

# 2004 BCSECCOM 323

## Headnote

Mutual Reliance Review System for Exemptive Relief Application – relief granted from the prospectus requirement for resales by control persons to permit them to include the period of time they held prior securities in calculating the hold period on new shares acquired under an arrangement

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C.1996, c. 418, ss. 61 and 76

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, ONTARIO, SASKATCHEWAN, MANITOBA,  
NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND AND  
LABRADOR, PRINCE EDWARD ISLAND, YUKON TERRITORY,  
NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

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

**AND**

**IN THE MATTER OF EUROGAS CORPORATION AND GREAT PLAINS  
EXPLORATION INC.**

## MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Ontario, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon Territory, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Eurogas Corporation (“Eurogas” or the “Filer”) for a decision pursuant to the securities legislation of the Jurisdictions (the “Legislation”) that:
  - 1.1 the prospectus requirement shall not apply to control distributions (as defined in Multilateral Instrument 45-102 *Resale of Securities* (“MI 45-102”)) of new common shares of Eurogas (“New Common Shares”) by shareholders of Eurogas (“Eurogas Shareholders”) (whether acquired in the Arrangement (as defined

## 2004 BCSECCOM 323

- below) or upon exercise of New Eurogas Options (as defined below)); and
- 1.2 the prospectus requirement shall not apply to control distributions (as defined in MI 45-102) of common shares of Great Plains (“Great Plains Shares”) by shareholders of Great Plains Exploration Inc. (“Great Plains”) (whether acquired in the Arrangement or upon exercise of Great Plains Options (as defined below));
  2. AND WHEREAS, pursuant to 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 Eurogas has represented to the Decision Makers that:
    - 4.1 Eurogas is a corporation continued under the Canada Business Corporations Act (the “CBCA”) and is and has been a reporting issuer (or the equivalent) for a period in excess of twelve months in each of the provinces and territories of Canada;
    - 4.2 Eurogas is an independent oil and gas company which currently carries on oil and gas exploration, development, production and acquisition and natural gas storage activities and has its primary interests in Tunisia and Spain and certain other minor oil and gas properties in Alberta and Saskatchewan;
    - 4.3 Eurogas’ principal business and head office and its registered office are in Calgary, Alberta;
    - 4.4 The authorized capital of Eurogas currently consists of an unlimited number of common shares (“Common Shares”) without nominal or par value, of which 75,932,181 were issued and outstanding as at December 31, 2003 as fully paid and non-assessable, and an unlimited number of preferred shares without nominal or par value issuable in series, none of which are issued and outstanding;
    - 4.5 Dundee Bancorp Inc., a public financial services holding company whose subordinated voting shares are listed on the TSX, holds

## 2004 BCSECCOM 323

38,502,193 Common Shares representing 50.7% of the outstanding Common Shares;

- 4.6 The Common Shares are listed on The Toronto Stock Exchange (the “TSX”). Application has been made to the TSX Venture Exchange for the listing of the New Common Shares to be issued pursuant to the Arrangement;
- 4.7 Eurogas proposes a reorganization by way of a plan of arrangement (the “Arrangement”) pursuant to section 192 of the CBCA involving Eurogas, its shareholders and optionholders and Great Plains. Under the Arrangement certain assets of Eurogas will be transferred to Great Plains, a new corporation formed for the purposes of the Arrangement. Each shareholder of Eurogas will, immediately after the Arrangement, hold one New Common Share and 0.2 of a Great Plains Share;
- 4.8 The board of directors of Eurogas, acting upon the recommendation of senior management, unanimously approved the Arrangement and unanimously recommended that the Eurogas Shareholders vote in favour of the Arrangement;
- 4.9 Following the Arrangement, Eurogas will continue to own a 71.4% interest in Castor UGS Limited Partnership, which holds oil and gas assets in Spain, and a 100% interest in Eurogas International, which holds oil and gas assets in Tunisia (collectively, the “International Assets”), which will carry on its international oil and gas activities in Tunisia and its gas storage project in Spain (collectively, the “New Eurogas Business”), respectively. Great Plains will own the Canadian oil and gas assets (other than certain excluded assets) (the “Canadian Assets”) now owned by Eurogas and will carry on the Canadian oil and gas business now carried on by Eurogas (the “Great Plains Business”);
- 4.10 Each holder of options (“Eurogas Options”) to acquire Common Shares will dispose of such Eurogas Options by exchanging such Eurogas Options for: (i) options (“New Eurogas Options”) to acquire the same number of New Common Shares on the same terms and conditions, other than the exercise price, which price will be equal to the original exercise price less the fair market value, as determined by the board of directors of Eurogas, of 0.2 of a Great Plains Share; and (ii) options (“Great Plains Options”) to acquire 0.2 of a Great Plains Share for each Common Share the holder

## 2004 BCSECCOM 323

would have been entitled to acquire at an exercise price equal to the fair market value of 0.2 of a Great Plains Share;

