

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Relief from registration and prospectus requirements in connection with a statutory arrangement involving an exchangeable share structure where exemptions may not be available in for technical reasons. Exchangeco exempted from certain continuous disclosure and insider reporting requirements subject to certain conditions. First trade deemed a distribution unless made in accordance with specified provisions of Multilateral Instrument 45-102: *Resale of Securities*.

Applicable Ontario Statutory Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74(1), 80(b)(iii) and 121(2)(a)(ii).

Applicable Ontario Rules

Rule 45-501 - *Exempt Distributions*

Rule 51-501 - *AIF and MD&A*

Applicable National Instruments

Multilateral Instrument 45-102: *Resale of Securities*

National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*

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

AND

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

AND

IN THE MATTER OF DUKE ENERGY CORPORATION, 3946509 CANADA INC.,
3058368 NOVA SCOTIA COMPANY AND WESTCOAST ENERGY INC.

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the "Decision Maker") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (collectively, the "Jurisdictions") has received an application from Duke Energy Corporation ("Duke Energy"), 3058368 Nova Scotia Company ("Calco"), 3946509 Canada Inc. ("Exchangeco") and Westcoast Energy Inc. ("Westcoast") (collectively, the "Applicant") for a decision pursuant to the securities legislation, regulations, rules, instruments and/or policies of the Jurisdictions (the "Legislation") that:

- (a) certain trades in securities made in connection with or resulting from the proposed combination (the "Transaction") of Duke Energy and Westcoast to be effected by way of a plan of arrangement (the "Arrangement") under Section 192 of the *Canada Business Corporations Act* (the "CBCA") shall be exempt from the requirements contained in the Legislation to be registered to trade in a security (the "Registration Requirements") and to file a preliminary prospectus and a prospectus and receive receipts therefor (the "Prospectus Requirements");
- (b) Exchangeco shall be exempt from the requirements of the Legislation to issue a press release and file a report upon the occurrence of a material change, to file with the Decision Makers and deliver to its security holders an annual report, where applicable, and interim and annual financial statements, to file and deliver an information circular, to file interim and annual management-s discussion and analysis of the financial condition and results of operation of Exchangeco and,

where applicable, to file an annual information form (the "Continuous Disclosure Requirements"); and

- (c) the requirement contained in the Legislation for an insider of a reporting issuer to file reports disclosing the insider's direct or indirect beneficial ownership of, or control or direction over, securities of the reporting issuer and the filing requirements of Exchangeco in connection therewith (the "Insider Reporting Requirements") shall not apply to each insider of Exchangeco and its successors and Exchangeco;

AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS the Applicant has represented to each Decision Maker that:

1. Duke Energy, together with its subsidiaries, is an integrated energy and energy services provider with the ability to offer physical delivery and management of both electricity and natural gas throughout the United States and abroad. With over 23,000 employees world-wide, Duke Energy is a multinational corporation with operations in over 50 countries.
2. As of December 31, 2000, Duke Energy's total assets were approximately US\$58 billion. For the financial year ended December 31, 2000, its total operating revenues and net income were approximately US\$49.318 billion and US\$1.776 billion, respectively.
3. Duke Energy was organized in 1917 under the laws of the state of New Jersey and reincorporated under the laws of the State of North Carolina in 1963. Duke Energy was known as Wateree Power Company until 1924, when it changed its name to Duke Power Company. In 1997, it changed its name to Duke Energy Corporation. Duke Energy's principal executive offices are located at 526 South Church Street, Charlotte, North Carolina, U.S.A. 28202.
4. Duke Energy's authorized capital currently consists of two billion common shares, without par value, 12.5 million shares of preferred stock ("Duke Energy Preferred Stock"), par value US\$100 per share, issuable in series, 10 million shares of preferred stock A ("Duke Energy Preferred Stock A"), par value US\$25 per share, issuable in series, and 1.5 million shares of preference stock, par value US\$100 per share, issuable in series ("Duke Energy Preference Stock"). The Duke Energy common shares are fully participating voting shares. As at December 10, 2001, there were 776,632,413 Duke Energy common shares issued and outstanding and as at November 30, 2001 there were 1,534,984 shares of Duke Energy Preferred Stock, 2,007,185 shares of Duke Energy Preferred Stock A and no shares of Duke Energy Preference Stock issued and outstanding.

