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Headnote

Mutual Reliance Review System for Exemptive Relief Applications – registration and prospectus relief to allow certain trades under a dividend reinvestment plan of the issuer to persons who are not holders of securities of the issuer, subject to conditions

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 45(2)(10), 48, 74(2)(11) and 76

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

AND

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

AND

**IN THE MATTER OF TRANSCANADA PIPELINES LIMITED AND
TRANSCANADA CORPORATION**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Makers”) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, the Yukon Territory, the Northwest Territories, and Nunavut (collectively, the “Jurisdictions”) has received an application from TransCanada PipeLines Limited (“TransCanada”) and TransCanada Corporation (“Holdco”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the requirements contained in the Legislation to be registered to trade in a security (the “Registration Requirement”) and to file and obtain a receipt for a preliminary prospectus and a final prospectus before effecting a trade that is a distribution (the “Prospectus Requirement”) shall not apply:
 - 1.1 to certain trades in shares of Holdco in connection with a Holdco dividend reinvestment and share purchase plan; and

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- 1.2 to certain trades in certain of the Jurisdictions:
 - 1.2.1 in connection with a proposed plan of arrangement (the “Arrangement”) under the *Canada Business Corporations Act* (the “CBCA”) involving TransCanada and Holdco;
 - 1.2.2 in stock options of Holdco in connection with a Holdco stock option plan; and
 - 1.2.3 in rights of Holdco in connection with a Holdco shareholder rights plan;
2. AND WHEREAS under 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, unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 Definitions or in Québec Commission Notice 14-101;
4. AND WHEREAS it was represented by TransCanada to the Decision Makers that:
 - 4.1 TransCanada is a corporation governed under the laws of Canada;
 - 4.2 TransCanada is and has been a reporting issuer (or the equivalent) for a period in excess of 12 months in each of the Jurisdictions;
 - 4.3 TransCanada is eligible to use the short form prospectus system pursuant to National Instrument 44-101 (“NI 44-101”);
 - 4.4 TransCanada’s registered and head office is in Calgary, Alberta;
 - 4.5 the authorized capital of TransCanada consists of an unlimited number of common shares (the “TransCanada Shares”), an unlimited number of Cumulative Redeemable First Preferred Shares (“TransCanada First Preferred Shares”), and an unlimited number of Cumulative Redeemable Second Preferred Shares of which as of February 25, 2003 there were 480,193,991

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TransCanada Shares, 4,000,000 TransCanada First Preferred Shares, Series U, and 4,000,000 TransCanada First Preferred Shares, Series Y outstanding;

- 4.6 the TransCanada Shares are listed on the Toronto Stock Exchange (the “TSX”) and the New York Stock Exchange (the “NYSE”);
- 4.7 TransCanada has implemented the TransCanada Key Employee Stock Incentive Plan (1995), as amended and restated as of May 19, 1998 (the “TransCanada Option Plan”) pursuant to which it has granted stock options (“TransCanada Options”) to acquire TransCanada Shares to certain key employees. As at February 25, 2003, an aggregate of approximately 13,551,530 TransCanada Shares were subject to TransCanada Options granted under the TransCanada Option Plan;
- 4.8 TransCanada has a Shareholder Rights Plan (the “TransCanada Rights Plan”) pursuant to a Shareholder Rights Plan Agreement dated as of December 2, 1994 between TransCanada and Computershare Trust Company of Canada, as Rights Agent. The TransCanada Rights Plan was subsequently amended, with the approval of the holders of TransCanada Shares on April 7, 1995, May 19, 1998 and April 27, 2001;
- 4.9 the TransCanada Rights Plan is designed to encourage the fair treatment of shareholders in connection with a take-over bid for TransCanada. Rights issued under the TransCanada Rights Plan become exercisable when a person acquires or commences a take-over bid to acquire 20% or more of the outstanding TransCanada Shares without complying with certain provisions set out in the TransCanada Rights Plan. Should such an event occur, each rights holder, other than the acquiring person, will have the right to purchase \$200 worth of TransCanada Shares for \$100;
- 4.10 TransCanada has a dividend reinvestment and share purchase plan (the “TransCanada DRIP”) pursuant to which registered holders of TransCanada Shares and TransCanada First Preferred Shares are entitled to acquire TransCanada Shares by reinvesting dividends paid on TransCanada Shares and TransCanada First Preferred Shares and by making optional cash payments to a maximum of \$10,000 (U.S.\$7,000) per

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quarter without being subject to brokerage or administrative fees;

