

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. S-42.2

AND

IN THE MATTER OF

Co-enerco Resources Ltd.
and
Numac Energy Inc.

DECISION

Hearing Held: April 13, 1994

Before: Marcel de la Gorgendiere, Q.C., Chairman
Rand Flynn, Commission Member

Appearances: Dean Murrison, Representing Commission Staff
Glenn Roy, for the Agency of the Alberta Securities Commission

Co-enerco Resources Ltd.:

Joe Dierker and Jim Russell, Gauley & Co., Saskatchewan Counsel

John Burns, Grant Stapon, John Gulak, Bennett Jones Verchere, Alberta Counsel

Numac Energy Inc.:

Grant Currie and Liz Nash, Robertson, Stromberg, Saskatchewan Counsel

Doug McGillivray, Bill Winters, Steve Cohen, Burnet, Duckworth & Palmer, Alberta Counsel

I

Decision dated: April 14, 1994.

DECISION

This application, resulting from a take-over bid for Co-enerco Resources Ltd. ("Co-enerco") by Numac Energy Ltd. ("Numac"), was made to have an order requiring the clarification of and extension of the time of the bid. The application was made to both the Alberta and Saskatchewan Securities Commissions (the "Commissions").

The Saskatchewan Securities Commission (the "SSC") had some concerns about an application made late in a bid where the principal jurisdiction was similarly involved. However, after considering the detailed explanation of the historic and existing significant relationship of the applicant to the province, both in terms of assets and individual shareholders, the Commission was of the opinion that the application was justified. While the concept of principal jurisdiction may not be one recognized in law, it is a useful concept in securities regulation in order to avoid a multiplicity of applications, the evils of forum shopping, and an inconsistent national application of policy. Preferring applications to be made to the principal jurisdiction, however, should not rule out an application such as this where a substantive need can be shown to obtain consideration of factors that might be more within the area of concern and competence of another jurisdiction.

The problem of ensuring, however, a co-ordination of regulatory response within a timeframe that reflects market concerns is also important. With that in mind, this application was heard in a joint hearing before both Commissions by telephone link-up. Both Commissions heard arguments with the parties represented by local counsel. The SSC feels that such coordinated disposition leads to great certainty in the market and protects varying regional interests.

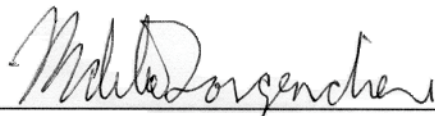
In this particular application the SSC adopts for Saskatchewan the reasons of the Chairman of the Alberta Securities Commission which are attached. The provisions in The Securities Act, 1988 (Saskatchewan) which correspond to the sections of the Securities Act (Alberta) referred to by Chairman Hess are considered by the SSC to be of no material difference. The reasons given in a Saskatchewan context is the same if the sections referred to were as follows:

	Alberta Securities Act	Saskatchewan Securities Act
Section	144(1)	113(1)
Section	137(1)	107(1)
Section	140(4)	109(4)
Section	135	104
Section	137	107
Section	137.1(2)	107(5)

The application is therefore denied for the above described reasons.

The Saskatchewan securities Commission appreciates the co-operation of all counsel appearing as well as the staff of the Commissions.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 14th day of April, 1994.

A handwritten signature in cursive script, reading "Marcel de la Gorgendiere", written over a horizontal line.

Marcel de la Gorgendiere, Q.C.
Chairman

**BOARD OF THE
ALBERTA SECURITIES COMMISSION**

IN THE MATTER OF the Securities Act Statutes of Alberta 1981,
Chapter S-6.1, as amended (the "Act")

and

**IN THE MATTER OF
Co-Enerco Resources Ltd.**

and

Numac Energy Inc.

**REASONS FOR THE DECISION OF THE
BOARD OF THE ALBERTA SECURITIES COMMISSION**

BEFORE

W.L Hess, Q.C.	Chairman of the Board of the Alberta Securities Commission (the "Board")
C.L. Narang	Member of the Board

APPEARANCES

Glenn Roy	for the Agency of the Alberta Securities Commission (the "Agency")
J.S. Burns, Q.C., G.N. Stapon, J.W. Gulak,	for the Applicant, Co-enerco Resources Ltd.
D.A. McGillivray, W.H. Winters, C.S. Chen,	for Numac Energy Inc.

