

Headnote

National Instrument 52-107, s. 5.1 *Acceptable Accounting Principles and Auditing Standards* – An issuer that is not an ‘SEC issuer’ wants to file financial statements prepared in accordance with U.S. GAAP - the key elements of this application satisfy the policy reasons for granting the exemptive relief requested - the Filer has “activities subject to rate regulation”; the Filer seeks relief from the requirements under section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises; the Filer will prepare its financial statements in accordance with U.S. GAAP for its financial years before January 1, 2019; and will provide information for comparative periods in these financial statements in accordance with U.S. GAAP; the relief will terminate for annual and interim periods commencing on or after the earlier of (a) January 1, 2019; (b) if that Filer ceases to have activities subject to rate regulation, the first day of the Filer’s financial year that commences after the Filer ceases to have activities subject to rate regulation ; and (c) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

Securities Act, R.S.B.C. 1996, c.418, section 171 – Revoke or vary a decision – An issuer wants to vary or repeal and replace a previous decision it received to revise the representations or conditions to the relief granted – The person previously obtained relief from certain requirements in securities legislation; the policy reasons for granting the relief have not changed, but certain of the representations or conditions to the relief are no longer appropriate.

Applicable British Columbia Provisions

National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, s. 5.1
Securities Act, R.S.B.C. 1996, c. 418, s.171 – Revoke or vary a decision

February 5, 2014

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

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of

Westcoast Energy Inc. and Union Gas Limited
(the Filers)

Decision

Background

- ¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from Westcoast Energy Inc. (Westcoast) and Union Gas Limited (Union Gas) under the securities legislation (the Legislation) of the Jurisdictions seeking exemption (the Exemption Sought) from the requirements of sections 3.2 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107) that financial statements (a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, and (b) disclose an unreserved statement of compliance with IFRS in the case of annual financial statements and an unreserved statement of compliance with IAS 34 in the case of an interim financial report.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission (BCSC) is the principal regulator for this application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (the Westcoast Passport Jurisdictions) with respect to Westcoast and in Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador (the Union Gas Passport Jurisdictions) with respect to Union Gas; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶ 2 In this decision:
- (a) unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 51-102 *Continuous Disclosure Obligations* and NI 52-107 have the same meaning; and
 - (b) “activities subject to rate regulation” has the meaning ascribed in the Handbook.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filers:

1. Westcoast is a corporation existing under the *Canada Business Corporations Act*; the head office of Westcoast is in Vancouver, British Columbia;
2. Union Gas is a corporation existing under the *Business Corporations Act* (Ontario); the head office of Union Gas is in Chatham, Ontario;
3. Westcoast is a reporting issuer or equivalent in the Jurisdictions and each of the Westcoast Passport Jurisdictions;
4. Union Gas is a reporting issuer or equivalent in the Jurisdictions and each of the Union Gas Passport Jurisdictions;
5. neither of the Filers is in default of securities legislation in any local jurisdiction;
6. Westcoast is an indirect wholly owned subsidiary of Spectra Energy; Westcoast indirectly owns all of the outstanding common shares of Union Gas;
7. each of the Filers and Spectra Energy Corp (Spectra Energy) has activities subject to rate regulation;
8. Spectra Energy is incorporated under the laws of Delaware;
9. Spectra Energy's financial statements are prepared in accordance with U.S. GAAP and its annual financial statements are audited in accordance with U.S. GAAS;
10. through various holdings, Spectra Energy has a significant economic interest in Westcoast and Union Gas;
11. pursuant to U.S. GAAP, the financial statements of Westcoast and Union Gas must be consolidated into the financial statements of Spectra Energy;
12. Spectra Energy is an SEC issuer and relies on subsection 3.7 of NI 52-107 to file financial statements prepared in accordance with U.S. GAAP;
13. the Filers are not SEC issuers and therefore cannot rely on that provision;
14. by orders cited as *In the Matter of Westcoast Energy Inc. and Union Gas Limited* 2011 BCSSECCOM 394, each of the Filers have been granted relief substantially similar to the Exemption Sought (collectively, the Existing Relief);
15. the Existing Relief will expire not later than 1 January 2015; and
16. the International Accounting Standards Board (IASB) continues to work on a project focusing on accounting specific to activities subject to rate regulation; it is not yet known when this project will be completed or whether IFRS will include a specific standard that is mandatory for entities with activities subject to rate regulation.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Makers to make the decision.

The decision of the Decision Makers under the Legislation is that:

- (a) the Existing Relief is revoked;
- (b) the Exemption Sought is granted to each Filer in respect of the Filer's financial statements required to be filed on or after the date of this order, provided that the Filer prepares those financial statements in accordance with U.S. GAAP; and
- (c) the Exemption Sought will terminate in respect of a Filer on the earliest of the following:
 - (i) January 1, 2019;
 - (ii) if that Filer ceases to have activities subject to rate regulation, the first day of the Filer's financial year that commences after the Filer ceases to have activities subject to rate regulation; and
 - (iii) the effective date prescribed by the IASB for the mandatory application of a standard within IFRS specific to entities with activities subject to rate regulation.

Peter Brady
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