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Headnote

Mutual Reliance Review System for Exemptive Relief Application – open-end investment trust exempt from prospectus and registration requirements in connection with issuance of units to existing unitholders under a distribution reinvestment plan whereby distributions of income are reinvested in additional units of the trust, subject to certain conditions – first trade relief provided for additional units of trust, subject to certain conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 48 and 76

Multilateral Instrument 45-102 *Resale of Securities*

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

AND

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

AND

IN THE MATTER OF PRIMEWEST ENERGY TRUST

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) has received an application from PrimeWest Energy Trust (the Trust) for a decision, pursuant to the securities legislation of the Jurisdictions (the Legislation), that the requirements contained in the Legislation to be registered to trade in a security (the Registration Requirement) and to file and obtain a receipt for a preliminary prospectus and a final prospectus (the Prospectus Requirement) shall not apply to certain trades in trust units of The Trust issued pursuant to a distribution reinvestment plan;

AND WHEREAS pursuant to 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, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Quebec Securities Commission Notice 14-101;

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

1. The Trust is an open-end investment trust created under the laws of Alberta pursuant to a declaration of trust dated August 2, 1996, as amended and restated November 6, 2002 (the Declaration of Trust);
2. Computershare Trust Company of Canada is the trustee of the Trust (in such capacity, the Trustee) and PrimeWest Energy Inc. (PrimeWest) is the authorized attorney of the Trust;
3. The principal undertaking of the Trust is to acquire and hold, directly and indirectly, interests in petroleum and natural gas properties and assets related thereto. The Trust's primary asset is a royalty entitling the Trust to receive 99% of the net cash flow generated by the petroleum and natural gas interest held by PrimeWest, after certain costs, expenditures and deductions (Distributable Income);
4. Under the Declaration of Trust, the Trust is authorized to issue an unlimited number of transferable, non-redeemable trust units (Trust Units), of which there were 46,120,145 Trust Units outstanding as at August 31, 2003;
5. Each Trust Unit represents an equal fractional undivided beneficial interest in the net assets of the Trust, and entitles its holder (a Unitholder) to one vote at meetings of Unitholders and to participate equally with respect to any and all distributions made by the Trust, including distributions of net income and net realized capital gains, if any;
6. The Trust has been a reporting issuer, or the equivalent, in each of the Jurisdictions since 1996 and is not in default of any requirement under the Legislation;
7. The Trust is a qualifying issuer within the meaning of Multilateral Instrument 45-102 *Resale of Securities* (MI 45-102);
8. The Trust Units are listed and posted for trading on the Toronto Stock Exchange (the TSX) under the symbol PWI.UN and on the New York Stock Exchange under the symbol PWI;

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9. Under the Declaration of Trust, each month the Trust distributes to Unitholders the Distributable Income generated during the previous month;
10. The Trust is not a mutual fund as defined in the Legislation because the Unitholders are not entitled to receive on demand an amount computed by references to the value of a proportionate interest in the whole or in part of the net assets of the Trust as contemplated by the definition of mutual fund contained in the Legislation;
11. The Trust currently has in place a distribution reinvestment and optional Trust Unit purchase plan (the Old DRIP) which enables eligible Unitholders who elect to participate in the Old DRIP to direct that cash distributions paid on their existing Trust Units (Cash Distributions) be automatically applied to the purchase of additional Trust Units (DRIP Units) from treasury (the Reinvestment Option);
12. The Old DRIP also entitles Unitholders who have elected to participate in the Reinvestment Option to make, at their discretion, additional cash payments (Optional Cash Payments) which are invested in additional DRIP Units on the same basis as distributions are reinvested pursuant to the Reinvestment Option (the Cash Payment Option);
13. At the time the Old DRIP was implemented, the Trust obtained exemptive relief from the Registration Requirement and Prospectus Requirement in those Jurisdictions in which such relief was necessary;
14. The Trust intends to establish a new Premium DRIP which will retain the Reinvestment Option and Cash Payment Option but will also enable eligible Unitholders who decide to reinvest Cash Distributions to authorize and direct Computershare Trust Company of Canada, in its capacity as agent under the Plan (or such other trust company that is appointed agent under the Plan) (in such capacity, the Plan Agent), to pre-sell through a designated broker (the Plan Broker), for the account of the Unitholders who so elect, that number of Trust Units equal to the number of DRIP Units issuable on such reinvestment, and to settle such pre-sales with the DRIP Units issued on the applicable distribution payment date in exchange for a cash payment equal to 102% of the reinvested Cash Distributions (the Premium Distribution Option). The Plan Broker will be entitled to retain for its own account the difference between the proceeds realized in connection with the pre-sales of such Trust Units and the cash payment to the Plan Agent equal to 102% of the reinvested Cash Distributions;