- 4.11 Great Plains is a corporation incorporated under the CBCA, and was incorporated for the purpose of facilitating the Arrangement;
- 4.12 Upon completion of the Arrangement, the authorized capital of Great Plains will consist of an unlimited number of Great Plains Shares without nominal or par value and an unlimited number of preferred shares issuable in series;
- 4.13 The TSX has conditionally approved the listing of the Great Plains Shares, to be issued pursuant to the Arrangement, subject to the fulfilment of all requirements of such exchange including the filing of usual documentation;
- 4.14 The following steps will occur in the following order as part of the Arrangement effective as of the date of the Certificates giving effect to the Arrangement (the “Effective Date”):
  - 4.14.1 the articles of Great Plains will be amended to create redeemable, retractable special shares (the “Great Plains Special Shares”);
  - 4.14.2 the articles of Eurogas will be amended to change the designation of the Common Shares, to change the right of the holders of Common Shares to receive the remaining property of Eurogas upon dissolution, to create the New Common Shares and to create redeemable, retractable special shares (the “Eurogas Special Shares”);
  - 4.14.3 each Eurogas Shareholder will dispose of each Common Share held by exchanging each such Common Share for one New Common Share and one Eurogas Special Share;
  - 4.14.4 each holder of Eurogas Options to acquire Common Shares will dispose of such Eurogas Options by exchanging such Eurogas Options for: (i) New Eurogas Options to acquire the same number of New Common Shares on the same terms and conditions, other than the exercise price, which price will be equal to the original exercise price less the fair market value, as determined by the board of directors of Eurogas, of 0.2 of a Great Plains Share; and (ii) Great

## 2004 BCSECCOM 323

Plains Options to acquire 0.2 of a Great Plains Share for each Common Share the holder would have been entitled to acquire at an exercise price equal to the fair market value of 0.2 of a Great Plains Share;

- 4.14.5 Great Plains will acquire all of the Eurogas Special Shares issued in accordance with paragraph 4.14.3 above, without action by the holder thereof, and in exchange therefor will issue to the holders of such Eurogas Special Shares 0.2 of a Great Plains Share for each Eurogas Special Share acquired;
- 4.14.6 Eurogas will transfer all of the Canadian Assets to Great Plains in consideration of Great Plains issuing Great Plains Special Shares to Eurogas;
- 4.14.7 Great Plains will redeem from Eurogas all of the Great Plains Special Shares and will issue to Eurogas, in consideration therefor, a demand promissory note in a principal amount equal to such aggregate redemption amount for the Great Plains Special Shares;
- 4.14.8 Eurogas will redeem from Great Plains all of the Eurogas Special Shares and will issue to Great Plains, in consideration therefor, a demand promissory note in a principal amount equal to such aggregate redemption amount for the Eurogas Special Shares;
- 4.14.9 the demand promissory notes referred to in paragraphs 4.14.7 and 4.14.8 above will be set off against each other in full satisfaction of the obligations under each note; and
- 4.14.10 the articles of Eurogas will be further amended and restated to cancel the Common Shares and the Eurogas Special Shares and the articles of Great Plains will be further amended and restated to cancel the Great Plains Special Shares;
- 4.15 The Arrangement has been structured in the foregoing manner to allow the separation of the Canadian Assets and Great Plains Business from the International Assets and New Eurogas Business;

## **2004 BCSECCOM 323**

- 4.16 The Arrangement received final approval from the Court of Queen's Bench of Alberta on May 3, 2004;
- 4.17 The Eurogas Shareholders approved the Arrangement at the Meeting on April 30, 2004 in Calgary, Alberta.
- 4.18 A management information circular dated April 5, 2004 (the "Circular") was delivered to the Eurogas Shareholders in connection with the Meeting, which contained (among other things) prospectus-level disclosure of the business and affairs of each of Eurogas and Great Plains and the particulars of the Arrangement;
- 4.19 Each Eurogas Shareholder was entitled to dissent from the Arrangement in accordance with Section 190 of the CBCA and to be paid the fair value of such holder's Common Shares subject to certain conditions described in the Circular;
- 5. AND WHEREAS under the System this MRRS Decision Document evidences the decision of each of the Decision Makers (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:
  - 7.1 the prospectus requirement shall not apply to control distributions (as defined in MI 45-102) of New Common Shares by Eurogas Shareholders (whether acquired in the Arrangement or upon exercise of New Eurogas Options) provided that the conditions in subsection (2) and the requirements in subsection (3) of section 2.8 of MI 45-102 are satisfied and for the purpose of determining the period of time that a holder of New Common Shares has held the New Common Shares under subsection 2.8(2) of MI 45-102, such holder shall be permitted to include the period of time that the holder held Common Shares or Eurogas Options, as the case may be, immediately before the Effective Date of the Arrangement; and
  - 7.2 the prospectus requirement shall not apply to control distributions (as defined in MI 45-102) of Great Plains Shares by shareholders of Great Plains (whether acquired in the Arrangement or upon exercise of Great Plains Options) provided that the conditions in

## **2004 BCSECCOM 323**

subsection (2) and the requirements in subsection (3) of section 2.8 of MI 45-102 are satisfied and:

- 7.2.1 for the purpose of determining the period of time that Great Plains has been a reporting issuer under subsection 2.8(2) of MI 45-102, a selling security holder is permitted to include the period of time that Eurogas was a reporting issuer in a jurisdiction of Canada immediately before the Effective Date of the Arrangement; and
- 7.2.2 for the purpose of determining the period of time that a holder of Great Plains Shares has held the Great Plains Shares under subsection 2.8(2) of MI 45-102, such holder is permitted to include the period of time that the holder held Common Shares or Eurogas Options immediately before the Effective Date of the Arrangement.

DATED this 27<sup>th</sup> day of May, 2004.

Glenda A. Campbell, Q.C., Vice-Chair

Stephen R. Murison, Vice-Chair