

Headnote

Multilateral Instrument 11-102 *Passport System* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* - exemption granted from the requirement to include audited carve-out financial statements for acquired assets in information circular. The assets will comprise the primary business of a new reporting issuer.

Applicable Legislative Provisions

National Instrument 51-102 *Continuous Disclosure Obligations*

Citation: UTS Energy Corporation, Re, 2010 ABASC 390

Date: 20100818

In the Matter of
the Securities Legislation of
Alberta and Ontario (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
UTS Energy Corporation (**UTS** or the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement under Item 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**) to provide the financial statements for the Spin-Off Assets (as defined below) for the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007 and the six month periods ended June 30, 2010 and June 30, 2009 along with the management's discussion and analysis for the corresponding periods (**MD&A**) in the management information circular (the **Circular**) to be prepared by UTS and delivered to the holders (**UTS Shareholders**) of common shares of UTS (**UTS Shares**) in connection with a special meeting (**UTS Meeting**) of UTS Shareholders expected to be held in September 2010 for the purpose of considering a plan of arrangement under the *Canada Business Corporations Act* (the **CBCA**) (the **Arrangement**) resulting in the exchange of the UTS Shares for \$3.08 cash from Total E&P Canada Ltd. (**Total**) and 0.1 of a common share (a **SilverBirch Share**) of SilverBirch Energy Corporation (**SilverBirch**) and the transfer from UTS to SilverBirch of the Spin-Off Assets (collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Alberta Securities Commission is the principal regulator for this Application;
- (b) UTS has provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

UTS

1. UTS is a corporation established under the CBCA on January 26, 1977. The principal office of UTS is located in Calgary, Alberta.
2. UTS is a reporting issuer or the equivalent under the securities legislation of each of the provinces of Canada. To its knowledge, UTS is not in default of securities legislation in any jurisdiction of Canada.
3. UTS' financial year end is December 31.
4. UTS is presently engaged in the development of oil sands projects located in Alberta's Athabasca oil sands area through its ownership of the Spin-Off Assets and through an interest in another oil sands project not comprised within the Spin-Off Assets.
5. UTS is currently in the development stage and has earned no operating revenue, including in respect of the Spin-Off Assets, within any of the fiscal years ended December 31, 2009, 2008 or 2007 or for the six months ended June 30, 2010.
6. There are no "reserves" within the meaning of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) attributable to the Spin-Off Assets and there has been no oil and gas production from the Spin-Off Assets.
7. The UTS Shares are listed on the Toronto Stock Exchange (the **TSX**) under the symbol "UTS".
8. Following completion of the Arrangement, the UTS Shares will be delisted from the TSX.

SilverBirch

9. SilverBirch is a corporation established under the CBCA on June 25, 2010 for the sole purpose of participating in the Arrangement.
10. SilverBirch has not carried on any active business since the date of its incorporation up to the date of this decision other than in connection with the Arrangement and related matters.
11. The principal office of SilverBirch is located in Calgary, Alberta.
12. SilverBirch's financial year end is December 31.
13. SilverBirch is a wholly-owned subsidiary of UTS which holds the one outstanding SilverBirch Share.
14. SilverBirch is not a reporting issuer in any jurisdiction and to its knowledge, is not in default of applicable securities legislation in any jurisdiction of Canada.

Total

15. Total is a corporation amalgamated under the *Business Corporations Act* (Alberta) on January 1, 2001.
16. Total is a wholly-owned subsidiary of Total S.A., a French Societe Anonyme.
17. To the knowledge of UTS, Total is not a reporting issuer in any jurisdiction of Canada nor is it in default of applicable securities legislation in any jurisdiction in Canada.

