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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - an issuer deemed to be no longer a reporting issuer under the Act following a plan of arrangement where there will be a de minimis number of shares held by Canadian shareholders

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF DUKE ENERGY CORPORATION AND 3058368 NOVA SCOTIA COMPANY

MRRS DECISION DOCUMENT

1. WHEREAS the Canadian securities regulatory authority or regulator (the “Decision Maker”), in each of British Columbia, Alberta and Saskatchewan (collectively, the “Jurisdictions”) has received an application from Duke Energy Corporation (“Duke Energy”) and 3058368 Nova Scotia Company (“Callco”) (together, the “Applicant”) for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the “Legislation”) that Duke Energy and Callco be deemed to cease to be reporting issuers under the Legislation at the effective time (the “Effective Time”) of the proposed plan of arrangement involving Duke Energy and Westcoast Energy Inc. (“Westcoast”) under section 192 of the Canada Business Corporations Act (the “Arrangement”) pursuant to an amended and restated combination agreement made as of September 20, 2001 among Duke Energy, Callco, Exchangeo and Westcoast;
2. AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS the Applicant has represented to the Decision Makers that:

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- 3.1 Duke Energy is a public company in the United States existing under the laws of the State of North Carolina. The Duke Energy common shares are listed on the New York Stock Exchange under the symbol “DUK”;
- 3.2 Duke Energy is currently subject to the United States Securities Exchange Act of 1934, as amended;
- 3.3 on the date that the Arrangement was announced, the market capitalization of Duke Energy was approximately Cdn\$47.2 billion and the trading price of a Duke Energy common share was US\$38.73;
- 3.4 Duke Energy’s authorized capital currently consists of two billion Duke Energy common shares, without par value, 12.5 million shares of preferred stock (“Duke Energy Preferred Stock”), par value US\$100 per share, issuable in series, 10 million shares of preferred stock A (“Duke Energy Preferred Stock A”), par value US\$25 per share, issuable in series, and 1.5 million shares of preference stock, par value US\$100 per share, issuable in series (“Duke Energy Preference Stock”). The Duke Energy common shares are fully participating voting shares. As at December 10, 2001, there were 776,632,413 Duke Energy common shares issued and outstanding and as at November 30, 2001 there were 1,534,984 shares of Duke Energy Preferred Stock, and 2,007,185 shares of Duke Energy Preferred Stock A and no shares of Duke Energy Preference Stock issued and outstanding;
- 3.5 as of November 30, 2001, there were 54,176,015 Duke Energy common shares reserved for issuance pursuant to the Duke Energy stock option plans;
- 3.6 Callco is an indirect wholly-owned subsidiary of Duke Energy. Callco is an unlimited liability company incorporated under the Companies Act (Nova Scotia) on September 14, 2001 as 3058368 Nova Scotia Company to hold the call rights related to the Exchangeable Shares. Prior to the effective date of the Arrangement it is expected that Callco will change its name to “Duke Energy Canada Call Co.”. Callco’s registered office address is Suite 800, 1959 Upper Water Street, P.O. Box 997, Halifax, Nova Scotia B3J 2X2;
- 3.7 the authorized capital of Callco consists of one billion common shares. All of the outstanding common shares of Callco are held indirectly by Duke Energy;

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- 3.8 Westcoast mailed a management proxy circular dated November 8, 2001 (the “Circular”) to holders (“Westcoast Shareholders”) of Westcoast common shares and holders (“Westcoast Optionholders”) of Westcoast options, and filed the Circular in all of the provinces on November 16, 2001;
- 3.9 the Circular sought, among other things, approval by the Westcoast Shareholders and Westcoast Optionholders (collectively, the “Westcoast Securityholders”) of the Arrangement and approval by the Westcoast Shareholders of the amendment to the shareholder rights plan of Westcoast (the “Westcoast Rights Agreement”) waiving the application of the Westcoast Rights Agreement to the Arrangement, at a special meeting of Westcoast Securityholders held on December 13, 2001 (the “Westcoast Meeting”). At the Westcoast Meeting, each Westcoast Shareholder was entitled to one vote for each Westcoast common share held, and each holder of Westcoast Options was entitled to one vote for each Westcoast common share such holder would receive on a valid exercise of the Westcoast Options held by the Holder. The approval of the Westcoast Securityholders of the Arrangement and the approval by the Westcoast Shareholders of the amendment to the Westcoast Rights Agreement was obtained at the Westcoast Meeting. In addition, the interim order and final order of the Supreme Court of British Columbia to the Arrangement was obtained on November 6, 2001 and January 10, 2002, respectively;
- 3.10 subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Arrangement will be completed in the first quarter of 2002;
- 3.11 Duke Energy will send concurrently to all holders of Duke Energy common shares resident in the Jurisdictions all disclosure material furnished to holders of Duke Energy common shares resident in the United States including, without limitation, copies of its annual financial statements and all proxy solicitation materials;
- 3.12 as of December 10, 2001, there were 961 beneficial holders of Duke Energy common shares in Canada holding 2,097,951 Duke Energy common shares, representing approximately 0.27% of the total number of issued and outstanding Duke Energy common shares. Of these beneficial holders of Duke Energy common shares in Canada, there are:
- 3.12.1 160 beneficial holders of Duke Energy common shares resident in British Columbia, holding 36,388 Duke Energy common

