

2002 BCSECCOM 563

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - offeror granted relief from the requirement to include the consent of former auditor for inclusion of auditors' report on the offeror's financial statements being incorporated by reference in a take-over bid circular - auditor no longer engaged in the practice of public accounting in Canada

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 114(2)(c)

Securities Rules, B.C. Reg. 194/97, s. 171

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

AND

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

AND

IN THE MATTER OF ENERFLEX SYSTEMS INC.

1. WHEREAS the Canadian securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta and Ontario (the "Jurisdictions") has received an application from Enerflex Systems Inc. (the "Filer") for a decision pursuant to the securities legislation of the Jurisdictions (the "Legislation") that the Filer be exempt from the requirement in the Legislation to include a consent of the Filer's former auditors, Arthur Andersen LLP, to the incorporation by reference of the auditors' report of Arthur Andersen LLP on the financial statements of the Filer for the years ended December 31, 2000 and December 31, 2001 (the "Consent Requirement") in a take-over bid circular (the "Circular") in connection with a proposed share exchange take-over bid (the "Bid") for all of the outstanding common shares of EnSource Energy Services Inc. ("Ensource");
2. AND WHEREAS pursuant to the Mutual Reliance Review System (the "System"), the Alberta Securities Commission is the principal regulator (the "Principal Regulator") for this application;
3. AND WHEREAS it was represented by the Filer to the Decision Makers that:

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- 3.1 the Filer is a reporting issuer in all of the provinces of Canada, its common shares are listed on The Toronto Stock Exchange (“TSX”), it is qualified to file a short form prospectus in accordance with the requirements of National Instrument 44-101 (“NI 44-101”), and its head office is located in Calgary, Alberta;
- 3.2 EnSource is a reporting issuer in Alberta, British Columbia and Ontario, its common shares are listed on the TSX, and its head office is located in Calgary, Alberta;
- 3.3 on May 28, 2002, the Filer and EnSource entered into a pre-acquisition agreement under which the Filer agreed to purchase all of the issued and outstanding common shares of EnSource on the basis of 0.26 of a common share of the Filer for each EnSource share;
- 3.4 Enerflex and EnSource announced the proposed transaction after the close of markets on May 28, 2002;
- 3.5 under the terms of the pre-acquisition agreement, the Filer is required to mail to EnSource shareholders a takeover bid circular (the “Circular”) on or before June 12, 2002;
- 3.6 on June 3, 2002, Arthur Andersen LLP resigned as auditor of the Filer and advised the Filer that it would be unable to provide a consent to the inclusion of its audit report in the Circular;
- 3.7 on June 10, 2002, the Filer appointed Deloitte & Touche LLP as auditor;
- 3.8 in the absence of a consent from Arthur Andersen LLP, the Filer proposes to include in the Circular the disclosure set out in Appendix A;
4. AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);
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. THE DECISION of the Decision Makers in the Jurisdictions pursuant to the Legislation is that the Filer is exempt from the Consent Requirement in connection with the Bid.

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Dated June 12, 2002

Glenda A Campbell, Q.C., Vice-Chair

Eric T. Spink, Vice- Chair

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Appendix A

Arthur Andersen LLP has advised Enerflex that it is no longer engaged in the practice of public accounting in Canada. Accordingly, Enerflex is unable to obtain the consent of Arthur Andersen LLP with respect to the incorporation by reference in the Circular of the auditors' report of Arthur Andersen LLP on the financial statements as at and for the years ended December 31, 2001 and 2000.

Generally, in accordance with applicable securities legislation, holders of securities may only exercise a statutory right of action against a person or company that has prepared a report, opinion or statement that is included in a take-over bid circular if that person or company has filed a consent in respect of such report, opinion or statement and such right of action may only be exercised in respect of the report, opinion or statement that has been made by such person or company. As a result, the absence of a consent from Arthur Andersen LLP to the inclusion in the Circular of their auditors' report may limit the statutory right of action of EnSource Shareholders against Arthur Andersen LLP. Enerflex is not aware of the extent to which there may be assets available, if any, to satisfy any judgment against Arthur Andersen LLP.