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April 11, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 44-101, s. 15.1 - An issuer wants relief from the qualification criteria in NI 44-101 so it can file a short form prospectus - The issuer has issued income participating securities that are listed on an exchange in Canada; the securities are not equity securities, but may be separated into separate components, one of which is a common share component; the aggregate market value of the issuer's listed securities is over the minimum set out in 2.2(3); the issuer will satisfy the other eligibility criteria in NI 44-101

Applicable British Columbia Provisions

National Instrument 44-101, ss. 2.1, 2.2, 2.3 and 15.1

In the Matter of
the Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New
Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the
Yukon Territory, the Northwest Territories and Nunavut
(the "Jurisdictions")

and

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

and

In the Matter of
Atlantic Power Corporation (the "Filer")

MRRS Decision Document

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application (the "Application") from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") for:

- (a) an exemption from the short form prospectus qualification criteria in section 2.2 of National Instrument 44-101 – *Short Form Prospectus Distributions* ("NI 44-101") that the aggregate market value of its equity securities that are

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listed and posted for trading on an exchange in Canada be \$75,000,000 or more on a date within 60 days before the date of filing by the Filer of a preliminary short form prospectus; and

- (b) an exemption from the short form prospectus qualification criteria in section 2.3 of NI 44-101 that the aggregate market value of its equity securities that are listed and posted for trading on an exchange in Canada be \$300,000,000 or more on a date within 60 days before the date of filing by the Filer of a preliminary short form prospectus,

(collectively, the “Requested Relief”).

Under the Mutual Reliance Review System for Exemptive Relief Applications:

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

Interpretation

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

Representations

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

- (a) The Filer was incorporated on June 18, 2004 and is validly existing under the laws of the Province of Ontario. The Filer’s registered office is located at 250 Yonge Street, Suite 2400, Toronto, Ontario, M5B 2M6.
- (b) The Filer is a reporting issuer in all of the Jurisdictions where such status exists and the Filer’s issued and outstanding income participating securities (“IPSs”) are listed and posted for trading on the Toronto Stock Exchange (the “TSX”).
- (c) To the best of its knowledge, the Filer is not in default of any requirement of the Legislation and is not on any list of defaulting reporting issuers maintained pursuant to the Legislation.
- (d) On November 10, 2004, the Filer filed a final prospectus (the “Prospectus”) for its initial public offering (the “IPO”) and became a reporting issuer in each of the Jurisdictions where such status exists.

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- (e) On November 18, 2004, the Filer completed the IPO and used the proceeds to indirectly acquire interests in the 15 power generation projects described the Prospectus.
- (f) On the closing of the IPO, the Filer issued 32,000,000 IPSs at a purchase price of \$10 per IPS for total gross proceeds of \$320,000,000. Each IPS of the Filer is comprised of two components: a common share component and a subordinated note component. The value of each of the Filer's IPSs was allocated between the common share component (\$4.233) and the subordinated note component (\$5.767).
- (g) Holders of IPSs have the right, at any time after 45 days of the date of the completion of the IPO, to separate each IPS into its respective common share and subordinated note component. The IPSs also separate automatically on the repurchase, redemption or maturity of the subordinated notes.
- (h) Each common share of the Filer carries one vote and entitles the holder to receive dividends as and when declared by the board of directors of the Filer and to share rateably in the remaining assets of the Filer on a liquidation or dissolution. A separate certificate representing the IPSs was issued on closing and each IPS is held through the book-entry system administered by CDS. The common shares and subordinated notes represented by the IPSs were also issued on closing and are held by the Filer's transfer agent pursuant to the terms of a voting and separation agreement.
- (i) The IPSs are listed and posted for trading on the TSX and the underlying common shares are listed on the TSX but not posted for trading. If a sufficient number of IPSs are separated to create a public distribution of common shares, the TSX will post a market in the common shares as well.

Decision

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 the Requested Relief is granted provided that:

- (a) the Filer shall only be exempt from the short form prospectus qualification criteria in section 2.2 of NI 44-101 that the aggregate market value of its equity securities be \$75,000,000 or more on certain dates, if the sum of (i) the aggregate market value of the Filer's unseparated IPSs that are listed and posted for trading on an exchange in Canada and (ii) the aggregate market

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value of the Filer's equity securities that are listed and posted for trading on an exchange in Canada, is \$75,000,000 or more on a date within 60 days before the date of filing by the Filer of the preliminary short form prospectus;

- (b) the Filer shall only be exempt from the short form prospectus qualification criteria in section 2.3 of NI 44-101 that the aggregate market value of its equity securities be \$300,000,000 or more on certain dates, if the sum of (i) the aggregate market value of the Filer's unseparated IPSs that are listed and posted for trading on an exchange in Canada and (ii) the aggregate market value of the Filer's equity securities that are listed and posted for trading on an exchange in Canada, is \$300,000,000 or more on a date within 60 days before the date of filing by the Filer of the preliminary short form prospectus;
- (c) in all cases, the aggregate market value of the Filer's issued and outstanding IPSs on the relevant date shall be calculated in accordance with section 2.9 of NI 44-101 and all references to "equity securities" in that section shall be deemed to include IPSs for this purpose; and
- (d) in all cases, the Filer otherwise complies with NI 44-101.

Iva Vranic
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Ontario Securities Commission