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**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications –Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available for technical reasons - Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions - First trades of securities acquired under the arrangement subject to the provisions in Multilateral Instrument 45-102 *Resale of Securities*.

**Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c.418, ss. 48, 76, and 91

Multilateral Instrument 45-102 *Resale of Securities*

**IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA,  
BRITISH COLUMBIA, SASKATCHEWAN, MANITOBA, ONTARIO,  
QUÉBEC, NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD  
ISLAND, NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY,  
NUNAVUT AND NORTHWEST TERRITORIES**

**AND**

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

**AND**

**IN THE MATTER OF NABORS INDUSTRIES, INC., NABORS  
EXCHANGE CO (CANADA) INC., 3064297 NOVA SCOTIA COMPANY  
AND ENSERCO ENERGY SERVICE COMPANY INC.**

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries, Inc. ("Nabors"), 3064297 Nova Scotia Company ("Callco") and Nabors Exchangeco (Canada) Inc. ("Canco") (collectively, the "Applicant") for a decision under the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:

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- 1.1 the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefore (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement (the "Acquisition Agreement") to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") pursuant to a plan of arrangement (the "Arrangement") under Section 192 of the Canada Business Corporations Act, as amended (the "CBCA");
- 1.2 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial statements, information circulars and annual information forms and provide, where applicable, interim and annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco; and
- 1.3 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Canco;
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:
  - 3.1 Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
  - 3.2 Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;

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- 3.3 as at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively;
- 3.4 the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("Nabors Shares"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding and no other shares of any class or series outstanding;
- 3.5 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "AMEX") under the symbol "NBR";
- 3.6 as at February 22, 2002, there were nine registered holders of Nabors Shares resident in Canada (out of a total of 2,447 registered holders) holding 1,744 Nabors Shares, representing approximately 0.001% of the total number of issued and outstanding Nabors Shares. As of March 27, 2002, there were 976 beneficial holders of Nabors Shares resident in Canada holding 243,022 Nabors Shares representing approximately 0.17% of the total number of issued and outstanding Nabors Shares;
- 3.7 on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion;
- 3.8 Nabors is subject to the reporting requirements of the United States Securities Exchange Act of 1934, as amended (the "1934 Act");
- 3.9 Nabors is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, Saskatchewan and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.10 Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the Companies Act (Nova Scotia) solely for the purpose of holding the various call rights associated with the exchangeable non-voting shares of Canco to be issued pursuant to the Arrangement (the "Exchangeable Shares");

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- 3.11 all of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times. Callco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada;
- 3.12 Nabors and Callco have submitted an application to the securities regulatory authorities in Alberta and Saskatchewan to be deemed to have ceased to be reporting issuers or the equivalent after the Effective Time (as defined below) of the Arrangement;
- 3.13 Canco was incorporated under the CBCA on March 8, 2002 for the purpose of implementing the Arrangement, and has its registered office in Calgary, Alberta. Canco has not carried on any business to date;
- 3.14 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;
- 3.15 the only securities of Canco that are issued or may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares are held and will continue to be held, indirectly, by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares (as defined below) who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement;
- 3.16 Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.17 the Exchangeable Shares were conditionally approved for listing on The Toronto Stock Exchange (the "TSE") on March 20, 2002, subject to completion of the Arrangement and the satisfaction of its customary requirements;
- 3.18 on November 17, 1988, Bonus Petroleum Cop. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("Bonus") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink

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Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001;

- 3.19 Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs;
- 3.20 Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively;
- 3.21 the authorized capital of Enserco consists of an unlimited number of common shares ("Enserco Shares"), of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money options ("Enserco Options") and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Enserco Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding warrants ("Warrants"). Up to an additional 2,500 Enserco Shares may be issued pursuant to certain share purchase rights ("Share Purchase Rights") pursuant to a cooperation agreement dated June 18, 2001 between Bonus Well Servicing Partnership and Polar Energy Services Ltd.;
- 3.22 the Enserco Shares are listed and posted for trading on the TSE under the symbol "ERC";
- 3.23 Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;
- 3.24 to the knowledge of the Applicant, Enserco is not in default of any requirements of the Legislation;
- 3.25 on March 19, 2002 the Applicant and Enserco obtained under Section 192 of the CBCA an interim order (the "Interim Order") from the Court of Queen's Bench of Alberta specifying, among other things, certain procedures and requirements to be followed in connection with the calling

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and conduct of the Enserco Meeting (as defined below) and the completion of the Arrangement;

- 3.26 the Arrangement is subject to approval of the holders of Enserco Shares ("Shareholders"), and the holders of Enserco Options, Warrants and Shares Purchase Rights (collectively, the "Enserco Security Holders") and the Court of Queen's Bench of Alberta by virtue of a final order (the "Final Order") approving the Arrangement;
- 3.27 a meeting of the Enserco Security Holders (the "Enserco Meeting") has been scheduled for April 24, 2002 to consider and, if deemed appropriate, approve the Arrangement;
- 3.28 an information circular dated on or about March 20, 2002 (the "Circular") prepared in accordance with the Legislation will be mailed to the Enserco Security Holders in connection with the Enserco Meeting and filed with each of the Decision Makers concurrently therewith;
- 3.29 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco;
- 3.30 at the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Warrants and Share Purchase Rights will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;
- 3.31 upon receipt of the approval of the Enserco Security Holders at the Enserco Meeting, the Applicant and Enserco will thereafter apply to the Court of Queen's Bench for the Final Order;
- 3.32 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about April 26, 2002;
- 3.33 under the terms of the Arrangement, at the effective time (the "Effective Time") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "Effective Date"):
  - 3.33.1 each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the

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fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "Per Share Price"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 3.34);

3.33.2 each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefore the Per Share Price in cash;

3.33.3 each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 3.34). The exercise price per Nabors Share under the Warrant shall equal the exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and

3.33.4 each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash,

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without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance;

3.34 the "Exchange Ratio" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "Measurement Period") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "Nabors Average Price"). The "Simple Average of the Weighted Average Trading Price" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;

3.35 as an alternative to the exchange contemplated by paragraph 3.33.1 each Shareholder shall be entitled to transfer its Enserco Shares to a newly incorporated corporation (a "Holdco") and transfer the issued and outstanding shares thereof (collectively, "Holdco Shares") to Canco (the "Holdco Alternative"), provided that on or prior to and as of the Effective Date:

3.35.1 the Shareholder is a resident of Canada for the purposes of the Income Tax Act (Canada) (the "ITA");

3.35.2 Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;

3.35.3 the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;

3.35.4 Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;

3.35.5 the Shareholder indemnifies Nabors, Enserco, Canco and Calco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Acquiror, Canco

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or Callco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;

- 3.35.6 prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;
- 3.35.7 on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;
- 3.35.8 on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabor's consent, acting reasonably;
- 3.35.9 other than as provided in 3.35.6 above, Holdco will not declare or pay any dividends or other distributions;
- 3.35.10 the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabor's right to approve all such returns as to form and substance;
- 3.35.11 the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and

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- 3.35.12 the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco;
- 3.36 to the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):
- 3.36.1 the Per Share Price in cash without additional interest; or
- 3.36.2 such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,
- in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco;
- 3.37 no fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Canco or Nabors. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share will be entitled to receive a cash payment equal to the product of the fractional interest and the Nabors Average Price;
- 3.38 as a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Enserco Shares will be held directly or indirectly by Nabors and its affiliates;
- 3.39 it is expected that the Enserco Shares will be delisted from the TSE on or after the Effective Date. Enserco will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec. It is expected that Enserco will apply for such exemptive relief upon completion of the Arrangement;
- 3.40 Nabors will apply to the AMEX to list the Nabors Shares to be issued in exchange for the Exchangeable Shares and upon exercise of the Warrants;

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- 3.41 the rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Nabors, Canco and a Canadian trust company (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Nabors, Callco and Canco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below;
- 3.42 the Exchangeable Shares will be issued by Canco and will be exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share will provide a holder with economic terms and voting rights, which are, as nearly as practicable, equivalent to those of a Nabors Share. Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the ITA;
- 3.43 subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "Exchangeable Share Price") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "Retraction Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "Retraction Request"), Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions;
- 3.44 subject to applicable law and the Redemption Call Right (as defined and described below), Canco:

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3.44.1 may at any time on or after the fifth anniversary of the Effective Date; or

3.44.2 will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,

redeem all but not less than all of the then outstanding Exchangeable Shares (the "Redemption Date") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "Redemption Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Callco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement;

3.45 except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable Share Provisions, the holders of Exchangeable Shares will not be entitled to receive notice of, or attend or vote at, any meeting of shareholders of Canco;

3.46 on the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares;

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- 3.47 the Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share;
- 3.48 on the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Callco (the "Liquidation Call Right") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "Liquidation Date") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "Liquidation Amount"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.49 on the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.50 in order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the assets of Nabors among its shareholders for the purpose of winding up its affairs (a "Liquidation Event"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement;

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- 3.51 the Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs;
- 3.52 on the Effective Date, Nabors, Canco and Callco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, re-divide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares;
- 3.53 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares and replacement Warrants; the issuance of Nabors Shares upon the exchange of Exchangeable Shares and the issuance of Nabors Shares upon the exercise of Warrants; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Callco) in connection with the Arrangement;
- 3.54 the fundamental investment decision to be made by an Enserco Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than a dissenting Shareholder) will

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ultimately receive Nabors Shares in exchange for the Enserco Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision;

- 3.55 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares;
- 3.56 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted;
- 3.57 following completion of the Arrangement, assuming an Exchange Ratio of 0.2808 (based upon the closing price of Nabors Shares, and the Canadian dollar exchange rate in effect, on the day immediately prior to the Arrangement being publicly announced), and assuming that Exchangeable Shares are considered to be Nabors Shares, it is expected that the beneficial holders of Nabors Shares resident in Canada will hold approximately 4.3% of the issued and outstanding Nabors Shares calculated based upon the number of beneficial and registered Shareholders and registered holders of Nabors Shares who are residents of Canada and on the assumption that the consideration to be paid by Nabors to Shareholders pursuant to the Arrangement will consist entirely of Exchangeable Shares (other than in respect of approximately 20.5% of Enserco Shares acquired by Nabors pursuant to prior agreement for cash);
- 3.58 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act;

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4. AND WHEREAS under 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. AND WHEREAS the Decision of the Decision Makers pursuant to the Legislation is that:
  - 6.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades;
  - 6.2 the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless:
    - 6.2.1 except in Quebec,
      - 6.2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or
      - 6.2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Enserco Shares shall be included in the calculation of the hold period);
    - 6.2.2 in Québec,
      - 6.2.2.1 Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the

## 2002 BCSECCOM 363

period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);

6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares;

6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

6.2.2.4 if the selling Exchangeable Share holder is an insider or officer of Nabors or Canco, the selling Exchangeable Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;

6.3 the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:

6.3.1 except in Québec,

6.3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or

6.3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and

6.3.2 in Québec,

6.3.2.1 Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);

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- 6.3.2.2 no unusual effort is made to prepare the market or to create a demand for the Nabors Shares;
  - 6.3.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - 6.3.2.4 if the selling Nabors Share holder is an insider or officer of Nabors or Canco, the selling Nabors Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;
- 6.4 the Continuous Disclosure Requirements shall not apply to Canco so long as:
- 6.4.1 Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
  - 6.4.2 Nabors files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Canco's SEDAR profile and the filing fees which would otherwise be payable by Canco in connection with such filings are paid;
  - 6.4.3 Nabors complies with the requirements of the AMEX in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Nabors' affairs;
  - 6.4.4 Canco complies with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares;
  - 6.4.5 Nabors includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct

## 2002 BCSECCOM 363

voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);

6.4.6 Nabors remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Canco; and

6.4.7 Canco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement; and

6.5 the Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders*, shall not apply to Canco and each insider of Canco, so long as:

6.5.1 such insider of Canco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Nabors before the material facts or material changes are generally disclosed; and

6.5.2 such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

DATED this 18th day of April, 2002.

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

Jerry A. Bennis, FCA, Member



**British Columbia  
Securities Commission**  
LEGAL AND MARKET INITIATIVES

# MEMORANDUM

## MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

### Recommendation and Determination

To: Noreen Bent, Manager

From: David Gunasekera, Legal Counsel

Date: April 11, 2002

Re: Nabors Industries Inc.  
MRRS for Exemptive Relief Applications (the "System")  
Application pursuant to section 48, 76 and 91 of the *Securities Act*

Subtype: ☐ Anomalous ☐ DeMinimis ☒ Routine ☐ N/A

### Recommendation

Attached is the recommendation of the staff of the principal regulator and the principal decision document on this application received by our office on April 9, 2002.

I recommend we make the same determination on this application as the principal regulator and opt into the System for this application. Confirmation of our decision to the principal regulator is required on or before **Thursday April 18, 2002**.

### Comments

This is a standard application for prospectus and registration relief and continuous disclosure and insider reporting relief in relation to a plan of arrangement involving exchangeable shares. The facts are set out in the attached decision document. All capitalized terms have the same meaning ascribed to them in the decision document.

Under the Arrangement, Canco, an indirect wholly owned subsidiary of Nabors, will issue exchangeable shares to former shareholders of Enserco. Following the Arrangement, Enserco will become a wholly owned subsidiary of Canco. The Exchangeable Shares are exchangeable into shares of Nabors. At the same time, Nabors will transfer that number of Nabors shares equalling the number of Exchangeable shares issued by Canco to the Trustee who will hold them in trust for the Exchangeable shareholders. The Exchangeable Shares will be listed on The TSE and Canco will become a reporting issuer in the Jurisdictions.

Under certain agreements entered into between the Exchangeable shareholders and the other parties, the Exchangeable shareholders will have all the same voting and economic rights as shareholders in Nabors.

As a result of the cross border share exchange structure, adopted for tax purposes, certain of the Trades do not technically fit within the arrangement exemptions in sections 45(2)(9) and 74(2)(8) of the Act.

I recommend granting this relief because:

- Each of the proposed Trades falls within the spirit and intent of the existing arrangement exemptions.
- The resale restrictions that apply to both the Exchangeable Shares and Nabors Shares, acquired on the exchange of the Exchangeable Shares, are subject to the resale restrictions in section 2.6 of MI 45-102 *Resale of Securities*. For certainty, it is stated in the decision document that the time that Enserco has been a reporting issuer may be used in determining the length of time that Canco has been deemed to be reporting.
- The relevant continuous disclosure information for holders of Exchangeable Shares is the disclosure of Nabors. The continuous disclosure relief is conditional on the holders of Exchangeable Shares receiving all the same continuous disclosure material provided to Nabors shareholders.
- The relief is not novel. Relief has been granted on numerous previous occasions in similar transactions. I attach a copy of the recent *Duke Energy* decision granted on Feb 26, 2002. The attached decision document contains all of the same key representations and conditions to the relief as contained in the *Duke* decision

Attached is an email note summarizing the continuous disclosure and insider reporting relief that will be provided to Anne McTeer once the decision is finalized.

  
David Gunasekera, Legal Counsel

Nabors Industries, Inc.

Date: April 12, 2002

Issuer a Reporting Issuer:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Statutory Filings Up-to-Date:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Cease Trade Order:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Investigation Pending / 3 File:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Enserco Energy Service Company Inc.

Date: April 12, 2002

Issuer a Reporting Issuer:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Statutory Filings Up-to-Date:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Cease Trade Order:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Investigation Pending / 3 File:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Determination:**

I make the same determination on this application as the principal regulator and opt into the System for this application. I consider that to grant the requested relief as contained in the decision document not to be prejudicial to the public interest.

April 15/02  
Date

Noreen Bent  
Noreen Bent



ALBERTA SECURITIES COMMISSION

## MEMORANDUM

**TO:** Commission Members

**DOCUMENT NO.:** 932852

**FILE NO.:** B28405

**FROM:** Blaine Young  
Legal Counsel

**DIRECT LINE:** 297- 4220

**DATE:** April 9, 2002

**SUBJECT:** MRRS for Exemptive Relief - Application filed by Nabors Industries, Inc. ("Nabors"), 3064297 Nova Scotia Company ("Calco"), and Nabors Exchangeco (Canada) Inc. ("Canco") dated March 11, 2002 under the *Securities Act* (Alberta) (the "Alberta Act")

### Application

This is an application filed under the Mutual Reliance Review System for Exemptive Relief Applications in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Yukon, Northwest Territories and Nunavut (the "Jurisdictions"). The Alberta Securities Commission (the "ASC") is the principal regulator for this application.

### Relief Sought

Nabors, Calco, and Canco are seeking a decision in the Jurisdictions that:

- The registration and prospectus requirements not apply to certain trades and distributions of securities to be made in connection with an agreement to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") under a plan of arrangement (the "Arrangement").
- Except in Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and New Brunswick, the requirement to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial statements, information circulars and annual information forms and provide interim and annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco.

- Except in Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and New Brunswick, the requirement that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Canco.

In Alberta, the relief can be granted under subsection 144(1), section 151 and subsection 212(2) of the Alberta Act.

### **Recommendation**

Commission staff ("Staff") recommend that the Commission grant the relief requested on the terms and conditions set out in the attached form of MRRS decision document (the "Decision Document").

### **Facts**

The facts, set out in detail in the Decision Document, are briefly stated below:

- Nabors is a corporation organized under the laws of the State of Delaware and is currently subject to the *United States Securities Exchange Act of 1934*.
- Shares of the common stock of Nabors (the "Nabors Shares") are currently listed and posted for trading on the American Stock Exchange.
- Enserco is a corporation organized under the *Canada Business Corporations Act* (the "CBCA") and is currently a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, and Quebec.
- The common shares of Enserco (the "Enserco Shares") are currently listed and posted for trading on the Toronto Stock Exchange (the "TSE").
- Calco is an indirect wholly-owned subsidiary of Nabors incorporated under the laws of Nova Scotia for the purpose of holding the various call rights associated with the non-voting exchangeable shares in the capital of Canco (the "Exchangeable Shares").

- Canco will be incorporated under the CBCA for the purpose of implementing the Arrangement. The only securities of Canco that may be issued are common shares and Exchangeable Shares and all of the outstanding common shares will be held indirectly by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors.
- Under the Arrangement Nabors will acquire Enserco. Each Enserco Share will be transferred to Canco in exchange for Cdn.\$15.50 or the number of Exchangeable Shares as is determined according to the Exchange Ratio.
- As an alternative, holders of Enserco Shares can choose to acquire their Exchangeable Shares through a newly incorporated corporation provided they comply with the conditions set out at paragraph 3.35 of the Decision Document.
- On completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former holders of Enserco Shares who receive Exchangeable Shares in exchange for their Enserco Shares under the Arrangement.
- Application has been made to have the Exchangeable Shares approved for listing on the TSE subject to completion of the Arrangement and the satisfaction of the TSE's customary requirements.

## **Discussion and Analysis**

### **Relief from the Registration and Prospectus Requirements**

Various distributions or trades of securities of Nabors, Canco and Enserco may occur under the Arrangement or in connection with the subsequent exchange or acquisition of Exchangeable Shares (the "Trades").

Relief from the registration and prospectus requirements with respect to certain of the Trades is required as they do not fall within the technical requirements of the registration and prospectus exemptions found in the Legislation. Staff recommends that the Commission grant the requested relief for the reasons set out below.

First, if the Arrangement was conducted directly between Nabors and Enserco,

all of the Trades would be covered by registration and prospectus exemptions contained in the Legislation (ref: subsections 86(1)(p) and 131(1)(i) of the Alberta Act).

As a result of the cross-border share exchange structure that has been adopted for tax purposes, certain of the Trades will not be technically exempt under the Legislation. However, each of the proposed Trades falls within the spirit and intent of one or more of the exemptions from the registration and prospectus requirements contained in the Legislation. As such, it would not be prejudicial to the public interest to grant the requested relief.

Second, the relevant investment decision by an Enserco security holder will be made when the holder votes in respect of the Arrangement. All subsequent exchanges of Exchangeable Shares for Nabors Shares will reflect the holder's initial investment decision. Each holder has been provided with a management information circular containing full disclosure concerning the Arrangement and the businesses of Nabors and Enserco and is therefore in a position to make an informed decision.

#### **Resale Restrictions on the Exchangeable Shares**

The Decision Document imposes resale restrictions on the first trade of Exchangeable Shares equivalent to those that would be imposed if the Exchangeable Shares were issued under the prospectus exemption concerning statutory arrangements contained in subsection 131(1)(i) of the Alberta Act (the "Arrangement Exemption"). First trades of securities acquired under the Arrangement Exemption are governed by section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102"), which imposes a seasoning period.

Paragraph 6.2.1.2 states that where the first trade of an Exchangeable Share is a "control distribution" as such term is defined in MI 45-102, such trade must be made in compliance with section 2.8 of MI 45-102; and that for the purpose of determining the period of time that Canco has been a reporting issuer under section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares held Enserco Shares shall be included in the calculation of the hold period.

Section 2.8 of MI 45-102 sets out the conditions that must be satisfied to allow a control distribution, or distribution by a lender, pledgee, mortgagee, or other encumbrancer for the purpose of liquidating a debt, or selling a security pledged,

mortgaged or otherwise encumbered as collateral for the debt if the security was acquired by the lender, pledgee, mortgagee, or encumbrancer in a control distribution.

Paragraph 6.2.1.2 contains control distribution language because it is possible that concentrated positions of Exchangeable Shares could arise. The final sentence in paragraph 6.2.1.2 allows a former shareholder of Enserco who holds a control block of Exchangeable Shares, and who is therefore subject to a six month hold period under subsection 2.8(3)(5) of MI 45-102 a credit for the period of time such control person previously held Enserco Shares. This relief was specifically considered in *Duke Energy Corporation* (copy attached). In *Duke*, it was noted that it seemed inconsistent with the spirit of the Arrangement Exemption for an Enserco shareholder (regardless of whether such shareholder held a control block of Enserco), who holds freely tradable Enserco Shares, but who acquires a control block of Exchangeable Shares under the Arrangement, to be subject to a new hold period. It was also noted that holding a control block of Exchangeable Shares was probably not meaningful. The Exchangeable Shares merely represent a pool of securities that economically mirror Nabors Shares and holding a control block of Exchangeable Shares does not necessarily imply a control position in Nabors.

#### **Resale Restrictions on the Nabors Shares**

The Decision Document makes the first trade of Nabors Shares acquired by way of the exchange, redemption or retraction of Exchangeable Shares subject to the prospectus requirement unless the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied.

Subsection 2.6(4)(1) of MI 45-102 requires that Nabors be a reporting issuer for 12 months immediately before the trade. Nabors was not a reporting issuer in any Jurisdiction prior to the Arrangement but will become a reporting issuer in one or more of British Columbia, Alberta, Saskatchewan and Quebec as a consequence of the Arrangement.

Subsection 2.9(1) of MI 45-102 states that in determining the period of time that an issuer has been a reporting issuer for the purposes of section 2.6 or 2.8, in the case of securities distributed under any of the provisions listed in Appendix G, the period of time that one of the amalgamating, merging or continuing issuers was a reporting issuer immediately before the amalgamation, merger or continuation may be included. It is not clear whether the language of subsection 2.9(1) applies to an arrangement. It is arguable that Enserco is a "continuing

issuer" immediately before the "continuation". If subsection 2.9(1) of MI 45-102 does not apply to an arrangement, Staff are of the opinion that this may be a technical error in the drafting of MI 45-102 as there would appear to be no reason why subsection 2.9(1) of MI 45-102 would apply to an amalgamation and a merger but not to an arrangement. In any event, the Decision Document is drafted in such a way as to make it clear that for the purpose of determining the period of time that Nabors has been a reporting issuer as required under section 2.6 of MI 45-102, the period of time that Enserco was a reporting issuer is included.

#### **Continuous Disclosure Relief**

Canco will be a reporting issuer or the equivalent in all of the Jurisdictions except Nova Scotia, Newfoundland and Labrador, Prince Edward Island, and New Brunswick following the Arrangement. Canco will not become a reporting issuer in those jurisdictions because Enserco is not a reporting issuer in any of those jurisdictions.

Canco has applied to be exempted from the Continuous Disclosure Requirements on the condition that certain continuous disclosure concerning Nabors, as set out in paragraph 6.4 of the Decision Document, is filed in the Jurisdictions (where Canco becomes a reporting issuer) and provided to holders of Exchangeable Shares. Staff recommends that the Commission grant the requested continuous disclosure relief.

The Exchangeable Shares provide a holder with a security in a Canadian issuer having economic and voting rights equivalent to those of Nabors Shares. The value of the Exchangeable Shares is entirely dependent on the assets and operations of Nabors. Canco, on the other hand, exists solely to facilitate the exchange structure. Given this, the continuous disclosure relevant to holders of Exchangeable Shares is that concerning Nabors, not Canco. As such, granting the requested continuous disclosure relief would have the effect of ensuring that relevant disclosure is provided to the holders of Exchangeable Shares, while relieving Canco of the obligation to prepare and file unnecessary disclosure information.

#### **Insider Reporting Requirements**

The Decision Document grants relief from the Insider Reporting Requirements to insiders of Canco if the insider does not have access to material information concerning Nabors before such information is generally disclosed and is not a director or senior officer of Nabors or a "major subsidiary" of Nabors as defined

in National Instrument 55-101 *Exemptions from Certain Insider Reporting Requirements*.

#### **Previous Orders**

Attached is a copy of *Duke Energy Corporation* for your reference.

#### **Comments From Other Jurisdictions**

##### **Ontario**

Ontario had two substantive comments. First, Ontario sought clarification as to whether Enserco would be seeking an order to be deemed to cease to be a reporting issuer or would Enserco require relief from the Continuous Disclosure Requirements. A representation was added to the Decision Document stating that it was expected that Enserco would apply to cease to be a reporting issuer in due course following completion of the Arrangement. Second, Ontario sought a representation as to the number of holders of Nabors Shares upon completion of the Arrangement. This representation was added to the Decision Document.

Ontario also provided a number of drafting comments that were incorporated into the Decision Document.

##### **Nova Scotia**

Nova Scotia requested that paragraphs 1.2 and 1.3 of the Decision Document list the jurisdictions that were not part of the relief specified in those paragraphs because Canco did not become a reporting issuer in those jurisdictions (as Enserco was not a reporting issuer in those jurisdictions). This change was made to the Decision Document.

##### **Quebec**

Quebec requested the addition of language contained in MI 45-102 with respect to first trades. This language was added to the relief portion of the Decision Document.

