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Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief granted from the requirement to reconcile to Canadian GAAP, certain financial statements included in an information circular that were prepared in accordance with U.S. GAAP

Applicable British Columbia Provisions

Securities Act, R.S.B.C.1996, c. 418, ss. 117(2)(a) and 119(2)(b)
BC Form 54-901F

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

AND

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

AND

IN THE MATTER OF FUELCELL ENERGY, INC.

AND

IN THE MATTER OF GLOBAL THERMOELECTRIC INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the Decision Makers”) in each of British Columbia, Alberta, Ontario, Quebec and Newfoundland and Labrador (the “Jurisdictions”) has received an application from FuelCell Energy, Inc. (“FuelCell”) and Global Thermoelectric Inc. (“Global”) (collectively the “Applicants”) for a decision (the “Decision”) under the securities legislation of the Jurisdictions (the “Legislation”), that the Applicants be exempt from the following requirements with respect to FuelCell in the joint management information circular and proxy statement (the “Circular”) to be sent to FuelCell and Global shareholders:

- (a) the requirement that historical and *pro forma* financial statements of FuelCell prepared in accordance with U.S. GAAP be accompanied by a note to explain and quantify the effect of material differences between

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Canadian GAAP and U.S. GAAP that relate to measurements and provide a reconciliation of such financial statements to Canadian GAAP;

- (b) the requirement that the FuelCell auditor's report disclose any material differences in the form and content of its auditor's report as compared to a Canadian auditor's report and confirming that the auditing standards applied are substantially equivalent to Canadian generally accepted auditing standards; and
- (c) the requirement that the FuelCell MD&A provide a restatement of those parts of the FuelCell MD&A that would read differently if the FuelCell MD&A were based on statements prepared in accordance with Canadian GAAP and the requirement that the FuelCell MD&A provide a cross-reference to the notes in the financial statements that reconcile the differences between U.S. GAAP and Canadian GAAP.

(collectively, the "GAAP Reconciliation Requirements")

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Securities Commission is the principal jurisdiction for this application;

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

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. Pursuant to a combination agreement dated August 4, 2003 between FuelCell and Global, FuelCell intends to acquire all of the outstanding common shares of Global (the "Global Common Shares") in a transaction (the "Transaction") to be effected pursuant to a plan of arrangement (the "Arrangement"). The Arrangement will be carried out under section 193 of the *Business Corporations Act* (Alberta) (the "ABCA").
2. The effect of the Arrangement will be to provide holders of Global Common Shares (other than Global Common Shares held by dissenting shareholders or by FuelCell or its affiliates) with exchangeable shares ("Exchangeable Shares") of a wholly-owned subsidiary of FuelCell to be incorporated ("Exchangeco") or shares of FuelCell common stock ("FuelCell Common Shares").

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3. The exchange ratio will be determined by dividing US\$2.72 by the product of the weighted average trading price of FuelCell Common Shares on Nasdaq over the 20 consecutive trading days ending on and including the third trading day next preceding the Global shareholders meeting provided that if such weighted average trading price is less than US\$7.96 it will be deemed to be \$7.96 and if such weighted average trading price is more than US\$9.74 it will be deemed to be US\$9.74 (the “Exchange Ratio”).
4. Global’s authorized capital consists of an unlimited number of Global Common Shares and an unlimited number of preferred shares issuable in series. As of August 4, 2003, there were 1,000,000 shares of Cumulative Redeemable Convertible Preferred Shares, Series 2 (the “Global Preferred Shares”) issued and outstanding and 29,200,850 Global Common Shares issued and outstanding. As of August 4, 2003, 2,176,500 Global Common Shares were reserved for issuance upon the exercise of stock options (the “Global Options”) under the Global Amended Incentive Stock Option Plan. As of August 4, 2003, 1,307,025 of the Global Options were outstanding. There are no Series 1 Global preferred shares issued and outstanding.
5. Pursuant to the Arrangement, all of the outstanding Global Common Shares (other than those held by dissenting shareholders, or those held by FuelCell or its affiliates) will be transferred to and acquired by Exchangeco, such that upon completion of the Transaction, FuelCell will own indirectly all of the Global Common Shares.
6. Under the Arrangement, each Global Option will represent an option to purchase the number of FuelCell Common Shares determined by multiplying the number of Global Common Shares subject to such Global Option by the Exchange Ratio, subject to rounding. The exercise price of the Global Option will be determined by dividing the exercise price per Global Common Share of the Global Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding, expressed in U.S. dollars.
7. Under the Arrangement, the Global Preferred Shares will remain preferred shares of Global and FuelCell will assume the obligation to issue FuelCell Common Shares upon their conversion.
8. Global is a company incorporated under the ABCA and is a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario and Quebec. The Global Common Shares are listed on The Toronto Stock Exchange (the “TSX”) under the symbol “GLE”. Global is not in default of any of the requirements of the securities legislation in any of the Jurisdictions except for

