

## **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – Relief from the prospectus and registration requirements granted for trades in negotiable promissory notes and commercial paper (short-term debt instruments). The short-term debt instruments may not meet the "approved credit rating" requirement contained in the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106). The definition of an "approved credit rating" requires, among other things, that every rating of the short-term debt instrument be at or above a prescribed standard. The relief is granted provided the short-term debt instrument:

- (i) matures not more than one year from the date of issue;
- (ii) is not convertible or exchangeable into or accompanied by a right to purchase another security other than a short-term debt instrument; and
- (iii) has a rating issued by one of the following rating organizations at or above one of the following rating categories: DBRS: "R-1(low); Fitch: "F2"; Moody's: "P-2" or S&P: "A-2".

The relief will terminate on the earlier of 90 days upon an amendment to section 2.35 of NI 45-106 or three years from the date of the decision.

## **Applicable Ontario Statutory Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., sections 25, 53 and 74.

May 23, 2006

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

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

**IN THE MATTER OF  
ONTARIO POWER GENERATION INC.  
(the Filer)**

**MRRS DECISION DOCUMENT**

## Background

The local securities regulatory authority or regulator (the Decision Makers) in each of the Jurisdictions has received an application of the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for:

(a) an exemption from the dealer registration requirement in respect of a trade in a negotiable promissory note or commercial paper maturing not more than one year from the date of issue (together Commercial Paper); and

(b) an exemption from the prospectus requirement in respect of the distribution of the Commercial Paper,

(collectively, 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 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 was amalgamated under the laws of the Province of Ontario by Articles of Amalgamation dated January 1, 2006 and is existing as a corporation under the Business Corporations Act (Ontario). The Filer is an Ontario-based electricity generation company whose principal business is the generation and sale of electricity in Ontario.

2. The Filer is a reporting issuer in Ontario, Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Québec and Saskatchewan.

3. The Filer is not in default of its obligations under the Legislation in any Jurisdiction.

4. The Filer has established an aggregate Cdn \$1 billion short term unsecured notes financing program pursuant to which the Filer may issue and sell unsecured Commercial Paper, provided that the aggregate outstanding principal amount of Commercial Paper issued by the Filer at any time does not exceed Cdn \$1 billion.

5. The Commercial Paper is not qualified by a prospectus filed in any Jurisdiction and is sold exclusively on a private placement basis in accordance with available exemptions from the prospectus requirements and dealer registration requirements.

6. Subsection 2.35(1)(b) of National Instrument 45-106 Prospectus and Registration Exemptions (NI 45-106) provides that exemptions from the dealer registration requirements and the prospectus requirements for short-term debt (the Commercial Paper Exemption) are available only where such short-term debt has an "approved credit rating from an approved credit rating organization". NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" that are used in National Instrument 81-102 Mutual Funds (NI 81-102).

7. The definition of an "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned to such debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".

8. The rating of the Filer's Commercial Paper by Dominion Bond Rating Service Limited, "R-1(low)", meets the prescribed threshold stated in the definition of "approved credit rating" in NI 81-102.

9. The Filer's Commercial Paper does not meet the definition of "approved credit rating" in NI 81-102 because Standard & Poor's has assigned the Filer's Commercial Paper a rating of "A-2", which is lower than that required by the Commercial Paper Exemption.

## **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 provided that the Commercial Paper:

- (a) matures not more than one year from the date of issue;
- (b) is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper; and
- (c) has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

<b>Rating</b>	<b>Organization Rating</b>
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2

Moody's Investors Service  
Standard & Poor's

P-2  
A-2

For each Jurisdiction, this decision will terminate on the earlier of:

(a) 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the Legislation of the Jurisdiction that amends section 2.35 of NI 45-106 or provides an alternate exemption; and

(b) three years from the date of this decision.

"Wendell S. Wigle, Q.C."  
Commissioner  
Ontario Securities Commission

"Suresh Thakrar, FICB"  
Commissioner  
Ontario Securities Commission