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15. The Cash Payment Option will only be available to Unitholders that have elected to have their Cash Distributions reinvested in DRIP Units under either the Reinvestment Option or Premium Distribution Option (Participants). In addition, PrimeWest shall have the right to determine from time to time whether the Cash Payment Option will be available;
16. The Premium DRIP will supercede the Old DRIP. All Unitholders who are enrolled in the Old DRIP at the time that the Premium DRIP becomes effective will, subject to any contrary elections made by such Unitholders, be automatically enrolled in the Reinvestment Option of the Premium DRIP;
17. All DRIP Units purchased under the Premium DRIP will be purchased by the Plan Agent directly from the Trust on the relevant distribution payment date at a price determined by reference to the Average Market Price (defined in the Plan as the arithmetic average of the daily volume weighted average trading prices of the Trust Units on the TSX for the trading days starting on the second business day following the distribution record date and ending on the second business day immediately prior to the distribution payment date on which at least a board lot of Trust Units was traded, such period not to exceed 20 trading days);
18. DRIP Units purchased under the Reinvestment Option, the Premium Distribution Option or the Cash Payment Option will be purchased at a 5% discount to the Average Market Price;
19. The Plan Broker's *prima facie* return under the Premium Distribution Option will be approximately 3% of the reinvested Cash Distributions (based on pre-sales of Trust Units having a market value of approximately 105% of the reinvested Cash Distributions and a fixed cash payment to the Plan Agent, for the account of applicable Participants, of an amount equal to 102% of the reinvested Cash Distributions). The Plan Broker may, however, realize more or less than this *prima facie* amount, as the actual return will vary according to the prices the Plan Broker is able to realize on the pre-sales of Trust Units. The Plan Broker bears the entire risk of adverse changes in the market, as Participants who have elected the Premium Distribution Option are assured a cash payment equal to 102% of the reinvested Cash Distributions;
20. All activities of the Plan Broker on behalf of the Plan Agent that relate to pre-sales of Trust Units for the account of Participants who elect the Premium Distribution Option will be in compliance with applicable Legislation and the rules and policies of the TSX (subject to any exemptive relief granted). The Plan Broker will also be a member of the Investment Dealers Association of Canada, and will be registered under the Legislation of any Jurisdiction where

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the first trade in DRIP Units pursuant to the Premium Distribution Option makes such registration necessary;

21. The Premium DRIP will not be available to Unitholders who are residents of the United States;
22. Participants who choose to participate in the Premium DRIP may elect either the Reinvestment Option or the Premium Distribution Option in respect of their Cash Distributions at their sole option, and are free to terminate their participation under either option, or to change their election, in accordance with the terms of the Premium DRIP;
23. Under the Reinvestment Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of DRIP Units, which will be held under the Premium DRIP for the account of the appropriate Participants who have elected to participate in that component of the Premium DRIP;
24. Under the Premium Distribution Option, Cash Distributions will be paid to the Plan Agent and applied by the Plan Agent to the purchase of DRIP Units for the account of the appropriate Participants who have elected to participate in that component of the Premium DRIP, but the DRIP Units purchased thereby will be automatically transferred to the Plan Broker to settle pre-sales of Trust Units made by the Plan Broker on behalf of the Plan Agent for the account of such Participants in exchange for a cash payment equal to 102% of the reinvested Cash Distributions;
25. Under the Cash Payment Option, a Participant may, through the Plan Agent, purchase DRIP Units up to a stipulated aggregate maximum dollar amount per year of \$100,000 and subject to a minimum amount per remittance of \$100. The aggregate number of DRIP Units that may be purchased under the Cash Payment Option by all Participants in any financial year of the Trust will be limited to a maximum of 2% of the number of Trust Units issued and outstanding at the start of the financial year;
26. No brokerage fees or service charges will be payable by Participants in connection with the purchase of DRIP Units under the Premium DRIP;
27. DRIP Units purchased under the Premium DRIP will be credited to a Participant's account, and all Cash Distributions on Trust Units enrolled in the Premium DRIP will be automatically reinvested in DRIP Units under the Reinvestment Option or exchanged for a cash payment under the Premium

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Distribution Option, as applicable, in accordance with the terms of the Premium DRIP and the current election of that Participant;

