

THE SECURITIES ACT

)

Order No. 3901

)

Section 20

)

October 2, 2002

## CLEAN POWER INCOME FUND

### WHEREAS:

(A) Application has been made by Clean Power Income Fund (the "Applicant") to The Manitoba Securities Commission (the "Commission") for an order pursuant to subsection 20(1) of *The Securities Act*, R.S.M. 1988, c. S50 (as amended) (the "Act") that certain trades in securities of the Applicant shall be exempt from sections 6 and 37 of the Act.

(B) It has been represented to the Commission by the Applicant that:

1. The Applicant is an unincorporated open-ended trust established under the laws of Ontario. The Applicant's head office is located at Suite 1600, 67 Yonge Street, Toronto, Ontario, Canada, M5E 1J8.

2. The Applicant invests in environmentally preferred power generating assets and distributes the resulting cash to unitholders.

3. An unlimited number of Trust Units ("Trust Units") are issuable pursuant to the Fund's trust indenture (the "Trust Indenture"). Each Trust Unit is transferable and represents an equal undivided beneficial interest in any distributions of the Fund whether net income, net realized capital gains or other amounts, and in the net assets of the Fund in the event of termination or winding-up of the Fund. The Trust Units are listed and posted for trading on the Toronto Stock Exchange.

4. The Applicant is a reporting issuer or the equivalent in each of the Provinces and Territories in Canada.

5. The Applicant has entered into an agreement to provide financing to a corporation that will be purchasing all of the shares of Gas Recovery System Inc. ("GRSI"). The transaction, which is subject to financing, final due diligence and obtaining all regulatory and other required consents, is expected to close in October, 2002.

6. The Applicant has offered up to 3,571,429 special warrants of the Applicant (the "Special Warrants") in each of Manitoba, Alberta, British Columbia, Saskatchewan, Ontario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador (the "Selling Jurisdictions") pursuant to exemptions from the registration and prospectus requirements contained in the securities legislation of each of the Selling Jurisdictions (being, in Manitoba,

subsection 19(3) and paragraph 58(1)(a) of the Act and section 90 of the *Securities Regulation*, MR 491/88R). Each purchaser of Special Warrants (a "Purchaser") has completed a subscription agreement (a "Subscription Agreement") which sets out the terms and conditions of the Special Warrants. Each Special Warrant, upon exercise, entitles a holder, subject to adjustment in special circumstances, to one Trust Unit of the Applicant (the "Underlying Trust Units").

7. The Special Warrants were issued pursuant to, and the exercise thereof shall be governed by, the provisions of a Special Warrant Indenture (the "Special Warrant Indenture") between the Applicant and Computershare Trust Company of Canada (the "Special Warrant Trustee").

8. The Applicant intends to file a prospectus with the Commission and in each of the other provinces in order to qualify the Underlying Trust Units for primary distribution to the public.

9. Except in circumstances of an automatic exercise, the Special Warrants are exercisable after the closing of the Offering (the "Closing Date") only after a receipt for the prospectus referred to above is issued. The Special Warrants will be automatically exercised into Underlying Trust Units at 5:00 p.m. (Toronto time) on the earlier of:

(a) the fifth business day after each of the following has occurred:

(i) a receipt for a final prospectus (the "Final Prospectus") relating to the exercise of the Special Warrants has been issued or deemed to be issued by the securities regulatory authorities (the "Securities Regulators") in each province in which a Purchaser resides,

(ii) the Underwriters are satisfied with their due diligence review of the Fund and GRSI, and

(iii) the GRSI transaction has been completed,

(collectively, the "Exercise Conditions"), and

(b) if any of the Exercise Conditions have not been satisfied on or before the 90<sup>th</sup> day following the Closing Date and the Purchaser of a Special Warrant has elected to retain such Special Warrant within 10 days thereof, the earlier of:

(i) the 100<sup>th</sup> day after the Closing Date, if a receipt for the Final Prospectus has been issued or deemed

to be issued by the Securities Regulators prior to such date,

(ii) if a receipt for the Final Prospectus has not been issued or deemed to be issued by the Securities Regulators on or before the 100<sup>th</sup> day after the Closing Date, the date such a receipt for the Final Prospectus is issued or deemed to be issued by the Securities Regulators, and

(iii) four months and one day following the Closing Date,

(any such conversions of the Special Warrants into the Underlying Trust Units being referred to collectively hereinafter as the "Automatic Conversions").

10. If any of the Exercise Conditions have not been satisfied on or before the date which is 90 days following the Closing Date and the Purchaser of a Special Warrant has not exercised its right to retain the Special Warrant by providing written notice to the Applicant on or before the 100<sup>th</sup> day following the Closing Date, the Special Warrant will be cancelled and the Purchaser of the Special Warrant will be repaid the purchase price of such Special Warrant, together with a proportionate share of any interest earned on the escrowed funds designated for this purpose, without deduction, which escrowed funds are comprised of 100% of the net proceeds from the Offering.

(C) The Commission is of the opinion that it would not be prejudicial to the public interest to grant the order requested.

IT IS ORDERED:

**1. THAT**, pursuant to subsection 20(1) of the Act all trades in connection with the Automatic Conversions shall be exempt from sections 6 and 37 of the Act provided that no commission or other remuneration is paid or given to any person in respect of such trades except for ministerial or professional services or for services performed by a person or company registered for trading in securities under the Act.

**2. THAT** the fee for this order shall be \$1,000.00.

BY ORDER OF THE COMMISSION

Deputy Director - Legal