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November 24, 2006

Headnote

Mutual Reliance Review System for Exemptive Relief Applications

National Instrument 51-102, s. 13.1 - Continuous Disclosure Obligations - General - An issuer wants an exemption from having to file continuous disclosure documents to permit it to rely on the continuous disclosure documents of its parent issuer - The issuer is an exchangeable share issuer that complies with the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer and the exchangeable shares have voting rights at the exchangeable share issuer level; the parent issuer is a Canadian reporting issuer that will send copies of all of its documents to the securityholders of the exchangeable share issuer and explain the reasons the information sent to them relates to the parent, rather than the exchangeable share issuer; the exchangeable share issuer will remain a subsidiary of the parent issuer, and will not issue any securities other than exchangeable shares or debt instruments to certain parties

Multilateral Instrument 52-109, s. 4.5 Certification of Disclosure in Issuer's Annual and Interim Filings - An issuer wants relief from the requirement in parts 2 and 3 of MI 52-109 to file annual and interim certificates - The issuer has applied for and received an exemption from filing interim and annual financial statements

Securities Act s. 91 Audit Committee - Exemption from audit committee requirements in BCI 52-509 Audit Committee - An exchangeable share issuer wants an exemption from BC Instrument 52-509 Audit Committees - The issuer is an exchangeable share issuer; the issuer is exempt from continuous disclosure requirements provided it files the continuous disclosure of its parent; its parent is subject to the audit committee requirements in Multilateral Instrument 52-110

National Instrument 58-101 Disclosure of Corporate Governance Practices - An exchangeable share issuer wants an exemption from NI 58-101 - The issuer is an exchangeable share issuer that complies with the conditions for continuous disclosure relief in section 13.3 of National Instrument 51-102 Continuous Disclosure Obligations except that its parent issuer is not an SEC issuer and the exchangeable shares have voting rights at the exchangeable share issuer level; the parent issuer is a Canadian reporting issuer that will comply with NI 58-101

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Securities Act s. 91 Insider - Exemption from the requirement to file insider reports - An insider of an issuer wants relief from the requirement to file insider reports - There is no public market for the issuer's securities; the securities of the issuer are exchangeable into securities of the issuer's parent and therefore the information about the parent is relevant to the security holders of the issuer.

Securities Act s. 114(2) Takeover Bids - Exemption from the formal take over bid requirements in Part 13 of the Act - A person wants relief from the early warning requirements in s. 111 of the Act - There is no public market for the issuer's securities; the securities of the issuer are exchangeable into securities of the issuer's parent and therefore the information about the parent is relevant to the security holders of the issuer.

Applicable British Columbia Provisions

National Instrument 51-102, s. 13.1

National Instrument 58-101, s. 3.1

Multilateral Instrument 52-109, s. 4.5

Securities Act, R.S.B.C. 1996, c. 418, s. 91 and 114

BC Instrument 52-509

In the Matter of
the Securities Legislation of
British Columbia, Saskatchewan, Quebec, Nova Scotia and
Newfoundland and Labrador
(the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of
Algonquin (AirSource) Power LP (the Filer)

MRRS Decision Document

Background

- ¶ 1 The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer under the securities legislation of the Jurisdictions (the Legislation) for:

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- (a) an exemption from the requirements of National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) other than the requirements of Part 9 of NI 51-102 relating to proxy solicitation and information circulars, and an exemption from any comparable continuous disclosure requirements under the Legislation of the Jurisdictions that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (collectively, the Non-Proxy Continuous Disclosure Requirements);
- (b) an exemption from the requirements of Multilateral Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Certification Requirements);
- (c) an exemption from the requirements under the Legislation relating to audit committees (the Audit Committee Requirements);
- (d) exemptions from the insider reporting and early warning requirements under the Legislation and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders* (the Insider Reporting and Early Warning Requirements); and
- (e) an exemption from the requirements of National Instrument 58-101 – *Disclosure of Corporate Governance Practices* (the Corporate Governance Requirements).