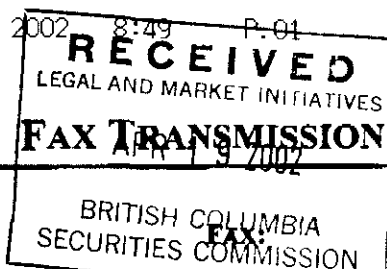
Quebec also suggested some drafting changes which were incorporated into the Decision Document.

#### **Attachments**

- Draft MRRS/ERA Decision Document
- *In the Matter of Duke Energy Corporation*

**A.S.C**

ALBERTA SECURITIES COMMISSION

**TO:**

- ☐ Susan C. Towes
- ☐ Chris Besko
- ☐ Ilana Singer
- ☐ Patti Pacholek
- ☐ Allard Louise
- ☐ Shirley Lee
- ☐ Office of the Administrator
- ☐ Securities Division
- ☐ Katharine Tummon
- ☐ M. Richard Roberts
- ☐ Tony S.K. Wong
- ☐ Gary Crowe

**COMPANY:**

BCSC	604-899-6814
MSC	204-945-0330
OSC	416-593-8244
SSC	306-787-5899
CVMQ	514-873-6155
NSSC	902-424-4625
New Brunswick	506-658-3059
Newfoundland	709-729-6187
Prince Edward Island	902-368-5283
Yukon	867-393-6251
Northwest Territories	867-873-0243
Nunavut	867-975-6194

**AND TO:**

Lawyer: Keith R. Chatwin  
Firm: Stikeman Elliott  
Fax: 266-9034

**FROM:** Blaine Young  
Phone: (403) 297-4220  
Fax: (403) 297-6156  
(e-mail: blaine.young@seccom.ab.ca)

**OUR FILE:** B28405**TOTAL PAGES:** 19**DATE:** April 9, 2002

**SUBJECT:** MRRS for Exemptive Relief Applications (the "System") - Application filed by Nabors Industries, Inc. dated March 11, 2002 under the *Securities Act* (Alberta) (the "Alberta Act")

**COMMENTS:**

Attached is the signed and dated Decision Document.

**THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.** If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error or have not received all the pages, please call Denise McLaren immediately at (403) 297-2985 (Fax: (403) 297-6156).

Docs#944584.1

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ALBERTA, BRITISH COLUMBIA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC,  
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY, NUNAVUT AND  
NORTHWEST TERRITORIES

AND

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

AND

IN THE MATTER OF NABORS INDUSTRIES, INC., NABORS EXCHANGE  
(CANADA) INC., 3064297 NOVA SCOTIA COMPANY  
AND ENSERCO ENERGY SERVICE COMPANY INC.

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries, Inc. ("Nabors"), 3064297 Nova Scotia Company ("Calco") and Nabors Exchangeco (Canada) Inc. ("Canco") (collectively, the "Applicant") for a decision under the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:
  - 1.1 the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefore (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement (the "Acquisition Agreement") to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") pursuant to a plan of arrangement (the "Arrangement") under Section 192 of the Canada Business Corporations Act, as amended (the "CBCA");
  - 1.2 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial

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statements, information circulars and annual information forms and provide, where applicable, interim and annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco; and

- 1.3 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Canco;
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:
  - 3.1 Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
  - 3.2 Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;
  - 3.3 as at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively;
  - 3.4 the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("Nabors Shares"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding and no other shares of any class or series outstanding;
  - 3.5 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "AMEX") under the symbol "NBR";
  - 3.6 as at February 22, 2002, there were nine registered holders of Nabors Shares resident in Canada (out of a total of 2,447 registered holders) holding 1,744 Nabors Shares, representing approximately 0.001% of the total number of issued and outstanding Nabors Shares. As of March 27, 2002, there were 976 beneficial holders of Nabors Shares resident in Canada holding 243,022 Nabors Shares representing approximately 0.17% of the total number of issued and outstanding

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Nabors Shares;

- 3.7 on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion;
- 3.8 Nabors is subject to the reporting requirements of the United States Securities Exchange Act of 1934, as amended (the "1934 Act");
- 3.9 Nabors is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, Saskatchewan and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.10 Calco is an indirect wholly-owned subsidiary of Nabors. Calco is an unlimited liability company incorporated under the Companies Act (Nova Scotia) solely for the purpose of holding the various call rights associated with the exchangeable non-voting shares of Canco to be issued pursuant to the Arrangement (the "Exchangeable Shares");
- 3.11 all of the issued and outstanding shares of Calco will be held indirectly by Nabors at all material times. Calco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada;
- 3.12 Nabors and Calco have submitted an application to the securities regulatory authorities in Alberta and Saskatchewan to be deemed to have ceased to be reporting issuers or the equivalent after the Effective Time (as defined below) of the Arrangement;
- 3.13 Canco was incorporated under the CBCA on March 8, 2002 for the purpose of implementing the Arrangement, and has its registered office in Calgary, Alberta. Canco has not carried on any business to date;
- 3.14 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;
- 3.15 the only securities of Canco that are issued or may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares are held and will continue to be held, indirectly, by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares (as defined below) who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement;

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- 3.16 Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.17 the Exchangeable Shares were conditionally approved for listing on The Toronto Stock Exchange (the "TSE") on March 20, 2002, subject to completion of the Arrangement and the satisfaction of its customary requirements;
- 3.18 on November 17, 1988, Bonus Petroleum Corp. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("Bonus") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001;
- 3.19 Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs;
- 3.20 Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively;
- 3.21 the authorized capital of Enserco consists of an unlimited number of common shares ("Enserco Shares"), of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money options ("Enserco Options") and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Enserco Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding warrants ("Warrants"). Up to an additional 2,500 Enserco Shares may be issued pursuant to certain share purchase rights ("Share Purchase Rights") pursuant to a cooperation agreement dated June 18, 2001 between Bonus Well Servicing Partnership and Polar Energy Services Ltd.;
- 3.22 the Enserco Shares are listed and posted for trading on the TSE under the symbol "ERC";
- 3.23 Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;

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- 3.24 to the knowledge of the Applicant, Enserco is not in default of any requirements of the Legislation;
- 3.25 on March 19, 2002 the Applicant and Enserco obtained under Section 192 of the CBCA an interim order (the "Interim Order") from the Court of Queen's Bench of Alberta specifying, among other things, certain procedures and requirements to be followed in connection with the calling and conduct of the Enserco Meeting (as defined below) and the completion of the Arrangement;
- 3.26 the Arrangement is subject to approval of the holders of Enserco Shares ("Shareholders"), and the holders of Enserco Options, Warrants and Shares Purchase Rights (collectively, the "Enserco Security Holders") and the Court of Queen's Bench of Alberta by virtue of a final order (the "Final Order") approving the Arrangement;
- 3.27 a meeting of the Enserco Security Holders (the "Enserco Meeting") has been scheduled for April 24, 2002 to consider and, if deemed appropriate, approve the Arrangement;
- 3.28 an information circular dated on or about March 20, 2002 (the "Circular") prepared in accordance with the Legislation will be mailed to the Enserco Security Holders in connection with the Enserco Meeting and filed with each of the Decision Makers concurrently therewith;
- 3.29 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco;
- 3.30 at the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Warrants and Share Purchase Rights will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;
- 3.31 upon receipt of the approval of the Enserco Security Holders at the Enserco Meeting, the Applicant and Enserco will thereafter apply to the Court of Queen's Bench for the Final Order;
- 3.32 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about April 26, 2002;
- 3.33 under the terms of the Arrangement, at the effective time (the "Effective Time") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "Effective Date"):

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- 3.33.1 each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "Per Share Price"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 3.34);
- 3.33.2 each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefore the Per Share Price in cash;
- 3.33.3 each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 3.34). The exercise price per Nabors Share under the Warrant shall equal the exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and
- 3.33.4 each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or

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Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance;

- 3.34 the "Exchange Ratio" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "Measurement Period") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "Nabors Average Price"). The "Simple Average of the Weighted Average Trading Price" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;
- 3.35 as an alternative to the exchange contemplated by paragraph 3.33.1 each Shareholder shall be entitled to transfer its Enserco Shares to a newly incorporated corporation (a "Holdco") and transfer the issued and outstanding shares thereof (collectively, "Holdco Shares") to Canco (the "Holdco Alternative"), provided that on or prior to and as of the Effective Date:
- 3.35.1 the Shareholder is a resident of Canada for the purposes of the Income Tax Act (Canada) (the "ITA");
- 3.35.2 Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;
- 3.35.3 the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;
- 3.35.4 Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;
- 3.35.5 the Shareholder indemnifies Nabors, Enserco, Canco and Callco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Acquiror, Canco or Callco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;
- 3.35.6 prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may

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be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;

- 3.35.7 on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;
  - 3.35.8 on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabor's consent, acting reasonably;
  - 3.35.9 other than as provided in 3.35.6 above, Holdco will not declare or pay any dividends or other distributions;
  - 3.35.10 the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabor's right to approve all such returns as to form and substance;
  - 3.35.11 the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and
  - 3.35.12 the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco;
- 3.36 to the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):
- 3.36.1 the Per Share Price in cash without additional interest; or
  - 3.36.2 such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,

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in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco;

- 3.37 no fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Canco or Nabors. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share will be entitled to receive a cash payment equal to the product of the fractional interest and the Nabors Average Price;
- 3.38 as a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Enserco Shares will be held directly or indirectly by Nabors and its affiliates;
- 3.39 it is expected that the Enserco Shares will be delisted from the TSE on or after the Effective Date. Enserco will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec. It is expected that Enserco will apply for such exemptive relief upon completion of the Arrangement;
- 3.40 Nabors will apply to the AMEX to list the Nabors Shares to be issued in exchange for the Exchangeable Shares and upon exercise of the Warrants;
- 3.41 the rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Nabors, Canco and a Canadian trust company (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Nabors, Callco and Canco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below;
- 3.42 the Exchangeable Shares will be issued by Canco and will be exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share will provide a holder with economic terms and voting rights, which are, as nearly as practicable, equivalent to those of a Nabors Share. Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute

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"foreign property", in each case, under the ITA;

- 3.43 subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "Exchangeable Share Price") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "Retraction Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "Retraction Request"), Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions;
- 3.44 subject to applicable law and the Redemption Call Right (as defined and described below), Canco:
- 3.44.1 may at any time on or after the fifth anniversary of the Effective Date; or
- 3.44.2 will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,
- redeem all but not less than all of the then outstanding Exchangeable Shares (the "Redemption Date") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "Redemption Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Callco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement;
- 3.45 except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable Share Provisions, the holders of Exchangeable Shares will not be entitled to receive notice of, or attend or vote at, any meeting of shareholders of Canco;
- 3.46 on the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued

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and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares;

- 3.47 the Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share;
- 3.48 on the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Calco (the "Liquidation Call Right") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "Liquidation Date") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "Liquidation Amount"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.49 on the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.50 in order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the

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assets of Nabors among its shareholders for the purpose of winding up its affairs (a "Liquidation Event"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement;

- 3.51 the Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs;
- 3.52 on the Effective Date, Nabors, Canco and Callco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, re-divide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares;
- 3.53 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares and replacement Warrants; the issuance of Nabors Shares upon the exchange of Exchangeable Shares and the issuance of Nabors Shares upon the exercise of Warrants; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Callco) in connection with the Arrangement;
- 3.54 the fundamental investment decision to be made by an Enserco Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a

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holder (other than a dissenting Shareholder) will ultimately receive Nabors Shares in exchange for the Enserco Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision;

- 3.55 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares;
- 3.56 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted;
- 3.57 following completion of the Arrangement, assuming an Exchange Ratio of 0.2808 (based upon the closing price of Nabors Shares, and the Canadian dollar exchange rate in effect, on the day immediately prior to the Arrangement being publicly announced), and assuming that Exchangeable Shares are considered to be Nabors Shares, it is expected that the beneficial holders of Nabors Shares resident in Canada will hold approximately 4.3% of the issued and outstanding Nabors Shares calculated based upon the number of beneficial and registered Shareholders and registered holders of Nabors Shares who are residents of Canada and on the assumption that the consideration to be paid by Nabors to Shareholders pursuant to the Arrangement will consist entirely of Exchangeable Shares (other than in respect of approximately 20.5% of Enserco Shares acquired by Nabors pursuant to prior agreement for cash);
- 3.58 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act;
4. AND WHEREAS under 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;

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6. AND WHEREAS the Decision of the Decision Makers pursuant to the Legislation is that:

6.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades;

6.2 the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless:

6.2.1 except in Quebec,

6.2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or

6.2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Enserco Shares shall be included in the calculation of the hold period);

6.2.2 in Québec,

6.2.2.1 Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);

6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares;

6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

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- 6.2.2.4 if the selling Exchangeable Share holder is an insider or officer of Nabors or Canco, the selling Exchangeable Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;
- 6.3 the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
  - 6.3.1 except in Québec,
    - 6.3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or
    - 6.3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
  - 6.3.2 in Québec,
    - 6.3.2.1 Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);
    - 6.3.2.2 no unusual effort is made to prepare the market or to create a demand for the Nabors Shares;
    - 6.3.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
    - 6.3.2.4 if the selling Nabors Share holder is an insider or officer of Nabors or Canco, the selling Nabors Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;
- 6.4 the Continuous Disclosure Requirements shall not apply to Canco so long as:
  - 6.4.1 Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to

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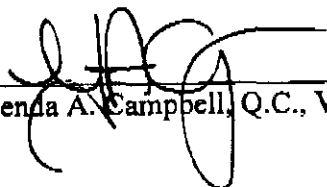
holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;

- 6.4.2 Nabors files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Canco's SEDAR profile and the filing fees which would otherwise be payable by Canco in connection with such filings are paid;
- 6.4.3 Nabors complies with the requirements of the AMEX in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Nabors' affairs;
- 6.4.4 Canco complies with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares;
- 6.4.5 Nabors includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
- 6.4.6 Nabors remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Canco; and
- 6.4.7 Canco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement; and
- 6.5 the Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders*, shall not apply to Canco and each insider of Canco, so long as:
  - 6.5.1 such insider of Canco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Nabors before the material facts or material changes are generally disclosed; and

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- 6.5.2 such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

DATED this 18<sup>th</sup> day of April, 2002.

  
Glenda A. Campbell, Q.C., Vice-Chair  
Jerry A. Bennis, FCA, Member

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**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection with statutory arrangement involving an exchangeable share structure where exemptions may not be available for technical reasons. Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions. First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 *Resale of Securities*.

**Applicable Alberta Statutory Provisions**

*Securities Act*, R.S.A., 2000, c.S-4, s. 75, 86(1)(p), 110, 131(1)(i), 144(1), 151, 212(2).

**Applicable National Instruments**

Multilateral Instrument 45-102 *Resale of Securities*.

**David Gunasekera**

04/12/02 10:41 AM

To: Anne McTeer

cc:

Subject: Financial and Insider reporting relief.

A decision was made regarding Financial and Insider Reporting.

**1.a) Who is the reporting issuer:**

Nabors Exchangeco (Canada) Inc. (Canco) Canco will become a reporting issuer in BC as a result of an arrangement between Nabors Industries Inc. and Enserco Energy Service Company. It is anticipated that Enserco will apply to cease to be a reporting issuer following the completion of the Arrangement.

**b) What will not be filed for the reporting issuer:**

- i) interim and annual financial statements,
- ii) material change reports (except for material changes that are a material change for Canco, but not for Nabors Industries, in which case Canco will file its own material change reports),
- iii) proxy materials, including an information circular or report in lieu thereof,
- iv) insider reports.

**c) What will be filed for the reporting issuer:**

Nabors Industries will file copies of its US continuous disclosure materials, including copies of any Form 10-K, Form 10-Q, Form 8-K and proxy statements.

**d) How it will be filed and paid for:**

Filings will be done under Canco's SEDAR profile and the fees that would otherwise be payable in respect of Canco's filings will be paid.

**e) Who is the solicitor in charge:**

The filing solicitor relating to this application is Keith Chatwin of Stikeman Elliott in Calgary. Her direct line is (403) 266-9088.

Please call me if you have any questions relating to this decision.

David Gunasekera  
Legal Counsel  
604-899-6864 (direct)  
604-899-6814 (fax)  
dgunasekera@bcsc.bc.ca

## To:

- ☐ Susan C. Towes
- ☐ Chris Besko
- ☐ Ilana Singer
- ☐ Patti Pacholek
- ☐ Allard Louise
- ☐ Shirley Lee
- ☐ Office of the Administrator
- ☐ Securities Division
- ☐ Katharine Tummon
- ☐ M. Richard Roberts
- ☐ Tony S.K. Wong
- ☐ Gary Crowe

## COMPANY:

BCSC  
MSC  
OSC  
SSC  
CVMQ  
NSSC  
New Brunswick  
Newfoundland  
Prince Edward Island  
Yukon  
Northwest Territories  
Nunavut

## FAX:

604-899-6814  
204-945-0330  
416-593-8244  
306-787-5899  
514-873-6155  
902-424-4625  
506-658-3059  
709-729-6187  
902-368-5283  
867-393-6251  
867-873-0243  
867-975-6194

## AND TO:

Lawyer: Keith R. Chatwin  
Firm: Stikeman Elliott  
Fax: 266-9034

FROM: Blaine Young  
Phone: (403) 297-4220  
Fax: (403) 297-6156  
(e-mail: blaine.young@seccom.ab.ca)

OUR FILE: B28405

TOTAL PAGES: 38

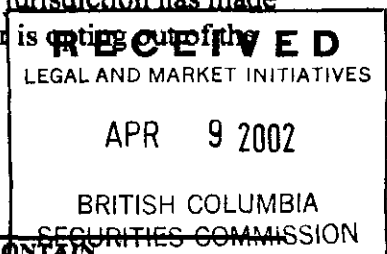
DATE: April 9, 2002

SUBJECT: MRRS for Exemptive Relief Applications (the "System") - Application filed by Nabors Instries, Inc. dated March 11, 2002 under the Securities Act (Alberta) (the "Alberta Act")

## COMMENTS:

Attached are the principal decision documents for the above application.

Please advise by **Thursday, April 18, 2002** whether your jurisdiction has made the same decision as the Alberta Securities Commission or is opting out of the system for the application.



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4TH FLOOR, 300 - 5TH AVENUE S.W., CALGARY, ALBERTA, CANADA T2P 3C4 TEL: (403) 297-6454 FAX: (403) 297-6156

IN THE MATTER OF  
THE SECURITIES LEGISLATION  
OF ALBERTA, BRITISH COLUMBIA,  
SASKATCHEWAN, MANITOBA, ONTARIO, QUÉBEC,  
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND AND LABRADOR, YUKON TERRITORY, NUNAVUT AND  
NORTHWEST TERRITORIES

AND

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

AND

IN THE MATTER OF NABORS INDUSTRIES, INC., NABORS EXCHANGE  
(CANADA) INC., 3064297 NOVA SCOTIA COMPANY  
AND ENSERCO ENERGY SERVICE COMPANY INC.

**MRRS DECISION DOCUMENT**

1. WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries, Inc. ("Nabors"), 3064297 Nova Scotia Company ("Calco") and Nabors Exchangeco (Canada) Inc. ("Canco") (collectively, the "Applicant") for a decision under the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:
  - 1.1 the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefore (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement (the "Acquisition Agreement") to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") pursuant to a plan of arrangement (the "Arrangement") under Section 192 of the Canada Business Corporations Act, as amended (the "CBCA");
  - 1.2 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial

statements, information circulars and annual information forms and provide interim and, where applicable, annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco; and

- 1.3 the requirements contained in the Legislation for all of the Jurisdictions except Nova Scotia, Prince Edward Island, New Brunswick and Newfoundland and Labrador that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Canco;
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:
  - 3.1 Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
  - 3.2 Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;
  - 3.3 as at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively;
  - 3.4 the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("Nabors Shares"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding and no other shares of any class or series outstanding;
  - 3.5 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "AMEX") under the symbol "NBR";
  - 3.6 as at February 22, 2002, there were nine registered holders of Nabors Shares resident in Canada (out of a total of 2,447 registered holders) holding 1,744 Nabors Shares, representing approximately 0.001% of the total number of issued and outstanding Nabors Shares. As of March 27, 2002, there were 976 beneficial holders of Nabors Shares resident in Canada holding 243,022 Nabors Shares representing approximately 0.17% of the total number of issued and outstanding

**Nabors Shares;**

- 3.7 on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion;
- 3.8 Nabors is subject to the reporting requirements of the United States Securities Exchange Act of 1934, as amended (the "1934 Act");
- 3.9 Nabors is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, Saskatchewan and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.10 Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the Companies Act (Nova Scotia) solely for the purpose of holding the various call rights associated with the exchangeable non-voting shares of Canco to be issued pursuant to the Arrangement (the "Exchangeable Shares");
- 3.11 all of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times. Callco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada;
- 3.12 Nabors and Callco have submitted an application to the securities regulatory authorities in Alberta and Saskatchewan to be deemed to have ceased to be reporting issuers or the equivalent after the Effective Time (as defined below) of the Arrangement;
- 3.13 Canco was incorporated under the CBCA on March 8, 2002 for the purpose of implementing the Arrangement, and has its registered office in Calgary, Alberta. Canco has not carried on any business to date;
- 3.14 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;
- 3.15 the only securities of Canco that are issued or may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares are held and will continue to be held, indirectly, by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares (as defined below) who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement;

- 3.16 Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement;
- 3.17 the Exchangeable Shares were conditionally approved for listing on The Toronto Stock Exchange (the "TSE") on March 20, 2002, subject to completion of the Arrangement and the satisfaction of its customary requirements;
- 3.18 on November 17, 1988, Bonus Petroleum Corp. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("Bonus") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001;
- 3.19 Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs;
- 3.20 Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively;
- 3.21 the authorized capital of Enserco consists of an unlimited number of common shares ("Enserco Shares"), of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money options ("Enserco Options") and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Enserco Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding warrants ("Warrants"). Up to an additional 2,500 Enserco Shares may be issued pursuant to certain share purchase rights ("Share Purchase Rights") pursuant to a cooperation agreement dated June 18, 2001 between Bonus Well Servicing Partnership and Polar Energy Services Ltd.;
- 3.22 the Enserco Shares are listed and posted for trading on the TSE under the symbol "ERC";
- 3.23 Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;

- 3.24 to the knowledge of the Applicant, Enserco is not in default of any requirements of the Legislation;
- 3.25 on March 19, 2002 the Applicant and Enserco obtained under Section 192 of the CBCA an interim order (the "Interim Order") from the Court of Queen's Bench of Alberta specifying, among other things, certain procedures and requirements to be followed in connection with the calling and conduct of the Enserco Meeting (as defined below) and the completion of the Arrangement;
- 3.26 the Arrangement is subject to approval of the holders of Enserco Shares ("Shareholders"), and the holders of Enserco Options, Warrants and Shares Purchase Rights (collectively, the "Enserco Security Holders") and the Court of Queen's Bench of Alberta by virtue of a final order (the "Final Order") approving the Arrangement;
- 3.27 a meeting of the Enserco Security Holders (the "Enserco Meeting") has been scheduled for April 24, 2002 to consider and, if deemed appropriate, approve the Arrangement;
- 3.28 an information circular dated on or about March 20, 2002 (the "Circular") prepared in accordance with the Legislation will be mailed to the Enserco Security Holders in connection with the Enserco Meeting and filed with each of the Decision Makers concurrently therewith;
- 3.29 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco;
- 3.30 at the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Warrants and Share Purchase Rights will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;
- 3.31 upon receipt of the approval of the Enserco Security Holders at the Enserco Meeting, the Applicant and Enserco will thereafter apply to the Court of Queen's Bench for the Final Order;
- 3.32 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about April 26, 2002;
- 3.33 under the terms of the Arrangement, at the effective time (the "Effective Time") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "Effective Date"):

- 3.33.1 each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "Per Share Price"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 3.34);
- 3.33.2 each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefore the Per Share Price in cash;
- 3.33.3 each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 3.34). The exercise price per Nabors Share under the Warrant shall equal the exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and
- 3.33.4 each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or

Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance;

3.34 the "Exchange Ratio" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "Measurement Period") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "Nabors Average Price"). The "Simple Average of the Weighted Average Trading Price" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;

3.35 as an alternative to the exchange contemplated by paragraph 3.33.1 each Shareholder shall be entitled to transfer its Enserco Shares to a newly incorporated corporation (a "Holdco") and transfer the issued and outstanding shares thereof (collectively, "Holdco Shares") to Canco (the "Holdco Alternative"), provided that on or prior to and as of the Effective Date:

3.35.1 the Shareholder is a resident of Canada for the purposes of the Income Tax Act (Canada) (the "ITA");

3.35.2 Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;

3.35.3 the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;

3.35.4 Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;

3.35.5 the Shareholder indemnifies Nabors, Enserco, Canco and Calco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Acquiror, Canco or Calco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;

3.35.6 prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may

be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;

- 3.35.7 on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;
- 3.35.8 on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabor's consent, acting reasonably;
- 3.35.9 other than as provided in 3.35.6 above, Holdco will not declare or pay any dividends or other distributions;
- 3.35.10 the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabor's right to approve all such returns as to form and substance;
- 3.35.11 the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and
- 3.35.12 the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco;

3.36 to the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):

- 3.36.1 the Per Share Price in cash without additional interest; or
- 3.36.2 such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,

in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco;

- 3.37 no fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Canco or Nabors. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share will be entitled to receive a cash payment equal to the product of the fractional interest and the Nabors Average Price;
- 3.38 as a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Enserco Shares will be held directly or indirectly by Nabors and its affiliates;
- 3.39 it is expected that the Enserco Shares will be delisted from the TSE on or after the Effective Date. Enserco will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec. It is expected that Enserco will apply for such exemptive relief upon completion of the Arrangement;
- 3.40 Nabors will apply to the AMEX to list the Nabors Shares to be issued in exchange for the Exchangeable Shares and upon exercise of the Warrants;
- 3.41 the rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Nabors, Canco and a Canadian trust company (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Nabors, Calco and Canco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below;
- 3.42 the Exchangeable Shares will be issued by Canco and will be exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share will provide a holder with economic terms and voting rights, which are, as nearly as practicable, equivalent to those of a Nabors Share. Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute

"foreign property", in each case, under the ITA;

3.43 subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "Exchangeable Share Price") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "Retraction Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "Retraction Request"), Canco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions;