5. As of November 29, 2001, there were 81 registered holders of Duke Energy common shares in Canada holding 38,933 Duke Energy common shares, representing approximately 0.005% of the total number of issued and outstanding Duke Energy common shares. As of December 10, 2001, there were 961 beneficial holders of Duke Energy common shares in Canada holding 2,097,951 shares representing approximately 0.27% of the total number of issued and outstanding Duke Energy common shares.
6. As of November 30, 2001, there were 54,176,015 Duke Energy common shares reserved for issuance pursuant to the Duke Energy stock option plans ("Duke Energy Plans"). As of November 30, 2001, of all of the options outstanding under the Duke Energy Plans, there were 28 persons in Canada holding options to purchase an aggregate of 99,220 Duke Energy common shares, representing approximately 0.18% of the Duke Energy common shares reserved for issuance pursuant to the Duke Energy Plans.
7. Duke Energy is a public company in the United States. The Duke Energy common shares are listed on the New York Stock Exchange (the "NYSE") under the symbol "DUK".
8. Duke Energy is not a reporting issuer or the equivalent in any province or territory of Canada. Upon the completion of and as a consequence of the Arrangement, Duke Energy may become a reporting issuer in British Columbia, Alberta, Saskatchewan and Québec.
9. Duke Energy is subject to the United States *Securities Exchange Act of 1934*, as amended (the "Exchange Act").
10. On September 20, 2001, the market capitalization of Duke Energy was approximately Cdn\$47.2 billion and the trading price of a Duke Energy common share was US\$38.73.
11. Callco is an indirect wholly-owned subsidiary of Duke Energy. Callco is an unlimited liability company incorporated under the *Companies Act* (Nova Scotia) on September 14, 2001 as 3058368 Nova Scotia Company to hold the call rights related to the Exchangeable Shares (as defined below). Prior to the effective date of the Arrangement (the "Effective Date"), it is expected that Callco will change its name to "Duke Energy Canada Call Co.". Callco's registered office address is Suite 800, 1959 Upper Water Street, P.O. Box 997, Halifax, Nova Scotia B3J 2X2.
12. The authorized capital of Callco consists of one billion common shares. All of the outstanding common shares of Callco are held indirectly by Duke Energy.
13. Exchangeco is an indirect subsidiary of Duke Energy incorporated under the CBCA

on September 14, 2001 as 3946509 Canada Inc. for the purpose of implementing the Arrangement. Prior to the Effective Date, it is expected that Exchangeco will change its name to "Duke Energy Canada Exchangeco Inc.". Exchangeco's registered office address is 199 Bay Street, Commerce Court West, Suite 5300, Toronto, Ontario M5L 1B9.

14. The authorized capital of Exchangeco consists of an unlimited number of common shares and an unlimited number of preference shares, issuable in series. All of the outstanding common shares of Exchangeco are held indirectly by Duke Energy. No preference shares of Exchangeco are currently outstanding.
15. The share capital of Exchangeco will be amended prior to the Effective Date to create the non-voting exchangeable shares (the "Exchangeable Shares"). Upon the completion of the Arrangement, all of the outstanding Exchangeable Shares will be held by former Westcoast Shareholders who receive Exchangeable Shares in exchange for their Westcoast common shares pursuant to the Arrangement.
16. Exchangeco is currently a "closely-held issuer" within the meaning of that term under OSC Rule 45-501. Upon completion of the Arrangement, it is anticipated that the Exchangeable Shares will be listed on The Toronto Stock Exchange (the "TSE") and that Exchangeco will become a reporting issuer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland. The Exchangeable Shares were conditionally approved for listing on the TSE on October 12, 2001, subject to the satisfaction of its customary requirements.
17. Westcoast is a North American energy company whose interests include natural gas gathering, processing and transmission, natural gas storage facilities and gas distribution, power generation, and international energy businesses as well as financial, information and energy services businesses.
18. As at December 31, 2000, Westcoast had consolidated assets of approximately Cdn\$15.1 billion and employed approximately 5,500 people. For the financial year ended December 31, 2000, Westcoast had gross revenues of approximately Cdn\$8.9 billion and net income of approximately Cdn\$388 million.
19. Westcoast was incorporated by a Special Act of Parliament as Westcoast Transmission Company Limited in 1949, and continued under the CBCA effective May 5, 1976. Westcoast Transmission Company Limited changed its name to Westcoast Energy Inc. on June 1, 1988. Westcoast's registered office is 1333 West Georgia Street, Vancouver, British Columbia V6E 3K9.
20. Westcoast's authorized capital consists of an unlimited number of Westcoast common shares and an unlimited number of first preferred shares, issuable in series (the "Westcoast First Preferred Shares"), and second preferred shares, issuable in series (the "Westcoast Second Preferred Shares"). As of November 27, 2001, 127,386,859

