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## **Headnote**

Mutual Reliance Review System for Exemptive Relief Application – relief granted from continuous disclosure requirements for an exchangeable share issuer whose securities are exchangeable into units of an income trust

## **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C.1996, c. 418, ss. 85(1), 91, 117 and 119

*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145, 149 and 184

National Instrument 51-102 – *Continuous Disclosure Obligations*, s. 13.1

## **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, NEWFOUNDLAND AND LABRADOR, YUKON AND NUNAVUT**

**AND**

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

**AND**

## **IN THE MATTER OF PROGRESS ENERGY LTD., CEQUEL ENERGY INC., PROGRESS ENERGY TRUST, PROGRESS ACQUISITION CORP., CEQUEL ACQUISITION CORP., CYRIES ENERGY INC. AND PROEX ENERGY LTD.**

## **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (collectively, the “Decision Makers”) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon and Nunavut (collectively, the “Jurisdictions”) has received an application from Progress Energy Ltd. (“Progress”), Cequel Energy Inc. (“Cequel”), Progress Energy Trust (the “Trust”), Progress Acquisition Corp. (“Progress AcquisitionCo”), Cequel Acquisition Corp. (“Cequel AcquisitionCo”), Cyries Energy Inc. (“Cyries”) and ProEx Energy Ltd. (“ProEx”), in connection with a proposed plan of arrangement (the “Arrangement”) under Section 193 of the *Business Corporations Act* (Alberta) (the “ABCA”) involving Progress, Cequel, the Trust, Progress AcquisitionCo, Cequel AcquisitionCo, Cyries and ProEx, for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that Progress AcquisitionCo and Cequel AcquisitionCo (and their successor on amalgamation with Progress and Cequel (“AmalgamationCo”)), be

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granted an exemption from National Instrument 51-102 Continuous Disclosure Obligations (“NI 51-102”), in its entirety, in each of the Jurisdictions, and in Québec by a revision of general order No. 2004-PDG-0020 dated March 26, 2004, and further be granted an exemption from any comparable continuous disclosure requirements under the Legislation of the Jurisdictions (other than Ontario) that have not yet been repealed or otherwise rendered ineffective as a consequence of the adoption of NI 51-102 (collectively, the “Continuous Disclosure Requirements”);

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;

AND WHEREAS, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS the Trust, Progress, Cequel, Progress AcquisitionCo, Cequel AcquisitionCo, Cyries and ProEx have represented to the Decision Makers that:

1. Progress is a corporation incorporated and subsisting pursuant to the provisions of the ABCA;
2. the head and principal office and registered office of Progress are located at Calgary, Alberta;
3. the authorized capital of Progress includes an unlimited number of common shares (“Progress Common Shares”). As at May 25, 2004, 33,938,556 Progress Common Shares were issued and outstanding. Progress has also reserved a total of 2,500,123 Progress Common Shares for issuance pursuant to outstanding options to purchase Progress Common Shares and warrants to purchase Progress Common Shares;
4. the Progress Common Shares are listed on The Toronto Stock Exchange (the “TSX”);
5. Progress is a reporting issuer in the Provinces of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia and has been for more than 12 months;
6. Progress has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Manitoba, Ontario, Québec and Nova Scotia and is not to its knowledge in default of the securities legislation in any of these jurisdictions;

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7. Cequel is a corporation amalgamated and subsisting pursuant to the provisions of the ABCA;
8. the head and principal office and registered office of Cequel are located at Calgary, Alberta;
9. the authorized capital of Cequel includes an unlimited number of common shares ("Cequel Common Shares"). As at May 25, 2004, 58,209,452 Cequel Common Shares were issued and outstanding. Cequel has also reserved a total of 10,650,747 Cequel Common Shares for issuance pursuant to outstanding options to purchase Cequel Common Shares and warrants to purchase Cequel Common Shares;
10. the Cequel Common Shares are listed on the TSX;
11. Cequel is a reporting issuer in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and has been for more than 12 months;
12. Cequel has filed all the information that it has been required to file as a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador and is not to its knowledge in default of the securities legislation in any of these jurisdictions;
13. the Trust is an open-end unincorporated investment trust governed by the laws of the Province of Alberta and created pursuant to a trust indenture dated May 26, 2004 among Cequel, Progress and Computershare Trust Company of Canada, as trustee;
14. the Trust was established to, among other things:
  - (a) participate in the Arrangement including, without limitation, acquiring a net profits interest under the net profits interest agreement to be entered into between AmalgamationCo and the Trust;
  - (b) invest in securities of Progress AcquisitionCo, Cequel AcquisitionCo, Progress Energy ExchangeCo Ltd. ("ExchangeCo") or any other affiliate or subsidiary of the Trust and acquire the securities of Progress and Cequel pursuant to the Arrangement, which investments shall be for the purpose of funding the acquisition, development, exploitation and disposition of all types of petroleum and natural gas and energy related