3.44 subject to applicable law and the Redemption Call Right (as defined and described below), Canco:

3.44.1 may at any time on or after the fifth anniversary of the Effective Date; or

3.44.2 will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,

redeem all but not less than all of the then outstanding Exchangeable Shares (the "Redemption Date") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "Redemption Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Canco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement;

3.45 except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable Share Provisions, the holders of Exchangeable Shares will not be entitled to receive notice of, or attend or vote at, any meeting of shareholders of Canco;

3.46 on the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued

and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares;

- 3.47 the Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share;
- 3.48 on the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Calco (the "Liquidation Call Right") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "Liquidation Date") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "Liquidation Amount"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.49 on the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 3.50 in order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the

assets of Nabors among its shareholders for the purpose of winding up its affairs (a "Liquidation Event"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement;

- 3.51 the Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs;
- 3.52 on the Effective Date, Nabors, Canco and Calco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Calco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, re-divide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares;
- 3.53 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares and replacement Warrants; the issuance of Nabors Shares upon the exchange of Exchangeable Shares and the issuance of Nabors Shares upon the exercise of Warrants; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Calco) in connection with the Arrangement;
- 3.54 the fundamental investment decision to be made by an Enserco Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a

holder (other than a dissenting Shareholder) will ultimately receive Nabors Shares in exchange for the Enserco Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision;

- 3.55 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares;
- 3.56 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted;
- 3.57 following completion of the Arrangement, assuming an Exchange Ratio of 0.2808 (based upon the closing price of Nabors Shares, and the Canadian dollar exchange rate in effect, on the day immediately prior to the Arrangement being publicly announced), and assuming that Exchangeable Shares are considered to be Nabors Shares, it is expected that the beneficial holders of Nabors Shares resident in Canada will hold approximately 4.3% of the issued and outstanding Nabors Shares calculated based upon the number of beneficial and registered Shareholders and registered holders of Nabors Shares who are residents of Canada and on the assumption that the consideration to be paid by Nabors to Shareholders pursuant to the Arrangement will consist entirely of Exchangeable Shares (other than in respect of approximately 20.5% of Enserco Shares acquired by Nabors pursuant to prior agreement for cash);
- 3.58 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act;
4. AND WHEREAS under 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. AND WHEREAS the Decision of the Decision Makers pursuant to the Legislation is that:

6.1 the Registration Requirement and Prospectus Requirement shall not apply to the Trades;

6.2 the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place, unless:

6.2.1 except in Quebec,

6.2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 *Resale of Securities* ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or

6.2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Enserco Shares shall be included in the calculation of the hold period);

6.2.2 in Québec,

6.2.2.1 Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);

6.2.2.2 no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares;

6.2.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and

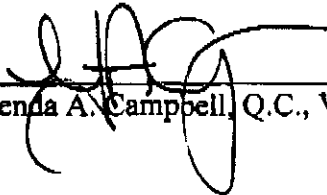
- 6.2.2.4 if the selling Exchangeable Share holder is an insider or officer of Nabors or Canco, the selling Exchangeable Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;
- 6.3 the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
  - 6.3.1 except in Québec,
    - 6.3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or
    - 6.3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
  - 6.3.2 in Québec,
    - 6.3.2.1 Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included);
    - 6.3.2.2 no unusual effort is made to prepare the market or to create a demand for the Nabors Shares;
    - 6.3.2.3 no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
    - 6.3.2.4 if the selling Nabors Share holder is an insider or officer of Nabors or Canco, the selling Nabors Share holder has no reason to believe that Nabors or Canco are in default of the Legislation;
- 6.4 the Continuous Disclosure Requirements shall not apply to Canco so long as:
  - 6.4.1 Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to

holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;

- 6.4.2 Nabors files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Canco's SEDAR profile and the filing fees which would otherwise be payable by Canco in connection with such filings are paid;
- 6.4.3 Nabors complies with the requirements of the AMEX in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Nabors' affairs;
- 6.4.4 Canco complies with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares;
- 6.4.5 Nabors includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
- 6.4.6 Nabors remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Canco; and
- 6.4.7 Canco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement; and
- 6.5 the Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 *System for Electronic Disclosure by Insiders*, shall not apply to Canco and each insider of Canco, so long as:
  - 6.5.1 such insider of Canco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Nabors before the material facts or material changes are generally disclosed; and

6.5.2 such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

DATED this        day of April, 2002.

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

  
\_\_\_\_\_  
Jerry A. Bennis, FCA, Member

**Headnote**

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection with statutory arrangement involving an exchangeable share structure where exemptions may not be available for technical reasons. Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions. First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 *Resale of Securities*.

**Applicable Alberta Statutory Provisions**

*Securities Act*, R.S.A., 2000, c.S-4, s. 75, 86(1)(p), 110, 131(1)(i), 144(1), 151, 212(2).

**Applicable National Instruments**

Multilateral Instrument 45-102 *Resale of Securities*.

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## Headnote

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available for technical reasons - Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions - first trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 *Resale of Securities*

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85(1), 87, 91, 117 and 119  
*Securities Rules*, B.C. Reg. 194/97, ss. 144, 145 and 184

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, YUKON TERRITORY, NORTHWEST TERRITORIES AND NUNAVUT

AND

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

AND

IN THE MATTER OF DUKE ENERGY CORPORATION, 3946509 CANADA INC., 3058368 NOVA SCOTIA COMPANY AND WESTCOAST ENERGY INC.

## MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an application from Duke Energy Corporation ("Duke Energy"), 3058368 Nova Scotia Company ("Callco"), 3946509 Canada Inc. ("Exchangeco") and Westcoast Energy Inc. ("Westcoast") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:

(a) certain trades in securities made in connection with or resulting from the proposed combination (the "Transaction") of Duke Energy and Westcoast to be effected by way of a plan of arrangement (the "Arrangement") under Section 192 of the *Canada Business Corporations Act* (the "CBCA") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Prospectus Requirements");

(b) Exchangeco shall be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file with the Decision Makers and deliver to its security holders an annual report, where applicable, and interim and annual financial statements, to file and deliver an information circular, to file interim and annual management's discussion and analysis of the financial condition and results of operation of Exchangeco and, where applicable, to file an annual information form (the "Continuous Disclosure Requirements"); and

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(c) the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements of Exchangeco in connection therewith (the "Insider Reporting Requirements") shall not apply to each insider of Exchangeco and its successors and Exchangeco;

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;

AND WHEREAS the Applicant has represented to each Decision Maker that:

1. Duke Energy, together with its subsidiaries, is an integrated energy and energy services provider with the ability to offer physical delivery and management of both electricity and natural gas throughout the United States and abroad. With over 23,000 employees world-wide, Duke Energy is a multinational corporation with operations in over 50 countries.
2. As of December 31, 2000, Duke Energy's total assets were approximately US\$58 billion. For the financial year ended December 31, 2000, its total operating revenues and net income were approximately US\$49.318 billion and US\$1.776 billion, respectively.
3. Duke Energy was organized in 1917 under the laws of the state of New Jersey and reincorporated under the laws of the State of North Carolina in 1963. Duke Energy was known as Wateree Power Company until 1924, when it changed its name to Duke Power Company. In 1997, it changed its name to Duke Energy Corporation. Duke Energy's principal executive offices are located at 526 South Church Street, Charlotte, North Carolina, U.S.A. 28202.
4. Duke Energy's authorized capital currently consists of two billion 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, 2,007,185 shares of Duke Energy Preferred Stock A and no shares of Duke Energy Preference Stock issued and outstanding.
5. As of November 29, 2001, there were 81 registered holders of Duke Energy common shares in Canada holding 38,933 Duke Energy common shares, representing approximately 0.005% of the total number of issued and outstanding Duke Energy common shares. As of December 10, 2001, there were 961 beneficial holders of Duke Energy common shares in Canada holding 2,097,951 shares representing approximately 0.27% of the total number of issued and outstanding Duke Energy common shares.
6. 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.

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7. Duke Energy is a public company in the United States. The Duke Energy common shares are listed on the New York Stock Exchange (the "NYSE") under the symbol "DUK".
8. Duke Energy is not a "reporting issuer" or the equivalent in any province or territory of Canada. Upon the completion of and as a consequence of the Arrangement, Duke Energy may become a reporting issuer in British Columbia, Alberta, Saskatchewan and Québec.
9. Duke Energy is subject to the United States *Securities Exchange Act of 1934*, as amended (the "Exchange Act").
10. On September 20, 2001, 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.
11. 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 (as defined below). Prior to the effective date of the Arrangement (the "Effective Date"), 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.
12. 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.
13. Exchangeco is an indirect subsidiary of Duke Energy incorporated under the CBCA on September 14, 2001 as 3946509 Canada Inc. for the purpose of implementing the Arrangement. Prior to the Effective Date, it is expected that Exchangeco will change its name to "Duke Energy Canada Exchangeco Inc.". Exchangeco's registered office address is 199 Bay Street, Commerce Court West, Suite 5300, Toronto, Ontario M5L 1B9.
14. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of preference shares, issuable in series. All of the outstanding common shares of Exchangeco are held indirectly by Duke Energy. No preference shares of Exchangeco are currently outstanding.
15. The share capital of Exchangeco will be amended prior to the Effective Date to create the non-voting exchangeable shares (the "Exchangeable Shares"). Upon the completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Westcoast Shareholders who receive Exchangeable Shares in exchange for their Westcoast common shares pursuant to the Arrangement.
16. Exchangeco is currently a "closely-held issuer" within the meaning of that term under OSC Rule 45-501. Upon completion of the Arrangement, it is anticipated that the Exchangeable Shares will be listed on The Toronto Stock Exchange (the "TSE") and that Exchangeco will become a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland. The Exchangeable Shares were conditionally approved for listing on the TSE on October 12, 2001, subject to the satisfaction of its customary requirements.
17. Westcoast is a North American energy company whose interests include natural gas gathering, processing and transmission, natural gas storage facilities and gas distribution, power generation, and international energy businesses as well as financial, information and energy services businesses.

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the Supreme Court of British Columbia which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Westcoast Meeting (as defined below) and the completion of the Arrangement.

28. 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.

29. The Circular contained or incorporated by reference prospectus-level disclosure of the business and affairs of Duke Energy and Westcoast and a detailed description of the Arrangement, except as varied by Orders previously granted by certain of the Decision Makers. The Circular also contained certain historical financial statements of Duke Energy and Westcoast and certain pro forma condensed consolidated financial statements for the combined Duke Energy/Westcoast entity.

30. 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 Transaction, at a special meeting of Westcoast Securityholders held on December 13, 2001 (the "Westcoast Meeting").

31. 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. At the Westcoast Meeting, over 96% of the votes cast by the Westcoast Securityholders were in favour of the Transaction. In addition, the Westcoast Shareholders approved the amendment to the Westcoast Rights Agreement.

32. Westcoast received a valid notice of objection to the Arrangement, pursuant to rights of dissent granted to Westcoast Shareholders in accordance with the Interim Order, from only one Westcoast Shareholder in respect of 664 Westcoast common shares (the "Dissenting Shareholder").

33. On January 10, 2002, the Supreme Court of British Columbia granted final approval to the Arrangement.

34. Subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Transaction will be completed in the first quarter of 2002.

35. On the Effective Date, pursuant to the Arrangement, each Westcoast Shareholder (other than the Dissenting Shareholder, and other than Duke Energy and its affiliates) may elect, subject to certain proration adjustments described in the Circular, as consideration for each Westcoast common share held:

- a. Cdn\$43.80 in cash;
- b. a fraction of a Duke Energy common share equal to the Exchange Ratio (as described below);
- c. a fraction of an Exchangeable Share equal to the Exchange Ratio; or

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d. a combination of a fraction of a Duke Energy common share, a fraction of an Exchangeable Share and/or cash.

36. Only residents of Canada may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Westcoast Shareholder who is not a resident of Canada will be deemed to be an election to receive Duke Energy common shares.

37. The Exchange Ratio will be determined by dividing Cdn\$43.80 by the product of the weighted average trading price of Duke Energy common shares on the NYSE over the 20 consecutive trading days ending two Business Days before the Effective Date (the "Weighted Average Trading Price of Duke Energy Common Shares") and a fixed currency exchange rate of Canadian dollars to U.S. dollars of 1.54. The Exchange Ratio is subject to a collar such that if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or less than US\$36.88, the Exchange Ratio will be fixed at 0.7711, and if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or greater than US\$46.48, the Exchange Ratio will be fixed at 0.6119.

38. The Arrangement provides that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will consist of approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares. Elections made by Westcoast Shareholders in the letter of transmittal and election form mailed to Westcoast Shareholders will, pursuant to the Arrangement, be prorated accordingly.

39. No fractions of Exchangeable Shares or Duke Energy common shares will be issued in exchange for Westcoast common shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or Duke Energy. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a Duke Energy common share will be entitled to receive a cash payment equal to the product of the fractional interest and the Weighted Average Trading Price of Duke Energy common shares.

40. Under the Arrangement, each Westcoast Option will be replaced with an option (the "Replacement Options") to purchase Duke Energy common shares. The number of Duke Energy common shares for which a Replacement Option may be exercised will be determined by multiplying the number of Westcoast common shares subject to the Westcoast Option by the Exchange Ratio, subject to rounding. The exercise price of the Replacement Option will be determined by dividing the exercise price per Westcoast common share of the Westcoast Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding. The exercise price will also be converted into U.S. dollars at the currency exchange rate on the Effective Date.

41. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Westcoast common shares will be held directly or indirectly by Duke Energy and its affiliates.

42. It is expected that the Westcoast common shares will be delisted from the TSE and the NYSE on or after the Effective Date and on the Effective Date, Exchangeco will become a reporting issuer, or the equivalent thereof, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland.

43. The Westcoast First Preferred Shares, Series 5, Series 6, Series 7, Series 8 and Series 9 will remain issued and outstanding and will continue to be listed on the TSE after the Effective Date. Westcoast will continue to be a reporting issuer or the equivalent thereof in all provinces of Canada.

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44. The Exchangeable Shares will be issued by Exchangeco. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Duke Energy common shares.
45. Duke Energy will apply to the NYSE to list the Duke Energy common shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares and upon exercise of the Replacement Options.
46. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Duke Energy, Exchangeco and a trustee (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Duke Energy, Calco and Exchangeco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below.
47. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time up to eight years from the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Duke Energy common shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Duke Energy common share. Westcoast Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada).
48. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the Retraction Price described in the Circular which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. When a holder of Exchangeable Shares makes a Retraction Request, Calco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions.
49. Subject to applicable law and the Redemption Call Right described below, at any time on or after the eighth anniversary of the Effective Date, Exchangeco may, or earlier in the event of certain circumstances described in the Circular under the heading "Early Redemption" will, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the Redemption Price described in the Circular, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. Calco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Plan of Arrangement attached as Schedule F to the Circular.

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50. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.

51. On the Effective Date, Duke Energy, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Duke Energy will issue to the Trustee a number of Duke Energy common shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Duke Energy common shares. Each registered holder of Exchangeable Shares (other than Duke Energy and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Duke Energy are entitled to vote will be entitled to instruct the Trustee to vote one Duke Energy common share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Duke Energy so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Duke Energy common shares.

52. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Duke Energy on a Duke Energy common share.

53. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Calco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Duke Energy and its affiliates) from the holders of Exchangeable Shares on the Liquidation Date for a purchase price per share equal to the Liquidation Amount described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share. On the liquidation, dissolution or winding-up of Exchangeco (or when any other Insolvency Event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Duke Energy and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Duke Energy to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price as described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share.

54. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Duke Energy common shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of Duke Energy (or when any other Liquidation Event described in the Circular occurs), each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Duke Energy common shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.

55. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of

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Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs. The Exchangeable Shares will rank junior to the preference shares of Exchangeco.

56. On the Effective Date, Duke Energy, Exchangeco and Callco will enter into the Support Agreement which will provide that Duke Energy will not declare or pay dividends on the Duke Energy common shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that Duke Energy will ensure that Exchangeco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, Duke Energy will not issue or distribute Duke Energy common shares, securities exchangeable for or convertible into or carrying rights to acquire Duke Energy common shares, rights, options or warrants to subscribe for or to purchase Duke Energy common shares, evidences of indebtedness or other assets of Duke Energy to the holders of Duke Energy common shares nor will Duke Energy subdivide, redivide or change the Duke Energy common shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.

57. The Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares, Replacement Options and Duke Energy common shares; the issuance of Duke Energy common shares upon the exchange of Exchangeable Shares and the issuance of Duke Energy common shares upon the exercise of Replacement Options; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Duke Energy and its affiliates (including Exchangeco and Callco) in connection with the Arrangement.

58. The fundamental investment decision to be made by a Westcoast Securityholder was made at the time when such holder voted in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than the Dissenting Shareholder) will ultimately receive Duke Energy common shares in exchange for the Westcoast common shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Duke Energy common shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision.

59. As a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Duke Energy common shares, holders of Exchangeable Shares will have an equity interest determined by reference to Duke Energy, rather than Exchangeco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Duke Energy, not Exchangeco. Accordingly, it is the information relating to Duke Energy, not Exchangeco, that will be relevant to the holders of Exchangeable Shares.

60. Duke Energy will send concurrently to all holders of Exchangeable Shares and 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.

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61. The Circular disclosed that applications have been made for prospectus, registration and resale exemptions and exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefor if such exemptions are granted.

62. Upon completion of the Arrangement, assuming a maximum Exchange Ratio of 0.7711, 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 shares and/or Exchangeable Shares (calculated based upon the number of beneficial Westcoast Shareholders and beneficial 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.

63. There is no public market in Canada for the Duke Energy common shares and no such public market is expected to develop.

AND WHEREAS pursuant to 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 Makers with the jurisdiction to make the Decision has been met;

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

1. the Registration Requirements and the Prospectus Requirements shall not apply to the Trades provided that

(a) the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless:

(i) except in Québec,

(A) the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.6 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; or

(B) where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with section 2.8 of MI 45-102; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.8 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Westcoast common shares shall be included in the calculation of the hold period);

(ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and

## 2002 BCSECCOM 201

has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and

(b) the first trade in Duke Energy common shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:

(i) except in Québec,

(A) if Duke Energy is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Duke Energy has been a reporting issuer under section 2.6, the period of time that Westcoast has been a reporting issuer may be included; or

(B) if Duke Energy is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and

(ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Duke Energy common shares; and

IT IS FURTHER THE DECISION of the Decision Makers, other than the Decision Maker in the Northwest Territories, pursuant to the Legislation that:

2. the Continuous Disclosure Requirements shall not apply to Exchangeco so long as:

(a) Duke Energy sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of Duke Energy common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;

(b) Duke Energy files with each Decision Maker copies of all documents required to be filed by it with the SEC under the *Exchange Act*, and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;

(c) Duke Energy complies with the requirements of the NYSE in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Duke Energy's affairs;

(d) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of Duke Energy common shares;

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(e) Duke Energy includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Duke Energy and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Duke Energy common shares and the right to direct voting at Duke Energy's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);

(f) Duke Energy remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Exchangeco;

(g) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement, and preferred shares issued to Duke Energy's financial advisors prior to the consummation of the Arrangement; and

3. The Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 - System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, so long as:

(a) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Duke Energy before the material facts or material changes are generally disclosed; and

(b) such insider of Exchangeco is not a director or senior officer of Duke Energy, or a "major subsidiary" of Duke Energy, as such term is defined in National Instrument 55-101 - Exemptions from Certain Insider Reporting Requirements as if Duke Energy were a reporting issuer.

DATED this 26th day of February, 2002.

Paul Moore

R.S. Paddon



British Columbia  
Securities Commission

LEGAL AND MARKET INITIATIVES

# MEMORANDUM

## MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

### Recommendation and Determination

To: Derek E. Patterson, Acting Director

From: Rosann L. Youck, Senior Legal Counsel

Date: February 18, 2002

Re: Duke Energy Corporation and Westcoast Energy Inc.  
MRRS for Exemptive Relief Applications (the System)  
Application pursuant to sections 48, 76, 91 and 119 of the *Securities Act*

Subtype: ☐ Anomalous ☐ DeMinimis ☒ Routine ☐ N/A

### Recommendation

Attached is the recommendation of the staff of the principal regulator and the principal decision document on this application we received on Friday, February 15, 2002.

I recommend we make the same decision as the principal regulator and opt into the System for this application. We are required to confirm our decision to the principal regulator before **Tuesday, February 26, 2002**.

### Comments

This is an application for relief:

1. under sections 48 and 76 from the registration and prospectus requirements of sections 34(1)(a) and 61 the Act for trades in securities under an arrangement that do not all fit under the exemptions in 45(2)(9) and 74(2)(8) of the Act for technical reasons,
2. continuous disclosure relief for Exchangeco, which will become a reporting issuer following the arrangement, to allow it to rely on the continuous disclosure documents of Duke Energy, and
3. insider reporting relief for the insiders of Exchangeco.

The memorandum of staff of the principal regulator contains a very thorough description of the Arrangement, the relief required, and the reasons for granting the relief that I will not repeat. There are three points that you should be aware of, however:

1. Duke Energy is not currently a reporting issuer in Canada, but will become a reporting issuer as a result of this Arrangement if any of the Westcoast shareholders elect to receive Duke Energy common shares, rather than Exchangeable Shares. Duke Energy

has applied to cease to be a reporting issuer following the closing of the Arrangement, but that application is on hold until the Arrangement is completed. As a result, the first trade relief for the Duke Energy common shares has two alternatives:

- a) compliance with the conditions in section 2.6 of MI 45-102, if Duke Energy is a reporting issuer in any of the jurisdictions listed in the appendix to MI 45-102, except Québec, and
- b) trades on a market outside Canada, if Duke Energy is not a reporting issuer in any of the jurisdictions listed in the appendix to MI 45-102.

This is the same approach as was taken in the *Newmont Mining Corporation and Franco-Nevada Mining Corporation* January 30, 2002 decision.


2. The attached decision document permits “tacking” of the hold period for control persons of Exchangeco. That is, a control person can calculate the period of time that the person has held the Exchangeable Share by including the time that the person held the Westcoast common share that was exchanged for the Exchangeable Share. This is not permitted by MI 45-102, and was not permitted by section 128(d) of the Rules, before it was replaced by MI 45-102. As noted in the memorandum of the principal regulator, staff feel it is appropriate to permit tacking in the circumstances of an exchangeable share deal where the control person is a control person of Exchangeco only, and not a control person of the issuer whose share is represented by the Exchangeable Share – in this case, Duke Energy. I discussed this with Brenda Leong, and she agreed that tacking should be permitting in these circumstances.

3. As noted in the memorandum of staff of the principal regulator, Westcoast applied in various jurisdictions from the Canadian GAAP reconciliation requirements in respect of its information circular. BC also has a Canadian GAAP reconciliation requirement, however no relief was applied for here. When I raised this point, the filer indicated that relief was not required in BC because of BCI 41-501. BCI 41-501, which refers to information circulars, provides that, where the prospectus disclosure follows the Ontario Rule, or Ontario has granted a waiver from its prospectus disclosure requirements, the issuer does not have to comply with the BC requirements. I discussed this issue with Carla Marie Hait. She indicated that it was not contemplated that the “waiver” would include any situation other than a prospectus filing, however, it was a reasonable, although unintended, reading of the Instrument.

Attached is a memorandum summarizing the continuous disclosure and insider reporting relief that will be provided to Anne McTeer once the decision is finalized. This relief is standard and does not raise any substantive issues.

I have compared the attached decision document to the *Newmont* decision and confirm that all of the necessary representations and conditions to the relief are included in this decision.

As the registration and prospectus relief is technical only, and it is the continuous disclosure documents of Duke Energy, not Exchangeco, that are relevant to the Exchangeable Shares, I recommend that the relief be given.

  
\_\_\_\_\_  
Rosann L. Youck, Senior Legal Counsel

**Duke Energy Corporation**

Date: February 18, 2002

Issuer a Reporting Issuer:	Yes	<input checked="" type="checkbox"/>	No
Statutory Filings Up-to-Date: <i>N/A</i>	Yes	<input type="checkbox"/>	No
Cease Trade Order:	Yes	<input checked="" type="checkbox"/>	No
Investigation Pending / 3 File:	Yes	<input checked="" type="checkbox"/>	No

**Westcoast Energy Inc.**


Date: February 18, 2002

Issuer a Reporting Issuer:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Statutory Filings Up-to-Date:	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
Cease Trade Order:	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
Investigation Pending / 3 File:	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No

**Determination**

I make the same decision as the principal regulator and opt into the System for this application. I consider that to grant the requested relief as contained in the decision document would not be prejudicial to the public interest.

Feb 18 / 02  
Date

  
\_\_\_\_\_  
Derek E. Patterson, Acting Director

A decision was made regarding Financial and Insider Reporting.

**1.a) Who is the reporting issuer:**

3946509 Canada Inc. (Exchangeco) <sup>1</sup>

**b) What will not be filed for the reporting issuer:**

- i) interim and annual financial statements.
- ii) material change reports (except for material changes that are a material change for Exchangeco, but not for Duke Energy Corporation, in which case Exchangeco will file its own material change reports),
- iii) proxy materials, including an information circular or report in lieu thereof,
- iv) insider reports.

**c) What will be filed for the reporting issuer:**

Duke Energy will file copies of its US continuous disclosure materials, including copies of any Form 10-K, Form 10-Q, Form 8-K and proxy statements.

**d) How it will be filed and paid for:**

Filings will be done under Exchangeco's SEDAR profile and the fees that would otherwise be payable in respect of Exchangeco's filings will be paid.

**e) Who is the solicitor in charge:**

The filing solicitor relating to this application is Roberta Carano of Stikeman Elliott in Toronto. Her direct line is (416) 869-5670.

Please call me if you have any questions relating to this decision.

Rosann L. Youck  
Senior Legal Counsel  
Legal and Market Initiatives  
Telephone: (604) 899-6656  
E-mail: [rycuck@bcsc.bc.ca](mailto:rycuck@bcsc.bc.ca)

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<sup>1</sup> Exchangeco will become a reporting issuer in BC as a result of an arrangement between Duke Energy Corporation and Westcoast Energy Inc. It is anticipated that Exchangeco will change its name to Duke Energy Canada Exchangeco Inc. prior to the closing of the arrangement. Please note that Duke Energy may also become a reporting issuer if any shareholders choose to take Duke Energy Shares, and not exchangeable shares. Duke Energy has applied to cease to be a reporting issuer, but this application is on hold until the arrangement closes.



