

# 2010 BCSECCOM 408

July 14, 2010

## **Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act*, s. 88 – *cease to be a reporting issuer in BC* - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer became a wholly owned subsidiary of another company; the issuer has debt securities outstanding that are held by more than 50 holders; there is a de minimis number of Canadian holders of the debt securities holding a de minimis amount of the outstanding debt; there is no market for the debt securities; the issuer is required under the terms of the debt instrument to provide certain continuous disclosure to the holders of the debt securities as long as the securities are outstanding, but is not required to remain a reporting issuer in Canada; the issuer does not intend to do a public offering of its securities to Canadian residents; the issuer will not be a reporting issuer in any Canadian jurisdiction

## **Applicable British Columbia Provisions**

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

In the Matter of  
the Securities Legislation of  
Ontario, British Columbia, Alberta and Saskatchewan  
(the “Jurisdictions”)

and

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

and

In the Matter of  
Michigan Consolidated Gas Company  
(the “Filer”)

## Decision

## **Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the “Decision Maker”) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the Filer is not a reporting issuer (the “Exemptive Relief Sought”).

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Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application),

- (a) the Ontario Securities Commission is the principal regulator for the application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

The decision is based on the following facts represented by the Filer:

1. The Filer is a corporation which was incorporated in 1898 as a Michigan corporation. The Filer's head office is located at One Energy Plaza, Detroit, Michigan 48226.
2. The Filer is an indirect wholly-owned subsidiary of DTE Energy Company (the "Parent Company"). The Parent Company is required to make public company filings in the United States and the financial results of the Filer are included in the consolidated financial results of the Parent Company. The Parent Company is not a reporting issuer in any jurisdiction in Canada.
3. The Filer has been a reporting issuer in the Jurisdictions since May 1997 when it obtained a receipt for a final prospectus in Ontario, British Columbia, Alberta and Saskatchewan in respect of two series, Series B and Series C, of the Filer's First Mortgage Bonds. The Filer is not a reporting issuer in any other jurisdiction in Canada.
4. All of the First Mortgage Bonds, Series C distributed under the 1997 prospectus were redeemed in 2003.
5. The Filer's publicly issued outstanding debt securities are Senior Notes designated as:
  - (a) First Mortgage Bonds designated as 7.06% Secured Medium Term Notes, Series B, due May 1, 2012;
  - (b) First Mortgage Bonds 8.25% Bonds, due May 1, 2014;

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- (c) 2004 Series E, 5.00% Senior Notes, due October 1, 2019; and
  - (d) 2003 Series A, 5.70% Senior Notes, due 2033.
6. The Filer also issued the following six series of debt securities in 2008, all by way of private placement:
- (a) 2008 Senior Notes Series A, 5.26%, due April 15, 2013;
  - (b) 2008 Senior Notes Series B, 6.04%, due April 15, 2018;
  - (c) 2008 Senior Notes Series C, 6.44%, due April 15, 2023;
  - (d) 2008 Senior Notes Series F, 6.78%, due April 15, 2028;
  - (e) 2008 Senior Notes Series H, 5.94%, due September 1, 2015; and
  - (f) 2008 Senior Notes Series I, 6.36%, due September 1, 2020.
7. The amount of outstanding debt securities of the Filer is approximately \$890 million (USD). This amount represents 100% of the outstanding long term debt of the Filer and 45% of the total capitalization of the Filer as at March 31, 2010. The Filer has no outstanding debt securities other than the debt securities enumerated in paragraphs 5 and 6 above. None of the debt securities are guaranteed by the Parent Company. The Filer has no outstanding shares of preferred stock or preference stock.
8. There is 1 beneficial holder of the publicly issued debt securities of the Filer resident in Canada. This individual (the "Ontario Holder") resides in Ontario and holds 2003 Series A, 5.70% Senior Notes having a principal amount of \$10,000 (USD), representing 0.005% of the aggregate principal amount of the 2003 Series A, 5.70% Senior Notes outstanding worldwide and representing 0.09% of the total number of beneficial holders of the 2003 Series A, 5.70% Senior Notes worldwide. There are 1,141 beneficial holders of the 2003 Series A, 5.70% Senior Notes worldwide.
9. An institutional holder (the "Manitoba Holder") in Manitoba holds 2008 Senior Notes Series F having a principal amount of \$7.5 million (USD), representing 10% of the aggregate principal amount of the 2008 Senior Notes Series F outstanding worldwide and representing 14.3% of the total number of beneficial holders of the 2008 Senior Notes Series F worldwide (there are 7 beneficial holders of that series). However,