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shares, representing approximately 0.005% of the issued and outstanding Duke Energy common shares;

3.12.2 122 beneficial holders of Duke Energy common shares resident in Alberta, holding 124,356 Duke Energy common shares, representing approximately 0.016% of the issued and outstanding Duke Energy common shares; and

3.12.3 7 beneficial holders of Duke Energy common shares resident in Saskatchewan, holding 2,560 Duke Energy common shares, representing approximately 0.0003% of the issued and outstanding Duke Energy common shares;

3.13 as of November 30, 2001, there were 54,176,015 Duke Energy common shares reserved for issuance pursuant to the Duke Energy stock option plans ("Duke Energy Plans"). As of November 30, 2001, of all of the options outstanding under the Duke Energy Plans, there were 28 persons in Canada holding options to purchase an aggregate of 99,220 Duke Energy common shares, representing approximately 0.18% of the Duke Energy common shares reserved for issuance pursuant to the Duke Energy Plans;

3.14 as of February 7, 2002, based on information provided to Westcoast by Independent Investor Communications Corp., it is estimated that beneficial Westcoast Shareholders in Canada held 87,087,844 Westcoast common shares, representing approximately 68.3% of the total number of issued and outstanding Westcoast common shares. Based on the number of sets of Westcoast Meeting materials sent to Canadian addresses, it is estimated that on November 8, 2001 there were 41,424 Westcoast Shareholders in Canada;

3.15 as of November 29, 2001 of all the Westcoast Options outstanding under the Westcoast stock option plans, Westcoast Options representing the right to acquire 4,788,312 Westcoast common shares were held by residents of Canada, representing approximately 98.7% of the total number of Westcoast common shares which may be acquired pursuant to the exercise of Westcoast Options;

3.16 upon completion of the Arrangement, assuming a maximum Exchange Ratio of 0.7711 and assuming that Exchangeable Shares are considered to be Duke Energy common shares, it is expected that the beneficial holders of Duke Energy common shares resident in Canada will hold approximately 4.1% of the issued and outstanding Duke Energy common

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shares (calculated based upon the number of beneficial and registered Westcoast Shareholders and registered holders of Duke Energy common shares who are residents of Canada, as set out above, and on the basis that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will be approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares). This percentage would increase to approximately 4.4% if it is assumed that all of the Westcoast Options held by residents of Canada were exercised prior to the Effective Time of the Arrangement;

3.17 assuming a maximum Exchange Ratio of 0.7711 and assuming that Exchangeable Shares are considered to be Duke Energy common shares, based upon the number of beneficial Westcoast Shareholders who are residents of British Columbia, Alberta and Saskatchewan pursuant to a search report of Computershare Trust Company of Canada dated February 6, 2002, and on the basis that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will be approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares, upon the consummation of the Arrangement, it is expected that there could be:

3.17.1 up to an additional 2,501,130 Duke Energy common shares held by holders in British Columbia, representing approximately 0.30% of the issued and outstanding Duke Energy common shares;

3.17.2 up to an additional 2,136,965 Duke Energy common shares held by holders in Alberta, representing approximately 0.263% of the issued and outstanding Duke Energy common shares; and

3.17.3 up to an additional 84,356 Duke Energy common shares held by holders in Saskatchewan, representing approximately 0.01% of the issued and outstanding Duke Energy common shares;

3.18 pursuant to the Legislation, upon the issuance of Duke Energy common shares to former holders of Westcoast common shares under the terms of the Arrangement and Callco's participation in the Arrangement, Duke Energy and Callco may or will be deemed to be reporting issuers under the Legislation;

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

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5. 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;
6. AND WHEREAS the Decision of the Decision Makers pursuant to the Legislation is that Duke Energy and Callco are deemed to have ceased to be reporting issuers under the Legislation forthwith after the Effective Time of the Arrangement.

DATED this 14th day of March, 2002.

Patricia M. Johnston, Director
Legal Services & Policy Development