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Headnote

Mutual Reliance Review System for Exemptive Relief Application - Exchangeco exempted from certain continuous disclosure requirements and insider reporting requirements subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 85(1), 87, 91, 117 and 119

Securities Rules, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, ONTARIO AND QUEBEC

AND

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

AND

IN THE MATTER OF FUELCELL ENERGY, INC., FCE CANADA INC., 1065918 ALBERTA LTD. AND GLOBAL THERMOELECTRIC INC.

MRRS DECISION DOCUMENT

WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”), in each of British Columbia, Alberta, Saskatchewan, Ontario and Quebec (collectively, the “Jurisdictions”) has received an application from FuelCell Energy Inc., (“FuelCell”), FCE Canada Inc. (“Exchangeco”) and 1065918 Alberta Ltd. (“Callco”) (collectively, the “Applicant”) for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the “Legislation”) that:

- (a) in connection with or resulting from the proposed combination (the “Transaction”) of FuelCell and Global Thermoelectric, Inc. (“Global”) to be effected by way of a plan of arrangement (the “Arrangement”) under Section 193 of the *Business Corporations Act* (“Alberta”) (the “ABCA”) Exchangeco be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file and deliver annual reports and, where applicable, interim and annual financial statements and to file and deliver an information circular (the “Continuous Disclosure Requirements”); and

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- (b) 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 of Exchangeco in connection therewith (the "Insider Reporting Requirement") shall not apply to each insider of Exchangeco and Exchangeco.

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;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Quebec Commission Notice 14-101;

AND WHEREAS the Applicant has represented to each Decision Maker that:

1. FuelCell and Global entered into a combination agreement dated August 4, 2003 (the "Combination Agreement").
2. FuelCell and Global mailed a joint management information circular and proxy statement (the "Circular") to holders of FuelCell common shares (the "FuelCell Shareholders") and holders of Global common shares (the "Global Shareholders") on October 6, 2003.
3. The Circular seeks among other things, approval by the Global Shareholders and the FuelCell Shareholders of the Arrangement at special meetings of each of the Global Shareholders and FuelCell Shareholders to be held on October 31, 2003. Subject to the satisfaction or waiver of all closing conditions, including all required regulatory approvals, it is currently anticipated that the Transaction will be completed on November 3, 2003.
4. The authorized capital of FuelCell consists of 150,000,000 FuelCell Common Shares. As at July 31, 2003, there were 39,374,633 FuelCell Common Shares outstanding and 7,528,982 FuelCell Common Shares reserved for issuance upon the exercise of stock options (the "FuelCell Options") under FuelCell's Section 423 Stock Purchase Plan and FuelCell's 1998 Equity Incentive Plan (collectively, the "FuelCell Plans") and for the further grant of FuelCell Options under the FuelCell Plans. 5,368,266 of the FuelCell Options were outstanding, of which 3,340,390 were vested and exercisable in accordance with their terms and 2,027,876 remained unvested. There were also warrants to purchase an aggregate of 2,140,000 FuelCell Common Shares outstanding.

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5. FuelCell is a public company in the United States. The FuelCell Common Shares are listed on The Nasdaq Stock Market Inc. (the “Nasdaq”) under the symbol “FCEL”.
6. FuelCell is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the “Exchange Act”).
7. On August 5, 2003, the date that the Transaction was announced, the market capitalization of FuelCell was approximately US\$294,128,509 and the trading price of a FuelCell Common Share was US\$7.47.
8. Callco is a direct wholly owned subsidiary of FuelCell incorporated under the laws of the Province of Alberta to hold the various call rights related to the Exchangeable Shares.
9. The authorized capital of Callco consists of an unlimited number of common shares of which 100 common shares are issued and outstanding. All of the outstanding common shares of Callco are held directly by FuelCell.
10. Exchangeco is an indirect subsidiary of FuelCell incorporated under the laws of the Province of Alberta for the purpose of implementing the Arrangement.
11. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of exchangeable shares (the “Exchangeable Shares”). All of the outstanding common shares of Exchangeco are held directly by Callco and indirectly by FuelCell. Upon completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Global shareholders who elect to receive Exchangeable Shares in exchange for their common shares in the capital of Global (the “Global Common Shares”) pursuant to the Arrangement.
12. Exchangeco has applied to the Toronto Stock Exchange (the “TSX”) to list the Exchangeable Shares to be issued pursuant to the Arrangement. Upon completion of the Arrangement it is anticipated that the Exchangeable Shares will be listed on the TSX and that Exchangeco will become a reporting issuer under the Legislation.
13. Global’s authorized capital consists of an unlimited number of common shares and an unlimited number of preferred shares issuable in series. As of August 4, 2003, there were 1,000,000 shares of Cumulative Redeemable Convertible Preferred Shares, Series 2 issued and outstanding and 29,200,850 Global Common Shares issued and outstanding. There were 2,176,500 Global Common Shares reserved for issuance upon the exercise of stock options (the

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“Global Options”) under the Global Amended Incentive Stock Option Plan (the “Global Incentive Plan”) and for the future grant of Global Options under the Global Incentive Plan. There were also 1,307,025 Global Options outstanding, of which 514,176 had vested and were exercisable in accordance with their terms and 792,849 remained unvested. There were no Series 1 Global preferred shares issued and outstanding.

