

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.

June 30, 2006

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

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

**UNION GAS LIMITED
(Union Gas)**

AND

**IN THE MATTER OF
WESTCOAST ENERGY INC.
(Westcoast Energy, and with Union Gas, the Filers)**

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 Filers 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 negotiable promissory notes or commercial paper of the Filers 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 Filers:

1. Union Gas was originally incorporated under the laws of Province of Ontario by letter patent dated December 19, 1911 and was amalgamated with Centra Gas Ontario Inc. on January 1, 1998 pursuant to the Business Corporations Act (Ontario). Union Gas is an indirect wholly-owned subsidiary of Duke Energy Corporation ("**Duke Energy**") and a direct subsidiary of Westcoast Energy. Union Gas owns and operates natural gas transmission, distribution and storage facilities in Ontario, distributes natural gas to customers in northern, southwestern and eastern Ontario, and provides natural gas storage and transportation services for other utilities and energy participants in Ontario, Quebec and the United States. Union Gas is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova

Scotia, Prince Edward Island, and Newfoundland and Labrador. Union Gas is not in default of its obligations under the Legislation in any Jurisdiction.

2. Westcoast Energy was incorporated by Special Act of the Parliament of Canada in 1949. It was continued under the Canada Business Corporations Act in 1976 and was amalgamated with seven subsidiaries in March 2002. Westcoast Energy is an indirect wholly-owned subsidiary of Duke Energy. Westcoast Energy is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Westcoast Energy is not in default of its obligations under the Legislation in any Jurisdiction.

3. Union Gas has established a short term unsecured notes financing program of up to an aggregate Cdn.\$ 400 million pursuant to which Union Gas may issue and sell short-term unsecured Commercial Paper having a maturity of up to 365 days.

4. Westcoast Energy has established a short term unsecured notes financing program of up to an aggregate Cdn.\$ 300 million pursuant to which Westcoast Energy may issue and sell short-term unsecured Commercial Paper having a maturity of up to 365 days.

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

6. Subsection 2.35(1)(b) of National Instrument 45-106 — *Prospectus and Registration Exemptions (NI 45-106)* provides that exemptions from the registration and prospectus requirements of the Legislation 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. Generally, for short-term debt to have an "approved credit rating" under the definition in NI 81-102, (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. Dominion Bond Rating Service Limited ("**DBRS**") has assigned the Commercial Paper a short-term rating of "R 1(low)" (the "**DBRS Rating**"). The DBRS is an "approved credit rating organization" and the DBRS Rating is an "approved credit rating", and therefore meets the prescribed threshold in NI 81-102.

9. The Commercial Paper does not, however, meet the "approved credit rating" in NI 81-102 because Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("**S&P**") has assigned the CP a short-term rating of "A-2" (the "**S&P Rating**"), which is a lower rating than required by the Commercial Paper Exemption. In addition although the S&P is an "approved credit rating organization", the S&P Rating is not an "approved credit rating".

10. As a result of the definitions incorporated by reference in NI 45-106 and the ratings assigned to the Commercial Paper, the Commercial Paper does not have an "approved credit rating" and therefore the Commercial Paper Exemption is not available in respect of trades in Commercial Paper.

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:

Rating	Organization Rating
Dominion Bond Rating Service Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	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.

" Robert L. Shirriff"
Commissioner
Ontario Securities Commission

"Robert W. Davis"
Commissioner
Ontario Securities Commission