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assets, including without limitation, facilities of any kind, oil sands interests, electricity or power generating assets and pipeline, gathering, processing and transportation assets and whether effected by an acquisition of assets or an acquisition of shares or other form of ownership interest in any entity the substantial majority of the assets of which are comprised of like assets;

- (c) acquire or invest in the securities of any other entity, including without limitation bodies corporate, partnerships or trusts and borrow funds or otherwise obtaining credit for that purpose; and
- (d) make loans or other advances to AmalgamationCo or any affiliate or subsidiary of the Trust or AmalgamationCo;

15. the head and principal office of the Trust is located at Calgary, Alberta;
16. the Trust was established with nominal capitalization and currently has only nominal assets and no liabilities. The only activity which will initially be carried on by the Trust will be the holding of securities of Progress AcquisitionCo, Cequel AcquisitionCo and ExchangeCo;
17. the Trust is authorized to issue an unlimited number of trust units ("Trust Units") and an unlimited number of special voting units ("Special Voting Units");
18. as of the date hereof, there are two (2) Trust Units issued and outstanding and no Special Voting Units are outstanding;
19. the Trust has obtained the conditional approval of the TSX for the listing on the TSX of the Trust Units to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Trust Units issuable from time to time in exchange for the exchangeable shares of AmalgamationCo (the "Exchangeable Shares") will also be listed on the TSX, subject to receipt of final approval from the TSX;
20. the Trust is not a reporting issuer in any of the Jurisdictions;
21. Progress AcquisitionCo is a wholly-owned subsidiary of the Trust that was incorporated pursuant to the ABCA. Progress AcquisitionCo was incorporated to participate in the Arrangement by, among other things, creating and issuing promissory notes and exchangeable shares required for implementing the Arrangement;

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22. the head and principal office and registered office of Progress AcquisitionCo are located at Calgary, Alberta;
23. the authorized capital of Progress AcquisitionCo currently includes an unlimited number of common shares. All of the common shares of Progress AcquisitionCo are owned by the Trust;
24. Progress AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
25. Cequel AcquisitionCo is a wholly-owned subsidiary of the Trust that was incorporated pursuant to the ABCA. Cequel AcquisitionCo was incorporated to participate in the Arrangement by, among other things, creating and issuing promissory notes and exchangeable shares required for implementing the Arrangement;
26. the head and principal office and registered office of Cequel AcquisitionCo are located at Calgary, Alberta;
27. the authorized capital of Cequel AcquisitionCo currently includes an unlimited number of common shares. All of the common shares of Cequel AcquisitionCo are owned by the Trust;
28. Cequel AcquisitionCo is not a reporting issuer in any of the Jurisdictions;
29. ProEx is a Canadian controlled private corporation incorporated pursuant to the provisions of the ABCA for the purposes of participating in the Arrangement. ProEx has not carried on any active business since incorporation;
30. the head and principal office and its registered office of ProEx are located at Calgary, Alberta;
31. pursuant to the Arrangement, ProEx will acquire, directly and indirectly, certain oil and gas assets from Progress. Upon completion of the Arrangement, ProEx will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves in the western Canadian sedimentary basin;
32. the authorized capital of ProEx includes an unlimited number of common shares ("ProEx Common Shares");
33. ProEx has applied for conditional approval from the TSX for the listing on the TSX of the ProEx Common Shares to be issued in connection with the

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Arrangement subject to, among other things, completion of the Arrangement. The ProEx Common Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;