Westcoast common shares were issued and outstanding, no Westcoast Second Preferred Shares were issued and outstanding, and the following Westcoast First Preferred Shares were issued and outstanding:

- a. 8,000,000 4.90% Cumulative Redeemable First Preferred Shares, Series 5;
 - b. 5,000,000 4.72% Cumulative Redeemable First Preferred Shares, Series 6;
 - c. 6,000,000 5.50% Cumulative First Preferred Shares, Series 7;
 - d. 6,000,000 5.60% Cumulative First Preferred Shares, Series 8; and
 - e. 5,000,000 5.00% Cumulative Redeemable First Preferred Shares, Series 9.
21. The Westcoast common shares are listed on the TSE under the symbol "W" and on the NYSE under the symbol "WE".
 22. Westcoast is a reporting issuer or the equivalent in all provinces of Canada. To the best of the knowledge of Westcoast, Westcoast is not in default of any of the requirements of the Legislation. Westcoast is also currently subject to the reporting requirements applicable to foreign private issuers under the Exchange Act.
 23. Westcoast is currently eligible to file under National Instrument 44-101 -"Short Form Prospectus Distributions".
 24. As of February 6, 2002, based on information provided to Westcoast by Independent Investor Communications Corp., it is estimated that beneficial Westcoast Shareholders in Canada held 87,087,844 Westcoast common shares, representing approximately 68% of the total number of issued and outstanding Westcoast common shares. Based on the number of sets of Westcoast Meeting materials sent to Canadian addresses, it is estimated that on November 8, 2001 there were 41,424 Westcoast Shareholders in Canada.
 25. As of November 29, 2001, of all the Westcoast Options outstanding under the Westcoast stock option plans, Westcoast Options representing the right to acquire 4,788,312 Westcoast common shares were held by residents of Canada, representing approximately 98.7% of the total number of Westcoast common shares which may be acquired pursuant to the exercise of Westcoast Options.
 26. Duke Energy, Calco, Exchangeco and Westcoast entered into an amended and restated combination agreement as of September 20, 2001, pursuant to which Duke Energy intends to acquire all of the issued and outstanding Westcoast common shares by way of the Arrangement.
 27. The Arrangement will be carried out under Section 192 of the CBCA. On November 6, 2001, the Applicant obtained, under section 192 of the CBCA, an interim order (the *Interim Order*) from the Supreme Court of British Columbia which order specifies, among other things, certain procedures and requirements to be followed in connection with the calling and holding of the Westcoast Meeting (as defined below) and the

completion of the Arrangement.