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

P.O. Box 55, 19th Floor  
20 Queen Street West  
Toronto ON M5H 3S8

CP 55, 19<sup>e</sup> étage  
20, rue Queen ouest  
Toronto ON M5H 3S8

Web site: [www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
TDX 76  
CDS-OSC

February 13, 2002

**MEMORANDUM TO:** The Commission

**FROM:** Paul Hayward  
Legal Counsel, Corporate Finance

**RE:** Application filed by Duke Energy Corporation and Westcoast Energy Inc. dated December 6, 2001 for relief from the registration and prospectus requirements, continuous disclosure requirements, and insider reporting requirements of the *Securities Act* (Ontario)

Our Application # 1320/01

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### *Application*

This is an application by Duke Energy Corporation, two affiliates of Duke Energy and Westcoast Energy Inc. under the Mutual Reliance Review System ("MRRS") in all of the provinces and territories of Canada for relief from the requirements described below (as such terms are defined in the Decision Document) in connection with the proposed acquisition by Duke Energy of all of the issued and outstanding common shares of Westcoast pursuant to a plan of arrangement:

- a) the Registration Requirements and the Prospectus Requirements,
- b) the Continuous Disclosure Requirements, and
- c) the Insider Reporting Requirements.

The Ontario Securities Commission has been selected as the principal regulator for the purposes of this application.<sup>1</sup>

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<sup>1</sup> A separate-but-related MRRS application has been made in the provinces of British Columbia, Alberta, Saskatchewan and Quebec for a decision that Duke Energy and 3058368 Nova Scotia Company be deemed to cease to be reporting issuers. Alberta has been selected as the principal regulator in that application. A decision has not yet issued in that application.

***Recommendation***

Staff recommends that relief be granted in the form of the attached decision document (the "Decision Document").

***Facts***

The facts are as set out in the Decision Document. Capitalized terms used in this memorandum have the same meaning ascribed to them in the Decision Document unless otherwise indicated.

***Discussion and Analysis***

In terms of substance, this application is neither novel nor controversial except for an issue relating to "tacking" (described below under the heading "Novel Issue Relating to Tacking").

In terms of form, the drafting of the operative part of the Decision Document is somewhat novel, in large part due to the coming into force of MI 45-102 on November 30, 2001. As a result of the coming into force of this instrument, the operative language differs somewhat from that contained in the precedents cited by the Applicant. However, the language has been drafted generally to be consistent with the terms of MI 45-102. The operative portion of the Decision Document also follows the form in the recent decisions *In the Matter of Newmont Mining Corporation and Franco-Nevada Mining Corporation*, dated January 30, 2002, and *In the Matter of Roxio, Inc. and MGI Software Corp.* dated January 31, 2002 (copies of which accompany this memorandum).

Although the relief sought is not novel (other than the tacking issue), I have set out below a fairly detailed analysis of the registration and prospectus relief to clarify i) questions relating to the post-MI 45-102 form of drafting, and ii) the tacking issue.

***1. Background***

Duke Energy is a large integrated energy and energy services provider with over 23,000 employees world-wide, and operations in over 50 countries. The Duke Energy common shares are listed on the NYSE, and Duke Energy is subject to the reporting requirements of the Exchange Act. Duke Energy is not currently a "reporting issuer" or the equivalent in any province or territory of Canada.

Westcoast is a North American energy company whose interests include natural gas gathering, processing and transmission, natural gas storage facilities and gas distribution, power generation, and international energy businesses as well as financial, information and energy services businesses. Westcoast is a reporting issuer or the equivalent in all provinces of Canada. Westcoast is also currently subject to the reporting requirements applicable to foreign private issuers under the Exchange Act. The Westcoast common shares are listed on the TSE and on the NYSE.

Duke Energy and Westcoast have entered into a combination agreement as of September 20, 2001, pursuant to which Duke Energy intends to acquire all of the issued and outstanding Westcoast common shares by way of the Arrangement.

In consideration for the Westcoast shares, each Westcoast Shareholder (other than the Dissenting Shareholder, and other than Duke Energy and its affiliates) may elect, subject to certain proration adjustments, as consideration for each Westcoast common share held:

- (a) Cdn\$43.80 in cash;
- (b) a fraction of a Duke Energy common share equal to the Exchange Ratio;
- (c) a fraction of an Exchangeable Share equal to the Exchange Ratio; or
- (d) a combination of a fraction of a Duke Energy common share, a fraction of an Exchangeable Share and/or cash.

As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Westcoast common shares will be held directly or indirectly by Duke Energy and its affiliates.

On the completion of and as a consequence of the Arrangement, Duke Energy may or will become a reporting issuer in one or more of British Columbia, Alberta, Saskatchewan and Québec due to the definition of "reporting issuer" in those jurisdictions. On the Effective Date, Exchangeco will become a reporting issuer, or the equivalent thereof, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland.

## *2. The Exchangeable Shares*

The Arrangement has been structured to permit Westcoast shareholders who are residents of Canada to take Exchangeable Shares in lieu of Duke Energy common shares if they so choose.

The use of an exchangeable share structure in cross-border acquisitions has become quite common in recent years, for the reason that the structure provides securityholders resident in Canada with certain tax benefits, but otherwise provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the common shares of the foreign acquiror.

As indicated in the application, the tax benefits are principally twofold. Westcoast Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada).

## *3. Need for Relief*

As a result of the introduction of the exchangeable share structure, certain of the Trades may not fall within existing registration and prospectus exemptions, either because such Trades do not meet certain technical requirements of a particular exemption or because of the various possible exchanges associated with the Exchangeable Shares. However, the Applicant submits, and staff agrees, that the Trades are of types that are within the spirit of one or more of the existing exemptions. Accordingly, in drafting the terms and conditions of relief, the relief generally parallels the exemptions that would have been available had the Applicant relied on existing exemptions, such as, in Ontario, s. 2.8 of OSC Rule 45-501.

#### *4. Analysis of relief under the Decision Document*

##### *a) Relief available under existing exemptions (benchmark comparison)*

The terms of relief under the Decision Document have been drafted to be generally consistent with the relief that would have been available had existing exemptions, such as s. 2.8 of OSC Rule 45-501, been used.

Section 2.8 of OSC Rule 45-501 reads as follows:

**2.8 Exemption for a Trade on an Amalgamation, Arrangement or Specified Statutory Procedure** - Sections 25 and 53 of the Act do not apply to a trade in a security of an issuer in connection with

- (a) a statutory amalgamation or statutory arrangement; or

...

Had the Applicant chosen to rely on s. 2.8 of OSC Rule 45-501, section 6.7 of Rule 45-501 would have governed the resale of such securities.

**6.7 Resale of a Security Distributed under Section 2.5 or 2.8** - If a security is distributed under an exemption from the prospectus requirement in section 2.5 or 2.8, the first trade in that security is subject to section 2.6 of MI 45-102.

Subsection 2.6(4) of MI 45-102 reads as follows:

**2.6 Seasoning Period** (1) Unless the conditions in subsection (3), (4) or (5) are satisfied, a trade that is specified by section 2.4 or other securities legislation to be subject to this section is a distribution.

...

- (4) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:

1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
  - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
  - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
2. The trade is not a control distribution.
3. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
4. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
5. If the selling security holder is an insider or officer of the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

Accordingly, if the Duke Energy common shares had been issued to Westcoast Shareholders resident in Ontario in reliance on s. 2.8 of 45-501, a former Westcoast Shareholder (who did not now hold a

control block in Duke Energy) would be entitled to look to subsection 2.6(4) of MI 45-102 to resell such Duke Energy common shares.

The conditions in s. 2.6(4)(1) are satisfied as follows. Although Duke Energy was not a reporting issuer in any jurisdiction prior to the Arrangement, Duke Energy will become a reporting issuer in one or more of British Columbia, Alberta, Saskatchewan and Québec as a consequence of the Arrangement. In the case of resales of Duke Energy common shares in the first year following the Arrangement, Duke Energy will not have been a reporting issuer for at least 12 months. However, section 2.9(1) of MI 45-102 allows former Westcoast Shareholders who acquire Duke Energy common shares under the Arrangement to satisfy the seasoning requirement in subsection 2.6(4)(1) by reference to the period of time that Westcoast has been a reporting issuer:

**2.9 Determining Time Periods** (1) In determining the period of time that an issuer has been a reporting issuer for the purposes of section 2.6 or 2.8, in the case of securities distributed under any of the provisions listed in Appendix G, the period of time that one of the amalgamating, merging or continuing issuers was a reporting issuer immediately before the amalgamation, merger or continuation may be included.

The resale provision in s. 2.6(4) of MI 45-102, discussed above, is not be available if either

- i) the resale of Duke Energy common shares constitutes a "control distribution", or
- ii) Duke Energy is not a reporting issuer in any Jurisdiction at the time of the resale.

These situations are discussed briefly below.

In the case of resales which are control distributions, the reseller would be entitled to rely on ss. 2.8(1) and (3) of MI 45-102:

**2.8 Exemption for a Trade by a Control Person**

- (1) The prospectus requirement does not apply to a control distribution, ..., if the conditions in subsections (2) or (3) are satisfied.  
...
- (3) If the issuer of the securities was not a qualifying issuer at the distribution date, the conditions are:
  - 1. The issuer is and has been a reporting issuer for the 12 months immediately preceding the trade
    - (a) in a jurisdiction listed in Appendix B, if the issuer is an electronic filer under NI 13-101; or
    - (b) in the local jurisdiction of the purchaser of the securities that are the subject of the trade, if the issuer is not an electronic filer under NI 13-101.
  - 2. No unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade.
  - 3. No extraordinary commission or consideration is paid to a person or company in respect of the trade.
  - 4. The selling security holder has no reasonable grounds to believe that the issuer is in default of securities legislation.

5. The selling security holder, ..., has held the securities for<sup>2</sup>

- (a) [Not applicable], and
- (b) in all other cases, at least six months.

As was the case of a resale under s. 2.6 of MI-45-102, for the purposes of section 2.8 of 45-102 section 2.9(1) of MI 45-102 allows former Westcoast Shareholders who acquire Duke Energy common shares under the Arrangement to satisfy the seasoning requirement in subsection 2.8(3)(1) by reference to the period of time that Westcoast has been a reporting issuer.

In the case of resales where Duke Energy was not a reporting issuer in any Jurisdiction, the reseller would be entitled to rely on s. 2.14 of MI 45-102:

**2.14 First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption**

- (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
  - (a) the issuer of the security was not a reporting issuer in any jurisdiction at the distribution date;
  - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
    - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
    - (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
  - (c) the trade is made
    - (i) through an exchange, or a market, outside of Canada, or
    - (ii) to a person or company outside of Canada;

*(b) Relief under the Decision Document*

Except in the case of Quebec,<sup>3</sup> the Decision Document provides resale relief which is generally consistent with the scheme of relief described above.

In the case of Duke Energy common shares distributed pursuant to the Arrangement, such distribution is exempt from the Registration and Prospectus Requirements; however, the first trade in such shares

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<sup>2</sup> As discussed below, had the Applicant relied on existing exemptions, it would appear that former Westcoast Shareholders who acquired Duke Energy common shares under the Arrangement, and who then held a control block in Duke Energy, would be subject to a new hold period. See discussion below under the heading "Novel Tacking Issue".

<sup>3</sup> In view of the fact that Quebec is not a party to MI 45-102, separate resale provisions were drafted by CVMQ staff. These are not discussed in this memo.

is deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:

- (i) except in Québec,
  - (A) if Duke Energy is a reporting issuer in any Jurisdiction listed in Appendix B to Multilateral Instrument 45-102: Resale of Securities ("MI 45-102") other than Québec,<sup>4</sup> the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Duke Energy has been a reporting issuer under section 2.6, the period of time that Westcoast has been a reporting issuer may be included;<sup>5</sup> or
  - (B) if Duke Energy is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada;<sup>6</sup> and

In other words, if, at the time of resale, Duke Energy is a reporting issuer in any of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario or Saskatchewan, the former Westcoast Shareholder may rely on section 2.6 of MI 45-102. However, if Duke Energy is not a reporting issuer in any of these Jurisdictions at the time of resale, the holder effectively gets s. 2.14 treatment.

Similarly, the first trade in Exchangeable Shares is deemed to be a distribution or primary distribution to the public unless

- (i) except in Québec,
  - (A) the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.6 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included;<sup>7</sup> or
  - (B)<sup>8</sup> where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.8 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included;<sup>9</sup> and the period of time that a holder of Exchangeable

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<sup>4</sup> This clause varies slightly the language of s. 2.6(4) of MI 45-102 to reflect the fact that Duke Energy may continue to be a reporting issuer in Quebec while ceasing to be a reporting issuer in the other jurisdictions pursuant to the separate application for relief. This variation was also made in the *Newmont Mining* and *Roxio* decisions.

<sup>5</sup> This clause replicates the deeming provision in s. 2.9(1) of MI 45-102.

<sup>6</sup> This clause replicates s. 2.14(1)(c) of MI 45-102.

<sup>7</sup> This clause replicates the deeming provision in s. 2.9(1) of MI 45-102.

<sup>8</sup> The Applicant has advised that it does not require control distribution language in the case of the resale of the Duke Energy common shares. However, because the Applicant has no way to determine which Westcoast Shareholders will take Duke Energy common shares, cash or Exchangeable Shares, the Applicant has advised that concentrated positions of Exchangeable Shares could arise, and has requested control distribution language in the case of the Exchangeable Shares.

<sup>9</sup> This clause replicates the deeming provision in s. 2.9(1) of MI 45-102.

*Shares (or an affiliated or controlled entity of such holder) held Westcoast common shares shall be included in the calculation of the hold period);<sup>10</sup>*

### 5. Novel Tacking Relief

Staff from the NSSC highlighted the following novel aspect of the Decision. The closing language of subparagraph 1(b)(ii) of the Decision (in italics above) allows a former Westcoast Shareholder who now holds a control block in Exchangeco, and who is accordingly subject to a 6-month hold period by virtue of s. 2.8(3)(5) of MI 45-102 (reproduced above) a credit for the amount of time that such control person previously held Westcoast common shares.

NSSC staff noted that this treatment is not ordinarily granted under MI 45-102 and in fact appears to be novel. (It also appears that this treatment was not granted under the previous regime in Ontario. See s. 2.8 and 3.11 of the former Rule 45-501). NSSC staff further noted that this issue is not really unique to this transaction but likely would arise in many amalgamations and arrangements.

Staff requested comments on this point, noting that it seemed inconsistent with the spirit of the arrangement exemption for a Westcoast shareholder (regardless of whether such person held a control block in Westcoast), who holds freely tradeable Westcoast common shares, but who acquires a control block of Exchangeable Shares under the Arrangement, to be subject to a new hold period.

Staff further noted that, in the present application at least, holding a control block of Exchangeable Shares is not all that meaningful. The Exchangeable Shares merely represent a pool of securities which economically mirror Duke Energy common shares. Holding a control block of Exchangeable Shares does not necessarily imply a control position in Duke Energy.

BCSC staff noted that this issue in fact was addressed in the comment process which preceded the adoption of MI 45-102,<sup>11</sup> and questioned whether it was appropriate to grant this relief in view of the above comment. However, BCSC staff accepted that, in the present application, given that the tacking relief was being requested only for holders of control blocks of Exchangeable Shares, and not for holders of control blocks of Duke Energy common shares, it would be acceptable to permit this relief.

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<sup>10</sup> This is novel. See discussion under heading Novel Tacking Relief.

<sup>11</sup> See (2001) 24 OSCB 5511 at 5520;

#### 9. Determining Time Periods (section 2.9 of the proposed Multilateral Instrument)

Comment: One commentator suggests that the same language in subsection 2.9(1) of the proposed Multilateral Instrument regarding amalgamating, merged or continuing corporations should be adopted in subsection 2.9(2) of the proposed Multilateral Instrument so that a merger does not restart the seasoning period for trades by control persons.

Response: The CSA have not amended the proposed Multilateral Instrument to permit the inclusion of the period of time that the selling security holder had held the securities of one of the amalgamating, merged or continuing issuers in determining the seasoning period for securities acquired under prospectus exemptions for amalgamation, arrangement and statutory procedures because it is not currently contemplated in securities legislation of the jurisdictions implementing the Multilateral Instrument.

BCSC staff noted that the staff memorandum should indicate that (until this issue has been considered further), this relief should be limited to control block holders of exchangeecos.

Accordingly, I recommend that this tacking relief be granted.

*6. Relief from the Continuous Disclosure Requirements and Insider Reporting Requirements*

This relief is not novel and is substantially equivalent to relief granted in the following recent precedents:

- *In the Matter of Newmont Mining Corporation and Franco-Nevada Mining Corporation*, dated January 30, 2002 (MRRS)
- *In the Matter of Solelectron Corporation et al.* dated November 28, 2001 (MRRS)

*Comments from the Non-Principal Jurisdictions*

We received a large number of substantive comments from the non-principal jurisdictions, both during the initial comment period and again when the amended Decision Document was recirculated for comment on February 7, 2002. These have been resolved as described below.

*British Columbia*

1. The filer indicates that it received relief in Ontario, Alberta, Quebec and Newfoundland from the requirement to reconcile the financial statements in the Circular. British Columbia also requires that financial statements be reconciled to Canadian GAAP. Please ask the filer if it had an exemption in British Columbia from this requirement, or how it complied with this requirement.

*Resolved: The Filer advised that counsel to Westcoast received advice from counsel in B.C. that relief was not required in B.C. in reliance on BC Instrument 41-501 "Variation of Prospectus Disclosure Requirements for Issuers Using OSC Prospectus Rule". BCSC staff advised that they were satisfied by this response.*

2. a) For the purposes of the first trades of Exchangeable Shares, I am not comfortable deeming Duke to be a "qualifying issuer" - this has much larger effect than just in this decision as Exchangeeco could then rely on this declaration for future issuances without filing an AIF.

*Resolved: the operative portion of the Decision Document was extensively revised, and this language deleted.*

b) For the purposes of first trades by control persons, please ask the filer to provide submissions as to why we should treat it as a qualifying issuer for the purposes of determining if the control persons should have to comply with section 2.8(2) or 2.8(3) of MI 45-102.

*Resolved: the operative portion of the Decision Document was extensively revised, and this language deleted.*

3. With regard to the reconciliation of Duke Energy's financials to Canadian GAAP, please ask the filer to confirm that it could rely on the reconciliation exemption in Part 15 of 71-101 if Duke Energy itself were obliged to file financial statements. This also applies to the supplementary currency and exchange rate disclosure relief.

*Resolved: The filer advised that Duke Energy will comply with the requirements of U.S. securities laws relating to quarterly reports and annual reports and we propose that Duke Energy make the disclosure, filings and mailings described in paragraph (i) to (vi) on pages 18 and 19 of the MRRS Application, and therefore confirm that, if Duke Energy itself were obliged to file financial statements, Part 15 of 71-101 could be relied upon by Duke Energy.*

4. Please ask the filer to add the standard representations relating to:

a) the fact that the Arrangement and various agreements involve a number of trades (all of the trades do not have to be - and should not be - listed in the decision document);

*Done*

b) the fundamental investment decision is made at the time of the vote on the Arrangement;

*Done*

c) the holders of Exchangeable Shares will have an interest determined by reference to Duke Energy, not Exchangeco, and so it is information relating to Duke Energy that is relevant to the shareholders; and

*Done*

d) the Circular disclosed that applications would be made for exemptive relief, particularly relief from the continuous disclosure requirements, and identified the disclosure that would be provided in lieu.

*Done*

The filer can refer to the E\*Trade or Newbridge decisions for sample wording in this regard. Also, item (d) should also be a condition to the relief, as per the previous exchangeable share decisions.

5. The conditions to the continuous disclosure relief should specify that Duke Energy will file the documents under Exchangeco's SEDAR profile and will pay the fees that would otherwise be payable (see the Soletron decision of November 28, 2001 in this regard).

*Done*

6. Conditions to the insider reporting relief must be added that mirror the insider reporting instrument - again, see the Soletron decision for precedent.

*Done*

7. In condition (f) to the decision, please ask the filer what preferred shares are to be issued to Duke's financial advisors.

The filer advised as follows:

Approximately Cdn.\$150,000 of non-voting preference shares of Exchangeco, which are described on page 92 of the Circular, will be issued at closing of the Transaction to Duke Energy's financial advisors, as consideration for services rendered.

The filer further advised that no relief was being sought for such trades and that such did not come within the definition of Trades.

BCSC staff also made a number of helpful drafting comments, virtually all of which were adopted.

Nova Scotia

We have the following drafting comments with respect to the decision document:

1. In connection with the first trade of the Duke Energy common shares, could the applicant please add a representation stating that Duke Energy will concurrently send to all holders of its securities resident in Canada all disclosure material sent to holders of its securities resident in the United States;

*Done (in respect of Duke Energy common shareholders and Exchangeable Shareholders, after some resistance).*

2. It does not appear that the term the "Tradcs" is defined before it is used in the operative paragraph; and

*Done*

3. The decision does not contain the conditions relating to the exemption from the insider trading requirements which have been included in more recent decisions of this nature.

*The conditions in Solectron were reproduced.*

NSSC staff also provided several helpful comments on the redrafted decision document, and noted the issue re novel tacking relief (discussed above).

Northwest Territories

NWT advised that relief from the Continuous Disclosure Requirements was not necessary in NWT and requested that the Decision Document be amended to reflect the fact that this relief did not apply in NWT.

*Done*

**Pauline F Chong**

05/02/2002 14:30

To: denise.mclaren@seccom.ab.ca

cc:

Subject: Nabors Industries, Inc. - MRRS Application dated March 11, 2002

Thank you for the fax attaching the final signed and dated decision document. Can you please send me the electronic version for publication in BC.

Thanks,  
Pauline



British Columbia Securities Commission

Date:

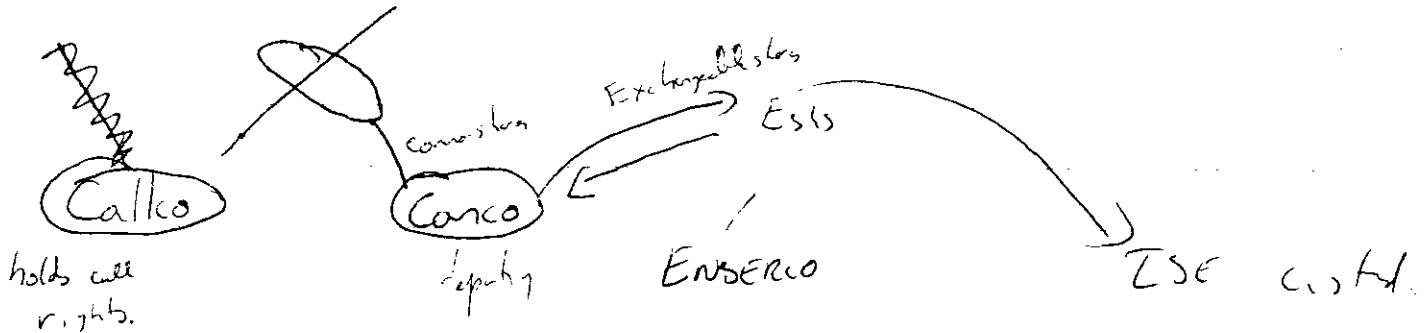
Subject:

Trust  
# of shares  
equal to # of exchangeable shares

Exchangeable shares may  
instead prefer to  
vote.

Nabors

ASE listed.



Exchangeable shares - Exchangeable into Nabors shares  
economic & voting right (though Calico)

Support Agreement -

Nabors & can't do anything  
unless Corco does it as well

Tax benefits

Information relating to Corco Nabors not Corco  
that is relevant to holders of Exchangeable shares

Application No.: 634  
Relief: S.119 S.48/76 S.91 Financials S.91 Insiders E&O Received: 03/12/2002  
Stage: Review  
Event: Sent initial comments to Principal Event Date: 03/27/2002  
E-mail Template: 2a - Initial comments to Principal  
Insert After:  
Comment:

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I reviewed this application. My initial comments are:

**Courtesy Comments**

1. The words "regulations, rules, instruments and/or policies" should be removed from the first recital.
2. Paragraphs 1.17 and 1.28 should be updated.
3. The following representation should be added (taken from paragraph 63 of the Duke Energy decision), "there is no public market in Canada for the Nabors Shares and no such public market is expected to develop."

**Substantive Comments**

I have no substantive comments.

Susan C Toews  
British Columbia Securities Commission  
Legal & Market Initiatives  
Telephone:(604) 899-6764  
Fax:(604)899-6814  
Email: stoews@bcsc.bc.ca

This message is confidential. Only the person to whom it is addressed may use it.

British Columbia Securities Commission

Category: Policy Documents - Decisions Sub-category: Exemption Orders (Discretionary)

BCSC Weekly Report, March 15, 2002 (Website)

Case Name:

Duke Energy Corp. (Re)

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, Yukon Territory, Northwest Territories and  
Nunavut

AND IN THE MATTER OF The Mutual Reliance Review System For  
Exemptive Relief Applications

AND IN THE MATTER OF Duke Energy Corporation, 3946509 CANADA  
Inc., 3058368 Nova Scotia Company and Westcoast Energy Inc.

