

Headnote

Mutual Reliance Review System for Exemptive Relief Applications -- Take-over Bids -- Offeror needs relief from the requirement in s. 97(1) of the Act that all holders of the same class of securities must be offered identical consideration -- Under the bid, Canadian resident unitholders may receive securities of Offeror as consideration; U.S. resident unitholders will receive substantially the same value as Canadian unitholders, in the form of cash paid to the U.S. unitholders based on the proceeds from the sale of their securities -- Offeror exempt from requirement that all holders of the same class of securities must be offered identical consideration.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 97(1), 104(2)(c).

May 28, 2007

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, MANITOBA,
NEW BRUNSWICK, NEWFOUNDLAND AND
LABRADOR, NOVA SCOTIA, ONTARIO, QUÉBEC
AND SASKATCHEWAN
(the "Jurisdictions")**

AND

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

AND

**IN THE MATTER OF
MACQUARIE POWER & INFRASTRUCTURE INCOME FUND
(the "Filer")**

MRRS DECISION DOCUMENT

Background

The local securities regulatory authority or regulator (the "Decision Maker") in each of the Jurisdictions has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the "Legislation") for an exemption from the requirement in the Legislation to offer identical consideration to all holders of the class of securities subject to a take-over bid (the "Identical Consideration Requirement") in connection with the securities

exchange take-over bid to be made by the Filer for all of the outstanding units (the "Units") of Clean Power Income Fund (the "Fund") (the "Requested Relief").

Under the Mutual Reliance Review System for Exemptive Relief Applications:

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

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

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a limited purpose trust established under the laws of the Province of Ontario by a declaration of trust dated March 15, 2004, as amended and restated as of April 16, 2004 and as further amended effective February 21, 2006.
2. The Filer's head office is located in the Province of Ontario.
3. The Filer is a reporting issuer in all provinces and territories of Canada and is not on the list of defaulting issuers maintained in any Jurisdiction.
4. The Filer is authorized to issue an unlimited number of units ("MPIIF Units"), of which, as at March 31, 2007, 26,798,995 were outstanding. In addition, as at March 31, 2007, there were 3,249,390 Class B exchangeable LP units of MPT LTC Holding LP outstanding exchangeable for an aggregate of 3,249,390 MPIIF Units, subject to certain limitations.
5. The MPIIF Units are listed and posted for trading on the Toronto Stock Exchange (the "TSX").
6. The Fund is an unincorporated, open-ended, limited purpose trust established under the laws of the province of Ontario by a trust indenture made as of October 31, 2001, as amended and restated by an amended and restated trust indenture dated July 16, 2003.
7. The Fund's head office is located in the Province of Ontario.
8. The Fund is a reporting issuer in all the provinces and territories of Canada.

9. The authorized capital of the Fund consists of an unlimited number of Units of which, as of April 18, 2007, there were 35,820,477 Units outstanding;

10. The Fund also has outstanding 6.75% convertible debentures due December 31, 2010 ("Debentures") in the principal amount equal to \$55,000,000. The Debentures are convertible at the holder's option into fully paid Units at any time prior to the earlier of their maturity date and the date fixed for redemption, at a conversion price of \$10.20 per Unit.

11. The Units and Debentures are each listed on the TSX.

12. The Filer, the Fund and the Fund's subsidiary operating trust, Clean Power Operating Trust, entered into a support agreement dated April 18, 2007 (the "Support Agreement", a copy of which has been filed on SEDAR and is accessible at www.sedar.com), pursuant to which the Filer agreed to make an offer for all the outstanding Units (the "Bid") and the Fund agreed to support the Bid, all upon the terms and conditions set out in the Support Agreement. The Filer and the Fund issued a joint press release announcing the signing of the Support Agreement on April 18, 2007.

13. The Filer will prepare and send a take-over bid circular (the "Circular") to holders of Units (the "Unitholders") and holders of the Debentures in connection with the Bid, subject to the provisions of the Support Agreement.

14. Under the Bid, the Filer will offer to acquire all of the outstanding Units and, as consideration for each Unit validly tendered to the Bid and not validly withdrawn, will offer to the Unitholders, other than to Unitholders resident in the United States (the "U.S. Unitholders"), 0.5581 of a MPIIF Unit and a Contingency Value Receipt (a "CVR").

15. The Bid will only be made for Units and any holder of Debentures who wishes to accept the Bid must convert the Debentures and deposit the Units issued as a result of such conversion under and in accordance with the Bid.

16. The CVRs will represent a contingent right of the holders to receive an amount calculated on the basis of 80% of the balance, if any, (less certain costs and expenses related to the CVRs) of an amount determined by taking into account: (i) US\$7.593 million deposited in an escrow account established by PEET U.S. Holdings Inc. ("PEET"), currently a subsidiary of the Fund, in connection with its sale of Gas Recovery Systems, LLC ("GRS"), and (ii) payments, if any, that might be made by the purchaser of GRS to PEET if such purchaser receives certain refunds from Commonwealth Edison Co. relating to GRS (after certain specified adjustments and deductions for certain payments, claims, costs and expenses). The Circular to be prepared by the Filer and sent to all Unitholders and holders of Debentures will describe the terms of the CVRs in detail.