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the requirement to mail its December 31, 2002 comparative financial statements. This situation will be remedied when the Circular is mailed, as the December 31, 2002 comparative financial statements will be included in the mailing.

9. FuelCell is a Delaware company based in Connecticut, the common stock of which is listed for trading on The Nasdaq Stock Market Inc. ("Nasdaq") under the symbol "FCEL".
10. FuelCell is currently subject to the *United States Securities Exchange Act of 1934*, as amended (the "Exchange Act").
11. Subject to the terms of an interim order (the "Interim Order") to be sought from the Alberta Court of Queen's Bench (the "Court"), it is anticipated that the required approval of the holders of the Global Common Shares of the Arrangement will be not less than 66 2/3% of the votes cast in person or by proxy at the special meeting (the "Special Meeting") of Global Common Shareholders called to consider the Arrangement, at which each Global Common Shareholder will be entitled to one vote for each Global Common Share held by them.
12. The Special Meeting of Global common shareholders is anticipated to be held on October 31, 2003 at which Global will, among other things, seek the requisite Global common shareholder approval for the special resolution approving the Arrangement.
13. In connection with the Special Meeting, Global will mail to each Global common shareholder (i) a notice of special meeting, (ii) a form of proxy, (iii) the Circular, (iv) a letter of transmittal and election form by which Global shareholders will be entitled to elect the consideration to be received in exchange for their Global Common Shares. It is anticipated that the Circular will be mailed in early October 2003. The Circular will, in accordance with the Legislation, contain prospectus-level disclosure regarding FuelCell and Global (subject to such exemptive relief as may be granted by the appropriate securities regulatory authorities) and a description of the Arrangement.
14. The Circular will contain the following financial statements:
 - (a) unaudited *pro forma* condensed combined balance sheet of FuelCell as of July 31, 2003 and unaudited condensed combined *pro forma* condensed combined statements of operations for the year ended October 31, 2002 and for the nine months ended July 31, 2003 and the compilation reports thereon, all in accordance with U.S. GAAP;

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- (b) audited annual financial statements of FuelCell for each of the three fiscal years ended October 31, 2000, October 31, 2001 and October 31, 2002 together with balance sheets as at the end of such periods and the auditor's reports thereon, and unaudited comparative interim financial statements for the nine months ended July 31, 2003, all in accordance with U.S. GAAP; and
 - (c) audited annual financial statements of Global for the fiscal years ended December 31, 2002 and December 31, 2001, and the nine month period ended December 31, 2000, together with balance sheets as at the end of such periods and the auditor's reports thereon, and unaudited comparative interim statements for the period ended June 30, 2003, all in accordance with Canadian GAAP with a reconciliation to U.S. GAAP.
15. An application will be made to list the Exchangeable Shares on the TSX. There is no current intention to list the Exchangeable Shares on any other stock exchange. It is expected that the Global Common Shares will be delisted from the TSX on or after the completion of the Arrangement.
16. FuelCell will apply to Nasdaq to list the FuelCell Common Shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares, upon exercise of the Global Options and upon conversion of the Global Preferred Shares.
17. Upon completion of the Arrangement, Global Common Shareholders who are Canadian residents will own between approximately 16% and 19% of the outstanding FuelCell Common Shares.

AND WHEREAS under the System, this MRRS Decision Document evidences the decision of the Decision Makers;

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 under the Legislation that the GAAP Reconciliation Requirements shall not apply to the Applicants in connection with the disclosure pertaining to FuelCell in the Circular.

DATED at Calgary, Alberta this 30th day of September, 2003

Agnes Lau, CA
Deputy Director, Capital Markets