14. The Global Common Shares are listed on the TSX under the symbol “GLE”.
15. Global is a reporting issuer or the equivalent in British Columbia, Alberta, Manitoba, Saskatchewan, Ontario and Quebec, and is not in default of any of the requirements of the securities legislation of any such provinces.
16. The Arrangement will be carried out under Section 193 of the ABCA. On September 30, 2003, the Applicants obtained, under Section 193 of the ABCA, an interim order (the “Interim Order”), from the Court of Queen’s Bench of Alberta (the “Court”) which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the meeting of Global Common Shareholders (the “Global Meeting”).
17. The Circular contained prospectus-level disclosure of the business and affairs of FuelCell and Global, and a detailed description of the Arrangement and the securities to be issued.
18. The Circular sought, among other things, approval of the Global Common Shareholders of the Arrangement at the Global Meeting and approval of the FuelCell shareholders of the Arrangement at a meeting of FuelCell Common Shareholders. Each holder of Global Common Shares will be entitled to one vote for each Global Common Share held.
19. Upon the Arrangement becoming effective, in accordance with elections made by holders of Global Common Shares, the outstanding Global Common Shares (except those held by shareholders who exercise their rights of dissent and are ultimately entitled to be paid the fair value thereof) will be exchanged for:
 - (a) such number of FuelCell Common Shares equal to the Exchange Ratio (as described below); or
 - (b) such number of Exchangeable Shares equal to the Exchange Ratio.

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20. Only Global Common Shareholders who are residents of Canada for purposes of the *Income Tax Act* (Canada) may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Global Shareholder who is not a resident of Canada will be deemed to be an election to receive FuelCell Common Shares.
21. The Exchange Ratio will be determined by dividing U.S.\$2.72 by the weighted average trading price of FuelCell Common Shares on the Nasdaq over the 20 consecutive trading days ending on and including the third trading day next preceding the Global Meeting provided that if such weighted average trading price is less than \$7.96 it will be deemed to be \$7.96 and if such weighted average trading price is more than \$9.74 it will be deemed to be \$9.74.
22. No fractions of Exchangeable Shares or FuelCell Common Shares will be issued in exchange for Global Common Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or FuelCell. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a FuelCell Common Share will be entitled to receive a cash payment equal to the product of the fractional interest and the weighted average trading price (as described above) of the FuelCell Common Shares.
23. Under the Arrangement, each Global Option will represent an option to purchase the number of FuelCell Common Shares determined by multiplying the number of Global Common Shares subject to such Global Option by the Exchange Ratio, subject to rounding. The exercise price of the Global Option will be determined by dividing the exercise price per Global Common Share of the Global Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding, expressed in U.S. dollars.
24. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Global Common Shares will be held directly or indirectly by FuelCell and its affiliates.
25. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the FuelCell Common Shares.
26. It is expected that the Global Common Shares will be delisted from the TSX on or after the completion of the Arrangement.

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27. FuelCell has applied to the Nasdaq to list the FuelCell Common Shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares, upon exercise of the Global Options and upon conversion of the Global Preferred Shares.
28. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the “Exchangeable Share Provisions”), the terms and conditions of the voting and exchange trust agreement to be entered into between FuelCell, Exchangeco and a trustee (the “Trustee”) in connection with the Arrangement (the “Voting and Exchange Trust Agreement”) and the terms and conditions of the support agreement to be entered into between FuelCell, Callco and Exchangeco in connection with the Arrangement (the “Support Agreement”) will be described in the Circular and are summarized below.
29. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time on a one-for-one basis, at the option of the holder, for FuelCell Common Shares. An Exchangeable Share will provide a holder with economic terms and voting rights that are, as nearly as practicable, equivalent to those of a FuelCell Common Share. Global Common Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange, they will be “qualified investments” for certain investors and will not constitute “foreign property”, in each case, under the *Income Tax Act* (Canada) (the “ITA”).
30. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the current market price for a FuelCell Common Share which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the retraction date (such aggregate amount, the “Retraction Price”). When a holder of Exchangeable Shares makes a retraction request, Callco will have an overriding call right (the “Retraction Call Right”) to purchase all but not less than all of the Exchangeable Shares subject to the retraction request in exchange for the Retraction Price.

