

# 2007 BCSECCOM 56

December 29, 2006

## Headnote

Mutual Reliance Review System for Exemptive Relief Applications – *Securities Act*, ss. 48, 76 – Corp Acquisitions & Reorgs – exemption from registration and prospectus requirements - Trades by an issuer to its shareholders in securities of another company that it owns (e.g. spin-off transactions) - The issuer will distribute the shares of the other company as a dividend to the issuer's shareholders; the other company is not a reporting issuer; the issuer has a de minimis connection to Canada; as a result of the transfer, the shareholders of the issuer will hold their interests in the subsidiary directly as opposed to indirectly through their shareholdings of the issuer

## Applicable British Columbia Provisions

*Securities Act*, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

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

and

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

and

In the Matter of  
Duke Energy Corporation  
(the Filer)

MRRS Decision Document

## Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions has received an application from the Filer granting a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the prospectus and dealer registration requirements (respectively, the Prospectus Requirements and the Registration Requirements) of the Legislation for the proposed distribution

## 2007 BCSECCOM 56

of shares of common stock (the Spectra Energy Common Shares) of Spectra Energy Corp (Spectra Energy) to registered holders of shares of common stock (the Duke Energy Common Shares) of the Filer (the Duke Energy Shareholders) resident in Canada (the Duke Energy Canadian Shareholders) by way of a pro-rata dividend in kind (the Spin-Off) and from the Prospectus Requirements and Registration Requirements for the proposed distribution of options to purchase Spectra Energy Common Shares (the Spectra Energy Options) to current holders of options of the Filer (Duke Energy Options) to purchase Duke Energy Common Shares resident in Canada who are former employees of the Filer or any of its affiliates (the Duke Energy Canadian Optionholders) (the Requested Relief).

2. Under the Mutual Reliance Review System for Exemptive Relief Applications
  - 2.1 the Alberta Securities Commission is the Principal Regulator for this application; and
  - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

### **Interpretation**

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

### **Representations**

4. This decision is based on the following facts represented by the Filer:
  - 4.1 The Filer is a corporation constituted pursuant to the laws of the State of Delaware with its headquarters in Charlotte, North Carolina. It is a diversified energy company with a portfolio of natural gas and electric businesses.
  - 4.2 Spectra Energy, currently a wholly-owned subsidiary of the Filer, will, upon completion of the Spin-Off, own the Filer's natural gas businesses in the United States and Canada.
  - 4.3 The Filer is not a reporting issuer under the securities laws of any province or territory of Canada other than Québec and the Filer has no intention of becoming a reporting issuer under the securities laws of any of the other Jurisdictions.

## 2007 BCSECCOM 56

- 4.4 The Duke Energy Common Shares are listed on the New York Stock Exchange (NYSE). The Duke Energy Common Shares are not listed on any Canadian exchange and the Filer has no intention of listing its securities on any Canadian exchange.
- 4.5 As of August 31, 2006, the Filer had approximately 4,371 registered Duke Energy Canadian Shareholders. There are registered and beneficial shareholders resident in each of the Jurisdictions except the Northwest Territories. The Duke Energy Canadian Shareholders constituted less than 0.83% of the approximately 529,860 holders of record of Duke Energy Common Shares worldwide on August 31, 2006. As of August 31, 2006, persons resident in Canada collectively held approximately 5,063,266 Duke Energy Common Shares, constituting less than 0.45% of the approximately 1,142,606,491 issued and outstanding Duke Energy Common Shares on August 31, 2006.
- 4.6 As of August 31, 2006, there were approximately 27 Duke Energy Canadian Optionholders. The Duke Energy Canadian Optionholders constituted less than 1.93% of the approximately 1,400 Duke Energy Optionholders worldwide on August 31, 2006. As of August 31, 2006, Duke Energy Canadian Optionholders collectively held approximately 456,284 Duke Energy Options, constituting less than 2.01% of the approximately 22,687,563 Duke Energy Options outstanding.
- 4.7 Subject to obtaining necessary approvals, on a distribution date to be fixed by the Filer's board of directors, the separation of Spectra Energy from the Filer will be accomplished through the Spin-Off. The Spin-Off consists of the following steps, among others:
- 4.7.1 the general terms and conditions relating to the Spin-Off will be set forth in a separation and distribution agreement to be entered into between the Filer and Spectra Energy;
- 4.7.2 as a result of the Spin-Off, each Duke Energy Shareholder will receive a fraction of one Spectra Energy Common Share for each Duke Energy Common Share held by such Duke Energy Shareholder, such fraction to be determined by the board of directors of the Filer prior to the record date for the Spin-Off;