28. Westcoast mailed a management proxy circular dated November 8, 2001 (the "Circular") to holders ("Westcoast Shareholders") of Westcoast common shares and holders ("Westcoast Optionholders") of Westcoast options, and filed the Circular in all of the provinces on November 16, 2001.
29. The Circular contained or incorporated by reference prospectus-level disclosure of the business and affairs of Duke Energy and Westcoast and a detailed description of the Arrangement, except as varied by Orders previously granted by certain of the Decision Makers. The Circular also contained certain historical financial statements of Duke Energy and Westcoast and certain pro forma condensed consolidated financial statements for the combined Duke Energy/Westcoast entity.
30. The Circular sought, among other things, approval by the Westcoast Shareholders and Westcoast Optionholders (collectively, the "Westcoast Securityholders") of the Arrangement and approval by the Westcoast Shareholders of the amendment to the shareholder rights plan of Westcoast (the "Westcoast Rights Agreement") waiving the application of the Westcoast Rights Agreement to the Transaction, at a special meeting of Westcoast Securityholders held on December 13, 2001 (the "Westcoast Meeting").
31. At the Westcoast Meeting, each Westcoast Shareholder was entitled to one vote for each Westcoast common share held, and each holder of Westcoast Options was entitled to one vote for each Westcoast common share such holder would receive on a valid exercise of the Westcoast Options held by the Holder. At the Westcoast Meeting, over 96% of the votes cast by the Westcoast Securityholders were in favour of the Transaction. In addition, the Westcoast Shareholders approved the amendment to the Westcoast Rights Agreement.
32. Westcoast received a valid notice of objection to the Arrangement, pursuant to rights of dissent granted to Westcoast Shareholders in accordance with the Interim Order, from only one Westcoast Shareholder in respect of 664 Westcoast common shares (the "Dissenting Shareholder").
33. On January 10, 2002, the Supreme Court of British Columbia granted final approval to the Arrangement.
34. Subject to the satisfaction or waiver of all closing conditions, including obtaining all required regulatory approvals, it is currently anticipated that the Transaction will be completed in the first quarter of 2002.
35. On the Effective Date, pursuant to the Arrangement, each Westcoast Shareholder (other than the Dissenting Shareholder, and other than Duke Energy and its affiliates) may elect, subject to certain proration adjustments described in the Circular, as

consideration for each Westcoast common share held:

- a. Cdn\$43.80 in cash;
 - b. a fraction of a Duke Energy common share equal to the Exchange Ratio (as described below);
 - c. a fraction of an Exchangeable Share equal to the Exchange Ratio; or
 - d. a combination of a fraction of a Duke Energy common share, a fraction of an Exchangeable Share and/or cash.
36. Only residents of Canada may elect to receive Exchangeable Shares. Any election to receive Exchangeable Shares by a Westcoast Shareholder who is not a resident of Canada will be deemed to be an election to receive Duke Energy common shares.
37. The Exchange Ratio will be determined by dividing Cdn\$43.80 by the product of the weighted average trading price of Duke Energy common shares on the NYSE over the 20 consecutive trading days ending two Business Days before the Effective Date (the "Weighted Average Trading Price of Duke Energy Common Shares") and a fixed currency exchange rate of Canadian dollars to U.S. dollars of 1.54. The Exchange Ratio is subject to a collar such that if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or less than US\$36.88, the Exchange Ratio will be fixed at 0.7711, and if the Weighted Average Trading Price of Duke Energy Common Shares is equal to or greater than US\$46.48, the Exchange Ratio will be fixed at 0.6119.
38. The Arrangement provides that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will consist of approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares. Elections made by Westcoast Shareholders in the letter of transmittal and election form mailed to Westcoast Shareholders will, pursuant to the Arrangement, be prorated accordingly.
39. No fractions of Exchangeable Shares or Duke Energy common shares will be issued in exchange for Westcoast common shares pursuant to the Arrangement and such fractional interests will not entitle the owner to exercise any rights as a shareholder of Exchangeco or Duke Energy. In lieu of any fractional securities, each holder otherwise entitled to a fraction of an Exchangeable Share or a Duke Energy common share will be entitled to receive a cash payment equal to the product of the fractional interest and the Weighted Average Trading Price of Duke Energy common shares.
40. Under the Arrangement, each Westcoast Option will be replaced with an option (the "Replacement Options") to purchase Duke Energy common shares. The number of Duke Energy common shares for which a Replacement Option may be exercised will

be determined by multiplying the number of Westcoast common shares subject to the Westcoast Option by the Exchange Ratio, subject to rounding. The exercise price of the Replacement Option will be determined by dividing the exercise price per Westcoast common share of the Westcoast Option immediately prior to the effective time of the Arrangement by the Exchange Ratio, subject to rounding. The exercise price will also be converted into U.S. dollars at the currency exchange rate on the Effective Date.