34. ProEx is not a reporting issuer in any of the Jurisdictions;
35. Cyries is a Canadian controlled private corporation incorporated pursuant to the provisions of the ABCA for the purposes of participating in the Arrangement. Cyries has not carried on any active business since incorporation;
36. the head and principal office and registered office of Cyries are located at Calgary, Alberta;
37. pursuant to the Arrangement, Cyries will acquire, directly and indirectly, certain oil and gas assets from Cequel. Upon completion of the Arrangement, Cyries will be engaged in the exploration for, and acquisition, development and production of, oil and natural gas reserves in the western Canadian sedimentary basin;
38. the authorized capital of Cyries includes an unlimited number of common shares ("Cyries Common Shares");
39. Cyries has applied for conditional approval from the TSX for the listing on the TSX of the Cyries Common Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement. The Cyries Common Shares issuable from time to time will also be listed on the TSX, subject to receipt of final approval from the TSX;
40. Cyries is not a reporting issuer in any of the Jurisdictions;
41. AmalgamationCo will be formed on the effective date of the Arrangement (the "Effective Date") pursuant to the amalgamation of Progress, Cequel, Progress AcquisitionCo and Cequel AcquisitionCo pursuant to the provisions of the ABCA;
42. the principal office and the registered office of AmalgamationCo will be located at, Calgary, Alberta;
43. the authorized capital of AmalgamationCo will include an unlimited number of common shares and an unlimited number of Exchangeable Shares;

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44. the Trust has obtained the conditional approval of the TSX for the listing on the TSX of the Exchangeable Shares to be issued in connection with the Arrangement subject to, among other things, completion of the Arrangement;
45. the common shares of AmalgamationCo will not be listed on any stock exchange;
46. all common shares of AmalgamationCo will be beneficially owned (directly or indirectly) by the Trust, for as long as any outstanding Exchangeable Shares are owned by any person other than the Trust or any of the Trust's subsidiaries and other affiliates;
47. the Arrangement will require: (i) approval by not less than two-thirds of the votes cast by the Progress securityholders and Cequel securityholders (present in person or represented by proxy), voting together as a single class, at the respective securityholder meetings (collectively, the "Meetings") of Progress and Cequel at which the Arrangement will be considered, and thereafter; (ii) approval of the Court of Queen's Bench of Alberta;
48. the joint information circular and proxy statement dated May 28, 2004 (the "Information Circular") prepared by Progress and Cequel contains prospectus-level disclosure concerning the respective business and affairs of Progress, Cequel, the Trust, ProEx, Cyries and AmalgamationCo and a detailed description of the Arrangement, and has been mailed to Progress securityholders and Cequel securityholders in connection with the Meetings. The Information Circular has been prepared in conformity with the provisions of the ABCA and applicable securities laws and policies;
49. the Arrangement provides that at the time the Arrangement takes effect on the Effective Date, a series of transactions will occur that will result in, among other things:
  - (a) subject to certain exceptions and adjustments, shareholders of Cequel receiving, for each Cequel Common Share owned:
    - (i) 0.695 of a Trust Unit, 0.139 of a ProEx Common Share and 0.139 of a Cyries Common Share; or
    - (ii) 0.695 of an Exchangeable Share, 0.139 of a ProEx Common Share and 0.139 of a Cyries Common Share;
  - (b) subject to certain exceptions and adjustments, shareholders of Progress receiving, for each Progress Common Share owned:

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- (i) one Trust Unit, 0.20 of a ProEx Common Share and 0.20 of a Cyries Common Share; or
    - (ii) one Exchangeable Share, 0.20 of a ProEx Common Share and 0.20 of a Cyries Common Share;
  - (c) the conveyance by Progress of certain assets to ProEx;
  - (d) the conveyance by Cequel of certain assets to Cyries; and
  - (e) Progress, Cequel, Progress AcquisitionCo and Cequel AcquisitionCo shall be amalgamated and continued as one corporation, AmalgamationCo;
50. AmalgamationCo will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
51. the Trust will become a reporting issuer under the Legislation of British Columbia, Alberta, Saskatchewan, Ontario and Québec, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions. Applications have been made to deem or declare the Trust to be a reporting issuer under the Legislation of Nova Scotia and Newfoundland and Labrador and if said applications are granted, the Trust will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
52. ProEx and Cyries will become reporting issuers under the Legislation of British Columbia, Alberta, Saskatchewan, Québec, Nova Scotia and Newfoundland and Labrador, and will be subject to the Continuous Disclosure Requirements in such Jurisdictions;
53. the Exchangeable Shares provide a holder with a security having economic and voting rights which are, as nearly as practicable, equivalent to those of the Trust Units;
54. under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, holders of Exchangeable Shares will be able to exchange them at their option for Trust Units;
55. under the terms of the Exchangeable Shares and certain rights to be granted in connection with the Arrangement, the Trust, ExchangeCo or AmalgamationCo