[2002] B.C.S.C.D. No. 242

2002 BCSECCOM 201

P. Moore and R.S. Paddon

February 26, 2002

Mutual Reliance Review System for Exemptive Relief Applications - relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available for technical reasons - Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions - first trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102 Resale of Securities

Applicable British Columbia Provisions:

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61, 76, 85(1), 87, 91, 117 and 119

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

#### MRRS DECISION DOCUMENT

¶ 1 WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an application from Duke Energy Corporation ("Duke Energy"), 3058368 Nova Scotia Company ("Calco"), 3946509 Canada Inc. ("Exchangeco") and Westcoast Energy Inc. ("Westcoast") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:

- (a) certain trades in securities made in connection with or resulting from the proposed combination (the "Transaction") of Duke Energy and Westcoast to be effected by way of a plan of arrangement (the "Arrangement") under Section 192 of the Canada Business Corporations Act (the "CBCA") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Prospectus Requirements");
- (b) Exchangeco shall be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file with the

QUICKLAW

Decision Makers and deliver to its security holders an annual report, where applicable, and interim and annual financial statements, to file and deliver an information circular, to file interim and annual management's discussion and analysis of the financial condition and results of operation of Exchangeco and, where applicable, to file an annual information form (the "Continuous Disclosure Requirements"); and

- (c) the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements of Exchangeco in connection therewith (the "Insider Reporting Requirements") shall not apply to each insider of Exchangeco and its successors and Exchangeco;

¶ 2 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;

¶ 3 AND WHEREAS the Applicant has represented to each Decision Maker that:

1. Duke Energy, together with its subsidiaries, is an integrated energy and energy services provider with the ability to offer physical delivery and management of both electricity and natural gas throughout the United States and abroad. With over 23,000 employees world-wide, Duke Energy is a multinational corporation with operations in over 50 countries.
2. As of December 31, 2000, Duke Energy's total assets were approximately US\$58 billion. For the financial year ended December 31, 2000, its total operating revenues and net income were approximately US\$49.318 billion and US\$1.776 billion, respectively.
3. Duke Energy was organized in 1917 under the laws of the state of New Jersey and reincorporated under the laws of the State of North Carolina in 1963. Duke Energy was known as Wateree Power Company until 1924, when it changed its name to Duke Power Company. In 1997, it changed its name to Duke Energy Corporation. Duke Energy's principal executive offices are located at 526 South Church Street, Charlotte, North Carolina, U.S.A. 28202.
4. Duke Energy's authorized capital currently consists of two billion 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, 2,007,185 shares of Duke Energy Preferred Stock A and no shares of Duke Energy Preference Stock issued and outstanding.
5. As of November 29, 2001, there were 81 registered holders of Duke Energy common shares in Canada holding 38,933 Duke Energy common shares, representing approximately 0.005% of the total number of issued and outstanding Duke Energy common shares. As of December 10, 2001, there were 961 beneficial holders of Duke Energy common shares in Canada holding 2,097,951 shares representing approximately 0.27% of the total number of issued and outstanding Duke Energy

QUICKLAW

common shares.

6. 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.
7. Duke Energy is a public company in the United States. The Duke Energy common shares are listed on the New York Stock Exchange (the "NYSE") under the symbol "DUK".
8. Duke Energy is not a "reporting issuer" or the equivalent in any province or territory of Canada. Upon the completion of and as a consequence of the Arrangement, Duke Energy may become a reporting issuer in British Columbia, Alberta, Saskatchewan and Québec.
9. Duke Energy is subject to the United States Securities Exchange Act of 1934, as amended (the "Exchange Act").
10. On September 20, 2001, 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.
11. Calco is an indirect wholly-owned subsidiary of Duke Energy. Calco 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 (as defined below). Prior to the effective date of the Arrangement (the "Effective Date"), it is expected that Calco will change its name to "Duke Energy Canada Call Co.". Calco's registered office address is Suite 800, 1959 Upper Water Street, P.O. Box 997, Halifax, Nova Scotia B3J 2X2.
12. The authorized capital of Calco consists of one billion common shares. All of the outstanding common shares of Calco are held indirectly by Duke Energy.
13. Exchangeco is an indirect subsidiary of Duke Energy incorporated under the CBCA on September 14, 2001 as 3946509 Canada Inc. for the purpose of implementing the Arrangement. Prior to the Effective Date, it is expected that Exchangeco will change its name to "Duke Energy Canada Exchangeco Inc.". Exchangeco's registered office address is 199 Bay Street, Commerce Court West, Suite 5300, Toronto, Ontario M5L 1B9.
14. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of preference shares, issuable in series. All of the outstanding common shares of Exchangeco are held indirectly by Duke Energy. No preference shares of Exchangeco are currently outstanding.
15. The share capital of Exchangeco will be amended prior to the Effective Date to create the non-voting exchangeable shares (the "Exchangeable Shares"). Upon the completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Westcoast Shareholders who receive Exchangeable Shares in exchange for their Westcoast common shares pursuant to the Arrangement.
16. Exchangeco is currently a "closely-held issuer" within the meaning of that term under

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OSC Rule 45-501. Upon completion of the Arrangement, it is anticipated that the Exchangeable Shares will be listed on The Toronto Stock Exchange (the "TSE") and that Exchangeco will become a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland. The Exchangeable Shares were conditionally approved for listing on the TSE on October 12, 2001, subject to the satisfaction of its customary requirements.

17. Westcoast is a North American energy company whose interests include natural gas gathering, processing and transmission, natural gas storage facilities and gas distribution, power generation, and international energy businesses as well as financial, information and energy services businesses.
18. As at December 31, 2000, Westcoast had consolidated assets of approximately Cdn\$15.1 billion and employed approximately 5,500 people. For the financial year ended December 31, 2000, Westcoast had gross revenues of approximately Cdn\$8.9 billion and net income of approximately Cdn\$388 million.
19. Westcoast was incorporated by a Special Act of Parliament as Westcoast Transmission Company Limited in 1949, and continued under the CBCA effective May 5, 1976. Westcoast Transmission Company Limited changed its name to Westcoast Energy Inc. on June 1, 1988. Westcoast's registered office is 1333 West Georgia Street, Vancouver, British Columbia V6E 3K9.
20. Westcoast's authorized capital consists of an unlimited number of Westcoast common shares and an unlimited number of first preferred shares, issuable in series (the "Westcoast First Preferred Shares"), and second preferred shares, issuable in series (the "Westcoast Second Preferred Shares"). As of November 27, 2001, 127,386,859 Westcoast common shares were issued and outstanding, no Westcoast Second Preferred Shares were issued and outstanding, and the following Westcoast First Preferred Shares were issued and outstanding:
  - a. 8,000,000 4.90% Cumulative Redeemable First Preferred Shares, Series 5;
  - b. 5,000,000 4.72% Cumulative Redeemable First Preferred Shares, Series 6;
  - c. 6,000,000 5.50% Cumulative First Preferred Shares, Series 7;
  - d. 6,000,000 5.60% Cumulative First Preferred Shares, Series 8; and
  - e. 5,000,000 5.00% Cumulative Redeemable First Preferred Shares, Series 9.
21. The Westcoast common shares are listed on the TSE under the symbol "W" and on the NYSE under the symbol "WE".
22. Westcoast is a reporting issuer or the equivalent in all provinces of Canada. To the best of the knowledge of Westcoast, Westcoast is not in default of any of the requirements of the Legislation. Westcoast is also currently subject to the reporting requirements applicable to foreign private issuers under the Exchange Act.
23. Westcoast is currently eligible to file under National Instrument 44-101 - "Short Form Prospectus Distributions".
24. As of February 6, 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% of the total number of issued and outstanding Westcoast common shares. Based on

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- 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.
25. 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.
  26. Duke Energy, Calco, Exchangeco and Westcoast entered into an amended and restated combination agreement as of September 20, 2001, pursuant to which Duke Energy *intends to acquire all of the issued and outstanding Westcoast common shares by way of the Arrangement.*
  27. The Arrangement will be carried out under Section 192 of the CBCA. On November 6, 2001, the Applicant obtained, under section 192 of the CBCA, an interim order (the "Interim Order") from the Supreme Court of British Columbia which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Westcoast Meeting (as defined below) and the completion of the Arrangement.
  28. 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.
  29. The Circular contained or incorporated by reference prospectus-level disclosure of the business and affairs of Duke Energy and Westcoast and a detailed description of the Arrangement, except as varied by Orders previously granted by certain of the Decision Makers. The Circular also contained certain historical financial statements of Duke Energy and Westcoast and certain pro forma condensed consolidated financial statements for the combined Duke Energy/Westcoast entity.
  30. 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 Transaction, at a special meeting of Westcoast Securityholders held on December 13, 2001 (the "Westcoast Meeting").
  31. 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. At the Westcoast Meeting, over 96% of the votes cast by the Westcoast Securityholders were in favour of the Transaction. In addition, the Westcoast Shareholders approved the amendment to the Westcoast Rights Agreement.
  32. Westcoast received a valid notice of objection to the Arrangement, pursuant to rights of dissent granted to Westcoast Shareholders in accordance with the Interim Order, from only one Westcoast Shareholder in respect of 664 Westcoast common shares (the "Dissenting Shareholder").

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33. On January 10, 2002, the Supreme Court of British Columbia granted final approval to the Arrangement.
34. Subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Transaction will be completed in the first quarter of 2002.
35. On the Effective Date, pursuant to the Arrangement, each Westcoast Shareholder (other than the Dissenting Shareholder, and other than Duke Energy and its affiliates) may elect, subject to certain proration adjustments described in the Circular, as consideration for each Westcoast common share held:
  - a. Cdn\$43.80 in cash;
  - b. a fraction of a Duke Energy common share equal to the Exchange Ratio (as described below);
  - c. a fraction of an Exchangeable Share equal to the Exchange Ratio; or
  - d. a combination of a fraction of a Duke Energy common share, a fraction of an Exchangeable Share and/or cash.
36. Only residents of Canada may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Westcoast Shareholder who is not a resident of Canada will be deemed to be an election to receive Duke Energy common shares.
37. The Exchange Ratio will be determined by dividing Cdn\$43.80 by the product of the weighted average trading price of Duke Energy common shares on the NYSE over the 20 consecutive trading days ending two Business Days before the Effective Date (the "Weighted Average Trading Price of Duke Energy Common Shares") and a fixed currency exchange rate of Canadian dollars to U.S. dollars of 1.54. The Exchange Ratio is subject to a collar such that if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or less than US\$36.88, the Exchange Ratio will be fixed at 0.7711, and if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or greater than US\$46.48, the Exchange Ratio will be fixed at 0.6119.
38. The Arrangement provides that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will consist of approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares. Elections made by Westcoast Shareholders in the letter of transmittal and election form mailed to Westcoast Shareholders will, pursuant to the Arrangement, be prorated accordingly.
39. No fractions of Exchangeable Shares or Duke Energy common shares will be issued in exchange for Westcoast common shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or Duke Energy. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a Duke Energy common share will be entitled to receive a cash payment equal to the product of the fractional interest and the Weighted Average Trading Price of Duke Energy common shares.
40. Under the Arrangement, each Westcoast Option will be replaced with an option (the "Replacement Options") to purchase Duke Energy common shares. The number of

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Duke Energy common shares for which a Replacement Option may be exercised will be determined by multiplying the number of Westcoast common shares subject to the Westcoast Option by the Exchange Ratio, subject to rounding. The exercise price of the Replacement Option will be determined by dividing the exercise price per Westcoast common share of the Westcoast Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding. The exercise price will also be converted into U.S. dollars at the currency exchange rate on the Effective Date.

41. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Westcoast common shares will be held directly or indirectly by Duke Energy and its affiliates.
42. It is expected that the Westcoast common shares will be delisted from the TSE and the NYSE on or after the Effective Date and on the Effective Date, Exchangeco will become a reporting issuer, or the equivalent thereof, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland.
43. The Westcoast First Preferred Shares, Series 5, Series 6, Series 7, Series 8 and Series 9 will remain issued and outstanding and will continue to be listed on the TSE after the Effective Date. Westcoast will continue to be a reporting issuer or the equivalent thereof in all provinces of Canada.
44. The Exchangeable Shares will be issued by Exchangeco. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Duke Energy common shares.
45. Duke Energy will apply to the NYSE to list the Duke Energy common shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares and upon exercise of the Replacement Options.
46. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Duke Energy, Exchangeco and a trustee (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Duke Energy, Calco and Exchangeco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below.
47. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time up to eight years from the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Duke Energy common shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Duke Energy common share. Westcoast Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the Income Tax Act (Canada).
48. Subject to applicable law and the exercise of the Retraction Call Right described below,

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a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the Retraction Price described in the Circular which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. When a holder of Exchangeable Shares makes a Retraction Request, Calco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions.

49. Subject to applicable law and the Redemption Call Right described below, at any time on or after the eighth anniversary of the Effective Date, Exchangeco may, or earlier in the event of certain circumstances described in the Circular under the heading "Early Redemption" will, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the Redemption Price described in the Circular, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. Calco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Plan of Arrangement attached as Schedule F to the Circular.
50. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.
51. On the Effective Date, Duke Energy, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Duke Energy will issue to the Trustee a number of Duke Energy common shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Duke Energy common shares. Each registered holder of Exchangeable Shares (other than Duke Energy and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Duke Energy are entitled to vote will be entitled to instruct the Trustee to vote one Duke Energy common share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Duke Energy so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Duke Energy common shares.
52. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Duke Energy on a Duke Energy common share.
53. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its

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affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Calco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Duke Energy and its affiliates) from the holders of Exchangeable Shares on the Liquidation Date for a purchase price per share equal to the Liquidation Amount described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share. On the liquidation, dissolution or winding-up of Exchangeco (or when any other Insolvency Event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Duke Energy and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Duke Energy to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price as described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share.

54. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Duke Energy common shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of Duke Energy (or when any other Liquidation Event described in the Circular occurs), each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Duke Energy common shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.
55. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary, or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs. The Exchangeable Shares will rank junior to the preference shares of Exchangeco.
56. On the Effective Date, Duke Energy, Exchangeco and Calco will enter into the Support Agreement which will provide that Duke Energy will not declare or pay dividends on the Duke Energy common shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that Duke Energy will ensure that Exchangeco and Calco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, Duke Energy will not issue or distribute Duke Energy common shares, securities exchangeable for or convertible into or carrying rights to acquire Duke Energy common shares, rights, options or warrants to subscribe for or to purchase Duke Energy common shares, evidences of indebtedness or other assets of Duke Energy to the holders of Duke Energy common shares nor will Duke Energy

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subdivide, redivide or change the Duke Energy common shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.

57. The Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares, Replacement Options and Duke Energy common shares; the issuance of Duke Energy common shares upon the exchange of Exchangeable Shares and the issuance of Duke Energy common shares upon the exercise of Replacement Options; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Duke Energy and its affiliates (including Exchangeco and Calico) in connection with the Arrangement.
58. The fundamental investment decision to be made by a Westcoast Securityholder was made at the time when such holder voted in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than the Dissenting Shareholder) will ultimately receive Duke Energy common shares in exchange for the Westcoast common shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Duke Energy common shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision.
59. As a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Duke Energy common shares, holders of Exchangeable Shares will have an equity interest determined by reference to Duke Energy, rather than Exchangeco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Duke Energy, not Exchangeco. Accordingly, it is the information relating to Duke Energy, not Exchangeco, that will be relevant to the holders of Exchangeable Shares.
60. Duke Energy will send concurrently to all holders of Exchangeable Shares and 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.
61. The Circular disclosed that applications have been made for prospectus, registration and resale exemptions and exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefor if such exemptions are granted.
62. Upon completion of the Arrangement, assuming a maximum Exchange Ratio of 0.7711, 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 shares and/or Exchangeable Shares (calculated based upon the number of beneficial Westcoast Shareholders and beneficial 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

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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.

63. There is no public market in Canada for the Duke Energy common shares and no such public market is expected to develop.

¶ 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 Makers with the jurisdiction to make the Decision has been met;

¶ 6 THE DECISION of the Decision Makers pursuant to the Legislation is:

1. the Registration Requirements and the Prospectus Requirements shall not apply to the Trades provided that
  - (a) the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless:
    - (i) except in Québec,
      - (A) the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.6 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; or
      - (B) where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with section 2.8 of MI 45-102; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.8 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Westcoast common shares shall be included in the calculation of the hold period);
    - (ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and
  - (b) the first trade in Duke Energy common shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the

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public under the Legislation unless, at the time of the trade:

(i) except in Québec,

- (A) if Duke Energy is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Duke Energy has been a reporting issuer under section 2.6, the period of time that Westcoast has been a reporting issuer may be included; or
- (B) if Duke Energy is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and

(ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Duke Energy common shares; and

IT IS FURTHER THE DECISION of the Decision Makers, other than the Decision Maker in the Northwest Territories, pursuant to the Legislation that:

2. the Continuous Disclosure Requirements shall not apply to Exchangeco so long as:
  - (a) Duke Energy sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of Duke Energy common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
  - (b) Duke Energy files with each Decision Maker copies of all documents required to be filed by it with the SEC under the Exchange Act, and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
  - (c) Duke Energy complies with the requirements of the NYSE in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Duke Energy's affairs;
  - (d) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material to holders of Exchangeable Shares but would not be material to holders of Duke Energy common shares;

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- (e) Duke Energy includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Duke Energy and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Duke Energy common shares and the right to direct voting at Duke Energy's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
  - (f) Duke Energy remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Exchangeco;
  - (g) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement, and preferred shares issued to Duke Energy's financial advisors prior to the consummation of the Arrangement; and
3. The Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 - System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, so long as:
- (a) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Duke Energy before the material facts or material changes are generally disclosed; and
  - (b) such insider of Exchangeco is not a director or senior officer of Duke Energy, or a "major subsidiary" of Duke Energy, as such term is defined in National Instrument 55-101 - Exemptions from Certain Insider Reporting Requirements as if Duke Energy were a reporting issuer.

P. MOORE  
R.S. PADDON

QL UPDATE: 20020322

qp/e/qlsfr

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Compared to  
Richland

IN THE MATTER OF ALBERTA, BRITISH COLUMBIA,  
SASKATCHEWAN, MANITOBA, ONTARIO QUEBEC,  
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND, YUKON TERRITORY, NUNAVUT AND  
NORTHWEST TERRITORIES  
AND

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

AND

IN THE MATTER OF NABORS INDUSTRIES, INC., ●,  
● AND ENSERCO ENERGY SERVICE COMPANY INC.

and  
Labrador

update

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries, Inc. ("Nabors"), ● ("Callco") and ● ("Canco") (collectively, the "Applicant") for a decision pursuant to the securities legislation, ~~regulations, rules, instruments and/or policies of~~ the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

- (A) to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefor (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement (the "Acquisition Agreement") to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") pursuant to a plan of arrangement (the "Arrangement") under Section 192 of the *Canada Business Corporations Act*, as amended (the "CBCA");
- (B) for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial statements, information circulars and annual information forms and provide interim and annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco; and
- (C) that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "Insider Reporting Requirements") shall not apply to insiders of Canco;

**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** the Applicant has represented to the Decision Makers that:

- 1.1 Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
- 1.2 Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;
- 1.3 as at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively;
- 1.4 the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("**Nabors Shares**"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding;
- 1.5 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "**AMEX**") under the symbol "**NBR**";
- 1.6 as at February 22, 2002, there were ● registered holders of Nabors Shares resident in Canada (out of a total of 2,447 registered holders) holding 1,744 Nabors Shares, representing approximately 0.001% of the total number of issued and outstanding Nabors Shares. As of ●, 2002, there were ● beneficial holders of Nabors Shares resident in Canada holding ● Nabors Shares representing approximately ●% of the total number of issued and outstanding Nabors Shares;
- 1.7 on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion;
- 1.8 Nabors is subject to the reporting requirements of the *United States Securities Exchange Act of 1934* (the "**1934 Act**");
- 1.9 Nabors is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, Saskatchewan and Québec following, and as a consequence of, the completion of the Arrangement;

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- 1.10 Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) solely for the purpose of holding ~~hold~~ the various call rights associated with the exchangeable non-voting shares of Canco to be issued pursuant to the Arrangement (the "Exchangeable Shares");
- 1.11 all of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times. Callco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada;
- 1.12 Nabors and Callco have submitted an application to the securities regulatory authorities in Alberta and Saskatchewan to be deemed to have ceased to be reporting issuers or the equivalent after the Effective Time (as defined below) of the Arrangement;
- 1.13 Canco was incorporated under the CBCA on ●, 2002 for the purpose of implementing the Arrangement, and has its registered office in Calgary, Alberta. Canco has not carried on any business to date;
- 1.14 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;
- 1.15 the only securities of Canco that are issued or may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares are held and will continue to be held, indirectly, by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares (as defined below) who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement;
- 1.16 Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement;
- 1.17 the Exchangeable Shares were conditionally approved for listing on The Toronto Stock Exchange (the "TSE") on ●, 2002, subject to completion of the Arrangement and the satisfaction of its customary requirements;
- 1.18 on November 17, 1988, Bonus Petroleum Cop. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("Bonus") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus

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subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001;

- 1.19 Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs;
- 1.20 Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively;
- 1.21 the authorized capital of Enserco consists of an unlimited number of common shares ("**Enserco Shares**"), of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money options ("**Enserco Options**") and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Enserco Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding warrants ("**Warrants**"). Up to an additional 2,500 Enserco Shares may be issued pursuant to certain share purchase rights ("**Share Purchase Rights**") pursuant to a cooperation agreement dated June 18, 2001 between Bonus Well Servicing Partnership and Polar Energy Services Ltd.;
- 1.22 the Enserco Shares are listed and posted for trading on the TSE under the symbol "**ERC**";
- 1.23 Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;
- 1.24 to the knowledge of the Applicant, Enserco is not in default of any requirements of the Legislation;
- 1.25 on March 19, 2002 the Applicant and Enserco obtained under Section 192 of the CBCA an interim order (the "**Interim Order**") from the Court of Queen's Bench of Alberta specifying, among other things, certain procedures and requirements to be followed in connection with the calling and conduct of the Enserco Meeting (as defined below) and the completion of the Arrangement;
- 1.26 the Arrangement is subject to approval of the holders of Enserco Shares ("**Shareholders**"), and the holders of Enserco Options, Warrants and Shares Purchase Rights (collectively, the "**Enserco Security Holders**") and the Court of Queen's Bench of Alberta by virtue of a final order (the "**Final Order**") approving the Arrangement;
- 1.27 a meeting of the Enserco Security Holders (the "**Enserco Meeting**") has been scheduled for April 24, 2002 to consider and, if deemed appropriate, approve the Arrangement;

- 1.28 an information circular dated on or about March 19, 2002 (the "Circular") prepared in accordance with the Legislation will be mailed to the Enserco Security Holders in connection with the Enserco Meeting and filed with each of the Decision Makers concurrently therewith;
- 1.29 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco;
- 1.30 at the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Warrants and Share Purchase Rights will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;
- 1.31 upon receipt of the approval of the Enserco Security Holders at the Enserco Meeting, the Applicant and Enserco will thereafter apply to the Court of Queen's Bench for the Final Order;
- 1.32 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about April 26, 2002;
- 1.33 under the terms of the Arrangement, at the effective time (the "**Effective Time**") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "**Effective Date**"):
- 1.33.1 each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "**Per Share Price**"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 1.34);
- 1.33.2 each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefor the Per Share Price in cash;

- 1.33.3 each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 1.34). The exercise price per Nabors Share under the Warrant shall equal the exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and
- 1.33.4 each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance;
- 1.34 the "Exchange Ratio" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "**Measurement Period**") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon-buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "**Nabors Average Price**"). The "**Simple Average of the Weighted Average Trading Price**" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;
- 1.35 as an alternative to the exchange contemplated by paragraph 1.33.1 each Shareholder shall be entitled to transfer its Enserco Shares to a newly-incorporated corporation (a "**Holdco**") and transfer the issued and outstanding shares thereof (collectively, "**Holdco Shares**") to Canco (the "**Holdco Alternative**"), provided that on or prior to and as of the Effective Date:

- 1.35.1 the Shareholder is a resident of Canada for the purposes of the *Income Tax Act* (Canada) (the "ITA");
- 1.35.2 Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;
- 1.35.3 the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;
- 1.35.4 Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;
- 1.35.5 the Shareholder indemnifies Nabors, Enserco, Canco and Callco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Acquiror, Canco or Callco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;
- 1.35.6 prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;
- 1.35.7 on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;
- 1.35.8 on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabor's consent, acting reasonably;
- 1.35.9 other than as provided in 1.35.6 above, Holdco will not declare or pay any dividends or other distributions;
- 1.35.10 the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabor's right to approve all such returns as to form and substance;

- 1.35.11 the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and
- 1.35.12 the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco;
- 1.36 to the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):
  - 1.36.1 the Per Share Price in cash without additional interest; or
  - 1.36.2 such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco;
- 1.37 no fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Canco or Nabors. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share will be entitled to receive a cash payment equal to the product of the fractional interest and the Nabors Average Price;
- 1.38 as a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Enserco Shares will be held directly or indirectly by Nabors and its affiliates;
- 1.39 it is expected that the Enserco Shares will be delisted from the TSE on or after the Effective Date. Enserco will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;
- 1.40 Nabors will apply to the AMEX to list the Nabors Shares to be issued in exchange for the Exchangeable Shares and upon exercise of the Warrants;
- 1.41 the rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Nabors, Canco

and a Canadian trust company (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Nabors, Callco and Canco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below;

- 1.42 the Exchangeable Shares will be issued by Canco and will be exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Nabors Share. Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the ITA;
- 1.43 subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "Exchangeable Share Price") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "Retraction Price"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "Retraction Request"), Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions;
- 1.44 subject to applicable law and the Redemption Call Right (as defined and described below), Canco:
- 1.44.1 may at any time on or after the fifth anniversary of the Effective Date; or
- 1.44.2 will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,

redeem all but not less than all of the then outstanding Exchangeable Shares (the "Redemption Date") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "Redemption Price"), which will be fully paid and satisfied by the delivery for each

Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Callco will have an overriding right (the "**Redemption Call Right**") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement;

- 1.45 except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable Share Provisions, the holders of Exchangeable Shares will not be entitled to receive notice of, or attend or vote at, any meeting of shareholders of Canco;
- 1.46 on the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "**Beneficiary**") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares;
- 1.47 the Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share;
- 1.48 on the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Callco (the "**Liquidation Call Right**") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "**Liquidation Date**") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "**Liquidation Amount**"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;

- 1.49 on the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "**Exchange Right**") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 1.50 in order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the assets of Nabors among its shareholders for the purpose of winding up its affairs (a "**Liquidation Event**"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement;
- 1.51 the Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs;
- 1.52 on the Effective Date, Nabors, Canco and Callco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, redivide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares;

- 1.53 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares and replacement Warrants; the issuance of Nabors Shares upon the exchange of Exchangeable Shares and the issuance of Nabors Shares upon the exercise of Warrants; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Calco) in connection with the Arrangement;
- 1.54 the fundamental investment decision to be made by an Enserco Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than a dissenting Shareholder) will ultimately receive Nabors Shares in exchange for the Enserco Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision; 58 ✓
- 1.55 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares; 59 ✓
- 1.56 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted; and 61 ✓
- 1.57 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act; 60 ✓

*No public market in Canada for Nabors (rep 63)*

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 shall not apply to the Trades;
2. the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless:
  - 2.1 except in Québec:
    - 2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 – *Resale of Securities* ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or
    - 2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Enserco Shares shall be included in the calculation of the hold period);
  - 2.2 in Québec, Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and
3. the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
  - 3.1 except in Québec,
    - 3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or

- 3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
- 3.2 in Québec, Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Nabors Shares; and
- 4. the Continuous Disclosure Requirements shall not apply to Canco so long as:
  - 4.1 Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
  - 4.2 Nabors files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Canco's SEDAR profile and the filing fees which would otherwise be payable by Canco in connection with such filings are paid;
  - 4.3 Nabors complies with the requirements of the AMEX in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Nabors' affairs;
  - 4.4 Canco complies with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares;
  - 4.5 Nabors includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
  - 4.6 Nabors remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Canco; and
  - 4.7 Canco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement; and

STIKEMAN ELLIOTT

5. The Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 – *System for Electronic Disclosure by Insiders*, shall not apply to Canco and each insider of Canco, so long as:
- 5.1 such insider of Canco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Nabors before the material facts or material changes are generally disclosed; and
  - 5.2 such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 - *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

DATED this ● day of ●, 2002.