HEARD

Calgary, Alberta	April 13,1994
------------------	---------------

This decision arises from an application by Co-Enerco for an order pursuant to section 144(1) of the Act to, inter alia, require Numac to amend its take-over bid (the "Offer") for Co-enerco common shares (the "Common Shares") and 6% convertible debentures (the "Debentures") on the basis that the take-over bid circular (the "Circular") contains material misstatements and is misleading on a number of material respects and by reason of the sending of an addendum (the "Addendum") to the take-over bid circular.

A hearing to consider the application was held on a joint basis with a hearing to hear a similar application before the Saskatchewan Securities Commission.

Counsel for Co-enerco raised certain preliminaries to which responses and decisions were given orally by the Chairman at the hearing.

FACTS

On January 31, 1994 the Board of Directors of Co-enerco adopted a shareholder rights plan agreement pursuant to which rights (the "Rights") to acquire Common Shares were issued. On March 14, 1994 Numac mailed the Offer and Circular to holders of Common Shares and Debentures. The Numac offer is not a permitted bid as defined in the rights plan agreement. A directors' circular (the "Directors' Circular") dated March 24, 1994 was sent by Co-enerco to the security holders. The Directors' Circular, inter alia, raised certain questions about the terms of the bid.

On April 4, 1994 Numac mailed the Addendum to the holders of Common Shares and Debentures. The Addendum went out with a covering letter from the president of Numac which stated:

"Enclosed is an Addendum to Numac's Circular containing additional information which I hope will assist you in considering the Offer. "

The Addendum at page 3 states:

"The Offer remains outstanding, unamended, on and subject to the terms and conditions specified in the Offer. This Addendum is an addition to the Circular and forms part thereof."

On the same page it further states:

"This Addendum is intended to ensure that Shareholders and Debentureholders have complete and accurate information to allow them to consider the Offer on its merits. "

The Addendum responded to a number of items discussed in the Directors' Circular. The Addendum was certified and signed substantially in the manner that the Act requires a take-over bid circular be certified.

ARGUMENT

Counsel for Co-enerco made its application in two parts, the first part relating to the allegation of material misstatements in the offering documents.

It was first argued that the Offer did not make it clear that security holders had to give up their entitlement to Rights to accept the Offer and that if separation time occurs prior to the close of the Offer and a security holder has sold Rights, then the security holder would be precluded from accepting the Offer.

Counsel for Co-enerco also argued that as the Rights cannot be exercised by Numac under the terms of the shareholder rights plan if the take-over is completed, tendering Common Shareholders cannot give the representation and warranty relating to the Rights required by the letter of transmittal that:

"Numac will acquire good title thereto, free and clear of all liens, changes, encumbrances, claims and equities"

and that the inability to give this representation and warranty should have been disclosed to shareholders.

Additionally counsel argued that since the Offer did not specifically state that it was for Rights, the tendering of such Rights with the Common Shares would in effect be a counter-offer by tendering Common Shareholders which Numac would be free to reject, in effect giving Numac the right to walk away from the transaction. In supplement to this argument, counsel argued that there was no consideration being paid for the Rights suggesting the possibility that the acceptance of the Offer by Common Shareholders may not be enforceable.

The second part of the argument in favour of Co-enerco's application relates to the Addendum and the specific timing requirements of the Act.

Section 137(1) states:

"An offeror shall send a take-over bid circular or an issuer bid circular, as the case may be, with or as part of a bid."

Counsel's first point was that if the Addendum forms part of the Circular, as stated therein,

it should have been included as part of the original document as it is not an amendment to or a variance of the Circular. The application supports this by pointing out that the Addendum specifically states that the Offer "*remains unamended*".