The Arrangement

18. Pursuant to the Arrangement, subject to certain conditions:
 - (a) Total will acquire all of the UTS Shares for cash consideration of \$3.08 per UTS Share;
 - (b) UTS will transfer the Spin-Off Assets to SilverBirch and SilverBirch will assume certain liabilities relating to or arising with respect to the Spin-Off Assets pursuant to the terms of a transfer agreement to be entered into between UTS and SilverBirch; and
 - (c) the UTS Shareholders will receive 0.1 of a SilverBirch Share per UTS Share.
19. Pursuant to the Arrangement, UTS will transfer to SilverBirch certain assets (the **Spin-Off Assets**) as follows:

- (a) a 50% interest in the Frontier Project, a possible commercial oil sands mining project, located in north-eastern Alberta;
 - (b) a 50% interest in the Equinox Project, a possible commercial oil sands mining project located on the west side of the Athabasca River, approximately 90 kilometres north of Fort McMurray, Alberta;
 - (c) a 50% working interest in an additional 209,280 acres of exploration oil sands leases located in the Athabasca oil sands region of Alberta;
 - (d) a 100% working interest in 23,040 acres of undeveloped lands also in the Athabasca oil sands region of Alberta with in-situ oil sands potential; and
 - (e) approximately \$50 million in working capital (subject to adjustment).
20. Following the completion of the Arrangement:
- (a) UTS would become a wholly-owned subsidiary of Total; and
 - (b) the Spin-Off Assets would become the principal business of SilverBirch.
21. Beneficial ownership of the SilverBirch Shares upon completion of the Arrangement will be identical to the beneficial ownership of the UTS Shares immediately prior to the Arrangement meaning the indirect interest in the Spin-Off Assets will remain unaffected by the Arrangement.
22. The beneficial owners of the SilverBirch Shares upon completion of the Arrangement will have had the benefit of UTS' continuous disclosure relating to the Spin-Off Assets since the time that they were initially acquired by UTS and accordingly, already have the benefit of existing public disclosure regarding the Spin-Off Assets and the nature of an investment therein.
23. Pursuant to UTS' constating documents, the CBCA and applicable securities laws, the UTS Shareholders will be required to approve the Arrangement at the UTS Meeting.
24. The Arrangement must be approved by not less than two-thirds of the votes cast by UTS Shareholders at the UTS Meeting. The UTS Meeting is anticipated to take place in late September 2010 and the Circular is expected to be mailed by UTS to the UTS Shareholders as early as September 8, 2010, subject to receipt of the Exemption Sought.
25. The Arrangement will be a "restructuring transaction" under National Instrument 51-102 *Continuous Disclosure Obligations* in respect of UTS and therefore would require compliance with Item 14.2 of the Circular Form.

Financial statement and MD&A requirements

26. Item 14.2 of the Circular Form requires, among other items, that the Circular contain the disclosure (including financial statements) prescribed under securities legislation and described in the form of prospectus that SilverBirch would be eligible to use immediately prior to the filing and sending of the Circular to UTS Shareholders for a distribution of SilverBirch securities. Therefore, the Circular must contain the disclosure in respect of SilverBirch prescribed by the Form 41-101F1 *Information Required in a Prospectus* (the **Prospectus Form**) and by National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**).
27. Items 8.2(1)(a) and (b) and 8.2(2) of the Prospectus Form require UTS to include the MD&A in the Circular.
28. Item 32.1(b) of the Prospectus Form requires UTS to include certain annual and interim financial statements for the Spin-Off Assets in the Circular, including, in accordance with Items 32.2 and 32.3(1) of the Prospectus Form: (i) an income statement, a statement of retained earnings and a cash flow statement relating to the Spin-Off Assets for each of the financial years ended December 31, 2009, December 31, 2008 and December 31, 2007 and for the six-month periods ended June 30, 2010 and June 30, 2009; and (ii) a balance sheet relating to the Spin-Off Assets as at December 31, 2009 and December 31, 2008 and as at June 30, 2010 and 2009 (collectively, the **Financial Statements**).
29. Subsection 4.2(1) of NI 41-101 requires that the Financial Statements required to be included in the Circular must be audited in accordance with National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*.

