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April 4, 2005

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - National Instrument 51-101, s. 8.1 - Exemption from disclosure requirements in NI 51-101 - A reporting issuer wants relief from the requirements contained in Part 2 Annual Filing Requirements and in Part 3 Responsibilities of Reporting Issuers and Directors - The issuer is a wholly owned subsidiary of a trust; the issuer and the trust are both reporting issuers; the issuer is exempt from continuous disclosure obligations on the basis that the trust's disclosure record will be filed and delivered in place of the issuer's disclosure record; the trust is subject to NI 51-101 and will provide all of the disclosure required in Parts 2 and 3 of NI 51-101

Applicable British Columbia Provisions

National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, Parts 2 and 3 and s. 8.1

In the Matter of
the Securities Legislation of
Alberta, British Columbia, Saskatchewan, Manitoba,
Ontario, New Brunswick, Nova Scotia,
Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut

and

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

and

In the Matter of
Progress Energy Ltd. (AmalgamationCo) and
Progress Energy Trust (the Trust) (collectively, the Filers)

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

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- 1.1 AmalgamationCo be exempted from Part 2 (Annual Filing Requirements) and Part 3 (Responsibilities of Reporting Issuers and Directors) of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) (the NI 51-101 Relief), and
- 1.2 except in British Columbia, AmalgamationCo be exempted from Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109) (the MI 52-109 Relief).
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - 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 defined in this decision.

Representations

4. The decision is based on the following facts represented by the Filers:
 - 4.1 The Trust was created pursuant to a plan of arrangement (the Arrangement) under Section 193 of the *Business Corporations Act* (Alberta) (the ABCA) involving the Trust, Cequel Energy Inc. (Cequel), Progress Energy Ltd. (Progress), Cyries Energy Inc. and ProEx Energy Ltd. and the securityholders of Cequel and Progress.
 - 4.2 Pursuant to the Decision Document issued in the matter of Progress Energy Ltd. et al dated June 30, 2004, (the Progress Decision Document), AmalgamationCo obtained an exemption from National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) in its entirety (the Continuous Disclosure Requirements) in each of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Yukon and Nunavut.

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Progress Energy Ltd.

- 4.3 AmalgamationCo was amalgamated under the ABCA on June 29, 2004 in accordance with the terms of the Arrangement pursuant to the amalgamation of Progress, Cequel, Progress AcquisitionCo and Cequel AcquisitionCo.
- 4.4 Prior to the Arrangement, Progress had been a reporting issuer in each of the provinces of British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia and the common shares of Progress (the Progress Shares) had been listed and posted for trading on the Toronto Stock Exchange (the TSX). The Progress Shares were de-listed from the TSX at the opening of trading on July 7, 2004. Prior to the Arrangement, Cequel had been a reporting issuer in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador and Cequel Shares had been listed and posted for trading on the TSX. The common shares of Cequel (the Cequel Shares) were de-listed from the TSX at the opening of trading on July 7, 2004.
- 4.5 The head office and registered office of AmalgamationCo are each located in Calgary, Alberta.
- 4.6 AmalgamationCo is engaged in the exploration, development and production of natural gas and crude oil in Western Canada.
- 4.7 The authorized share capital of AmalgamationCo includes an unlimited number of common shares and an unlimited number of Exchangeable Shares. As at January 31, 2005, 100 common shares of AmalgamationCo were issued and outstanding, all of which were owned by the Trust and 14,166,911 Exchangeable Shares were issued and outstanding, all of which were owned by the former shareholders of Progress and Cequel. The common shares of AmalgamationCo are not listed or quoted on a marketplace. The Exchangeable Shares are listed and posted for trading on the TSX.
- 4.8 AmalgamationCo became a reporting issuer in each of the provinces of Canada on June 29, 2004 when the Arrangement was completed because AmalgamationCo was the direct successor of Progress and Cequel by way of amalgamation. AmalgamationCo is subject to NI 51-101 and to MI 52-109.

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- 4.9 AmalgamationCo has filed all of the information that it has been required to file as a reporting issuer in the applicable jurisdictions and is not in default of the Legislation in the applicable jurisdictions.