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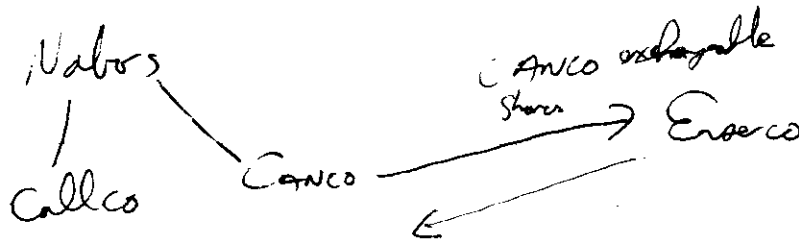
●



British Columbia Securities Commission

Date:

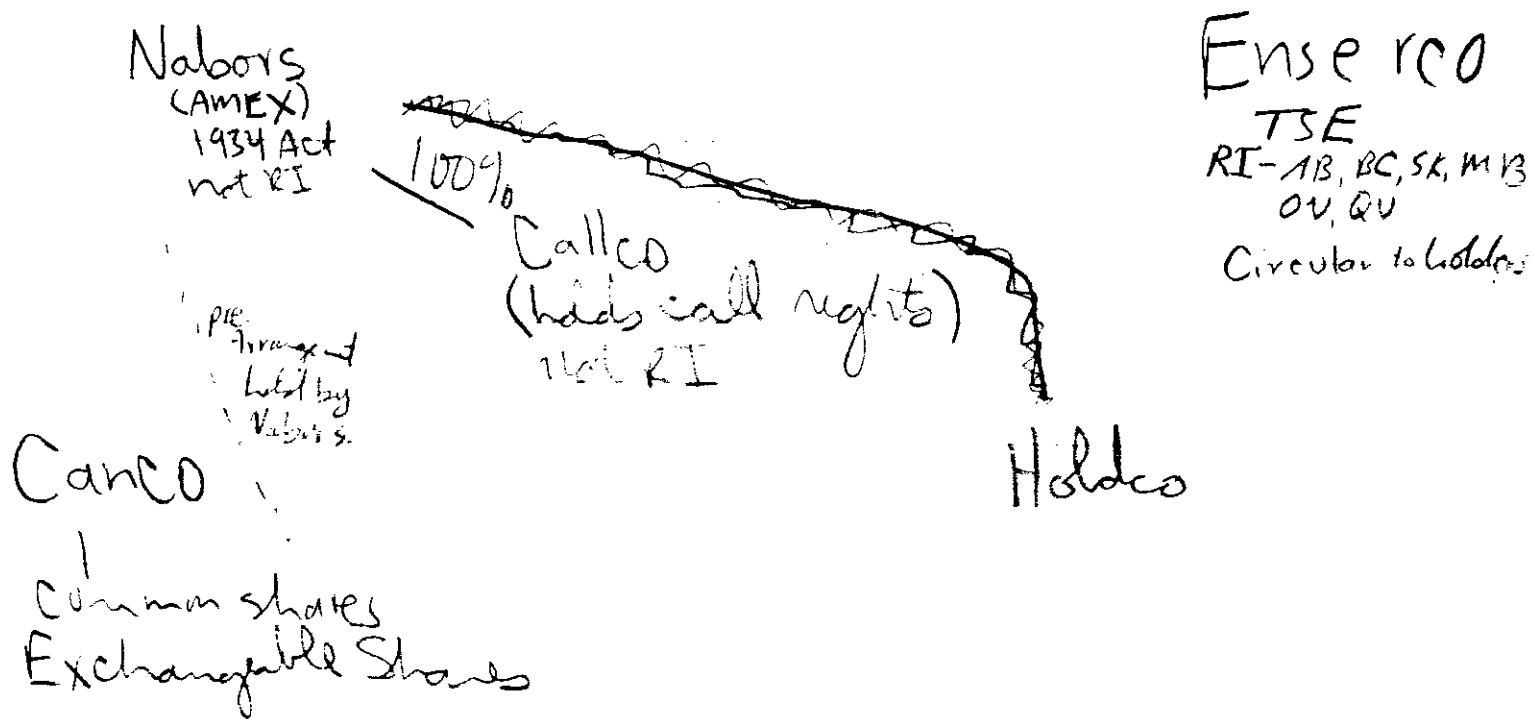
Subject:



Canadian shareholders of Enserco receive 1 Canco exchangeable share of Valors

Trustee receives share of Valors equivalent to # of exchangeable shares issued to Enserco shhs.

based on Duke - issued per 62



Enserco Share exchanged for \$cash or Exchangeable Shares  
" " transferred to Canco

Enserco Warrants - become right to acquire ~~Enserco~~ Nabors Shares

Enserco Option & Share Purchase Right - terminated  
& get cash

or Enserco Shares could be transferred to Holdco for  
Holdco Shares → then transferred to Canco

Holdco declares stock dividend

**A.S.C****ALBERTA SECURITIES COMMISSION****RECEIVED TRANSMISSION**

LEGAL AND MARKET INTL

**To:**

- ☐ Exemptions & Orders Div.
- ☐ Douglas Brown
- ☐ Admin/Document Mgmt
- ☐ Dean Murrison
- ☐ Marches des Capitaux
- ☐ Shirley Lee
- ☐ Office of the Administrator
- ☐ Securities Division
- ☐ Registrar of Securities
- ☐ [Assigned Staff Person]
- ☐ [Assigned Staff Person]
- ☐ [Assigned Staff Person]

**COMPANY:**

MAR 13 2002

**FAX:**

BCSC	604-899-6814
MSC	204-945-0330
OSC	416-593-8244
SSC	306-787-5899
CVMQ	514-873-3090
NSSC	902-424-4625
New Brunswick	506-658-3059
Newfoundland	709-729-6187
Prince Edward Island	902-368-5283
Yukon	867-393-6251
Northwest Territories	867-873-0243
Nunavut	867-975-6194

**AND TO:**

Lawyer: Keith R. Chatwin  
 Firm: Stikeman Elliott  
 Fax: 266-9034

**FROM:** Blaine Young  
 Phone: (403) 297-4220  
 Fax: (403) 297-6156  
 (e-mail: blaine.young@seccom.ab.ca)

**OUR FILE:** B28405**TOTAL PAGES:** 1**DATE:** March 13, 2002

**SUBJECT:** MRRS for Exemptive Relief Applications (the "System") - Application filed by Nabors Instrties, Inc. dated March 11, 2002 under the *Securities Act* (Alberta) (the "Alberta Act")

**COMMENTS:**

The above application has been filed under the system. Alberta has been selected as principal jurisdiction for the application and the file has been assigned to me.

The 7 business day initial comment period will end on Friday, March 22, 2002.

**THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL.** If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error or have not received all the pages, please call Denise McLaren immediately at (403) 297-2985 (Fax: (403) 297-6156).

4TH FLOOR, 300 - 5TH AVENUE S.W., CALGARY, ALBERTA, CANADA T2P 3C4 TEL.: (403) 297-6454 FAX: (403) 297-6156

referred  
to  
end of  
at  
del

# APPLICATION FOR AN EXEMPTION ORDER

E&O Application No: 634

Local / (MRRS) Principal Jurisdiction: Alberta

Expedited: (Yes) No

Relief requested by: ASAP. Plants

Confidential: Yes (No)

mail circular on  
or about Mar 25/02

\*\*\*\*\*

File #: X0 \_\_\_\_\_

Date Received Mar 12, 2002

or

Party ID#: S 160416-4

Application SEDAR Project # N/A

Prospectus SEDAR Project # N/A

Assigned to: N/A

Name of Issuer: Nabors Industries, Inc.;  
Enserco Energy Service Company Inc.

Type of Order: Sec 48, 76, 91 & 119

Fee: pd 4 x ☒ \$750.00 = \$3000

☐ Other

only need \$750

Refund \$2250  
upon closing of  
application

Entry on System

☒ YES

Exchange Issuer

☐ YES

☒ NO

Statutory Filings Up-to-Date:

☒ YES

Enserco  
Nabors is not  
Reporting

☐ NO

Cease Trade Order:

☐ YES

☒ NO

Investigation Pending / 3 File:

☐ YES

☒ NO

Application under Interim L.P.S. #3-24 including:

Draft Order:

☒ YES

☐ NO

Precedents (Cited) Attached

☒ YES

☐ NO

Verification:

☒ YES

☐ NO

System Updated

☐ YES

App #634

## STIKEMAN ELLIOTT

Barristers & Solicitors

4300 Bankers Hall West, 888 - 3rd Street S.W., Calgary, Canada T2P 5C5  
Tel: (403) 266-9000 Fax: (403) 266-9034 www.stikeman.com

S. 160416-4  
NRK /

Keith R. Chatwin  
Direct: (403) 266-9088  
Fax: (403) 266-9034  
E-mail: kchatwin@cal.stikeman.com

March 11, 2002

British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, British Columbia V7Y 1L2

Alberta Securities Commission  
4th Floor, 300 - 5th Ave S.W.  
Calgary, Alberta T2P 3C4

Attention: Exemptions & Orders Division

Attention: Director, Legal Services and  
Policy Development

Saskatchewan Securities Commission  
800 - 1920 Broad Street  
Regina, Saskatchewan S4P 3V7

Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba R3C 3L6

Attention: Registrar

Attention: The Director

Ontario Securities Commission  
Suite 1800, P.O. Box 55  
20 Queen Street West  
Toronto, Ontario M5H 3S8

Commission des valeurs mobilières du Québec  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, Tour de la Bourse  
Montréal, Québec H4Z 1G3

Attention: Corporate Finance

Attention: Direction des marchés des capitaux

New Brunswick  
Office of the Administrator  
Harbour Building  
133 Prince William Street, Suite 606  
Saint John, New Brunswick E2L 4Y9

Nova Scotia Securities Commission  
Joseph Howe Building  
2nd Floor, 1690 Hollis Street,  
Halifax, Nova Scotia B3J 3J9

Attention: The Administrator

Attention: Director of Securities

Prince Edward Island  
Registrar of Securities  
Shaw Building, 95 Rochford Street  
P.O. Box 2000, 4th Floor  
Charlottetown, PE C9A 7N8

Newfoundland Securities Commission  
Confederation Building West, 2nd Floor  
75 O'Leary Avenue, P.O. Box 8700  
St. John's NF A1B 4J6

Attention: Registrar of Securities

Attention: Director of Securities

CALGARY  
VANCOUVER  
TORONTO  
MONTREAL  
OTTAWA  
NEW YORK  
LONDON  
HONG KONG  
SYDNEY

020312  
Sec 9/119

STIKEMAN ELLIOTT

Yukon Territory  
Department of Justice  
Andrew A. Philipsen Law Centre  
3<sup>rd</sup> Floor, 2130 – 2<sup>nd</sup> Avenue  
Whitehorse, YT Y1A 5H6

Nunavut Securities Registry  
Box 1000, Station 570  
1<sup>st</sup> Floor, Brown Building  
Iqaluit, Nunavut  
X0A 0H0

Attention: Registrar of Securities

Attention: Registrar of Securities

Northwest Territories  
Government of the North West Territories  
Legal Registries  
5<sup>th</sup> Floor Courthouse  
4903 – 49<sup>th</sup> Street  
Yellowknife, NT X1A 2L9

Attention: Registrar of Securities

Dear Sirs/Mesdames:

**Re: Application pursuant to the Mutual Reliance Review System with respect to the Proposed Combination of Nabors Industries, Inc. ("Nabors"), through affiliates of Nabors, and Enserco Energy Service Company Inc. ("Enserco")**

We are counsel to Nabors, and will be counsel to an as yet unincorporated unlimited liability company ("**Calco**") under the *Companies Act* (Nova Scotia) and an as yet unincorporated limited liability company ("**Canco**") under the *Canada Business Corporations Act* (the "**CBCA**"). Both Calco and Canco will be indirect wholly-owned subsidiaries of Nabors. Blake, Cassels & Graydon LLP is counsel to Enserco and concurs in the making of this application (the "**Application**"). Nabors, Calco and Canco are collectively referred to herein as the "**Applicants**". Capitalized terms used herein and not otherwise defined have the meanings given to them in the management proxy circular of Enserco dated on or about March 19, 2002 (the "**Circular**") and anticipated to be filed with the Canadian securities regulatory authorities in each of the provinces of Canada on or about March 25, 2002.

This Application is being made by the Applicants pursuant to National Policy 12-201 - *Mutual Reliance Review System for Exemptive Relief Applications* (the "**National Policy**"). Pursuant to Section 3.2 of the National Policy, the Applicants have selected the Alberta Securities Commission (the "**ASC**") as the principal regulator for this Application because subsequent to the completion of the transactions contemplated herein the Applicants will have a more significant connection with Alberta than with any other province. A copy of this Application is being filed concurrently with the securities regulatory authority or regulator (collectively, the "**Decision Makers**") in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Prince Edward Island, Nova Scotia, Newfoundland, New Brunswick, Nunavut, Yukon Territory and the Northwest Territories (collectively, the "**Jurisdictions**"). Pursuant to the National Policy, reference herein is specifically made to the legislative requirements of Alberta. Attached as Appendix "A" is a table of concordance setting out the relevant legislative provisions of the other Jurisdictions where this Application is being made.

(A) Summary of the Application

1. This Application is being made in connection with the proposed combination of Nabors and Enserco (the "**Transaction**") pursuant to an acquisition agreement (the "**Acquisition Agreement**") dated February 25, 2002. The Transaction was publicly announced by Nabors and Enserco in a joint press release issued on February 26, 2002 and a material change report in respect of the Transaction was filed by Enserco with the applicable Canadian securities regulatory authorities on February 28, 2002. Enserco anticipates mailing the Circular to holders ("**Shareholders**") of common shares in the capital of Enserco ("**Enserco Shares**"), holders of options to acquire Enserco Shares ("**Options**"), holders of warrants ("**Warrants**") to acquire Enserco Shares and holders of share purchase rights entitling the holder to acquire Enserco Shares ("**Share Purchase Rights**") on or about March 25, 2002 (collectively, the Shareholders and holders of Options, Warrants and Share Purchase Rights are the "**Enserco Security Holders**"). The Circular seeks, among other things, approval by the Enserco Security Holders of the Arrangement (as defined below) at a special meeting of Enserco Security Holders to be held on April 24, 2002 (the "**Enserco Meeting**"). Subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Transaction will be completed on or about April 26, 2002.
2. The Transaction will be implemented by way of a court-approved plan of arrangement (the "**Arrangement**") under Section 192 of the CBCA.
3. The Arrangement and the attributes of the non-voting exchangeable shares in the capital of Canco (the "**Exchangeable Shares**"), including (i) the issuance of Exchangeable Shares and the issuance of warrants to purchase Nabors Shares issued in exchange for Warrants to acquire Enserco Shares, pursuant to the Arrangement (the "**Replacement Warrants**"); and (ii) the issuance of shares of common stock in the capital of Nabors ("**Nabors Shares**") upon the exchange of the Exchangeable Shares and upon the exercise of the Replacement Warrants, involve or may involve trades and/or distributions of securities under the *Securities Act* (Alberta), as amended, the Regulations thereto and the Rules thereunder (collectively, the "**Act**"). Certain of these trades and/or distributions may not have the benefit of an applicable registration or prospectus exemption under the Act. Accordingly, we are applying on behalf of the Applicants for a ruling of the ASC pursuant to Section 144(1) of the Act that all trades occurring in connection with the Arrangement are not subject to Sections 75 or 110 of the Act and pursuant to Section 144(2) of the Act that the first trade of Exchangeable Shares or Nabors Shares acquired in connection with the Arrangement be deemed to be a distribution unless certain conditions are satisfied.
4. Canco will become a reporting issuer under the Act and, in the absence of the relief requested, would be subject to certain timely and continuous disclosure obligations under the Act and the provisions of Ontario Securities Commission ("**OSC**") Rule 51-501 – AIF and MD&A ("**OSC Rule 51-501**"), Saskatchewan Securities Commission ("**SSC**") Local Instrument 51-501 – *Annual Information Form and Management's Discussion and Analysis* ("**SSC Rule 51-501**"), Section 159 of the regulations (the "**Québec Regulations**") to the *Securities Act* (Québec) and National Instrument 55-102 - *System for Electronic*

*Disclosure by Insiders* ("NI 55-102"). In addition, Canco's insiders would be subject to certain reporting requirements under the Act and NI 55-102. As the Exchangeable Shares are the economic equivalent of the Nabors Shares in all material respects (without taking into account tax effects), we are applying on behalf of Canco for an order pursuant to:

- (a) Section 151(c) of the Act, exempting Canco from the requirements of Sections 146, 148, 149, 150 and 152(2) of the Act;
- (b) Section 5.1 of OSC Rule 51-501, exempting Canco from the requirements of OSC Rule 51-501 (or any replacement instrument thereto);
- (c) Section 212(2) of the Act, exempting each insider of Canco from the requirements of Sections 182 and 183 of the Act; and
- (d) Section 6.1 of NI 55-102, exempting Canco and each insider of Canco from the requirements of NI 55-102 (or any replacement instrument thereto),

in each case, subject to certain conditions as described below.

- 5. Pursuant to the Arrangement, Nabors will or may be deemed to be a reporting issuer under the securities legislation of the provinces of Alberta, Saskatchewan and Québec. Callco will or may also be deemed to be a reporting issuer on the effective date of the Transaction (the "Effective Date") in the provinces of Alberta, Saskatchewan and Québec. Accordingly, we are applying on behalf of Nabors and Callco for a ruling that each of Nabors and Callco be deemed to cease to be a reporting issuer under the applicable provincial securities legislation on the Effective Date. We understand that the Commission des valeurs mobilières du Québec (the "CVMQ") may be reluctant to grant such prospective relief but in the normal course would be amenable, to the extent the other Decision Makers issue the attached decision, to issuing a local order providing that Nabors will only be required to file all of the continuous disclosure material it files on behalf of Canco under Canco's SEDAR profile. We would request that the CVMQ grant such relief in the circumstances.
- 6. By application dated March 1, 2002, Blake, Cassels & Graydon LLP applied to the OSC, ASC, CVMQ, British Columbia Securities Commission (the "BCSC"), Nova Scotia Securities Commission (the "NSSC"), Saskatchewan Securities Commission (the "SSC") and Newfoundland Securities Commission (the "NfldSC") on behalf of the Applicants and requested relief from the requirements of Section 109 of the ASC Rules, Item 11(3) of ASC Form 30 and ASC Rule 41-501 and the equivalent provisions of policies of Ontario, Québec, British Columbia, Nova Scotia, Saskatchewan and Newfoundland to, among other things, reconcile certain of Nabors' financial statements and information to Canadian generally accepted accounting principles contained in the Circular. The Applicants anticipate obtaining relief from these requirements from the ASC, on its own behalf and on behalf of the OSC, CVMQ, BCSC, NSSC, SSC and NfldSC in the near future, and in any event prior to mailing the Circular.

(B) Background

Nabors Industries, Inc.

7. Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas.
8. Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East. As at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively.
9. The authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("Nabors Shares"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of Class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding.
10. The Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "AMEX") under the symbol "NBR".
11. Nabors is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "1934 Act"). Nabors is not and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada.
12. On February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion.

Callco

13. Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) solely for the purpose of holding the various call rights associated with the Exchangeable Shares.
14. All of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times. Callco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada.

Canco

15. Canco will be incorporated under the CBCA for the purpose of implementing the Arrangement, and will have its registered office in Calgary, Alberta. Canco will not have carried on any business prior to its involvement in the Arrangement.
16. The authorized capital of Canco will consist of an unlimited number of common shares and an unlimited number of Exchangeable Shares. The only securities of Canco that

may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares will be held indirectly by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement.

17. Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement. An application has been made to have the Exchangeable Shares approved for listing on The Toronto Stock Exchange (the "TSE"), subject to completion of the Arrangement and the satisfaction of the TSE's customary requirements.

Enserco Energy Service Company Inc.

18. On November 17, 1988, Bonus Petroleum Corp. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("Bonus") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001.
19. Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs. Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively.
20. The authorized capital of Enserco consists of an unlimited number of Enserco Shares, of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money Options and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding Warrants. Up to an additional 2,500 Enserco Shares may be issued pursuant to certain Share Purchase Rights pursuant to a cooperation agreement dated June 18, 2001 between Bonus Well Servicing Partnership and Polar Energy Services Ltd.
21. The Enserco Shares are listed and posted for trading on the TSE under the symbol "ERC".

22. Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec. To the knowledge of the Applicants, Enserco is not in default of any requirements of the securities legislation in force in the Jurisdictions.

**(C) The Transaction**

23. The Transaction will be effected by way of the Arrangement, which will require, among other things, pursuant to the terms of an interim order entered on March 19, 2002 from the Court of Queen's Bench of Alberta (the "Court"), (a) the approval of 66 2/3% of the Enserco Security Holders, voting together as a class, at the Enserco Meeting for the purpose of approving the Arrangement, and (b) the final approval of the Court. Each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Share Purchase Rights and Warrants will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof. The Transaction will be described in detail in the Circular.
24. In connection with the Enserco Meeting, Enserco intends to mail the Circular to Enserco Security Holders on or about March 25, 2002. The Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco.
25. Under the terms of the Arrangement, at the effective time (the "Effective Time") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "Effective Date"):
- (a) each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "Per Share Price"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 26);
  - (b) each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco, without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefor the Per Share Price in cash;
  - (c) each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to

the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 26). The exercise price per Nabors Share under the Warrant shall equal the exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and

- (d) each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance.
26. The "**Exchange Ratio**" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "**Measurement Period**") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon-buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "**Nabors Average Price**"). The "**Simple Average of the Weighted Average Trading Price**" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold.
27. Each Shareholder shall be entitled to transfer its Enserco Shares to a newly-incorporated corporation (a "**Holdco**") and transfer the issued and outstanding shares thereof (collectively, "**Holdco Shares**") to Canco (the "**Holdco Alternative**"), provided that on or prior to and as of the Effective Date:
- (a) the Shareholder is a resident of Canada for the purposes of the *Income Tax Act* (Canada) (the "**ITA**");
  - (b) Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;

- (c) the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;
- (d) Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;
- (e) the Shareholder indemnifies Nabors, Enserco, Canco and Callco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Nabors, Canco or Callco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;
- (f) prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;
- (g) on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;
- (h) on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabors' consent, acting reasonably;
- (i) other than as provided in (f) above, Holdco will not declare or pay any dividends or other distributions;
- (j) *the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabors' right to approve all such returns as to form and substance;*
- (k) the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and
- (l) the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco.

28. To the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):
- (a) the Per Share Price in cash without additional interest; or
  - (b) such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,
- in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco.
29. No fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Canco or Nabors. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share will be entitled to receive a cash payment equal to the product of the fractional interest and the Nabors Average Price.
30. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Enserco Shares will be held directly or indirectly by Nabors and its affiliates.
31. It is expected that the Enserco Shares will be delisted from the TSE on or after the Effective Date. Enserco will continue to be a reporting issuer or the equivalent thereof, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec.
32. Nabors will apply to the AMEX to list the Nabors Shares issuable in exchange for the Exchangeable Shares and upon exercise of the Replacement Warrants.

**(D) Description of Exchangeable Shares and Collateral Agreements**

33. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Nabors, Canco and a Canadian trust company (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Nabors, Callco and Canco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below.

Exchangeable Shares

34. The Exchangeable Shares will be issued by Canco and will be exchangeable at any time after the Effective Date (subject to earlier redemption in accordance with the

Arrangement), on a one-for-one basis, at the option of the holder, for Nabors Shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Nabors Share. Shareholders who are residents of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the ITA.

*Retraction, Redemption and Call Rights Applicable to Exchangeable Shares*

35. *Retraction of Exchangeable Shares.* Subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "**Exchangeable Share Price**") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "**Retraction Price**"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "**Retraction Request**"), Canco will have an overriding call right (the "**Retraction Call Right**") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions.
  
36. *Redemption of Exchangeable Shares.* Subject to applicable law and the Redemption Call Right (as defined and described below), Canco:
  - (a) may at any time on or after the fifth anniversary of the Effective Date; or
  - (b) will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,

redeem all but not less than all of the then outstanding Exchangeable Shares (the "**Redemption Date**") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "**Redemption Price**"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Canco will have an overriding right (the "**Redemption Call Right**") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement.
  
37. *Voting Rights with Respect to Canco.* Except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable

Share Provisions, the holders of Exchangeable Shares will not be entitled to receive notice of, or attend or vote at, any meeting of shareholders of Canco.

38. *Voting Rights with Respect to Nabors.* On the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "**Beneficiary**") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares.
39. *Dividend Rights.* The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share.
40. *Liquidation Rights with Respect to Canco.* On the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Calco (the "**Liquidation Call Right**") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "**Liquidation Date**") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "**Liquidation Amount**"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share.

On the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "**Exchange Right**") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share.

41. *Liquidation Rights with Respect to Nabors.* In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the

distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the assets of Nabors among its shareholders for the purpose of winding up its affairs (a "**Liquidation Event**"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement (the "**Automatic Exchange Rights**"), automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.

42. *Ranking.* The Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs.
43. *Nabors Support Obligations.* On the Effective Date, Nabors, Canco and Callco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, redivide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.