41. As a result of the foregoing, upon the completion of the Arrangement, all of the issued and outstanding Westcoast common shares will be held directly or indirectly by Duke Energy and its affiliates.
42. It is expected that the Westcoast common shares will be delisted from the TSE and the NYSE on or after the Effective Date and on the Effective Date, Exchangeco will become a reporting issuer, or the equivalent thereof, in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and Newfoundland.
43. The Westcoast First Preferred Shares, Series 5, Series 6, Series 7, Series 8 and Series 9 will remain issued and outstanding and will continue to be listed on the TSE after the Effective Date. Westcoast will continue to be a reporting issuer or the equivalent thereof in all provinces of Canada.
44. The Exchangeable Shares will be issued by Exchangeco. The Exchangeable Shares provide the holder with a security having, as nearly as practicable, economic terms and voting rights that are the same as the Duke Energy common shares.
45. Duke Energy will apply to the NYSE to list the Duke Energy common shares to be issued pursuant to the Arrangement and issuable in exchange for the Exchangeable Shares and upon exercise of the Replacement Options.
46. The rights, privileges, conditions and restrictions attaching to the Exchangeable Shares (the "Exchangeable Share Provisions"), the terms and conditions of the voting and exchange trust agreement to be entered into between Duke Energy, Exchangeco and a trustee (the "Trustee") in connection with the Arrangement (the "Voting and Exchange Trust Agreement") and the terms and conditions of the support agreement to be entered into between Duke Energy, Callco and Exchangeco in connection with the Arrangement (the "Support Agreement") are described in the Circular, and are summarized below.
47. The Exchangeable Shares will be issued by Exchangeco and will be exchangeable at any time up to eight years from the Effective Date (subject to earlier redemption in accordance with the Arrangement), on a one-for-one basis, at the option of the holder, for Duke Energy common shares. An Exchangeable Share will provide a holder with economic terms and voting rights which are, as nearly as practicable, equivalent to those of a Duke Energy common share. Westcoast Shareholders who are residents

of Canada and who receive Exchangeable Shares under the Arrangement may, upon filing the necessary tax elections, obtain a full or partial deferral of taxable capital gains for Canadian federal income tax purposes in certain circumstances. In addition, provided the Exchangeable Shares are listed on a prescribed stock exchange (which currently includes the TSE), they will be "qualified investments" for certain investors and will not constitute "foreign property", in each case, under the *Income Tax Act* (Canada).

48. Subject to applicable law and the exercise of the Retraction Call Right described below, a holder of Exchangeable Shares will be entitled at any time following the effective time of the Arrangement to retract any or all of the Exchangeable Shares owned by the holder and to receive an amount per share equal to the Retraction Price described in the Circular which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. When a holder of Exchangeable Shares makes a Retraction Request, Callco will have an overriding call right (the "Retraction Call Right") to purchase all but not less than all of the Exchangeable Shares subject to the Retraction Request in exchange for the Retraction Price, pursuant to the Exchangeable Share Provisions.
49. Subject to applicable law and the Redemption Call Right described below, at any time on or after the eighth anniversary of the Effective Date, Exchangeco may, or earlier in the event of certain circumstances described in the Circular under the heading "*Early Redemption*" will, redeem all but not less than all of the then outstanding Exchangeable Shares for an amount per share equal to the Redemption Price described in the Circular, which will be fully paid and satisfied by the delivery for each Exchangeable Share of one Duke Energy common share and any dividends payable on such Exchangeable Share. Callco will have an overriding right (the "Redemption Call Right") to purchase on the Redemption Date all but not less than all of the Exchangeable Shares then outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates) for a purchase price per share equal to the Redemption Price, as set out in the Plan of Arrangement attached as Schedule F to the Circular.
50. Except as required by law or under the Support Agreement, the terms of the Exchangeable Share Provisions or the Voting and Exchange Trust Agreement, the holders of Exchangeable Shares will not be entitled to receive notice of, attend or vote at any meeting of shareholders of Exchangeco.
51. On the Effective Date, Duke Energy, Exchangeco and the Trustee will enter into the Voting and Exchange Trust Agreement pursuant to which Duke Energy will issue to the Trustee a number of Duke Energy common shares equal to the number of Exchangeable Shares issued and outstanding (other than Exchangeable Shares held by Duke Energy and its affiliates), which will be held by the Trustee to enable the holders of Exchangeable Shares to have voting rights that are equivalent to those of holders of Duke Energy common shares. Each registered holder of Exchangeable Shares (other than Duke Energy and its affiliates) (a "Beneficiary") on the record date for any meeting at which shareholders of Duke Energy are entitled to vote will be