Alternative Disclosure

30. The Circular will include:
 - (a) an audited opening balance sheet of SilverBirch as at June 30, 2010;
 - (b) an audited schedule of property, plant and equipment comprised in the Spin-Off Assets as at June 30, 2010, including a breakdown of the material components; and
 - (c) a pro forma balance sheet of SilverBirch as at June 30, 2010, giving effect to the acquisition of the Spin-Off Assets as at that date
 (collectively, the **Alternative Financial Statements**).
31. The Circular will include the following in respect of the Spin-Off Assets:
 - (a) With respect to the oil sands leases comprised in the Spin-Off Assets, detailed disclosure, with the assistance of maps and tables where appropriate, of:

- (i) the location and nature of the oil sands leases;
 - (ii) a chronology of the history and development of the Spin-Off Assets since January 1, 2007;
 - (iii) a description of any arrangements with counterparties relating to the exploration and development of the oil sands leases;
 - (iv) a summary of drilling conducted to date on the oil sands leases;
 - (v) information about the nature of any preliminary engineering and mine planning conducted with respect to the oil sands leases; and
 - (vi) a description of any regulatory activities undertaken with respect to the oil sands leases;
- (b) With respect to the two proposed oil sands projects identified to date on the oil sands leases comprised in the Spin-Off Assets, being the Frontier Project and the Equinox Project, disclosure of:
- (i) a summary of the proposed projects;
 - (ii) key activities within the work program for the projects over the next eighteen months; and
 - (iii) a timeline for the development of the projects, including information regarding the expected timing for submission of regulatory applications and receipt of regulatory approvals related to the Frontier Project;
- (c) a summary of the following reports prepared by Sproule Unconventional Limited (**Sproule**) in accordance with the requirements of NI 51-101 in respect of the Frontier Project and the Equinox Project:
- (i) the report dated February 8, 2010 providing Sproule's independent opinion of UTS' resources data effective December 31, 2009, based on a geological evaluation of the Frontier Project within the Norwest Corporation (**Norwest**) defined pit surfaces as of December 31, 2008 and updated to incorporate the inclusion of more recent Norwest pit slope modifications and a geological audit of the Equinox Project based on the Norwest defined pit surfaces as at December 31, 2008 (**Sproule Report**); and
 - (ii) a technical review providing Sproule's independent opinion of UTS' resources data for the Frontier Project and the Equinox Project effective June 30, 2010, updating the Sproule Report to include Sproule's audit of the results of the 2009/2010 83 core hole drilling program conducted on behalf of UTS and Teck Resources Ltd. including 68 core holes drilled on the Frontier Project leases;

- (d) disclosure of capital expenditures (including costs that were capitalized or charged to expense when incurred) incurred by UTS with respect to the Spin- Off Assets for the year ended December 31, 2009 and the six months ended June 30, 2010, in accordance with Item 6.6 of Form 51-101F1;
- (e) disclosure of the fact there has been no production, gross revenue, royalty expenses, production costs and operating income for the Spin-Off Assets for each of the relevant financial periods;
- (f) disclosure regarding SilverBirch and the Spin-Off Assets that otherwise complies with Form 41-101F1; and
- (g) with respect to the working capital comprised in the Spin-Off Assets, a summary of how the working capital amount to be transferred to SilverBirch will be calculated and the intentions of SilverBirch as to the uses of the working capital by SilverBirch for 18 months

(collectively, the **Proposed Disclosure**).

- 32. The Alternative Financial Statements and the Proposed Disclosure will provide full, true and plain disclosure of all material facts relating to the Spin-Off Assets, and will provide information in respect of the Spin-Off Assets that is sufficient to enable an investor to make an informed investment decision regarding the Spin-Off Assets and the Arrangement generally.
- 33. Disclosure of the Financial Statements and MD&A is not necessary to allow UTS Shareholders to form a reasoned judgement concerning the nature and effect of the Arrangement.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that the Circular includes the Alternative Financial Statements and the Proposed Disclosure.

“original signed by”

Blaine Young
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