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- (a) The principal amount of debt securities of the Filer held by the Ontario Holder and the Manitoba Holder represent only 0.84% of the aggregate principal amount of the Filer's outstanding debt securities worldwide; and
- (b) The Ontario Holder and the Manitoba Holder represent only 0.14% of the total number of beneficial holders of the Filer's publicly issued debt securities worldwide (there are 1,474 beneficial holders of such securities).

Furthermore, the 2008 Senior Notes Series F were issued by way of a private placement that was not marketed in Canada. The \$7.5 million (USD) principal amount of 2008 Senior Notes Series F held by the Manitoba Holder represent only 1.67% of the aggregate principal amount of all debt securities issued by the Filer in 2008. The total principal amount of all the debt securities issued by the Filer in 2008 is \$450 million (USD).

10. The information regarding the beneficial holders of the Filer's debt securities was obtained through:

- (a) Broadridge Financial Solutions, Inc. ("Broadridge") which conducted a geographical survey of all beneficial holders using the CUSIP identifier for each series of debt securities issued publicly by the Filer. Broadridge reported to the Filer that there is 1 beneficial holder of the publicly issued debt securities of the Filer resident in Canada (the Ontario Holder). The information is current to September 14, 2009.
- (b) Citibank, the trustee for the 6 series of debt securities of the Filer issued by way of private placement (the "Trustee"), which conducted a search of their debt securities registers for any beneficial holders who are resident in Canada. The Trustee reported to the Filer that there is 1 beneficial holder of the privately placed debt securities of the Filer resident in Canada (the Manitoba Holder). The information is current to September 8, 2009.

11. Based upon the information and diligent inquiries set out above, the Filer has concluded that residents of Canada, other than the beneficial holder of one series mentioned in paragraph 9 above, do not:

- (a) directly or indirectly beneficially own more than 2% of each class or series of outstanding securities of the Filer worldwide, and

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- (b) directly or indirectly comprise more than 2% of the total number of securityholders of the Filer worldwide.
12. The Filer's securities are not listed on any stock exchange or publicly traded on a marketplace (as defined in National Instrument 21-101 *Marketplace Operations*).
13. In the preceding 12 months, the Filer has not taken any steps that indicate there is a market for its securities in Canada.
14. The Filer has no current intention to distribute any securities to the public.
15. On August 9, 2007, the Filer filed a Form 15 *Certification and Notice of Termination of Registration under Section 12(g) of the Securities Exchange Act of 1934 or Suspension of Duty to File Reports under Sections 13 and 15(d) of the Securities Exchange Act of 1934* (the "Form 15 Filing") with the Securities and Exchange Commission ("SEC") to terminate its reporting obligations in the United States. The Filer made the Form 15 Filing pursuant to Rule 12h-3(b)(1)(i) under the 1934 Act on the basis that each class of its relevant securities were held of record by less than 300 persons. The last continuous disclosure documents of the Filer that were filed on the Filer's EDGAR file with the SEC were in respect of the interim financial period ended March 31, 2007. As a result of the Form 15 Filing, the Filer no longer has any obligation to make U.S. public company filings under U.S. securities legislation.
16. However, the Parent Company posts on its website and furnishes to the SEC, by way of filings on Form 8-K under the 1934 Act made on the Parent Company's EDGAR file, annual audited financial statements and quarterly unaudited financial statements of the Filer. These filings are made pursuant to obligations under the trust indentures that created the debt securities of the Filer, including the 2003 Series A, 5.70% Senior Notes and the 2008 Senior Notes Series F (the "Trust Indentures"). Under the Trust Indentures, the annual audited financial statements of the Filer are to be filed within 90 days of the end of the Filer's financial year and the quarterly unaudited financial statements of the Filer are to be filed within 45 days after the end of each of the first three quarters of each financial year of the Filer.
17. Although the Filer is seeking to be released from its reporting obligations in Canada, the Parent Company will continue to post on its website and file, on the Parent Company's EDGAR file, the annual audited financial statements and quarterly unaudited financial statements of the Filer required under the Trust Indentures.