entitled to instruct the Trustee to vote one Duke Energy common share held by the Trustee for each Exchangeable Share held by the Beneficiary. The Exchangeable Shares are subject to adjustment or modification in the event of a stock split or other change to the capital structure of Duke Energy so as to maintain the initial one-to-one relationship between the Exchangeable Shares and the Duke Energy common shares.

52. The Exchangeable Share Provisions will provide that each Exchangeable Share will entitle the holder to dividends from Exchangeco payable at the same time as, and the same as or economically equivalent to, each dividend paid by Duke Energy on a Duke Energy common share.
53. On the liquidation, dissolution or winding-up of Exchangeco or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs, holders of the Exchangeable Shares will have, subject to applicable law, preferential rights to receive from Exchangeco the Liquidation Amount for each Exchangeable Share held. When a liquidation, dissolution or winding-up occurs, Calco will have an overriding right (the "Liquidation Call Right") to purchase all of the outstanding Exchangeable Shares (other than Exchangeable Shares held by Duke Energy and its affiliates) from the holders of Exchangeable Shares on the Liquidation Date for a purchase price per share equal to the Liquidation Amount described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share. On the liquidation, dissolution or winding-up of Exchangeco (or when any other Insolvency Event described in the Circular occurs, and while it continues) each holder of Exchangeable Shares (other than Duke Energy and its affiliates) will be entitled to instruct the Trustee to exercise the exchange right (the "Exchange Right") granted to the Trustee in the Voting and Exchange Trust Agreement to require Duke Energy to purchase from such holder all or any part of the Exchangeable Shares held by the holder for a purchase price per share equal to the Exchangeable Share Price as described in the Circular, which will be fully paid and satisfied by the delivery of one Duke Energy common share and any dividends payable on such Exchangeable Share.
54. In order for the holders of the Exchangeable Shares to participate on a pro rata basis with the holders of Duke Energy common shares, immediately prior to the effective time of the liquidation, dissolution or winding-up of Duke Energy (or when any other Liquidation Event described in the Circular occurs), each Exchangeable Share will, pursuant to the automatic exchange right granted to the Trustee in the Voting and Exchange Trust Agreement, automatically be exchanged for Duke Energy common shares equal to the Exchangeable Share Price under the Voting and Exchange Trust Agreement.
55. The Exchangeable Shares will have a preference over the common shares of Exchangeco and any other shares ranking junior to the Exchangeable Shares with respect to the payment of dividends and the distribution of assets in the event of a liquidation, dissolution or winding-up of Exchangeco, whether voluntary or involuntary,

or any other distribution of the assets of Exchangeco among its shareholders for the purpose of winding-up its affairs. The Exchangeable Shares will rank junior to the preference shares of Exchangeco.