28. Depending on the policies of a Participant's broker, investment dealer, financial institution or other nominee through which the Participant holds its Trust Units, in the case of beneficial Unitholders, the Premium DRIP permits full investment of reinvested Cash Distributions and Optional Cash Payments because fractions of Trust Units, as well as whole Trust Units, may be credited to Participants' accounts;
29. PrimeWest reserves the right to determine for any distribution payment date how many DRIP Units will be available for purchase under the Premium DRIP;
30. If, in respect of any distribution payment date, fulfilling all of the elections under the Premium DRIP would result in the Trust exceeding either the limit on DRIP Units set by PrimeWest or the aggregate annual limit on DRIP Units issuable pursuant to the Cash Payment Option, then elections for the purchase of DRIP Units on the next distribution payment date will be accepted: (i) first, from Participants electing the Reinvestment Option; (ii) second, from Participants electing the Premium Distribution Option; and (iii) third, from Participants electing the Cash Payment Option. If the Trust is not able to accept all elections in a particular category, then purchases of DRIP Units on the next distribution payment date will be pro rated among all Participants in that category according to the number of DRIP Units sought to be purchased;
31. If PrimeWest determines that no DRIP Units will be available for purchase under the Premium DRIP for a particular distribution payment date, then all Participants will receive the Cash Distribution announced by the Trust for that distribution payment date;
32. A Participant may terminate its participation in the Premium DRIP at any time by providing written notice to the Plan Agent, or in the case of a beneficial Unitholder, by providing written notice to their investment advisor or broker. A termination form received on or after the distribution record date will become effective after the distribution payment date to which such record date relates;
33. The Trust reserves the right to amend, suspend or terminate the Plan at any time, provided that such action shall not have a retroactive effect which would prejudice the interests of the Participants. The Trust will notify Unitholders of any such amendment, suspension or termination in accordance with the Premium DRIP and applicable securities law requirements;

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34. The distribution of DRIP Units by the Trust pursuant to the Premium DRIP cannot be made in reliance on existing exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation as the Premium DRIP involves the reinvestment of distributions of Distributable Income of the Trust and not the reinvestment of dividends, interest or distributions of capital gains or out of earnings or surplus;
35. The distribution of DRIP Units by the Trust pursuant to the Premium DRIP may not be permitted to be made in reliance on exemptions from the Registration Requirement and Prospectus Requirement contained in the Legislation for distribution reinvestment plans of mutual funds, as the Trust is not a mutual fund as defined in the Legislation;

AND WHEREAS under 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 Maker with the jurisdiction to make the Decision has been met;

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

1. the Registration Requirement and Prospectus Requirement contained in the Legislation shall not apply to trades by the Trust of DRIP Units for the account of Participants pursuant to the Premium DRIP, provided that:
 - 1.1 at the time of the trade the Trust is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
 - 1.2 no sales charge is payable by Unitholders in respect of the trade;
 - 1.3 the Trust has caused to be sent to the person or company to whom the DRIP Units are traded, not more than 12 months before the trade, a statement describing:
 - 1.3.1 their right to withdraw from the Premium DRIP and to make an election to receive cash instead of DRIP Units on the making of a distribution of income by the Trust (the Withdrawal Right); and
 - 1.3.2 instructions on how to exercise the Withdrawal Right; and

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- 1.4 the aggregate number of DRIP Units issued under the Cash Payment Option of the Premium DRIP in any financial year of the Trust shall not exceed 2% of the aggregate number of Trust Units outstanding at the start of that financial year;
2. the first trade of the DRIP Units acquired under this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation; and
3. the Prospectus Requirement contained in the Legislation shall not apply to the first trade of DRIP Units acquired by Participants under this Decision, provided that:
 - 3.1 except in Québec, the conditions in subsection 2.6(3) of MI 45-102 are satisfied; and
 - 3.2 in Québec:
 - 3.2.1 at the time of the first trade the Trust is a reporting issuer in Québec and has been a reporting issuer in Québec for the 12 months immediately preceding the first trade and is not in default of any of the requirements of the Legislation in Québec;
 - 3.2.2 no unusual effort is made to prepare the market or to create a demand for the DRIP Units;
 - 3.2.3 no extraordinary commission or consideration is paid to a person or company other than the vendor of the DRIP Units in respect of the trade; and
 - 3.2.4 the vendor of the DRIP Units, if in a special relationship with the Trust, has no reasonable grounds to believe that the Trust is in default of any requirement of the Legislation.

DATED this 16th day of September, 2003.

Paul M. Moore

H. Lorne Morphy, Q.C.