Under the Mutual Reliance Review System for Exemptive Relief Applications (MRRS):

- (a) the British Columbia Securities Commission is the principal regulator for this application; and
- (b) the MRRS decision document evidences the decision of each Decision Maker.

Interpretation

- ¶ 2 Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless are otherwise defined in this decision.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:

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1. on May 15, 2006, the Filer made an offer (the Take-over Bid) to purchase all of the limited partnership units (the AirSource Units) of AirSource Power Fund I LP (AirSource);
2. pursuant to the Take-over Bid, the Filer offered to holders of AirSource Units who are residents of Canada for the purposes of the *Income Tax Act* (Canada) (the Tax Act), limited partnership units of the Filer (the Exchangeable Units) which are exchangeable into units (the APIF Units) of Algonquin Power Income Fund (APIF); each Exchangeable Unit is exchangeable at the option of the holder into 0.9808 APIF Units; holders of AirSource Units who tendered their AirSource Units to the Take-over Bid could also elect to immediately exchange their Exchangeable Units for APIF Units and effectively receive, pursuant to the Take-over Bid, APIF Units;
3. the Filer is a limited partnership established under the laws of the Province of Ontario; the principal and head office of the Filer is located in Oakville, Ontario L6H 7H7; the business of the Filer is limited to wind power or renewable energy electricity-generating projects and any other business ancillary thereto;
4. the authorized capital of the Filer consists of an unlimited number of general partnership units, an unlimited number of Exchangeable Units and an unlimited number of non-exchangeable limited partnership units (Ordinary Units), all without par value;
5. as of October 30, 2006, the issued and outstanding capital of the Filer consists of:
 - (a) one general partnership unit in the Filer issued to Algonquin (AirSource) GP Inc. (the Filer GP), the general partner of the Filer;
 - (b) an aggregate of 9,053,531 Ordinary Units owned by Algonquin Power Operating Trust (APOT), a trust whose sole beneficiary is an affiliated entity of APIF; and
 - (c) an aggregate of 3,434,034 Exchangeable Units issued to those holders of AirSource Units who tendered their AirSource Units to the Take-over Bid or the subsequent compulsory acquisition completed by the Filer and did not elect to immediately exchange, and have not subsequently elected to exchange, the Exchangeable Units received therefor for APIF Units.
6. pursuant to the Limited Partnership Agreement, the holders of general partnership units, Exchangeable Units and Ordinary Units of the Filer are

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entitled to notice of, and to vote at, meetings of partners of the Filer; each general partnership unit, Exchangeable Unit and Ordinary Unit is entitled to one vote at such meetings;

7. pursuant to an exchange agreement dated as of April 24, 2006 between APIF, AirSource, Filer GP, APOT and others, the parties agreed that, concurrently with the delivery by APIF to holders of APIF Units of any annual report, proxy information circular or other continuous disclosure document required by securities law to be delivered to securityholders, APIF shall make such materials available to the Filer and the Filer shall make available and, upon request, deliver such materials to holders of Exchangeable Units;
8. APIF is an open-ended mutual fund trust established under the laws of the Province of Ontario pursuant to a declaration of trust dated as of September 8, 1997, as amended; the principal and head office of APIF is located at 2845 Bristol Circle, Oakville, Ontario L6H 7H7;
9. since its formation in 1997, APIF has acquired direct and indirect interests in diverse portfolio of operating assets including 48 hydroelectric generating facilities, one wind energy generating facility, one energy from waste facility, 10 landfill gas-fired generating facilities, three natural gas-fired cogeneration facilities, three bio-mass fired generating facilities and two natural gas/wood waste-fired generating facilities; in addition, APIF owns 17 regulated water distribution and water reclamation facilities in the United States;
10. APIF is currently, and has been since 1997, a reporting issuer or equivalent under the Legislation;
11. APIF Units are listed and posted for trading on the Toronto Stock Exchange under the symbol APF.UN;
12. an aggregate of 6,003,910 AirSource Units were deposited to the Take-over Bid, which expired on June 29, 2006; the Filer took up all such deposited AirSource Units; the holders of an aggregate of 3,863,554 AirSource Units elected to receive Exchangeable Units and the holders of an aggregate of 2,140,356 AirSource Units elected to exchange the Exchangeable Units they would otherwise receive for an aggregate of 2,099,261 APIF Units; the 2,140,356 Exchangeable Units exchanged for APIF Units were delivered to APOT and became Ordinary Units of the Filer;
13. in August 2006, the Filer acquired all of the AirSource Units not acquired in the Take-over Bid pursuant to the compulsory acquisition provisions available to the Filer under the limited partnership agreement of AirSource;