56. On the Effective Date, Duke Energy, Exchangeco and Callco will enter into the Support Agreement which will provide that Duke Energy will not declare or pay dividends on the Duke Energy common shares unless Exchangeco on the same day declares or pays an equivalent dividend on the Exchangeable Shares, and that Duke Energy will ensure that Exchangeco and Callco will be able to honour the redemption and retraction rights and dissolution entitlements that are attributes of the Exchangeable Shares under the Exchangeable Share Provisions and the Redemption Call Right, Retraction Call Right and Liquidation Call Right. The Support Agreement will also provide that, without the prior approval of Exchangeco and the holders of the Exchangeable Shares, Duke Energy will not issue or distribute Duke Energy common shares, securities exchangeable for or convertible into or carrying rights to acquire Duke Energy common shares, rights, options or warrants to subscribe for or to purchase Duke Energy common shares, evidences of indebtedness or other assets of Duke Energy to the holders of Duke Energy common shares nor will Duke Energy subdivide, redivide or change the Duke Energy common shares unless the same or an economically equivalent distribution or change is simultaneously made to the Exchangeable Shares.
57. The Arrangement involves or may involve, a number of trades and/or distributions of securities (collectively, the "Trades"), in respect of which there may be no registration or prospectus exemptions available under the Legislation, including, without limitation, the issuance of the Exchangeable Shares, Replacement Options and Duke Energy common shares; the issuance of Duke Energy common shares upon the exchange of Exchangeable Shares and the issuance of Duke Energy common shares upon the exercise of Replacement Options; the creation and exercise of all the various rights under the Voting and Exchange Trust Agreement, Support Agreement and Exchangeable Share Provisions; and the issuance of shares of Duke Energy and its affiliates (including Exchangeco and Callco) in connection with the Arrangement.
58. The fundamental investment decision to be made by a Westcoast Securityholder was made at the time when such holder voted in respect of the Arrangement. As a result of this decision, unless Exchangeable Shares are sold in the market, a holder (other than the Dissenting Shareholder) will ultimately receive Duke Energy common shares in exchange for the Westcoast common shares held by such holder. The use of the Exchangeable Shares will provide certain Canadian tax benefits to certain Canadian holders but will otherwise be, as nearly as practicable, the economic and voting equivalent of the Duke Energy common shares. As such, all subsequent exchanges of Exchangeable Shares are in furtherance of the holder's initial investment decision.
59. As a result of the economic and voting equivalency in all material respects between the Exchangeable Shares and the Duke Energy common shares, holders of Exchangeable Shares will have an equity interest determined by reference to Duke Energy, rather than

Exchangeco. Dividend and dissolution entitlements will be determined by reference to the financial performance and condition of Duke Energy, not Exchangeco. Accordingly, it is the information relating to Duke Energy, not Exchangeco, that will be relevant to the holders of Exchangeable Shares.

60. Duke Energy will send concurrently to all holders of Exchangeable Shares and Duke Energy common shares resident in the Jurisdictions all disclosure material furnished to holders of Duke Energy common shares resident in the United States including, without limitation, copies of its annual financial statements and all proxy solicitation materials.
61. The Circular disclosed that applications have been made for prospectus, registration and resale exemptions and exemptions from the continuous disclosure requirements. The Circular specified the disclosure requirements from which Exchangeco has applied to be exempted and identified the disclosure that would be made in substitution therefor if such exemptions are granted.
62. Upon completion of the Arrangement, assuming a maximum Exchange Ratio of 0.7711, it is expected that the beneficial holders of Duke Energy common shares resident in Canada will hold approximately 4.1% of the issued and outstanding Duke Energy common shares and/or Exchangeable Shares (calculated based upon the number of beneficial Westcoast Shareholders and beneficial holders of Duke Energy common shares who are residents of Canada, as set out above, and on the basis that the consideration to be paid by Duke Energy to Westcoast Shareholders pursuant to the Arrangement will be approximately 50% cash and approximately 50% Duke Energy common shares and/or Exchangeable Shares). This percentage would increase to approximately 4.4% if it is assumed that all of the Westcoast Options held by residents of Canada were exercised prior to the effective time of the Arrangement.
63. There is no public market in Canada for the Duke Energy common shares and no such public market is expected to develop.

AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers pursuant to the Legislation is:

1. the Registration Requirements and the Prospectus Requirements shall not apply to the Trades provided that
 - (a) the first trade in Exchangeable Shares acquired in connection with the

Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation of the Jurisdiction in which the trade takes place (the "Applicable Legislation"), unless:

- (i) except in Québec,
 - (A) the conditions in subsections (3) or (4) of section 2.6 of Multilateral Instrument 45-102 ("MI 45-102") are satisfied; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.6 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; or
 - (B) where such first trade is a control distribution as such term is defined in MI 45-102, such trade is made in compliance with section 2.8 of MI 45-102; and provided further that, in determining the period of time that Exchangeco has been a reporting issuer for the purposes of section 2.8 of MI 45-102, the period of time that Westcoast has been a reporting issuer may be included; and the period of time that a holder of Exchangeable Shares (or an affiliated or controlled entity of such holder) held Westcoast common shares shall be included in the calculation of the hold period);
 - (ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and the Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Exchangeable Shares; and
- (b) the first trade in Duke Energy common shares acquired in connection with the Arrangement shall be deemed to be a distribution or primary distribution to the public under the Legislation unless, at the time of the trade:
- (i) except in Québec,
 - (A) if Duke Energy is a reporting issuer in any Jurisdiction listed in Appendix B to MI 45-102 other than Québec, the conditions in subsections (3) or (4) of section 2.6 of MI 45-102 are satisfied;

and for the purpose of determining the period of time that Duke Energy has been a reporting issuer under section 2.6, the period of time that Westcoast has been a reporting issuer may be included; or

