and Duke Energy has no intention of becoming a reporting issuer in any other province or territory under the Legislation.
- 4.14 The Duke Energy Common Shares are listed on the NYSE. The Duke Energy Common Shares are not listed on any Canadian stock exchange and Duke Energy has no intention of listing its securities on any Canadian stock exchange.
- 4.15 Duke Energy's authorized capital currently consists of two billion Duke Energy Common Shares and 44 million shares of preferred stock, par value US\$0.001 per share. The Duke Energy Common Shares are fully participating voting shares. As at September 30, 2006, there were 1,254,569,020 Duke Energy Common Shares issued and outstanding and no shares of Duke Energy preferred stock issued and outstanding.
- 4.16 Exchangeco's registered office address is located in Calgary, Alberta.
- 4.17 As of November 14, 2006, there were 10,950,117 Exchangeable Shares outstanding.
- 4.18 The Exchangeable Shares are listed on the TSX.
- 4.19 Exchangeco is a reporting issuer or equivalent in each Jurisdiction.

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- 4.20 At the time of the Initial Transaction, 6,000 Exchangeco Preference Shares were issued by Exchangeco to ML IBK Positions, Inc.
- 4.21 The Duke Energy Exchangeable Share Provisions and the Spectra Energy Exchangeable Share Provisions are similar to the rights, privileges, conditions and restrictions attaching to the existing Exchangeable Shares. The Duke Energy Exchangeable Shares will provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Duke Energy Common Shares. The Spectra Energy Exchangeable Shares will provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Spectra Energy Common Shares.
- 4.22 Under the Duke Energy Voting and Exchange Trust Agreement and the Spectra Energy Voting and Exchange Trust Agreement, a trustee will hold a number of Duke Energy Common Shares or Spectra Energy Common Shares, as the case may be, equal to the number of Duke Energy Exchangeable Shares or Spectra Energy Exchangeable Shares, as the case may be, issued and outstanding, in order to enable the holders of Duke Energy Exchangeable Shares or the holders of Spectra Energy Exchangeable Shares, as the case may be, to have voting rights which are equivalent to those of holders of Duke Energy Common Shares or Spectra Energy Common Shares, as the case may be.
- 4.23 Under the Duke Energy Support Agreement and the Spectra Energy Support Agreement, each of Duke Energy and Spectra Energy, as the case may be, will be subject to certain covenants which are to be applicable so long as any Duke Energy Exchangeable Shares or Spectra Energy Exchangeable Shares, as the case may be, are outstanding.
- 4.24 Since the completion of the Initial Transaction, Duke Energy and Exchangeco have complied in all material respects with all of the requirements of section 1 of the Initial Decision.
- 4.25 From the completion of the Initial Transaction until the date of the Amended Decision, Exchangeco complied in all material respects with all of the requirements of section 2 of the Initial Decision. Since the date of the Amended Decision, Exchangeco has complied in all material respects with sections 1 and 2 of the *Amended Decision*, including filing the Duke Energy Certifications.

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- 4.26 Since the completion of the Initial Transaction, Exchangeco has complied in all material respects with all of the requirements of section 3 of the Initial Decision.

Decision

5. 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.
6. The decision of the Decision Makers under the Legislation is that the Requested Relief with respect to items 1.1 – 1.4 is granted to Exchangeco, the Requested Relief with respect to items 1.5 and 1.6 is granted to insiders of Exchangeco, and the Requested Relief with respect to item 1.7 is granted, provided that:
 - 6.1 with respect to items 1.1 – 1.4 of the Requested Relief:
 - 6.1.1 Spectra Energy is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of Exchangeco;
 - 6.1.2 Duke Energy is an SEC issuer with a class of securities listed or quoted on a U.S. Marketplace that has filed all documents it is required to file with the SEC;
 - 6.1.3 Spectra Energy is an SEC issuer with a class of securities listed or quoted on a U.S. Marketplace that has filed all documents it is required to file with the SEC;
 - 6.1.4 Exchangeco does not issue any securities, and does not have any securities outstanding, other than:
 - 6.1.4.1 Duke Energy Exchangeable Shares;
 - 6.1.4.2 Spectra Energy Exchangeable Shares;
 - 6.1.4.3 the Exchangeco Preference Shares previously issued;
 - 6.1.4.4 debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

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- 6.1.4.5 securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 – Prospectus and Registration Exemptions;
- 6.1.5 Exchangeco files copies of all documents that Duke Energy and Spectra Energy, as the case may be, are required to file with the SEC under the 1934 Act, at the same time as, or as soon as practicable after, the filing by Duke Energy or Spectra Energy of those documents with the SEC;
- 6.1.6 Exchangeco concurrently sends to all holders of Duke Energy Exchangeable Shares, in the manner and at the time required by U.S. laws and the requirements of any U.S. Marketplace on which securities of Duke Energy are listed or quoted, all disclosure materials that are sent to the holders of Duke Energy Common Shares;
- 6.1.7 Exchangeco concurrently sends to all holders of Spectra Energy Exchangeable Shares, in the manner and at the time required by U.S. laws and the requirements of any U.S. Marketplace on which securities of Spectra Energy are listed or quoted, all disclosure materials that are sent to the holders of Spectra Energy Common Shares;
- 6.1.8 Duke Energy is in compliance with U.S. laws and the requirements of any U.S. Marketplace on which securities of Duke Energy are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues in Canada and files any news release that discloses a material change in its affairs;
- 6.1.9 Spectra Energy is in compliance with U.S. laws and the requirements of any U.S. Marketplace on which securities of Spectra Energy are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues in Canada and files any news release that discloses a material change in its affairs;
- 6.1.10 Exchangeco issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of Exchangeco that are

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not also material changes in the affairs of Duke Energy or Spectra Energy, as the case may be;

- 6.1.11 Duke Energy includes in all mailing of proxy solicitation material to holders of Duke Energy Exchangeable Shares a clear and concise statement that:

- 6.1.11.1 explains the reason the mailed material relates solely to Duke Energy;

- 6.1.11.2 indicates that the Duke Energy Exchangeable Shares are the economic equivalent to Duke Energy Common Shares; and

- 6.1.11.3 describes the voting rights associated with the Duke Energy Exchangeable Shares; and

- 6.1.12 Spectra Energy includes in all mailing of proxy solicitation material to holders of Spectra Energy Exchangeable Shares a clear and concise statement that:

- 6.1.12.1 explains the reason the mailed material relates solely to Spectra Energy; and

- 6.1.12.2 indicates that the Spectra Energy Exchangeable Shares are the economic equivalent to Spectra Energy Common Shares; and

- 6.1.12.3 describes the voting rights associated with the Spectra Energy Exchangeable Shares; and

- 6.2 with respect to items 1.5 and 1.6 of the Requested Relief:

- 6.2.1 each insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Duke Energy or Spectra Energy, as the case may be, before the material facts or material changes are generally disclosed;

- 6.2.2 each insider is not an insider of Duke Energy or Spectra Energy, as the case may be, in any capacity other than by virtue of being an insider of Exchangeco; and

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- 6.2.3 if the insider is Duke Energy or Spectra Energy, as the case may be, the insider does not own any Duke Energy Exchangeable Shares or Spectra Energy Exchangeable Shares, respectively, other than Duke Energy Exchangeable Shares or Spectra Energy Exchangeable Shares acquired through the exercise of the exchange rights contained in the Duke Energy Exchangeable Share Provisions and the Spectra Energy Exchangeable Share Provisions, respectively, and not subsequently traded by the insider.

Blaine Young
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Alberta Securities Commission