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the Filer issued an aggregate of 206,818 Exchangeable Units and delivered 283,717 APIF Units as consideration for the AirSource Units acquired in the Compulsory Acquisition;

14. the Filer became a reporting issuer in each of the Jurisdictions upon filing of the securities exchange take-over bid circular in connection with, or upon taking up securities under, the Take-over Bid.

Decision

- ¶ 4 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.

The Decision of the Decision Makers under the Legislation is that:

1. the Non-Proxy Continuous Disclosure Requirements, the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements do not apply to the Filer, provided that:
 - (a) APIF is a reporting issuer in a designated Canadian jurisdiction that has filed all documents it is required to file under NI 51-102;
 - (b) the Filer does not issue any securities, and does not have any securities outstanding, other than
 - (i) the Exchangeable Units;
 - (ii) securities issued to and held by APIF, an affiliated entity of APIF or the manager of APIF;
 - (iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*;
 - (c) the Filer files in electronic format,

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- (i) a notice indicating that the Filer is relying on the continuous disclosure documents filed by APIF and setting out where those documents can be found in electronic format; or
 - (ii) copies of all documents APIF is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by APIF of those documents with a securities regulatory authority or regulator;
- (d) the Filer concurrently sends to all holders of Exchangeable Units all disclosure materials that are sent to holders of APIF Units in the manner and at the time required by securities legislation;
- (e) APIF
- (i) complies with securities legislation in respect of making public disclosure of material information on a timely basis; and
 - (ii) immediately issues in Canada and files any news release that discloses a material change in its affairs;
- (f) the Filer issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of the Filer that are not also material changes in the affairs of APIF; and
- (g) the Filer, with respect to mailings by the Filer of proxy solicitation materials of APIF at the request of holders of Exchangeable Units, provide with such mailings a clear and concise statement that
- (i) explains the reason the mailed material relates solely to APIF;
 - (ii) indicates that the Exchangeable Units are the economic equivalent to the APIF Units; and
 - (iii) describes the voting rights associated with the Exchangeable Units.
2. the Insider Reporting and Early Warning Requirements do not apply to any insider of the Filer in respect of securities of the Filer so long as:
- (a) if the insider is not APIF, an affiliated entity of APIF or the manager of APIF,

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- (i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning APIF before the material facts or material changes are generally disclosed, and
 - (ii) the insider is not an insider of APIF in any capacity other than by virtue of being an insider of the Filer;
- (b) if the insider is APIF, an affiliated entity of APIF or the manager of APIF, the insider does not beneficially own any Exchangeable Units other than securities acquired through the exercise of the exchange right not subsequently traded by the insider;
- (c) APIF is a reporting issuer in a designated Canadian jurisdiction; and
- (d) the Filer has not issued any securities, other than
- (i) Exchangeable Units;
 - (ii) securities issued to APIF, an affiliated entity of APIF or the manager of APIF;
 - (iii) debt securities issued to banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or
 - (iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

Martin Eady, CA
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British Columbia Securities Commission