Progress Energy Trust

- 4.10 The Trust was established pursuant to a trust indenture dated May 26, 2004 under the laws of the Province of Alberta.
- 4.11 The Trust is, for the purposes of the Income Tax Act (Canada), an unincorporated, open-end mutual fund trust.
- 4.12 The head office of the Trust is located in Calgary, Alberta.
- 4.13 The authorized capital of the Trust consists of an unlimited number of trust units (Trust Units), one million 6.75% convertible unsecured subordinated debentures, each in the principal amount of \$1,000 (the Convertible Debentures) and an unlimited number of special voting units. As at January 31, 2005, 67,218,402 Trust Units, \$100,000,000 principal amount of Convertible Debentures and one special voting unit were issued and outstanding.
- 4.14 The Trust owns all of the issued and outstanding securities of ExchangeCo. In addition, the Trust owns all of the issued and outstanding securities of AmalgamationCo, other than the Exchangeable Shares of AmalgamationCo.
- 4.15 The Unitholders are the sole beneficiaries of the Trust. Computershare Trust Company of Canada (the Trustee) is the trustee of the Trust. AmalgamationCo is the administrator of the Trust.
- 4.16 The Trust Units were listed and posted for trading on the TSX at the opening on July 7, 2004.
- 4.17 The Trust became a reporting issuer in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia and Newfoundland and Labrador on June 29, 2004 concurrent with the completion of the Arrangement. The Trust is subject to the Continuous Disclosure Requirements, to NI 51-101 and to MI 52-109.

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The Exchangeable Shares

- 4.18 The Exchangeable Shares are, to the extent possible, the economic equivalent of the Trust Units.
- 4.19 The Exchangeable Shares have voting attributes equivalent to those of the Trust Units.
- 4.20 Holders of Exchangeable Shares will receive all disclosure material that the Trust is required to send to holders of Trust Units under the Legislation.
- 4.21 The exchange rights attaching to the Exchangeable Shares are governed by a voting and exchange trust agreement among the Trust, AmalgamationCo, ExchangeCo and the Trustee that provides the Trustee the right to require the Trust or ExchangeCo to exchange the Exchangeable Shares and which will trigger automatically the exchange of the Exchangeable Shares for Trust Units upon the occurrence of certain specified events.
- 4.22 The Exchangeable Shares are also subject to a support agreement among the Trust, AmalgamationCo and ExchangeCo, pursuant to which the Trust and ExchangeCo will take certain actions and make certain payments and will deliver or cause to be delivered Trust Units in satisfaction of the obligations of AmalgamationCo.

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 NI 51-101 Relief is granted for so long as:
 - 6.1.1 the Trust files with each Decision Maker copies of all documents required to be filed by it pursuant to NI 51-101;
 - 6.1.2 AmalgamationCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements;
 - 6.1.3 if disclosure to which NI 51-101 applies is made by AmalgamationCo separately from the Trust, the disclosure includes a statement to the effect that AmalgamationCo

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relies on an exemption from the requirements to file information annually under NI 51-101 separately from the Trust, and indicates where disclosure under NI 51-101 filed by the Trust (or by AmalgamationCo, if applicable) can be found for viewing on SEDAR by electronic means; and

6.1.4 if the Trust files a material change report to which section 6.1 of NI 51- 101 applies, AmalgamationCo files the same material change report.

6.2 The MI 52-109 Relief is granted for so long as:

6.2.1 AmalgamationCo is not required to, and does not, file its own interim filings and annual filings (as those terms are defined under MI 52-109);

6.2.2 the Trust files in electronic format under the SEDAR profile of AmalgamationCo the:

6.2.2.1 interim filings;

6.2.2.2 annual filings;

6.2.2.3 interim certificates; and

6.2.2.4 annual certificates;

of the Trust, at the same time as such documents are required to be filed under the Legislation by the Trust; and

6.2.3 AmalgamationCo is exempt from or otherwise not subject to the Continuous Disclosure Requirements.

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

Stephen R. Murison, Vice-Chair
Alberta Securities Commission