Section 140(4) states that a take-over bid circular shall, for the purposes of sections 135 and 137:

"be deemed to have been sent and dated as of the date on which it was sent to all or substantially all of the persons and companies entitled to receive it"

Mr. Burns argued that, as a result, the sending of the Addendum to security holders means that the date of the Circular should be deemed to be April 4, 1994, with the effect that the bid should have to remain open for acceptance for at least 21 days from that date.

As a further alternative, Mr. Burns supplemented the written application by suggesting that if the Board did not find that the Addendum formed part of the Circular with the effect that the date of the bid should be deemed to be April 4, 1994, we should find that the Addendum constituted a notice of change or variation to the Offer or Circular, with the result that the period during which securities may be deposited pursuant to the bid is one day short of the requirement of 10 days set out in section 137.1(2). Mr. Burns acknowledged that the change or variance would consist of additional information in that the information in the Addendum did not change or vary any of the specific terms of the Offer or specific statements contained in the Circular.

DECISION

The decision of the Board is that no order will be granted.

REASONS FOR DECISION

Having reviewed the disclosure provided to the securities holders by Co-enerco and Numac, there is sufficient information for any reasonably prudent investor to determine that in order to accept the Offer, the investor must give up all benefits to Rights in equal number to the Common Shares tendered. While arguably the language might have been clearer, the same can be said for much of the boilerplate that has developed in transactions of this nature. To not be aware of the effect of the transaction on Rights, the shareholder would have to have ignored parts of the description in the Offer, the wording of the letter of transmittal and the reference to this issue in the Directors' Circular. To try and protect any such investor who is not taking reasonable steps to protect his own self-interest, the Board would have to make an order that may delay an opportunity to all other persons whose securities are the subject matter of the Offer, which would be contrary to the public interest.

In addition, at the time of the application, one day from the close of the Offer, the problems suggested by counsel for Co-enerco are hypothetical as the board of directors of Co-enerco has postponed the separation time after which the Rights are separated from the Common Shares with the result that the Rights can not be currently traded or exercised. This means that all Common Shareholders still retain all Rights, and such Rights would be automatically transferred with Common Shares tendered under the bid.

We do not agree that there would be a breach of the representation and warranty as to title by virtue of Numac's incapacity to exercise the Rights. If we are wrong, it is our view that as a result of the statement in the Addendum that:

“Numac confirms that no representation or warranty required to be provided by a Co-enerco shareholder relates to any restriction which prevent the Rights from being exercised by Numac”,

Numac would be estopped from enforcing any such breach. Finally, in light of all these circumstances, we are of the view that any attempt by Numac to make any such claim would be an abuse of the capital markets.

As to the point that the tendering will, under the circumstances, simply be a counter-offer allowing Numac to refuse to take up tendered securities, while we do not agree with this submission, we believe to assert such a claim would be in breach of the Act for which relief may be available and which is so remote that it does not indicate to us that we should be making an order that would at best delay an opportunity for Co-enerco securities holders. Additionally we do not agree with the submission that the validity of the acceptance of the bid could be challenged on the basis of a lack of consideration for the Rights.

With respect to the second part of the applicant's submissions, firstly we find that notwithstanding the statement to the contrary found therein, the Addendum does not form part of the Circular. The Circular is a physical document, it may be changed or varied by a subsequent document, but calling a document part of another document does not make it so. To allow a different result could have absurd results, for example, it would require the board of directors of Co-enerco to issue another Directors' Circular.

Additionally, the Addendum is not a notice of change or variation, to the bid. It is solely a response to statements contained in the Directors' Circular. To find or require that any such response similarly restricted in its scope must be considered to be a variation to the bid (with the potential result of forcing an offeror to extend the bid) would discourage full disclosure and debate in contested take-over bid circumstances, which is clearly contrary to a purpose of the Act which is to encourage full and complete disclosure.

While we make no comment as to whether certification of the Addendum was necessary, we certainly approve of the practice. However, the use of a formal certificate in the form required for documents prescribed by the Act does not make the Addendum something it otherwise is not.

DATED at the **CITY OF CALGARY**, in the **PROVINCE OF ALBERTA** this 14th day of
April, 1994.



William L. Hess, Q.C., Chairman

"C. Lal Narang"

C. Lal Narang, Member of the Board