

# 2004 BCSECCOM 467

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application - relief from all the requirements of NI 51-101 granted to a reporting issuer that is a US issuer under NI 71-101 - relief is subject to the conditions that the reporting issuer continue to have a de minimis connection to Canadian capital markets and prepare disclosure about its oil and gas activities in accordance with the requirements of the SEC

## **Applicable British Columbia Provisions**

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Issuers*

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

**AND**

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

**AND**

**IN THE MATTER OF CALPINE CORPORATION**

## **MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the “Jurisdictions”) has received an application from Calpine Corporation (“Calpine”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Calpine be exempted from all of the requirements contained in National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities (“NI 51-101”);
2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;

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3. AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or Appendix 1 of Companion Policy 51-101CP;
4. AND WHEREAS Calpine has represented to the Decision Makers that:
  - 4.1 Calpine's head office for its Canadian operations is in Calgary, Alberta;
  - 4.2 Calpine
    - 4.2.1 is a corporation organized and subsisting under the laws of the State of Delaware, with its head office in San Jose, California;
    - 4.2.2 has securities registered under the 1934 Act; and
    - 4.2.3 is a reporting issuer or equivalent in each of the Jurisdictions and in Quebec;
  - 4.3 Calpine's common shares (the "Calpine Shares") are listed on the New York Stock Exchange (the "NYSE");
  - 4.4 Calpine prepares disclosure about its oil and gas activities in accordance with the requirements of the 1934 Act and the rules of the SEC;
  - 4.5 Calpine, as a "U.S. issuer" under National Instrument 71-101 The Multijurisdictional Disclosure System ("NI 71-101"), satisfies the continuous disclosure requirements under the Legislation by complying with the continuous disclosure requirements of United States federal securities law and the NYSE and filing, delivering and issuing in Canada pursuant to the provisions of Parts 14 through 18 of NI 71-101 any continuous disclosure documents it files, delivers or issues in the United States;
  - 4.6 less than 10% of the number of registered and beneficial holders of Calpine Shares, are resident in Canada;
  - 4.7 less than 10% of the outstanding Calpine Shares are held by residents of Canada;

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5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, 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 NI 51-101 shall not apply to Calpine for so long as:
  - 7.1 less than 10% of the number of registered and beneficial holders of Calpine Shares are resident in Canada;
  - 7.2 less than 10% of the outstanding Calpine Shares are held by residents of Canada; and
  - 7.3 Calpine prepares disclosure about its oil and gas activities in accordance with the requirements of the 1934 Act and the rules of the SEC.

DATED this 30<sup>th</sup> day of July, 2004

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

Stephen R. Murison, Vice-Chair