- 4.11 the price of TransCanada Shares purchased under the TransCanada DRIP is 100% of the weighted average purchase price of TransCanada Shares on the TSX on the investment date;
- 4.12 TransCanada may also issue the TransCanada Shares purchased under the TransCanada DRIP from treasury at 100% of the average market price, being the weighted average price of all TransCanada Shares traded on the TSX on the 20 trading days preceding the applicable dividend payment date;
- 4.13 TransCanada has proposed a reorganization by way of the Arrangement that will result in Holdco acquiring all of the issued and outstanding TransCanada Shares;
- 4.14 each holder of TransCanada Shares (a “TransCanada Shareholder”) will, immediately after the date of the certificate giving effect to the Arrangement (the “Effective Date”), hold one common share of Holdco (a “Holdco Share”) for each TransCanada Share formerly held;
- 4.15 Holdco was incorporated pursuant to the provisions of the CBCA on February 25, 2003 for the purposes of effecting the Arrangement;
- 4.16 the registered and head office of Holdco is, and will be following the completion of the Arrangement, located in Calgary, Alberta;
- 4.17 the authorized share capital of Holdco consists of an unlimited number of Holdco Shares and an unlimited number of First Preferred Shares (the “Holdco First Preferred Shares”) and Second Preferred Shares (the “Holdco Second Preferred Shares”), issuable in series;
- 4.18 upon completion of the Arrangement:
 - 4.18.1 Holdco will become a reporting issuer in British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, and Newfoundland and Labrador;

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- 4.18.2 Holdco will be eligible to use the short form prospectus system pursuant to NI 44-101 and will be a “qualifying issuer” as defined in Multilateral Instrument 45-102 *Resale of Securities* (“MI- 45-102”);
- 4.18.3 Holdco will act as a management holding company;
- 4.19 application is being made in Québec for an order declaring Holdco to be a reporting issuer on the Effective Date and to have been a reporting issuer for the period of time that TransCanada was a reporting issuer before the Effective Date;
- 4.20 on the Effective Date:
 - 4.20.1 Holdco will not own any assets directly other than all of the TransCanada Shares and its only outstanding securities will be the Holdco Shares;
 - 4.20.2 all of the existing employees of TransCanada will continue to be employed by TransCanada;
 - 4.20.3 TransCanada will enter into a management services agreement with Holdco whereby TransCanada will provide Holdco with the management and administrative services required by Holdco;
 - 4.20.4 Holdco will provide strategic direction to TransCanada and its subsidiaries and also provide coordination on matters which affect these companies collectively;
 - 4.20.5 based on the number of TransCanada Shares outstanding as of February 25, 2003, it is expected that there will be approximately 480,193,991 Holdco Shares outstanding, which amount does not take into consideration the exercise of any options under the TransCanada Option Plan after February 25, 2003; and
 - 4.20.6 Holdco will not have any Holdco First Preferred Shares or Holdco Second Preferred Shares outstanding;
- 4.21 the TSX and the NYSE have conditionally approved the listing of the Holdco Shares;

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- 4.22 the rights, privileges, restrictions and conditions attaching to the Holdco Shares, the Holdco First Preferred Shares and the Holdco Second Preferred Shares, as a class, are in all material respects identical to the rights, privileges, restrictions and conditions attaching to the TransCanada Shares, the TransCanada Cumulative Redeemable First Preferred Shares and the TransCanada Cumulative Redeemable Second Preferred Shares, as a class, respectively, except that no voting rights attach to the Holdco First Preferred Shares and the Holdco Second Preferred Shares, except as provided under the CBCA or except as provided under the share conditions attaching to a particular series of Holdco First Preferred Shares or Holdco Second Preferred Shares;
- 4.23 the following steps will occur in the following order as part of the Arrangement effective as of the Effective Date:
- 4.23.1 each right (“TransCanada Right”) held by TransCanada Shareholders under the TransCanada Rights Plan shall be cancelled and the TransCanada Rights Plan shall be terminated and be of no further force and effect;
- 4.23.2 each TransCanada Share (other than TransCanada Shares held by TransCanada Shareholders who exercise their dissent rights under section 190 of the CBCA in respect of the Arrangement) shall be and shall be deemed to have been exchanged, free and clear of any encumbrances and claims, with Holdco for the sole consideration of the issuance by Holdco of one Holdco Share;
- 4.23.3 Holdco will hold all of the issued and outstanding TransCanada Shares. The Holdco Shares will have the same rights, privileges, restrictions and conditions as the TransCanada Shares;
- 4.23.4 each holder of Holdco Shares shall be issued and shall be deemed to have been issued that number of rights (“Holdco Rights”) under a shareholder rights plan of Holdco to be implemented on or before the Effective Date equal to the number of Holdco Shares issued to such holder under the Arrangement; and

