

2011 BCSECCOM 394

July 29, 2011

Headnote

An issuer that is not an ‘SEC issuer’ wants to file financial statements prepared in accordance with U.S. GAAP - the Filer has “activities subject to rate regulation”; the Filer seeks relief from the requirements under section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises; the Filer will prepare its financial statements in accordance with U.S. GAAP for its financial years that begin on or after January 1, 2012 but before January 1, 2015; and will provide information for comparative periods in these financial statements in accordance with U.S. GAAP; the relief will terminate for annual and interim periods commencing on or after the earlier of (a) January 1, 2015; and (b) the date on which the Filer ceases to have “activities subject to rate regulation” as defined in the Handbook as at the date of this decision.

Applicable Legislative Provisions

National Instrument 52-107, s. 5.1 *Acceptable Accounting Principles and Auditing Standards*

In the Matter of
the Securities Legislation of
British Columbia and Ontario
(the Jurisdictions)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Westcoast Energy Inc. and Union Gas Limited
(the Filers)

Decision

Background

- ¶1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from Westcoast Energy Inc. (Westcoast) and Union Gas Limited (Union Gas) for a decision under the

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securities legislation of the Jurisdictions (the Legislation) exempting each Filer from the requirements under section 3.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the Exemption Sought) to permit each Filer to prepare its financial statements in accordance with U.S. GAAP for its financial years that begin on or after January 1, 2012, but before January 1, 2015.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the British Columbia Securities Commission is the principal regulator of each Filer for this application;
- (b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Westcoast Passport Jurisdictions) with respect to Westcoast and in Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Union Gas Passport Jurisdictions) with respect to Union Gas; and
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

- ¶2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* or NI 52-107 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

- ¶3 This decision is based on the following facts represented by the Filers:
- 1. Westcoast is a corporation existing under the *Canada Business Corporations Act*. The head office of Westcoast is in Vancouver, British Columbia;
 - 2. Union Gas is a corporation existing under the *Business Corporations Act* (Ontario). The head office of Union Gas is in Chatam, Ontario;
 - 3. Union Gas has chosen the British Columbia Securities Commission as the principal regulator for this application on the basis that British Columbia is the jurisdiction with which Union Gas has the next most significant connection, as

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Union Gas is a subsidiary of Westcoast and Westcoast's head office is located in British Columbia. The Ontario Securities Commission has granted its consent to Union Gas's request for a change in principal regulator with respect to this application under section 3.7(2) of National Policy 11-203 *Process for Exemptive Relief in Multiple Jurisdictions*;

4. Westcoast is a reporting issuer or equivalent in the Jurisdictions and each of the Westcoast Passport Jurisdictions; Union Gas is a reporting issuer or equivalent in the Jurisdictions and each of the Union Gas Passport Jurisdictions; Filer is in default of securities legislation in any jurisdiction;
5. the Filers are not SEC issuers;
6. the Filers each have "activities subject to rate regulation", as defined in the Handbook;
7. as a "qualifying entity" for the purposes of section 5.4 of NI 52-107, each Filer is permitted by that provision to prepare its financial statements for its financial year commencing January 1, 2011 and ending December 31, 2011 in accordance with Canadian GAAP – Part V of the Handbook; and
8. if each of the Filers were an SEC issuer, each would be permitted by section 3.7 of NI 52-107 to file its financial statements prepared in accordance with U.S. GAAP, which accords treatment of "activities subject to rate regulation" similar to that under Canadian GAAP – Part V.

Decision

- ¶4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

- (a) for its financial years commencing on or after January 1, 2012 but before January 1, 2015 and interim periods therein, each Filer prepares its financial statements in accordance with U.S. GAAP; and
- (b) information for comparative periods presented in the financial statements referred to in paragraph (a) is prepared in accordance with U.S. GAAP.

The Exemption Sought will terminate in respect of a Filer's financial statements for annual and interim periods commencing on or after the earlier of:

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- (a) January 1, 2015; and
- (b) the date on which such Filer ceases to have “activities subject to rate regulation” as defined in the Handbook as at the date of this decision.

Martin Eady, CA
Director, Corporate Finance
British Columbia Securities Commission