17. A geographic analysis report (the "Report") delivered to the Filer by the Fund, covering approximately 86.6% of all issued and outstanding Units as at April 23, 2007, disclosed that: (i) residents in Canada comprise 10,164 Unitholders, collectively holding approximately 71.8% of all Units reported, (ii) residents in the United States comprise 74 Unitholders, collectively holding approximately 16.3% of all Units reported, and (iii) residents outside of Canada and the United States comprise 109 Unitholders collectively holding approximately 11.9% of all Units reported.

18. The MPIIF Units and CVRs issuable under the Bid have not been and will not be registered or otherwise qualified for distribution pursuant to the securities legislation of any jurisdiction outside of Canada, including the United States Securities Act of 1933, as amended (the "1933 Act") or U.S. state securities laws.

19. The Filer does not believe that the CVRs would be required to be registered or otherwise qualified for distribution under U.S. federal or state securities laws. The MPIIF Units would be required to be registered under the 1933 Act if they were to be issued and delivered to U.S. Unitholders without any further action by the Filer. However, in lieu of delivering MPIIF Units to U.S. Unitholders, the Filer intends to use a vendor placement mechanism, the details and procedures of which are described in paragraph 21 below. As a result of the Vendor Placement (as defined in paragraph 21(a) below), the registration requirements of the 1933 Act will not apply to the Filer and/or the Bid because the MPIIF Units will not be delivered in the United States or to the U.S. Unitholders.

20. In the absence of the Vendor Placement, the offer, sale and delivery of MPIIF Units to the U.S. Unitholders would constitute a violation of certain U.S. securities laws. Registration under such U.S. securities laws of the MPIIF Units deliverable to U.S. Unitholders pursuant to the Bid would be extremely costly and burdensome to the Filer. Further, the Multijurisdictional Disclosure System would not provide relief from the registration or qualification requirements of such U.S. securities laws.

21. For U.S. Unitholders who validly tender and do not validly withdraw their Units to the Bid, the Filer proposes, in lieu of delivering the MPIIF Units and CVRs that such U.S. Unitholders would otherwise be entitled to receive under the Bid, such MPIIF Units and CVRs will be:

(a) in the case of MPIIF Units, aggregated and sold in Canada, through the facilities of the TSX, through a registered broker or investment dealer located outside of the United States, and each such U.S. Unitholder whose MPIIF Units have been sold in such manner will be forwarded an amount equal to such Unitholder's pro rata interest in the aggregate net proceeds of such sale, after commissions, expenses and/or any applicable withholding taxes, as

soon as reasonably practicable after completion of such sale (the "Vendor Placement"); and

(b) in the case of the CVRs, issued to an escrow agent (the "CVR Escrow Agent"), located outside of the United States, and held in escrow until payment is made on such CVRs or such CVRs are cancelled in accordance with their terms, after which the CVR Escrow Agent will forward to those CDS Participants (as defined herein) identified by CDS Clearing and Depository Services Inc. ("CDS") to the depository under the Bid on or about the expiry time of the Bid as being, as at such time, the participants in the book-entry system maintained by CDS ("CDS Participants") of the U.S. Unitholders, a payment in Canadian Dollars in an amount equal to each such Unitholder's pro rata portion of the aggregate payment amount, if any, net of all costs relating to such arrangements and any applicable withholding taxes in relation to the respective number of CVRs such Unitholder would have otherwise been entitled to receive.

22. The Circular to be prepared by the Filer and sent to all Unitholders and holders of Debentures will disclose the procedure described in paragraph 21 above to be followed for U.S. Unitholders who tender their Units to the Bid.

23. To the extent that there are any Unitholders in jurisdictions outside Canada and the United States to whom the MPIIF Units or CVRs may not be delivered without registration or qualification under the laws of their own jurisdiction (collectively, with the U.S. Unitholders, the "Non-Resident Unitholders"), the Filer may utilize a vendor placement mechanism similar to the one described in paragraph 21 above, modified as necessary to comply with the laws of such foreign jurisdiction.

24. If the Filer increases the consideration offered pursuant to the Bid to holders of Units resident in Canada, the increase in consideration will also be offered to the Non-Resident Unitholders at the same time and on the same basis.

25. Any sale of the MPIIF Units described in paragraph 21 above will be completed as soon as practicable after the date on which the Filer issues MPIIF Units in exchange for the Units tendered by the Non-Resident Unitholders under the Offer and will be done in a manner intended to maximize the consideration to be received from the sale by the applicable Non-Resident Unitholder and minimize any adverse impact of the sale on the market for the MPIIF Units.

26. Except as to the extent that relief from the Identical Consideration Requirement is granted herein, the Bid will be made in compliance with the requirements under the Legislation governing take-over bids.

Decision

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.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted so that the Filer is exempt from the Identical Consideration Requirement insofar as Non-Resident Unitholders, who would otherwise receive MPIIF Units and CVRs pursuant to the Bid, receive instead cash proceeds from the sale of such MPIIF Units and the payment, if any, in connection with such CVRs, in accordance with the procedures set out in paragraphs 21 and 23 above.

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