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4.23.5 TransCanada Options issued and outstanding under the TransCanada Option Plan, shall be and shall be deemed to be exchanged with Holdco for the same number of options (“Holdco Options”) to purchase Holdco Shares granted pursuant to a stock option plan of Holdco (the “Holdco Option Plan”) on the same terms and conditions and at the same exercise price as provided for under the TransCanada Options so exchanged, provided that the exercise price under each Holdco Option will be such that the amount by which the total fair market value of a Holdco Share that a holder is entitled to acquire under a Holdco Option immediately after the Effective Date exceeds the total amount payable by such holder to acquire a Holdco Share under a Holdco Option will not exceed the amount by which the total fair market value of a TransCanada Share that a holder is entitled to acquire under a TransCanada Option immediately before the Effective Date exceeds the amount payable by such holder to acquire a TransCanada Share under a TransCanada Option. Immediately following such exchange all issued and outstanding TransCanada Options shall be cancelled;

(the trades referred to in paragraphs 4.23.1 through 4.23.5 are collectively referred to herein as the “Arrangement Trades”);

4.24 TransCanada’s outstanding first mortgage pipe line bonds, medium term notes, debentures, preferred securities and subordinated debentures and outstanding Cumulative Redeemable First Preferred Shares, Series U and Cumulative Redeemable First Preferred Shares, Series Y will not be affected by the Arrangement and will remain obligations and securities of TransCanada after the Effective Date;

4.25 on or before the Effective Date, Holdco will adopt a dividend reinvestment and share purchase plan (the “Holdco DRIP”) which will be substantially the same as the TransCanada DRIP;

4.26 subject to this decision document, registered holders of Holdco Shares and TransCanada First Preferred Shares will be entitled to acquire Holdco Shares under the Holdco DRIP, on the same

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basis as participants in the TransCanada DRIP are presently able to acquire TransCanada Shares, by reinvesting dividends paid on TransCanada Shares and TransCanada First Preferred Shares and by making optional cash payments (to a maximum of \$10,000 (U.S.\$7,000) per quarter (the "Optional Cash Payments") without being subject to brokerage or administrative fees;

- 4.27 there are currently 18 holders of TransCanada First Preferred Shares that are participating in the TransCanada DRIP that will be participating in the Holdco DRIP;
- 4.28 the TransCanada DRIP will be terminated after the Effective Date;
- 4.29 on the Effective Date, all participants in the TransCanada DRIP automatically will become participants in the Holdco DRIP in respect of reinvestment of dividends paid after the Effective Date on Holdco Shares and, subject to this decision document, TransCanada First Preferred Shares, unless a notice of withdrawal has been delivered to the trustee of the TransCanada DRIP by June 30, 2003 or the participant has dissented in connection with the Arrangement;
- 4.30 TransCanada's other compensation plans will be amended to provide that accruals or vesting thereunder, as applicable, will be measured with reference to the financial performance of Holdco rather than TransCanada and the stock market performance of Holdco Shares rather than TransCanada Shares, as applicable, and that any rights to shares thereunder will be with respect to Holdco Shares rather than TransCanada Shares;
- 4.31 unless and until changed in accordance with applicable law, the financial year of Holdco will end on December 31st in each year;
- 4.32 the board of directors of TransCanada, acting upon the recommendation of senior management, have unanimously approved the Arrangement and have unanimously recommended that the TransCanada Shareholders vote in favour of the Arrangement;