## 2007 BCSECCOM 56

- 4.7.3 Duke Energy Shareholders will not be required to pay any consideration for Spectra Energy Common Shares received in the Spin-Off or to surrender or exchange Duke Energy Common Shares in order to receive Spectra Energy Common Shares or to take any other action in connection with the Spin-Off;
- 4.7.4 fractional shares of a Spectra Energy Common Share will not be issued to Duke Energy Shareholders as part of the Spin-Off nor credited to book-entry accounts. Instead, the Filer and Spectra Energy will have their distribution agent aggregate Spectra Energy fractional shares into whole shares, sell them into the open market at the prevailing market prices and then distribute the aggregate sale proceeds rateably to Duke Energy Shareholders who would otherwise be entitled to receive fractional shares;
- 4.7.5 as a result of the Spin-Off, each Duke Energy Optionholder will receive a fraction of one Spectra Energy Option for each Duke Energy Option held by such Duke Energy Optionholder, such fraction to be determined by the board of directors of the Filer prior to the record date for the Spin-Off;
- 4.7.6 Duke Energy Optionholders will not be required to pay any consideration for Spectra Energy Options received in the Spin-Off or to surrender or exchange Duke Energy Options in order to receive Spectra Energy Options or to take any other action in connection with the Spin-Off; and
- 4.7.7 fractional options of a Spectra Energy Option will not be issued to Duke Energy Optionholders as part of the Spin-Off.
- 4.8 After the Spin-Off, the Duke Energy Common Shares will continue to be listed and traded on the NYSE and the Spectra Energy Common Shares are expected to be listed and traded as shares of a separate public company, Spectra Energy, on the NYSE.
- 4.9 It is not intended that Spectra Energy will list its shares on any exchange in Canada. It is not intended that Spectra Energy will become a reporting issuer in any of the Jurisdictions other than Québec.

## 2007 BCSECCOM 56

- 4.10 In September 2006, Spectra Energy filed a registration statement (the Registration Statement) with the SEC in September 2006, amended in October and November 2006, which includes an information statement (the Information Statement) detailing the planned Spin-Off.
- 4.11 After the SEC has completed its review of the Registration Statement, a copy of the Information Statement will be given to Duke Energy Shareholders.
- 4.12 Because the Spin-Off of Spectra Energy Common Shares will be by way of dividend (the Dividend) to the Duke Energy Shareholders, no shareholder approval of the proposed transaction is required under the laws of the State of Delaware.
- 4.13 All materials relating to the Spin-Off and the Dividend sent by or on behalf of the Filer or Spectra Energy in the United States (including the Information Statement) will be sent concurrently to the Duke Energy Canadian Shareholders.
- 4.14 Following the Spin-Off, each of Spectra Energy and the Filer, respectively, will send, concurrently to the Duke Energy Canadian Shareholders, the same disclosure material that it sends to holders of Spectra Energy Common Shares and Duke Energy Common Shares in the United States.
- 4.15 The Duke Energy Canadian Shareholders who receive Spectra Energy Common Shares as a dividend pursuant to the Spin-Off will have the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-Off as are available under the laws of the United States to Spectra Energy and Duke Energy Shareholders in the United States.
- 4.16 The issuance of Spectra Energy Common Shares to Duke Energy Canadian Optionholders on the exercise of Spectra Energy Options will be made in accordance with applicable laws in the United States. It is expected that the NYSE will be the principal trading market for the Spectra Energy Common Shares. Because there will be no active trading market for the Spectra Energy Common Shares in Canada and none is expected to develop, it is expected that any resale of the Spectra Energy Common Shares underlying the Spectra Energy Options by the Spectra Energy Canadian

## 2007 BCSECCOM 56

Optionholders will occur through the facilities of the NYSE. The Filer expects that Spectra Energy Common Shares underlying the Spectra Energy Options will be qualified for public distribution in the United States.

### **Decision**

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met.
6. The decision of the Decision Makers under the Legislation is that:
  - 6.1 the Requested Relief is granted; and
  - 6.2 the first trade in a Jurisdiction of Spectra Energy Common Shares acquired under the Dividend by Duke Energy Canadian Shareholders or acquired on exercise of Spectra Energy Options by Duke Energy Canadian Optionholders will be deemed to be a distribution or primary distribution to the public under the Legislation of such Jurisdiction unless the conditions in section 2.6 or section 2.14 of National Instrument 45-102 *Resale of Securities* are satisfied.

Glenda A. Campbell, Q.C., Vice-Chair  
Alberta Securities Commission

Stephen R. Murison, Vice-Chair  
Alberta Securities Commission