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18. As a result of certain remedial filings and payments in the Jurisdictions in June 2010 (the “Remedial Filings”), the Filer has now filed in the Jurisdictions all continuous disclosure documents required under the Legislation (and has now paid in the Jurisdictions all related filing, participation and similar fees required under the Legislation) for financial periods or events up to and including the interim financial period ended March 31, 2007. Consequently, the Filer is not in default of securities legislation in any jurisdiction in Canada except as follows:
- (a) the Filer has not filed annual financial statements and annual management discussion and analysis in the Jurisdictions pursuant to sections 4.1, 4.2 and 5.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”) for the financial years ended December 31, 2007, December 31, 2008 and December 31, 2009;
  - (b) the Filer has not filed CEO/CFO certificates in connection with the annual financial statements in the Jurisdictions pursuant to section 4.1 of National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (“NI 52-109”) for the financial years ended December 31, 2007, December 31, 2008 and December 31, 2009;
  - (c) the Filer has not filed interim financial statements and interim management discussion and analysis in the Jurisdictions pursuant to sections 4.3, 4.4 and 5.1 of NI 51-102 for any interim financial period after the interim financial period ended March 31, 2007;
  - (d) the Filer has not filed CEO/CFO certificates in connection with the interim financial statements in the Jurisdictions pursuant to section 5.1 of NI 52-109 for any interim financial period after the interim financial period ended March 31, 2007;
  - (e) the Filer has not filed any other continuous disclosure documents in the Jurisdictions in respect of any disclosure obligation under the Legislation arising since the interim financial period ended March 31, 2007; and
  - (f) the Filer has not paid any filing, participation or similar fees in the Jurisdictions in respect of any payment obligation under the Legislation arising since the interim financial period ended March 31, 2007.
19. The defaults that required the Remedial Filings arose through inadvertence as a result of the departure of personnel from the Filer who were aware of its

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public reporting obligations in Canada and the Filer's unintentional failure to continue effecting Canadian public filings thereafter.

20. Other than the Form 15 Filing or as disclosed in the SEC filings of the Parent Company, the Filer has not had any material change since the interim period ended March 31, 2007.
21. The Filer will provide to its holders of debt securities in Canada all disclosure material that is required to be provided under the Trust Indentures.
22. The Filer is currently subject to a cease trade order ("CTO") in Alberta for failure to file continuous disclosure documents. The CTO was made on October 10, 2008.
23. The Filer is also subject to a CTO in British Columbia for failure to file an interim financial statement for the nine month period ended September 30, 2001. The CTO was made on March 5, 2002.
24. Upon the grant of the Exemptive Relief Sought, the Filer will not be a reporting issuer or the equivalent in any jurisdiction of Canada. The British Columbia CTO will be revoked concurrently with the grant of the Exemptive Relief Sought. The Filer has applied to the securities regulatory authority in Alberta for an order revoking the Alberta CTO and expects that it will be revoked soon after this decision is issued.
25. On March 17, 2010, the Filer issued a press release announcing that it had applied for a decision to be released from public company reporting obligations under Canadian securities legislation and that if the decision is granted, the Filer will not be required to file continuous disclosure documents in the Jurisdictions. The press release was disseminated in Canada.

### **Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

Carol S. Perry  
Commissioner  
Ontario Securities Commission

Paulette L. Kennedy  
Commissioner  
Ontario Securities Commission