(E) **Rulings Requested**

Section 144(1) Order

44. The Arrangement and the exercise of certain rights provided for in the Exchangeable Share Provisions, the Voting and Exchange Trust Agreement and the Support Agreement involve or may involve a number of trades and/or distributions of securities, including trades and/or distributions related to the issuance of the Exchangeable Shares and Replacement Warrants pursuant to the Arrangement, and the issuance of Nabors Shares upon the exchange of the Exchangeable Shares and upon exercise of the Replacement Warrants. The trades and/or distributions and possible trades and/or distributions in securities which arise under the Arrangement include, but are not limited to, the following:

- (a) the issuance and intra-corporate transfers of Nabors Shares and related issuances of shares of Nabors affiliates (including, but not limited to, Canco and Calco) all by and between Nabors and its affiliates (including, but not limited to, Canco and Calco) from time to time to enable Nabors, Calco and/or Canco to deliver Nabors Shares in connection with the Arrangement, the Exchangeable Share Provisions, the Voting and Exchange Trust Agreement and the Support Agreement;
- (b) the issuance by Canco of Exchangeable Shares to certain holders of Enserco Shares in connection with the Arrangement and the transfer of Enserco Shares by such holders to Canco;
- (c) the transfer of Enserco Shares to Canco by holders who exercise their dissent rights and are entitled to receive fair value for their Enserco Shares pursuant to the Arrangement;
- (d) the exchange of Warrants for Replacement Warrants, the issuance of a document evidencing such Replacement Warrants, if necessary, and the issuance and delivery of Nabors Shares by Nabors to a holder of Replacement Warrants upon the exercise thereof;
- (e) the issuance by Nabors, pursuant to the Voting and Exchange Trust Agreement, of Nabors Shares to the Trustee (the "**Trustee Shares**"), and the establishment of the trust under the Voting and Exchange Trust Agreement for the benefit of the holders of the Exchangeable Shares;
- (f) the grant to the Trustee for the benefit of holders of Exchangeable Shares, pursuant to the Voting and Exchange Trust Agreement, of the Exchange Right, the Automatic Exchange Rights and the voting rights attaching to the Trustee Shares;
- (g) in connection with the exchange, redemption or retraction of Exchangeable Shares and the concurrent distribution to Nabors of an equivalent number of Trustee Shares, the transfer by the Trustee to Nabors of any dividend or other distribution paid on such Trustee Shares;
- (h) the grant of the Liquidation Call Right, the Retraction Call Right and the Redemption Call Right to Calco;
- (i) the transfer and/or subsequent delivery by the Trustee, Nabors or its affiliates, as applicable, of Nabors Shares upon the redemption or retraction of Exchangeable Shares, or upon the liquidation, dissolution or winding-up of Canco, or upon the exercise of the Redemption Call Right, Retraction Call Right or Liquidation Call Right, or upon the exercise of the Exchange Right or Automatic Exchange Right and the transfer and/or subsequent delivery of Exchangeable Shares by the holder thereof to Nabors or its affiliates, as applicable, upon the occurrence of any of the foregoing events;

- (j) the first trades of Exchangeable Shares received in connection with the Arrangement; and
  - (k) the first trades of Nabors Shares received in connection with the Arrangement upon the redemption or retraction of Exchangeable Shares, or upon the liquidation, dissolution or winding-up of Canco, or upon the exercise of the Redemption Call Right, Retraction Call Right or Liquidation Call Right, or upon the exercise of the Exchange Right or Automatic Exchange Right, or upon the exercise of the Replacement Warrants or upon being otherwise received in connection with the trades described above in this paragraph 44.
45. We request that the ASC rule pursuant to Section 144(1) of the Act that all trades and/or distributions, directly or indirectly, made in connection with the Arrangement, including as described in the paragraph above (collectively, the "**Trades**"), are not subject to Sections 75 or 110 of the Act.
46. We further request that the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "**Applicable Legislation**"), unless:
- (a) except in Québec:
    - (i) the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 – *Resale of Securities* ("**MI 45-102**") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or
    - (ii) where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Enserco Shares shall be included in the calculation of the hold period);
  - (b) in Québec, Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and

47. Finally, we request that the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
- (a) except in Québec,
    - (i) if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or
    - (ii) if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
  - (b) in Québec, Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Nabors Shares.

Sections 151(c), 212, OSC Rule 51-501 (and the equivalent) and NI 55-102 Orders

48. As a reporting issuer under the Act, pursuant to Sections 148, 149 and 150 of the Act, Canco will be required to send to its securityholders, and file with the ASC, unaudited interim financial statements and audited annual financial statements. Pursuant to Section 152(2) of the Act, Canco will be obligated to prepare and file with the ASC an annual filing on Form 28. In addition, as a reporting issuer, Canco will be subject to the timely and continuous disclosure requirements of the Act, such as the filing of material change reports pursuant to Section 146 of the Act.
49. Pursuant to OSC Rule 51-501, Canco will be required to prepare and file an annual information form with the OSC within 140 days of the end of each fiscal year. OSC Rule 51-501 also requires that annual and interim management's discussion and analysis of the financial condition and results of operations of Canco be prepared and mailed to all securityholders of Canco, and filed with the OSC, with the audited annual financial statements and unaudited interim financial statements of Canco.
50. Each insider of Canco will be obligated to file insider trading reports in accordance with Sections 182 and 183 of the Act and NI 55-102.
51. We therefor request an order:

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- (a) pursuant to Section 151(c) of the Act, that Canco be exempt from the requirements of Sections 146, 148 - 150 and 152(2) of the Act;
- (b) pursuant to Section 5.1 of OSC Rule 51-501, that Canco be exempt from the requirements of OSC Rule 51-501; and
- (c) pursuant to Section 212(2) of the Act, that each insider of Canco be exempt from the requirements of Section 182 and 183 of the Act,

in each case provided that:

- (a) Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
- (b) Nabors files with each Decision Maker copies of all documents required to be filed by it with the SEC under the 1934 Act, and such filings are made under Canco's SEDAR profile and the filing fees which would otherwise be payable by Canco in connection with such filings are paid;
- (c) Nabors complies with the requirements of the AMEX in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Nabors' affairs;
- (d) Canco complies with the material change reporting requirements in respect of material changes in the affairs of Canco that would be material to holders of Exchangeable Shares but would not be material to holders of Nabors Shares;
- (e) Nabors includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Nabors and not in relation to Canco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Nabors Shares and the right to direct voting at Nabors' shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
- (f) Nabors remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Canco; and
- (g) Canco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement.

Section 6.1 of NI 55-102 Order

52. We also request an order pursuant to Section 6.1 of NI 55-102 that Canco and each insider of Canco be exempt from the requirements of NI 55-102, provided that:
- (a) such insider of Canco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Nabors before the material facts or material changes are generally disclosed; and
  - (b) such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 - *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

Section 153 Order under the Securities Act (Alberta)

53. Nabors may or will become a reporting issuer under the securities legislation of the provinces of Alberta, Saskatchewan and Québec upon the consummation of the Arrangement. We hereby request that Nabors be deemed to cease to be a reporting issuer in the provinces of Alberta and Saskatchewan upon the consummation of the Arrangement. We further request that for the province of Québec, the CVMQ permit Nabors to substitute all of its continuous disclosure obligations contained in the *Securities Act* (Québec) with those prescribed by the 1934 Act.
54. Callco may or will also become a reporting issuer under the securities legislation of the provinces of Alberta, Saskatchewan and Québec upon the consummation of the Arrangement. We hereby request that Callco be deemed to cease to be a reporting issuer in the provinces of Alberta and Saskatchewan upon the consummation of the Arrangement and the CVMQ likewise grant the identical relief requested for Nabors in the immediately preceding paragraph.

**(F) Submissions**

Section 144(1) Ruling

55. Certain of the Trades subject to the Act have the benefit of registration and prospectus exemptions thereunder (i.e., the issuance of the Nabors Shares to Alberta resident holders of Exchangeable Shares in connection with their exercise of the Automatic Exchange Right previously granted by Nabors, pursuant to Section 35(1)(m)(iii) and Section 131(1)(f)(iii) of the Act). The remaining Trades may not fall within registration or prospectus exemptions under the Act, either because such Trades do not meet the technical requirements of a particular exemption or because of the mechanics of the various possible exchanges of Exchangeable Shares. We submit, however, that the Trades are of types that are within the spirit of one or more exemptions under the Act, especially those in Sections 86(1)(m), 86(1)(p), 131(1)(f) and 131(1)(i) for various forms of mergers and reorganizations.

56. We submit that the fundamental investment decision to be made by a Shareholder is made at the time of the Arrangement, when such holder votes in respect of the Arrangement. As a result of this decision, and the proration adjustments described in the Circular, a holder (other than a holder who exercises his or her dissent rights) will receive Exchangeable Shares, cash or a combination thereof in exchange for its Enserco Shares. As the Exchangeable Shares will provide Canadian tax benefits to certain Canadian holders but will otherwise be the economic and voting equivalent in all material respects of the Nabors Shares, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision to acquire Nabors Shares on the Arrangement. We submit that this investment decision will be made on the basis of the Circular, which contains disclosure of the business and affairs of each of Nabors and Enserco, including through incorporation by reference, and of the particulars of the Arrangement. Accordingly, we submit that it is in the public interest to grant the Section 144 ruling as requested.
57. Similar rulings to those requested in this Application have been granted by the ASC in:
- (a) In the Matter of Shire Pharmaceuticals Group plc, Shire Acquisition Inc., 3829359 Canada Inc. and BioChem Pharma Inc. dated March 29, 2001;
  - (b) In the Matter of Newbridge Networks Corporation and Alcatel dated May 23, 2000;
  - (c) In the Matter of AMEC p.l.c., AGRA Exchangeco Limited and 3040915 Nova Scotia Limited dated April 18, 2000;
  - (d) In the Matter of Burlington Resources Inc., Poco Petroleum Ltd and Burlington Resources Canada Inc. dated November 17, 1999;
  - (e) In the Matter of CIT Group, Inc., 3026192 Nova Scotia Company and CIT Exchangeco Inc. dated November 1, 1999;
  - (f) In the Matter of Uniphase Corporation, 3506967 Canada Inc. and 302544 Nova Scotia Company dated June 29, 1999; and
  - (g) In the Matter of Homestake Mining Company, Homestake Canada Holdings Company and Homestake Canada Inc. dated December 2, 1998.

We would be pleased to provide copies of these orders on request.

Sections 151(c), 212, OSC Rule 51-501 (and the equivalent) and NI 55-102 Orders

58. It is submitted that the information respecting Canco that would be required to be disseminated through compliance with the requirements described in paragraphs 48 to 50 above is not relevant (and is arguably misleading) to holders of Exchangeable Shares. As indicated above, the election by certain Shareholders who are residents of Canada to receive Exchangeable Shares under the Arrangement will enable such holders to defer certain Canadian income tax and permit other holders to hold property that is

not foreign property under the ITA. As the Exchangeable Shares and the Nabors Shares have economic and voting equivalency in all material respects, holders of Exchangeable Shares will, in effect, have an equity interest in Nabors, rather than Canco, as dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors and not Canco that will be relevant to holders of the Exchangeable Shares. In light of the fact that the value of the Exchangeable Shares, determined through dividend and dissolution entitlements and capital appreciation, is determined by reference to the consolidated financial performance and condition of Nabors, and not Canco, information respecting the financial condition of Canco (otherwise than as included in Nabors' consolidated financial statements) is not relevant (and is arguably misleading) to holders of Exchangeable Shares.

59. Nabors will send concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to holders of Nabors Shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP.
60. Similar orders to those requested in this Application have been granted by the OSC:
- (a) in the case of acquirers from the United Kingdom and France in:
    - (i) In the Matter of Shire Pharmaceuticals Group plc, Shire Acquisition Inc., 3829359 Canada Inc. and BioChem Pharma Inc. dated March 29, 2001;
    - (ii) In the Matter of Newbridge Networks Corporation and Alcatel dated May 23, 2000;
    - (iii) In the Matter of AMEC p.l.c., AGRA Exchangeco Limited and 3040915 Nova Scotia Limited dated April 18, 2000; and
  - (b) in the case of acquirers from the United States in:
    - (i) In the Matter of Weyerhaeuser Company, Weyerhaeuser Company Limited and Weyerhaeuser Holdings Limited dated October 29, 1999;
    - (ii) In the Matter of CIT Group, Inc., 3026192 Nova Scotia Company and CIT Exchangeco Inc. dated November 1, 1999;
    - (iii) In the Matter of Uniphase Corporation, 3506967 Canada Inc. and 3025244 Nova Scotia Company dated June 29, 1999; and
    - (iv) In the Matter of Homestake Mining Company, Homestake Canada Holdings Company and Homestake Canada Inc. dated December 2, 1998.

We would be pleased to provide copies of these orders on request.

Reporting Issuer Ruling

*Nabors*

61. It is expected that following the completion of the Transaction, the beneficial holders of Nabors Shares resident in Canada will hold less than 5% of the issued and outstanding Nabors Shares. Further, there is currently no market in Canada through which the Nabors Shares may be sold and no market is expected to develop. Accordingly, we submit that it would be appropriate and not prejudicial to the protection of investors to deem Nabors to not be a reporting issuer under the securities legislation in the provinces of Alberta and Saskatchewan.
62. We respectfully request that, for the purposes of Québec, Nabors be permitted to substitute all of its continuous disclosure obligations contained in the *Securities Act* (Québec) with those prescribed by the 1934 Act. Similar orders to those requested herein have been granted by the Québec Securities Commission in the transactions involving *AMVESCAP Plc*, *AMVESCAP Inc.*, *AVZ Callco Inc.* and *Trimark Financial Corporation*, decision no. 2000-MC-2068 as well as *Psion Plc* and *Teklogix International Inc.*

*Callco*

63. Nabors is indirectly the sole shareholder of Callco and Callco has not issued, and does not intend to issue, any of its shares to the public. Accordingly, we submit that it would not be prejudicial to the public interest to deem Callco to not be a reporting issuer under the securities legislation of the provinces of Alberta and Saskatchewan, upon the completion of the Arrangement. We request identical relief to that requested for Nabors from the CVMQ in this regard.

**(G) Expedited Review**

64. We respectfully request that this Application be given expedited consideration.

**(H) Verification and Enclosures**

65. The factual information contained in this Application has been provided to us by, and verified by each of Nabors and Enserco. The verification statement of Nabors is enclosed as Appendix B and the verification statement of Enserco is enclosed as Appendix C.
66. Also enclosed are the following:
  - (a) two copies of this Application;
  - (b) a draft of the form of decision document in respect of the Section 144(1), Section 151(c), OSC Rule 51-501, Section 212, NI 55-102 Orders and a draft of the form of decision document in respect of the Section 153 Order for your consideration (hard copies and on a diskette in Word format); and

STIKEMAN ELLIOTT

- (c) our firm cheque in the amount specified under "Filing Fee" in Appendix A in respect of the applicable filing fee.

If you have any questions or require further information in respect of the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

Keith R. Chatwin

cc: Stikeman Elliott  
Attn: Christopher W. Nixon  
Attn: Leland P. Corbett

cc: Blake, Cassels & Graydon LLP  
Attn: Ross Bentley  
Attn: Nicole Anderson

# **APPENDIX "A"** **TABLE OF CONCORDANCE**

APPLICATION	ON	BC	AB	SK	MAN.	QC	NB	NS	PEI	NF	NWT	YKT	Nunavut
Exemption from prospectus and registration requirements	s.74(1) Act s.25 Act s.53 Act	s.48 Act s.76 Act ss.34-48 Act ss.61-72 Act	s.144(1) Act s.75 Act s.110 Act	s.83(1) Act s.27 Act s.58 Act	s.59(d) Act s.37 Act s.6 Act	s.50 Act s.263 Act s.11 Act s.148 Act	s.13 Act s.13 Regs s.4(f) Regs ss.5-14 Act	s.79(1) Act s.31 Act s.58 or 67 Act	s.14 Act ss. 2 & 8 Act	s.75(1) Act s.26 Act s.54 Act	s.27(2)(b) Act s.4(b) Act s.27(2)(a) Act s.4(a) Act	s. 22(1) Act and O/C 1980/273 s.3 Act s.22 Act	s.27(2)(b) Act s.4(b) Act s.27(2)(a) Act s.4(a) Act
Filing Fee	\$1,600 +0.020% value in Ontario	\$750	\$500	\$400	\$100	\$500 +0.02% of 25% of gross value of issue	\$500	\$450	\$200	\$350	\$200	\$10	\$200
Financial Reporting Requirements	s.80(b)(iii) Act ss.75-83.1 Act	ss.85-91 Act	s.151(c) Act ss.146,148-150, 152(2) Act	s.89 Act ss.84-92 Act	s.131(1)(c) Act ss.118-135 Act	s.263 Act s.79 Act ss.68-109 Act	N/A	s.86(b)(iii) Act ss.81-89 Act	N/A	s.81 Act ss.76-84 Act	N/A	N/A	N/A
Canadian GAAP Requirements	s.1(4) Regs	s.2 Rules	s.6(2) Regs s.110 Regs	s.2 Regs s.84 Regs		s.2 Regs	N/A	s.3(5) Rules s.104 Rules	N/A	s.2(4) Regs s.46 Regs	N/A	N/A	N/A
Filing Fee	\$400	\$750	\$300	\$250	\$25	\$500	N/A	\$350	N/A	\$350	N/A	N/A	N/A
Insider Trading Reporting Requirements	s.121(2)(a)(ii) Act ss.106-121 Act	s.130 Act ss.85-130 Act	s.212(2) Act ss.182-183 Act	s.130(2) Act ss.115-130 Act	s.116(1) Act s.109 Act	s.263 Act ss.89-103 Act s.175 Regs	N/A	s.128 Act ss.112-128 Act	N/A	s.121(2) Act ss.107-121 Act	N/A	N/A	N/A
Filing Fee	\$400	\$750	\$300	\$250	\$25	\$500	N/A	\$350	N/A	\$350	N/A	N/A	N/A
AIF and MD&A	OSC Rule 51- 501	N/A	N/A	Local Instrument 51-501	N/A	Section 159 Regs.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Filing Fee	\$200												
Cease to be a Reporting Issuer	N/A	s.88 Act	s.153 Act	s.92 Act	N/A	s.69 Act	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Filing Fee	N/A	\$750	\$300	\$100	N/A	\$100	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL	\$2,600 + 0.020% value in Ontario	\$3,000	\$1,400	\$1,000	\$150	\$1,600 + 0.005% gross value of issue	\$500	\$1,150	\$200	\$1,050	\$200	\$10	\$200

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APPENDIX "B"

VERIFICATION

The making and filing of the attached application is authorized by Nabors Industries, Inc. and the truth of the facts contained therein concerning Nabors Industries, Inc. and its subsidiaries is confirmed.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2002

NABORS INDUSTRIES, INC.

By: \_\_\_\_\_

Name:

Title:

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APPENDIX "C"

VERIFICATION

The making and filing of the attached application is authorized by Enserco Energy Service Company Inc. and the truth of the facts contained therein concerning Enserco Energy Service Company Inc. is confirmed.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2002

ENSERCO ENERGY SERVICE  
COMPANY INC.

By: \_\_\_\_\_

Name: Kevin Nugent

Title: Chief Financial Officer, Corporate  
Secretary & VP Finance

IN THE MATTER OF THE SECURITIES LEGISLATION OF  
ALBERTA AND SASKATCHEWAN

AND

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

AND

IN THE MATTER OF  
NABORS INDUSTRIES, INC. AND ●

MRRS DECISION DOCUMENT

**WHEREAS** the Canadian securities regulatory authority or regulator (the "**Decision Maker**"), in each of Alberta and Saskatchewan (collectively, the "**Jurisdictions**") has received an application from Nabors Industries, Inc. ("**Nabors**") and ● ("**Callco**") (together, the "**Applicant**") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "**Legislation**") that Nabors 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 Nabors and Enserco Energy Service Company Inc. ("**Enserco**") under Section 192 of the *Canada Business Corporations Act* (the "**Arrangement**") pursuant to an acquisition agreement made as of February 25, 2002 between Nabors and Enserco;

**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** the Applicant has represented to the Decision Maker that:

1. Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
2. Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;
3. the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("**Nabors Shares**"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of Class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding;

4. on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was US\$34.80, representing a market capitalization of approximately US\$4.9 billion;
5. Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) and will hold the various call rights associated with the exchangeable non-voting shares of an as yet to be incorporated indirect wholly-owned subsidiary of Nabors ("**Canco**") to be issued pursuant to the Arrangement (the "**Exchangeable Shares**");
6. all of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times;
7. Enserco intends to mail a management proxy circular dated on or about March 19, 2002 (the "**Circular**") to holders ("**Shareholders**") of Enserco common shares ("**Enserco Shares**") and holders of Enserco options, share purchase rights and warrants (collectively, the Shareholders and holders of all such options, share purchase rights and warrants are the "**Enserco Security Holders**"), and will file the Circular in all of the provinces concurrently therewith;
8. the Circular will seek, among other things, approval by the Enserco Security Holders of the Arrangement at a special meeting of Enserco Security Holders to be held on or about April 24, 2002 (the "**Enserco Meeting**"). At the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of options, share purchase rights or warrants will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;
9. 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 on or about April 26, 2002;
10. following completion of the Arrangement, Nabors will send concurrently to all holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material furnished to holders of Nabors Shares resident in the United States including, without limitation, copies of its annual financial statements and all proxy solicitation materials;
11. as of ●, 2002, there were ● beneficial holders of Nabors Shares in Canada holding ● Nabors Shares, representing approximately ●% of the total number of issued and outstanding Nabors Shares. Of these beneficial holders of Nabors Shares in Canada, there are:
  - (a) ● beneficial holders of Nabors Shares resident in Alberta, holding ● Nabors Shares, representing approximately ●% of the issued and outstanding Nabors Shares; and

- (b) ● beneficial holders of Nabors Shares resident in Saskatchewan, holding  
● Nabors Shares, representing approximately ●% of the issued and outstanding  
Nabors Shares;
12. as of ●, 2002, based on information provided to Enserco by Independent Investor  
Communications Corp., it is estimated that beneficial Shareholders in Canada held  
● Enserco Shares, representing approximately ●% of the total number of issued and  
outstanding Enserco Shares;
13. upon completion of the Arrangement, assuming a maximum exchange ratio ("Exchange  
Ratio") of ● and assuming that Exchangeable Shares are considered to be Nabors Shares,  
it is expected that the beneficial holders of Nabors Shares resident in Canada will hold  
approximately ●% of the issued and outstanding Nabors Shares (calculated based upon  
the number of beneficial and registered Shareholders and registered holders of Nabors  
Shares who are residents of Canada, as set out above, and on the assumption that the  
consideration to be paid by Nabors to Shareholders pursuant to the Arrangement will  
consist entirely of Exchangeable Shares (other than in respect of approximately 20.5% of  
Enserco Shares acquired by Nabors pursuant to prior agreement));
14. assuming a maximum Exchange Ratio of ● and assuming that Exchangeable Shares are  
considered to be Nabors Shares, based upon the number of beneficial Shareholders who  
are residents of Alberta and Saskatchewan pursuant to a search report of ● dated ●,  
2002, and on the assumption that the consideration to be paid by Nabors to Shareholders  
pursuant to the Arrangement will consist entirely of Exchangeable Shares (other than in  
respect of approximately 20.5% of Enserco Shares acquired by Nabors pursuant to prior  
agreement), upon the consummation of the Arrangement, it is expected that there could  
be:
- (a) up to an additional ● beneficial holders of Nabors Shares resident in Alberta,  
holding up to ● Nabors Shares, representing approximately ●% of the issued  
and outstanding Nabors Shares; and
- (b) up to an additional ● beneficial holders of Nabors Shares resident in  
Saskatchewan, holding up to ● Nabors Shares, representing approximately ●%  
of the issued and outstanding Nabors Shares; and
15. pursuant to the Legislation, upon the issuance of Nabors Shares to former Shareholders  
under the terms of the Arrangement and Callco's participation in the Arrangement,  
Nabors and Callco may or will be deemed to be reporting issuers under the Legislation;

**AND WHEREAS** pursuant to the System, this MRRS Decision Document evidences the  
decision of each Decision Maker with respect to Nabors and with respect to Callco (together, the  
"Decision");

**AND WHEREAS** each of the Decision Makers is satisfied that the test contained in the  
Legislation that provides the Decision Makers with the jurisdiction to make the Decision has  
been met;

STIKEMAN ELLIOTT

**THE DECISION** of the Decision Makers pursuant to the Legislation is that Nabors and Callco are deemed to have ceased to be reporting issuers under the Legislation forthwith after the Effective Time of the Arrangement.

**DATED** at Calgary, Alberta this \_\_\_\_ day of \_\_\_\_\_, 2002.

STIKEMAN ELLIOTT

**APPENDIX "B"**

**VERIFICATION**

The making and filing of the attached application is authorized by Nabors Industries, Inc. and the truth of the facts contained therein concerning Nabors Industries, Inc. and its subsidiaries is confirmed.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_, 2002

**NABORS INDUSTRIES, INC.**

By: \_\_\_\_\_

Name:

Title:

STIKEMAN ELLIOTT

**APPENDIX "C"**

**VERIFICATION**

The making and filing of the attached application is authorized by Enserco Energy Service Company Inc. and the truth of the facts contained therein concerning Enserco Energy Service Company Inc. is confirmed.