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31. Subject to applicable law and the Redemption Call Right described below, at any time on or after the fifth anniversary of the date shown on the Articles of Arrangement filed with the Registrar under the ABCA giving effect to the Arrangement, (the “Effective Date”), Exchangeco may, or earlier in the event of certain circumstances as will be described in the Circular, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the current market price of a FuelCell Common Share, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the redemption date (such aggregate amount, the “Redemption Price”). Callco will have an overriding right (the “Redemption Call Right”) to purchase all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) for a purchase price per share equal to the Redemption Price.
32. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.
33. On the Effective Date, FuelCell, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which FuelCell will issue to the Trustee a number of FuelCell Common Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by FuelCell and its affiliates) (the “Trustee Shares”), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of FuelCell Common Shares. Each registered holder of Exchangeable Shares (other than FuelCell and its affiliates) (a “Beneficiary”) on the record date for any meeting at which shareholders of FuelCell are entitled to vote will be entitled to instruct the Trustee to vote one FuelCell Common Share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock consolidation, subdivision or other change to the capital structure of FuelCell so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the FuelCell Common Shares.
34. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by FuelCell on a FuelCell Common Share.

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35. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount (as described below) for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Callco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by FuelCell and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation (the "Liquidation Date") for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share held by such holder on any dividend record date which occurred prior to the Liquidation Date (such aggregate amount, the "Liquidation Amount"). On the liquidation, dissolution or winding-up of Exchangeco or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each holder of Exchangeable Shares (other than FuelCell and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.
36. A holder of Exchangeable Shares will be entitled at any time after failure of Callco to exercise the Liquidation Call Right, the Redemption Call Right or the Retraction Call Right, to instruct the Trustee to exercise the exchange put right (the "Exchange Put Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require FuelCell to purchase all or any part of the Exchangeable Shares of the holder for a purchase price per share equal to the current market price of a FuelCell Common Share which will be fully paid and satisfied by the delivery of one FuelCell Common Share, plus an amount equal to all declared and unpaid dividends on each such Exchangeable Share.
37. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of FuelCell Common Shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of FuelCell or to effect any other distribution of the assets of FuelCell among its shareholders for the purpose of winding-up its affairs, each Exchangeable Share will,

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pursuant to the automatic exchange right (the “Automatic Exchange Right”) granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for FuelCell Common Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.

38. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs.
39. On the Effective Date, FuelCell, Exchangeco and Callco will enter into the Support Agreement which will provide that FuelCell will not declare or pay any dividends on the FuelCell Common Shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that FuelCell will ensure that Exchangeco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, FuelCell will not issue or distribute FuelCell Common Shares, securities exchangeable for or convertible into or carrying rights to acquire FuelCell Common Shares, rights, options or warrants to subscribe for or to purchase FuelCell Common Shares, evidences of indebtedness or other assets of FuelCell to the holders of FuelCell Common Shares nor will FuelCell subdivide, redivide or change the FuelCell Common Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.
40. The Circular disclosed that applications have been made for exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefore if such exemptions are granted.
41. A small number of Canadian residents currently own FuelCell Common Shares. However, upon completion of the Arrangement, Global Common Shareholders who are Canadian residents will own between approximately 16% and 19% of the outstanding FuelCell Common Shares.

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42. Following completion of the Arrangement, FuelCell will concurrently send to holders of Exchangeable Shares and FuelCell Common Shares resident in the Jurisdictions all disclosure material it sends to holders of FuelCell Common Shares resident in the United States pursuant to the Exchange Act.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is that:

- (a) the Continuous Disclosure Requirements shall not apply to Exchangeco, provided that:
 - (i) FuelCell sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of FuelCell common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its interim and annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
 - (ii) FuelCell files with each Decision Maker copies of all documents required to be filed by it with the SEC under the Exchange Act, as amended and such filings are made under Exchangeco’s SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
 - (iii) FuelCell complies with the requirements of the Nasdaq in respect of making public disclosure of material information on a timely basis and without delay issues in Canada and files with the Decision Makers any press release that discloses a material change in FuelCell’s affairs;
 - (iv) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of FuelCell Common Shares;

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- (v) FuelCell includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to FuelCell and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the FuelCell Common Shares and the right to direct voting at FuelCell's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
 - (vi) FuelCell remains the direct or indirect beneficial owner of all of the issued and outstanding common shares of Exchangeco;
 - (vii) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement;
- (b) the Insider Reporting Requirements and the requirement to file an insider profile under National Instrument 55-102 – System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, provided that:
- (i) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning FuelCell before the material facts or material changes are generally disclosed;
 - (ii) such insider of Exchangeco is not a director or senior officer of FuelCell, or a “major subsidiary” of FuelCell, as such term is defined in National Instrument 55-101 – Exemptions from Certain Insider Reporting Requirements as if FuelCell were a reporting issuer.

DATED at Calgary, Alberta on this 31st day of October, 2003.

Agnes Lau, CA
Deputy Director, Capital Markets