

## **2003 BCSECCOM 749**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – relief from requirement that issuer must be a reporting issuer for a least 12 months to permit issuer to distribute non-convertible debt securities under the POP system – issuer is a debt-only issuer with a substantial market presence because of its size, position and public disclosure record

### **Applicable British Columbia Provisions**

National Instrument 44-101 *Short Form Prospectus Distributions*

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

**AND**

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

**AND**

**IN THE MATTER OF TORONTO HYDRO CORPORATION**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (the “Jurisdictions”) have received an application from Toronto Hydro Corporation (the “Filer”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirement contained in the Legislation that an issuer shall have been a reporting issuer or equivalent in the Jurisdictions for the 12 calendar months preceding the date of filing of its initial annual information form (“Initial AIF”) (the “Eligibility Requirement”) to permit offerings of approved rating non-convertible securities in the Jurisdictions under National Instrument 44-101 Short Form Prospectus Distributions (“NI 44-101”) and National Instrument 44-102 Shelf Distributions (“NI 44-102”) shall not apply to the Filer;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Ontario Securities Commission is the principal regulator for this application;

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AND WHEREAS, unless otherwise defined, capitalized terms used herein have the meanings given to them in National Instrument 14-101 Definitions or Quebec Commission Notice 14-101;

AND WHEREAS the Filer has represented to the Decision Makers that:

1. The Filer was incorporated under the *Business Corporations Act* (Ontario) on June 23, 1999. Its registered office is located at 14 Carlton Street, Toronto, Ontario, M5B 1K5.
2. The Filer is a holding company which, through its wholly-owned subsidiaries, distributes electricity, manages an existing portfolio of electricity and natural gas contracts and is engaged in the development and sale of energy efficiency products and services and leases fibre optic cable capacity and provides managed data services.
3. The Filer and its subsidiaries have approximately \$2.3 billion of assets and approximately \$661 million of shareholders' equity.
4. The City of Toronto is the sole shareholder of the Filer.
5. The Filer became a reporting issuer (or equivalent) under the Legislation on May 1, 2003 in connection with its initial public offering of \$225,000,000 principal amount of senior unsecured debentures due 2013 (the "Debentures"). The Filer is not in default of any of the requirements of the Legislation.
6. The Debentures have been assigned ratings of "A (low)" and "A-" by Dominion Bond Rating Service Limited and Standard & Poor's Ratings Services, respectively.
7. The Filer currently has indebtedness of \$980.2 million owing to the City of Toronto under the terms of a promissory note (the "City Note") dated May 7, 2003. The principal amount of the City Note, together with accrued interest thereon, will be payable.
  - (a) on demand on not less than 90 days written notice at any time on or after June 2, 2003 until May 7, 2006; and
  - (b) in accordance with a payment schedule to be delivered by the City of Toronto at least 90 days before May 7, 2006.

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provided that the Filer will not be required to pay more than \$330 million of the principal amount of the City Note during any twelve-month period. The maximum term of the City Note is ten years.

8. The City Note is also convertible in whole or in part at any time and from time to time into debt securities issued by the Filer (subject to applicable law and compliance by the Filer with covenants contained in its outstanding indebtedness).
9. The Filer's primary sources of liquidity and capital resources are from cash provided by operations, debt capital market borrowings and bank financing.
10. The Filer:
  - (a) does not believe that equity contributions from the City of Toronto, its sole shareholder, will constitute a source of capital;
  - (b) is not aware of any plan or decision by the City of Toronto to permit the Filer to sell equity to the public or other investors;
  - (c) expects to borrow to repay the City Note when required to do so under the terms of the City Note; and
  - (d) wishes to establish a medium term note program to issue approved rating non-convertible securities to, among other things, facilitate the repayment of the City Note.
11. The Filer proposes to file an Initial AIF pursuant to NI 44-101 in respect of its financial year ended December 31, 2002.
12. The Filer's primary sources of liquidity and capital resources are from cash provided by operations, debt capital market borrowings and bank financing.
13. Assuming that the Initial AIF is accepted by the securities regulatory authorities in the Jurisdictions, the Filer would be qualified to file a prospectus for approved rating non-convertible securities pursuant to section 2.4 of NI 44-101 and section 2.4 of NI 44-102, but for the fact that it has not been a reporting issuer for 12 months.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each of the Decision Makers (collectively, the "Decision");

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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 under to the Legislation is that the Eligibility Requirement shall not apply to the Filer in connection with the issuance of approved rating non-convertible securities under NI 44-101 and NI 44-102, provided that the Filer complies with the other requirements and procedures and each of the other eligibility requirements of NI 44-101 and NI 44-102.

DATED November 7, 2003.

Iva Vranic