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_, 2002

**ENSERCO      ENERGY      SERVICE  
COMPANY INC.**

By: \_\_\_\_\_

Name:

Title:

## TABLE OF CONCORDANCE

APPLICATION	ON	BC	AB	SK	MAN.	QC	NB	NS	PEI	NF	NWT	YKT	Nunavut
Exemption from prospectus and registration requirements	s.74(1) Act s.25 Act s.53 Act	s.48 Act s.76 Act ss.34-48 Act ss.61-72 Act	s.144(1) Act s.75 Act s.110 Act	s.83(1) Act s.27 Act s.58 Act	s.59(d) Act s.37 Act s.6 Act	s.50 Act s.263 Act s.11 Act s.148 Act	s.13 Act s.13 Regs s.4(f) Regs ss.5-14 Act	s.79(1) Act s.31 Act s.58 or 67 Act	s.14 Act ss. 2 & 8 Act	s.75(1) Act s.26 Act s.54 Act	s.27(2)(b) Act s.4(b) Act s.27(2)(a) Act s.4(a) Act	s. 22(1) Act and O/C 1980/273 s.3 Act s.22 Act	s.27(2)(b) Act s.4(b) Act s.27(2)(a) Act s.4(a) Act
Filing Fee	\$1,600 +0.020% value in Ontario	\$750	\$500	\$400	\$100	\$500 +0.02% of 25% of gross value of issue	\$500	\$450	\$200	\$350	\$200	\$10	\$200
Financial Reporting Requirements	s.80(b)(iii) Act ss.75-83.1 Act	ss.85-91 Act	s.151(c) Act ss.146,148-150, 152(2) Act	s.89 Act ss.84-92 Act	s.131(1)(c) Act ss.118-135 Act	s.263 Act s.79 Act ss.68-109 Act	N/A	s.86(b)(iii) Act ss.81-89 Act	N/A	s.81 Act ss.76-84 Act	N/A	N/A	N/A
Canadian GAAP Requirements	s.1(4) Regs	s.2 Rules	s.6(2) Regs s.110 Regs	s.2 Regs s.84 Regs		s.2 Regs	N/A	s.3(5) Rules s.104 Rules	N/A	s.2(4) Regs s.46 Regs	N/A	N/A	N/A
Filing Fee	\$400	\$750	\$300	\$250	\$25	\$500	N/A	\$350	N/A	\$350	N/A	N/A	N/A
Insider Trading Reporting Requirements	s.121(2)(a)(iii) Act ss.106-121 Act	s.130 Act ss.85-130 Act	s.212(2) Act ss.182-183 Act	s.130(2) Act ss.115-130 Act	s.116(1) Act s.109 Act	s.263 Act ss.89-103 Act s.175 Regs	N/A	s.128 Act ss.112-128 Act	N/A	s.121(2) Act ss.107-121 Act	N/A	N/A	N/A
Filing Fee	\$400	\$750	\$300	\$250	\$25	\$500	N/A	\$350	N/A	\$350	N/A	N/A	N/A
AIF and MD&A	CSC Rule 51- 501	N/A	N/A	Local Instrument 51-501	N/A	Section 159 Regs.	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Filing Fee	\$200												
Cease to be a Reporting Issuer	N/A	s.88 Act	s.153 Act	s.92 Act	N/A	s.69 Act	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Filing Fee	N/A	\$750	\$300	\$100	N/A	\$100	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL	\$2,600 + .020% value in Ontario	\$3,000	\$1,400	\$1,000	\$150	\$1,600 + 0.005% gross value of issue	\$500	\$1,150	\$200	\$1,050	\$200	\$10	\$200

IN THE MATTER OF ALBERTA, BRITISH COLUMBIA,  
SASKATCHEWAN, MANITOBA, ONTARIO QUEBEC,  
NEW BRUNSWICK, NOVA SCOTIA, PRINCE EDWARD ISLAND,  
NEWFOUNDLAND, YUKON TERRITORY, NUNAVUT AND  
NORTHWEST TERRITORIES  
AND

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

AND

IN THE MATTER OF NABORS INDUSTRIES, INC., ●,  
● AND ENSERCO ENERGY SERVICE COMPANY INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, Yukon Territory, Nunavut and the Northwest Territories (the "Jurisdictions") has received an application from Nabors Industries, Inc. ("Nabors"), ● ("Callco") and ● ("Canco") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that the requirements contained in the Legislation:

- (A) to be registered to trade in a security (the "Registration Requirement") and to file a preliminary prospectus and a prospectus and to obtain receipts therefor (the "Prospectus Requirement") shall not apply to certain trades and distributions of securities to be made in connection with an agreement (the "Acquisition Agreement") to combine the businesses of Nabors and Enserco Energy Service Company Inc. ("Enserco") pursuant to a plan of arrangement (the "Arrangement") under Section 192 of the *Canada Business Corporations Act*, as amended (the "CBCA");
- (B) for a reporting issuer or the equivalent to issue a press release and file a report with the Decision Makers upon the occurrence of a material change, file and deliver an annual report, where applicable, interim and annual financial statements, information circulars and annual information forms and provide interim and annual management's discussion and analysis of financial conditions and results of operations (collectively, the "Continuous Disclosure Requirements") shall not apply to Canco; and

- (C) that an insider of a reporting issuer or the equivalent file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer or the equivalent (the "**Insider Reporting Requirements**") shall not apply to insiders of Canco;

**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** the Applicant has represented to the Decision Makers that:

- 1.1 Nabors is a corporation organized and existing under the laws of the State of Delaware, with its head office in Houston, Texas;
- 1.2 Nabors, together with its subsidiaries, is the largest drilling contractor in the world, conducting oil, gas and geothermal and drilling operations in the United States, Canada and internationally, primarily in South and Central America and the Middle East;
- 1.3 as at December 31, 2001, Nabors' total assets were approximately US\$4.2 billion, while its total operating revenues and net income for the financial year then ended were approximately US\$2.2 billion and US\$387.5 million, respectively;
- 1.4 the authorized capital stock of Nabors consists of 418,000,000 shares of Nabors stock, par value US\$0.10 per share, of which 400,000,000 are shares in the common stock of Nabors ("**Nabors Shares**"), 10,000,000 are shares of preferred stock and 8,000,000 are shares of class B stock. As at February 25, 2002, there were 140,943,885 Nabors Shares issued and outstanding;
- 1.5 the Nabors Shares are currently listed and posted for trading on the American Stock Exchange (the "**AMEX**") under the symbol "**NBR**";
- 1.6 as at February 22, 2002, there were ● registered holders of Nabors Shares resident in Canada (out of a total of 2,447 registered holders) holding 1,744 Nabors Shares, representing approximately 0.001% of the total number of issued and outstanding Nabors Shares. As of ●, 2002, there were ● beneficial holders of Nabors Shares resident in Canada holding ● Nabors Shares representing approximately ●% of the total number of issued and outstanding Nabors Shares;
- 1.7 on February 25, 2002, the day immediately prior to the Arrangement being publicly announced, the closing price for Nabors Shares was

US\$34.80, representing a market capitalization of approximately US\$4.9 billion;

- 1.8 Nabors is subject to the reporting requirements of the *United States Securities Exchange Act of 1934* (the "1934 Act");
- 1.9 Nabors is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, absent exemptive relief from the securities regulatory authority or regulator therein, in Alberta, Saskatchewan and Québec following, and as a consequence of, the completion of the Arrangement;
- 1.10 Callco is an indirect wholly-owned subsidiary of Nabors. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) solely for the purpose of holding hold the various call rights associated with the exchangeable non-voting shares of Canco to be issued pursuant to the Arrangement (the "Exchangeable Shares");
- 1.11 all of the issued and outstanding shares of Callco will be held indirectly by Nabors at all material times. Callco is not a reporting issuer or the equivalent and does not intend to become a reporting issuer or the equivalent in any province or territory of Canada;
- 1.12 Nabors and Callco have submitted an application to the securities regulatory authorities in Alberta and Saskatchewan to be deemed to have ceased to be reporting issuers or the equivalent after the Effective Time (as defined below) of the Arrangement;
- 1.13 Canco was incorporated under the CBCA on ●, 2002 for the purpose of implementing the Arrangement, and has its registered office in Calgary, Alberta. Canco has not carried on any business to date;
- 1.14 the authorized capital of Canco consists of an unlimited number of common shares and an unlimited number of Exchangeable Shares;
- 1.15 the only securities of Canco that are issued or may be issued are common shares and Exchangeable Shares and all of the issued and outstanding common shares are held and will continue to be held, indirectly, by Nabors as long as any outstanding Exchangeable Shares are owned by any person or entity other than Nabors or any of Nabors' subsidiaries. Upon completion of the Arrangement, all of the issued and outstanding Exchangeable Shares will be held by former holders of Enserco Shares (as defined below) who receive Exchangeable Shares in exchange for their Enserco Shares pursuant to the Arrangement;

- 1.16 Canco is not a reporting issuer or the equivalent in any of the Jurisdictions but anticipates becoming a reporting issuer or the equivalent, in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Québec following, and as a consequence of, the completion of the Arrangement;
- 1.17 the Exchangeable Shares were conditionally approved for listing on The Toronto Stock Exchange (the "TSE") on ●, 2002, subject to completion of the Arrangement and the satisfaction of its customary requirements;
- 1.18 on November 17, 1988, Bonus Petroleum Cop. and Bonus Resources Ltd. were amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus Petroleum Corp. Bonus Petroleum Corp. changed its name to Bonus Resource Services Corp. ("**Bonus**") on June 6, 1996. Thereafter on August 1, 1998, Bonus, Pink Panther Oilfield Services Ltd., Swab-Tech Inc. and Trimat Well Servicing Inc. amalgamated under the CBCA by virtue of a Certificate of Amalgamation to continue under the name Bonus. Bonus subsequently changed its name to Enserco Energy Service Company Inc. on May 4, 2001;
- 1.19 Enserco is an integrated energy services company providing production and drilling services to the North American oil and gas industry, which, through its subsidiaries, currently operates over 200 service rigs and 30 drilling rigs;
- 1.20 Enserco has reported that, as at December 31, 2001, Enserco's total assets were approximately Cdn. \$407.2 million, while its total operating revenues and net income for the year ended December 31, 2001 were Cdn. \$293.4 million and Cdn. \$45.3 million, respectively;
- 1.21 the authorized capital of Enserco consists of an unlimited number of common shares ("**Enserco Shares**"), of which 26,179,861 Enserco Shares were issued and outstanding as of February 25, 2002. Up to an additional 741,630 Enserco Shares may be issued pursuant to outstanding in-the-money options ("**Enserco Options**") and up to 77,000 Enserco Shares may be issued pursuant to outstanding out-of-the-money Enserco Options. Up to an additional 500,000 Enserco Shares may be issued pursuant to outstanding warrants ("**Warrants**"). Up to an additional 2,500 Enserco Shares may be issued pursuant to certain share purchase rights ("**Share Purchase Rights**") pursuant to a cooperation agreement dated June 18, 2001

between Bonus Well Servicing Partnership and Polar Energy Services Ltd.;

- 1.22 the Enserco Shares are listed and posted for trading on the TSE under the symbol "ERC";
- 1.23 Enserco is a reporting issuer or the equivalent in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Québec;
- 1.24 to the knowledge of the Applicant, Enserco is not in default of any requirements of the Legislation;
- 1.25 on March 19, 2002 the Applicant and Enserco obtained under Section 192 of the CBCA an interim order (the "**Interim Order**") from the Court of Queen's Bench of Alberta specifying, among other things, certain procedures and requirements to be followed in connection with the calling and conduct of the Enserco Meeting (as defined below) and the completion of the Arrangement;
- 1.26 the Arrangement is subject to approval of the holders of Enserco Shares ("**Shareholders**"), and the holders of Enserco Options, Warrants and Shares Purchase Rights (collectively, the "**Enserco Security Holders**") and the Court of Queen's Bench of Alberta by virtue of a final order (the "**Final Order**") approving the Arrangement;
- 1.27 a meeting of the Enserco Security Holders (the "**Enserco Meeting**") has been scheduled for April 24, 2002 to consider and, if deemed appropriate, approve the Arrangement;
- 1.28 an information circular dated on or about March 19, 2002 (the "**Circular**") prepared in accordance with the Legislation will be mailed to the Enserco Security Holders in connection with the Enserco Meeting and filed with each of the Decision Makers concurrently therewith;
- 1.29 the Circular contains or incorporates by reference prospectus-level disclosure concerning the Arrangement and the business and affairs of both Nabors and Enserco as well as certain historical financial information regarding both Nabors and Enserco;
- 1.30 at the Enserco Meeting, each Shareholder will be entitled to one vote for each Enserco Share held, and each holder of Options, Warrants and Share Purchase Rights will be entitled to one vote for each Enserco Share such holder would receive on a valid exercise thereof;

- 1.31 upon receipt of the approval of the Enserco Security Holders at the Enserco Meeting, the Applicant and Enserco will thereafter apply to the Court of Queen's Bench for the Final Order;
- 1.32 subject to the satisfaction or waiver of all closing conditions, including the receipt of all regulatory approvals, it is currently anticipated that the Arrangement will be completed on or about April 26, 2002;
- 1.33 under the terms of the Arrangement, at the effective time (the "**Effective Time**") on the date shown on the registration statement issued upon filing Articles of Arrangement under the CBCA giving effect to the Arrangement (the "**Effective Date**"):
  - 1.33.1 each Enserco Share that is not held by either a Shareholder who has exercised its dissent right and who is ultimately entitled to be paid the fair value of its Enserco Shares, or by Nabors or any affiliate thereof, will be transferred to, and acquired by, Canco, in exchange for, at the Shareholder's election (or deemed election): (a) Cdn. \$15.50 plus simple interest thereon at the rate of 6% per annum in respect of the period from, but not including, February 25, 2002 to and including the Effective Date (the "**Per Share Price**"); or (b) such number of fully paid and non-assessable Exchangeable Shares as is determined pursuant to an Exchange Ratio (as defined in paragraph 1.34);
  - 1.33.2 each Enserco Share in respect of which no election or no effective election has been made by the Shareholder (other than Enserco Shares held by (i) a Shareholder who has exercised its dissent right and is ultimately entitled to be paid the fair market value of its Enserco Shares, or (ii) Enserco or any affiliate) will be transferred to, and acquired by, Canco without any act or formality on the part of the Shareholder or Canco, free and clear of all liens, claims and encumbrances, and the Shareholder shall be deemed to have elected to receive in exchange therefor the Per Share Price in cash;
  - 1.33.3 each Warrant that has not been duly exercised prior to the Effective Time shall thereafter represent the right to purchase that number of Nabors Shares equal to the number of Enserco Shares subject to such Warrant multiplied by the Exchange Ratio (as defined in paragraph 1.34). The exercise price per Nabors Share under the Warrant shall equal the

exercise price per Enserco Share of such Warrant immediately prior to the Effective Time divided by the Exchange Ratio. If the foregoing calculation results in the Warrant being exercisable for a fraction of a Nabors Share, then the number of Nabors Shares subject to such Warrant shall be rounded down to the next whole number of Nabors Shares and the total exercise price for the Warrant shall be reduced by the exercise price of the fractional Nabors Share. The term to expiry, conditions to and manner of exercising and all other terms and conditions of such Warrant will be unaffected except to the extent necessary to reflect the changes to the securities acquirable upon exercise and to the exercise price, and any document or agreement previously evidencing such Warrant shall thereafter evidence and be deemed to evidence such Warrant after the Effective Time; and

1.33.4 each Option and each Share Purchase Right that has not been duly exercised or surrendered for termination prior to the Effective Time shall be terminated and, in consideration for such termination, each holder of such Option or Share Purchase Right shall receive cash, without interest, in an amount equal to the greater of: (A) the positive difference, if any, between (i) the product of the Per Share Price and the number of Enserco Shares that are subject to issuance upon the exercise of such Option or Share Purchase Right, as the case may be, and (ii) the cash exercise price of such Option or Share Purchase Right; and (B) \$0.10, for each Enserco Share subject to such issuance;

1.34 the "Exchange Ratio" will be determined by dividing the Per Share Price by the simple average of the weighted average trading price of Nabors Shares on the AMEX over the 10 consecutive trading days ending on the third Business Day prior to the date of the Enserco Meeting (the "Measurement Period") using a currency exchange rate of Canadian dollars to U.S. dollars equal to the average of the noon-buying rates in New York City for cable transfers in Canadian dollars as certified for customs purposes by the Federal Reserve Bank of New York for each trading day in the Measurement Period (the "Nabors Average Price"). The "Simple Average of the Weighted Average Trading Price" is determined by dividing the aggregate sale price of all Nabors Shares sold on the AMEX during the Measurement Period by the total number of Nabors Shares sold;

- 1.35 as an alternative to the exchange contemplated by paragraph 1.33.1 each Shareholder shall be entitled to transfer its Enserco Shares to a newly-incorporated corporation (a "Holdco") and transfer the issued and outstanding shares thereof (collectively, "Holdco Shares") to Canco (the "Holdco Alternative"), provided that on or prior to and as of the Effective Date:
- 1.35.1 the Shareholder is a resident of Canada for the purposes of the *Income Tax Act* (Canada) (the "ITA");
  - 1.35.2 Holdco is incorporated no earlier than 60 days prior to the Effective Date, under the CBCA;
  - 1.35.3 the Shareholder transfers its Enserco Shares to Holdco solely in consideration for the Holdco Shares;
  - 1.35.4 Holdco has no indebtedness or liabilities and owns no assets other than the Enserco Shares;
  - 1.35.5 the Shareholder indemnifies Nabors, Enserco, Canco and Callco for any and all liabilities of Holdco (other than tax liabilities of Holdco that arise solely as a result of the tax status of Acquiror, Canco or Callco as a "financial institution" for purposes of the ITA) in a form satisfactory to Nabors in its sole discretion, and such Shareholder either has net assets as reflected on its audited financial statements for its most recently ended fiscal year which are satisfactory to Nabors or provides Nabors with security satisfactory to Nabors in respect of such Shareholder's indemnification obligations as set out above;
  - 1.35.6 prior to the Effective Date, Holdco (i) declares one or more stock dividends which (if the Holdco Shares are to be acquired by Canco) may be in the form of preferred shares of Holdco that are converted into common shares of Holdco prior to the Effective Date; (ii) increases the stated capital of the Holdco Shares; or (iii) (if the Holdco Shares are to be acquired by Canco) declares one or more cash dividends, provided that such cash is used to subscribe, directly or indirectly, for shares of Holdco;
  - 1.35.7 on the Effective Date, Holdco has no issued shares outstanding other than the Holdco Shares and such shares will be owned by the Shareholder;

- 1.35.8 on or prior to the Effective Date, Holdco has never entered into any transaction (or conducted any business or operations or engaged in any activity) other than those described herein or such other transactions as are necessary to facilitate those transactions described herein with Nabor's consent, acting reasonably;
  - 1.35.9 other than as provided in 1.35.6 above, Holdco will not declare or pay any dividends or other distributions;
  - 1.35.10 the Shareholder shall prepare and file all income tax returns of its Holdco in respect of the taxation year-end of such Holdco ending immediately prior to the acquisition of such Holdco Shares by Canco subject to Nabor's right to approve all such returns as to form and substance;
  - 1.35.11 the Shareholder provides Enserco and Nabors with copies of all documents necessary to effect the transactions contemplated in this Section at least ten days prior to the Effective Date which documents must be approved by both Enserco and Nabors in their sole discretion; and
  - 1.35.12 the Shareholder and its Holdco execute a share purchase agreement in the form required by Nabors, acting reasonably, providing for, among other things, the sale of the Holdco Shares to Canco;
- 1.36 to the extent a Shareholder elects to utilize the Holdco Alternative, at the Effective Time, each Holdco Share will be transferred to, and acquired by, Canco without any act or formality on the part of the holder of such Holdco Share or the entity which acquires such Holdco Share, free and clear of all liens, claims and encumbrances, in exchange for, at the holder's election (or deemed election):
- 1.36.1 the Per Share Price in cash without additional interest; or
  - 1.36.2 such number of fully paid and non-assessable Exchangeable Shares as is equal to the Exchange Ratio,
- in each case multiplied by a fraction having as its numerator the number of Enserco Shares held by the Holdco and as its denominator the number of issued and outstanding Holdco Shares of the Holdco;
- 1.37 no fractions of Exchangeable Shares will be issued in exchange for Enserco Shares pursuant to the Arrangement and such fractional

- 1.43 subject to applicable law and the exercise of the Retraction Call Right (as defined and described below), a holder of Exchangeable Shares will be entitled at any time following the Effective Time to require Canco to redeem any or all of the Exchangeable Shares registered in the name of such holder for an amount per share equal to the current market price of a Nabors Share (as adjusted, if necessary) (the "**Exchangeable Share Price**") on the last Business Day prior to the date the holder desires Canco to redeem the Exchangeable Shares (the "**Retraction Price**"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. When a holder of Exchangeable Shares makes a retraction request (a "**Retraction Request**"), Canco will have an overriding call right (the "**Retraction Call Right**") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions;
- 1.44 subject to applicable law and the Redemption Call Right (as defined and described below), Canco:
- 1.44.1 may at any time on or after the fifth anniversary of the Effective Date; or
- 1.44.2 will at any time, provided there are less than 1,500,000 Exchangeable Shares outstanding (excluding those held by Nabors and its affiliates) or on the occurrence of certain other events as described in the Arrangement,
- redeem all but not less than all of the then outstanding Exchangeable Shares (the "**Redemption Date**") for an amount per share equal to the Exchangeable Share Price on the last Business Day prior to the Redemption Date (the "**Redemption Price**"), which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share. Canco will have an overriding right (the "**Redemption Call Right**") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Nabors and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Arrangement;
- 1.45 except as required by law or under the Support Agreement, Voting and Exchange Trust Agreement or the terms of the Exchangeable Share Provisions, the holders of Exchangeable Shares will not be entitled to

receive notice of, or attend or vote at, any meeting of shareholders of Canco;

- 1.46 on the Effective Date, Nabors, Canco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Nabors will issue to the Trustee a number of Nabors Shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Nabors and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Nabors Shares. Each registered holder of Exchangeable Shares (other than Nabors and its affiliates) (a "**Beneficiary**") on the record date for any meeting at which shareholders of Nabors are entitled to vote will be entitled to instruct the Trustee to vote one Nabors Share held by the Trustee for each Exchangeable Share held by the Beneficiary. Pursuant to the Support Agreement, the Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Nabors so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Nabors Shares;
- 1.47 the Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Canco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Nabors on a Nabors Share;
- 1.48 on the liquidation, dissolution or winding-up of Canco or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law and the overriding right of Callco (the "**Liquidation Call Right**") to purchase all but not less than all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Nabors and its affiliates) from the holders of Exchangeable Shares on the effective date of such liquidation, dissolution or winding-up (the "**Liquidation Date**") for a purchase price per share equal to the Exchangeable Share Price on the last Business Day prior to the Liquidation Date (the "**Liquidation Amount**"), preferential rights to receive from Canco the Liquidation Amount for each Exchangeable Share held, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;
- 1.49 on the liquidation, dissolution or winding-up of Canco (or when any other insolvency event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Nabors and

its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "**Exchange Right**") granted to the Trustee in the Voting and Exchange Trust Agreement to require Nabors to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price, which will be fully paid and satisfied by the delivery of one Nabors Share and any dividends payable or deliverable on such Exchangeable Share;

- 1.50 in order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Nabors Shares in the distribution of assets of Nabors in connection with any voluntary or involuntary liquidation, dissolution or winding-up proceedings with respect to Nabors or to effect any other distribution of the assets of Nabors among its shareholders for the purpose of winding up its affairs (a "**Liquidation Event**"), immediately prior to the Liquidation Event each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Nabors Shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement;
- 1.51 the Exchangeable Shares will have a preference over the common shares of Canco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Canco, whether voluntary or involuntary, or any other distribution of the assets of Canco among its shareholders for the purpose of winding-up its affairs;
- 1.52 on the Effective Date, Nabors, Canco and Callco will enter into the Support Agreement which will provide that Nabors will not declare or pay dividends on the Nabors Shares unless Canco simultaneously declares or pays, as the case may be, an equivalent dividend or other distribution economically equivalent thereto on the Exchangeable Shares, and that Nabors will ensure that Canco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Canco and the holders of the Exchangeable Shares, Nabors will not issue or distribute Nabors Shares, securities exchangeable for or convertible into or carrying rights to acquire Nabors Shares, rights, options or

warrants to subscribe for or to purchase Nabors Shares, evidences of indebtedness or other assets of Nabors to the holders of Nabors Shares, nor will Nabors subdivide, redivide, reduce, combine, consolidate, reclassify or otherwise change the Nabors Shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares;

- 1.53 the Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "**Trades**"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares and replacement Warrants; the issuance of Nabors Shares upon the exchange of Exchangeable Shares and the issuance of Nabors Shares upon the exercise of Warrants; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Nabors and its affiliates (including Canco and Calco) in connection with the Arrangement;
- 1.54 the fundamental investment decision to be made by an Enserco Security Holder will be made at the time when such holder votes in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than a dissenting Shareholder) will ultimately receive Nabors Shares in exchange for the Enserco Shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Nabors Shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision;
- 1.55 as a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Nabors Shares, holders of Exchangeable Shares will have an equity interest determined by reference to Nabors, rather than Canco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Nabors, not Canco. Accordingly, it is the information relating to Nabors, not Canco, that will be relevant to the holders of Exchangeable Shares;
- 1.56 the Circular discloses that Nabors and Canco have applied for relief from the Registration Requirement and Prospectus Requirement, the Continuous Disclosure Requirements and Insider Reporting Requirements for insiders of Canco. The Circular also identifies the

limitations imposed on any resale of Exchangeable Shares or Nabors Shares and the continuous disclosure that will be provided to holders of Exchangeable Shares if the requested relief is granted; and

- 1.57 following completion of the Arrangement, Nabors will concurrently send to holders of Exchangeable Shares or Nabors Shares resident in the Jurisdictions all disclosure material it sends to holders of Nabors Shares resident in the United States pursuant to the 1934 Act;

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 shall not apply to the Trades;
2. the first trade in Exchangeable Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless:

2.1 except in Québec:

2.1.1 the conditions in subsections (3) or (4) of Section 2.6 of Multilateral Instrument 45-102 - *Resale of Securities* ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.6 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; or

2.1.2 where such first trade is a "control distribution" as such term is defined in MI 45-102, such trade is made in compliance with Sections 2.8 of MI 45-102; and provided further that, in determining the period of time that Canco has been a reporting issuer for the purposes of Section 2.8 of MI 45-102, the period of time that Enserco has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of

such holder) held Enserco Shares shall be included in the calculation of the hold period);

- 2.2 in Québec, Canco or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and
3. the first trade in Nabors Shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
  - 3.1 except in Québec,
    - 3.1.1 if Nabors is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of Section 2.6 of MI 45-102 are satisfied; and for the purpose of determining the period of time that Nabors has been a reporting issuer under Section 2.6, the period of time that Enserco has been a reporting issuer may be included; or
    - 3.1.2 if Nabors is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
  - 3.2 in Québec, Nabors or one of the parties to the Arrangement (including, for greater certainty, Enserco) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the first trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Enserco was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Nabors Shares; and
4. the Continuous Disclosure Requirements shall not apply to Canco so long as:
  - 4.1 Nabors sends concurrently to all holders of Exchangeable Shares or Nabors Shares resident in Canada all disclosure material furnished to

- 5.2 such insider of Canco is not a director or senior officer of Nabors, or a "major subsidiary" of Nabors, as such term is defined in National Instrument 55-101 - *Exemptions from Certain Insider Reporting Requirements* as if Nabors were a reporting issuer.

DATED this ● day of ●, 2002.

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