- (B) if Duke Energy is not a reporting issuer in any Jurisdiction other than Québec, such first trade is made through an exchange, or a market, outside of Canada; and
- (ii) in Québec, to the extent that there is no exemption available from the Registration Requirements and Prospectus Requirements in respect of any of the Trades, the Trades are not subject to the Registration Requirements and the Prospectus Requirements, provided that the issuer or one of the parties to the Arrangement (including, for greater certainty, Westcoast) is and has been a reporting issuer in Québec in good standing for the twelve months immediately preceding the Trades (and for the purpose of determining the period of time that the issuer or one of the parties to the Arrangement has been a reporting issuer in Québec, the period of time that Westcoast was a reporting issuer may be included); and no unusual effort is made to prepare the market or to create a demand for the Duke Energy common shares; and

IT IS FURTHER THE DECISION of the Decision Makers, other than the Decision Maker in the Northwest Territories, pursuant to the Legislation that:

2. the Continuous Disclosure Requirements shall not apply to Exchangeco so long as:
 - (a) Duke Energy sends concurrently to all holders of Exchangeable Shares resident in Canada all disclosure material furnished to holders of Duke Energy common shares resident in the United States, including, without limitation, copies of its proxy solicitation materials and its annual financial statements, which financial statements will be prepared solely in accordance with US GAAP;
 - (b) Duke Energy files with each Decision Maker copies of all documents required to be filed by it with the SEC under the *Exchange Act*, and such filings are made under Exchangeco's SEDAR profile and the filing fees which would otherwise be payable by Exchangeco in connection with such filings are paid;
 - (c) Duke Energy complies with the requirements of the NYSE in respect of making public disclosure of material information on a timely basis and forthwith issues in Canada and files with the Decision Makers any press release that discloses a material change in Duke Energy's affairs;
 - (d) Exchangeco complies with the material change reporting requirements in respect of material changes in the affairs of Exchangeco that would be material

to holders of Exchangeable Shares but would not be material to holders of Duke Energy common shares;

- (e) Duke Energy includes in all future mailings of proxy solicitation materials (if any) to holders of Exchangeable Shares a clear and concise statement explaining the reason for the mailed material being solely in relation to Duke Energy and not in relation to Exchangeco, such statement to include a reference to the economic equivalency between the Exchangeable Shares and the Duke Energy common shares and the right to direct voting at Duke Energy's shareholders' meetings pursuant to the Voting and Exchange Trust Agreement (without taking into account tax effects);
 - (f) Duke Energy remains the direct or indirect beneficial owner of all of the issued and outstanding voting securities, including, without limitation, common shares of Exchangeco;
 - (g) Exchangeco does not issue any securities to the public other than the Exchangeable Shares in connection with the Arrangement, and preferred shares issued to Duke Energy's financial advisors prior to the consummation of the Arrangement; and
3. The Insider Reporting Requirements, and the requirement to file an insider profile under National Instrument 55-102 B System for Electronic Disclosure by Insiders, shall not apply to Exchangeco and each insider of Exchangeco, so long as:
- (a) such insider of Exchangeco does not receive or have access to, in the ordinary course, information as to material facts or material changes concerning Duke Energy before the material facts or material changes are generally disclosed; and
 - (b) such insider of Exchangeco is not a director or senior officer of Duke Energy, or a "major subsidiary" of Duke Energy, as such term is defined in National Instrument 55-101 - Exemptions from Certain Insider Reporting Requirements as if Duke Energy were a reporting issuer.

DATED this 26th day of February, 2002.

APaul Moore@

AR.S. Paddon@