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- 4.33 a management proxy circular dated February 25, 2003 (the “Circular”) has been sent to the TransCanada Shareholders in connection with the Meeting, which contains among other things, prospectus level disclosure of the business and affairs of TransCanada, Holdco and the particulars of the Arrangement. The mailing of the Circular was commenced on March 25, 2003 and was filed on SEDAR in each of the Jurisdictions concurrently with the mailing to TransCanada Shareholders;
- 4.34 on March 4, 2003, the Court of Queen’s Bench of Alberta (the “Alberta Court”) granted an interim order (the “Interim Order”) providing, among other things, for the calling and holding of an annual and special meeting of TransCanada Shareholders (the “Meeting”);
- 4.35 on April 25, 2003, TransCanada held the Meeting at which the TransCanada Shareholders passed a special resolution approving the Arrangement;
- 4.36 on April 28, 2003, the Arrangement received final approval of the Alberta Court;
- 4.37 each TransCanada Shareholder was entitled to dissent from the Arrangement in accordance with section 190 of the CBCA, as modified by the Interim Order and the Arrangement, and to be paid the fair value of such holder’s TransCanada Shares, subject to certain conditions described in the Circular;
- 4.38 it is anticipated that the Arrangement will become effective on May 15, 2003, after all conditions to the Arrangement have been satisfied or waived;
- 4.39 exemptive relief from the Registration Requirement and the Prospectus Requirement is required:
 - 4.39.1 in all Jurisdictions to effect the distribution of the Holdco Shares by Holdco pursuant to the Holdco DRIP to the holders of TransCanada First Preferred Shares who do not also hold Holdco Shares;
 - 4.39.2 in New Brunswick and the Yukon Territory to effect the distribution of the Holdco Shares by Holdco

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pursuant to the Holdco DRIP to holders of Holdco Shares;

4.39.3 in Québec to effect the Arrangement Trades and the trades in Holdco Rights and Holdco Shares issuable pursuant to the exercise of Holdco Rights under the Holdco shareholder rights plan (the “Rights Trades”); and

4.39.4 in New Brunswick to effect the Rights Trades and trades in Holdco Options and Holdco Shares issuable pursuant to the exercise of Holdco Options to employees of TransCanada under the Holdco Option Plan (the “Option Trades” and collectively, with the Arrangement Trades and the Rights Trades, the “Transaction Trades”);

5. AND WHEREAS under the System this MRRS Decision Document evidences the decision of the Decision Makers (the “Decision”);
6. 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;
7. THE DECISION of the Decision Makers under the Legislation is that:
 - 7.1 the Registration Requirement and Prospectus Requirement shall not apply to the Transaction Trades provided that the first trade in securities acquired pursuant to the Transaction Trades under this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation;
 - 7.2 except in Québec, the Registration Requirement and Prospectus Requirement shall not apply to trades by Holdco of Holdco Shares to holders of Holdco Shares under the Holdco DRIP, provided that:
 - 7.2.1 at the time of the trade Holdco is a reporting issuer or the equivalent under the Legislation and is not in default of any requirements of the Legislation;
 - 7.2.2 no sales charge is payable in respect of the trade;

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- 7.2.3 the terms and conditions of the Holdco DRIP are accessible to prospective participants and existing participants including instructions regarding participation in, and terminating participation in, the Holdco DRIP;
 - 7.2.4 in any financial year of Holdco during which the trade takes place, the aggregate number of Holdco Shares issued pursuant to the Optional Cash Payments shall not exceed 2% of the aggregate number of Holdco Shares outstanding at the commencement of that financial year; and
 - 7.2.5 the first trade of the Holdco Shares acquired pursuant to the Holdco DRIP under this Decision shall be deemed to be a distribution or a primary distribution to the public under the Legislation;
- 7.3 except in Québec, the Registration Requirement and Prospectus Requirement shall not apply to trades by Holdco of Holdco Shares to holders of TransCanada First Preferred Shares under the Holdco DRIP, provided that:
 - 7.3.1 the requirements in each of the conditions in 7.2.1 through 7.2.5 are met;
 - 7.3.2 TransCanada is a subsidiary of Holdco;
 - 7.3.3 the assets of TransCanada and its subsidiaries, on a book value basis, as reflected in the latest interim or annual financial statements of Holdco filed under the Legislation, represent at least 85% of the assets of consolidated Holdco on a book value basis; and
 - 7.3.4 Holdco provides any new participant in the Holdco DRIP that is a registered holder of TransCanada First Preferred Shares and not Holdco Shares copies of all continuous disclosure documents that are provided to holders of Holdco Shares;
- 7.4 the Prospectus Requirement shall not apply to the first trade of securities acquired under this Decision, provided that:

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- 7.4.1 except in Québec, the conditions in paragraphs 2 through 5 of subsection 2.6(3) of MI 45-102 are satisfied; and
- 7.4.2 in Québec:
 - 7.4.2.1. at the time of the first trade Holdco is a reporting issuer in Québec and is not in default of any of the requirements of the securities legislation in Québec;
 - 7.4.2.2. no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
 - 7.4.2.3. no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
 - 7.4.2.4. if the selling security holder is in a special relationship with the issuer, the selling security holder has no reasonable grounds to believe that the issuer is in default of any requirement of the securities legislation in Québec.

DATED this 14th day of May, 2003

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

Stephen R. Murison, Vice-Chair