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will redeem, retract or otherwise acquire Exchangeable Shares in exchange for Trust Units in certain circumstances;

56. in order to ensure that the Exchangeable Shares remain the voting and economic equivalent of the Trust Units prior to their exchange, the Arrangement provides for:

- (a) a voting and exchange trust agreement to be entered into among the Trust, AcquisitionCo, ExchangeCo and Valiant Trust Company (the “Voting and Exchange Agreement Trustee”) which will, among other things, (i) grant to the Voting and Exchange Agreement Trustee, for the benefit of holders of Exchangeable Shares, the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares for Trust Units, and (ii) trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events;
- (b) the deposit by the Trust of a Special Voting Unit with the Voting and Exchange Agreement Trustee which will effectively provide the holders of Exchangeable Shares with voting rights equivalent to those attached to the Trust Units; and
- (c) a support agreement to be entered into among the Trust, AcquisitionCo and ExchangeCo which will, among other things, restrict the Trust from issuing or distributing to the holders of all or substantially all of the outstanding Trust Units:
  - (i) additional Trust Units or securities convertible into Trust Units;
  - (ii) rights, options or warrants for the purchase of Trust Units; or
  - (iii) units or securities of the Trust other than Trust Units, evidences of indebtedness of the Trust or other assets of the Trust;

unless the same or an equivalent distribution is made to holders of Exchangeable Shares, an equivalent change is made to the Exchangeable Shares, such issuance or distribution is made in connection with a distribution reinvestment plan instituted for holders of Trust Units or a unitholder rights protection plan approved for holders of Trust Units by the board of directors of AmalgamationCo, or the approval of holders of Exchangeable Shares has been obtained;

57. the Information Circular discloses that application will be made to relieve AmalgamationCo from the Continuous Disclosure Requirements;

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58. the Trust will concurrently send to holders of Exchangeable Shares resident in the Jurisdictions all disclosure material it sends to holders of Trust Units pursuant to the Legislation; and

59. AmalgamationCo and its insiders will comply with the insider reporting requirement and the requirement to file an insider profile under National Instrument 55-102;

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 under the Legislation is that the Continuous Disclosure Requirements of the Jurisdictions shall not apply to AmalgamationCo for so long as:

- (a) the Trust is a reporting issuer in at least one of the jurisdictions listed in Appendix B of Multilateral Instrument 45-102 and is an electronic filer under National Instrument 13-101;
- (b) the Trust sends to all holders of Exchangeable Shares resident in the Jurisdictions all disclosure material furnished to holders of Trust Units under the Continuous Disclosure Requirements;
- (c) the Trust complies with the requirements in the Legislation and of any marketplace on which the securities of the Trust are listed or quoted in respect of making public disclosure of material information on a timely basis, and immediately issues and files any news release that discloses a material change in its affairs;
- (d) AmalgamationCo issues a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of AmalgamationCo that are not also material changes in the affairs of the Trust;
- (e) the Trust includes in all mailings of proxy solicitation materials to holders of Exchangeable Shares a clear and concise statement that explains the reason the mailed material relates solely to the Trust, indicates that the Exchangeable Shares are the economic equivalent to

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the Trust Units, and describes the voting rights associated with the Exchangeable Shares;

- (f) the Trust remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities of AmalgamationCo; and
- (g) AmalgamationCo does not issue any securities, other than the Exchangeable Shares, securities issued to the Trust or its affiliates, or debt securities issued to banks, loan corporations, trust corporations, treasury branches, credit unions, insurance companies or other financial institutions.

DATED at Calgary, Alberta on this 30<sup>th</sup> day of June, 2004.

Mavis Legg, CA  
Manager, Securities Analysis