



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
ELECTROVAYA INC. and SANKAR DAS GUPTA**

**STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff (“Staff”) of the Ontario Securities Commission (the “Commission”) make the following allegations:

A. Introduction

1. Electroveya Inc. (“Electroveya” or the “Company”) issued unbalanced news releases and failed to update previously-announced forward-looking information.

2. During the period commencing in December 2015 and ending in September 2016, Electroveya issued five unbalanced news releases, contrary to the public interest. Contrary to Ontario securities law, Electroveya failed to: (a) update announced forward-looking information in its Management’s Discussion & Analysis (“MD&A”); and (b) provide an accurate description of its business in its annual information form (“AIF”). By authorizing, permitting or acquiescing in Electroveya’s non-compliance, Dr. Sankar Das Gupta, the President and Chief Executive Officer of the Company and Chair of its board of directors (the “Board”), (“Das Gupta” and, together with Electroveya, the “Respondents”) is deemed to have also failed to comply with Ontario securities law.

B. Respondents

3. Electroveya designs, develops and manufactures energy storage systems for the automotive, utility and commercial sector, primarily focusing on lithium ion battery systems. It is a

reporting issuer in Ontario, and its common shares (the “Shares”) are listed on the Toronto Stock Exchange under the trading symbol “EFL”. The Shares also trade on the OTCQX Best Market under the trading symbol “EFLVF”. Electrovaya also has outstanding stock options and warrants.

4. Das Gupta is the Chair of the Board, President and Chief Executive Officer of Electrovaya. He also serves on its Disclosure Committee.

C. Overview

5. The conduct at issue relates to news releases issued by Electrovaya, which contained unbalanced presentations of information, and the failure to disclose developments affecting previously-announced forward-looking information.

6. As a reporting issuer, Electrovaya is subject to continuous disclosure obligations under Ontario securities law. To assist reporting issuers in complying with their obligations, the Canadian Securities Administrators, including the Commission, have issued National Policy 51-201 *Disclosure Standards*. It provides guidance that, among other things, emphasizes the importance of announcements being factual and balanced, without exaggerated reports or promotional commentary.

7. Disclosure of forward-looking information is subject to the provisions of National Instrument 51-102 *Continuous Disclosure Obligations* (“NI 51-102”). Specifically, Part 4A requires, among other things, that the disclosure include the factors or assumptions used to develop the forward-looking information and risk factors that could cause actual results to differ from it. Furthermore, section 5.8 requires the reporting issuer to include in its MD&A (unless otherwise previously disclosed in a press release by the reporting issuer) disclosure of any events or circumstances that are reasonably likely to cause actual results to differ from the forward-looking information.

8. Requirements for timely, accurate and efficient disclosure of information are a primary means for achieving the purposes of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”).

9. Between May and September 2016, Electrovaya issued five news releases that announced significant new business relationships in unbalanced terms. Electrovaya also did not disclose in its MD&A that revenue estimates announced in two previously announced commercial arrangements would not be realized.

10. In 2015, Staff identified and discussed similar issues with Electrovaya, including five unbalanced news releases, which the Company had not updated. To address these issues, Electrovaya provided additional balancing disclosure and business updates in its MD&A for the year ended September 30, 2014 (the “2014 MD&A”). However, it did not reflect that information in its AIF for the year ended September 30, 2015 (the “2015 AIF”).

D. Details of Conduct

2015 Review

11. In 2015, Staff conducted a continuous disclosure review of Electrovaya (the “2015 Review”) that revealed the issuance of unbalanced press releases. This included five specific press releases issued on or prior to November 2014, each of which made significant positive announcements, such as the announcement of a new contract or revenue opportunity. In most of these cases, the amount of revenue that the arrangement was expected to generate was not quantified in the announcement, but significant revenue potential was implied by the nature of the announced opportunity. None of these press releases contained an adequate discussion of risks, contingencies or barriers to crystalizing the arrangements, and some of the press releases did not discuss the revenue opportunity in sufficient detail in order for investors to be able to understand the nature of the opportunity and therefore the probability of realization. In some cases, the initiatives represented non-binding letters of intent, rather than non-cancellable contracts, which made the initial announcements incomplete in the absence of other disclosure outlining the risks, contingencies and barriers involved in realizing these amounts.

12. When events occurred which made it likely that the contracts and revenue opportunities originally announced in the five aforementioned press releases would not transpire (such as the potential customer’s decision not to proceed with the arrangement) the Company failed to provide adequate disclosure in this regard. Following the review by Staff, Electrovaya provided additional business updates and balancing disclosure in its 2014 MD&A.

2016 Review

13. In 2016, in connection with a prospectus review, Staff reviewed Electrovaya's recent continuous disclosure (the "2016 Review"). The 2016 Review revealed that:

- (a) Subsequent to the 2015 Review, the Company continued to issue unbalanced press releases. Between May and September 2016 the Company issued five press releases, announcing significant new positive business relationships. In most cases, the amount of revenue which the Company expected to earn from these relationships was quantified and such amounts represented many multiples of the Company's historical annual revenues. None of the press releases contained balanced disclosure discussing the nature of the arrangements, which were often non-binding, including disclosure about any related risks, contingencies and barriers.
- (b) While some information contained in these five press releases represented forward looking information in the form of quantified anticipated future revenue amounts for specific customer arrangements, the Company did not provide material factors and assumptions underlying the forward looking statements.
- (c) The Company did not update forward looking information in its ongoing MD&A, in respect of two other customer arrangements, where anticipated revenue amounts had been previously disclosed and when events subsequent to their original announcement made it clear that these revenue estimates would not transpire.
- (d) As noted above, in response to the 2015 Review, the Company provided certain clarifying disclosure in the form of additional business updates in its 2014 MD&A. During the 2016 Review, Staff noted that these updates had not been carried forward to its 2015 AIF. As a result, the 2015 AIF provided overly optimistic information about the future potential of certain revenue arrangements.

14. Das Gupta authorized, permitted or acquiesced in the conduct of Electrovaya described above.

E. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

15. The specific allegations advanced by Staff are that, by engaging in the conduct described above:

- (a) Electrovaya issued unbalanced news releases, contrary to the public interest;
- (b) Electrovaya failed to update forward-looking information in its Q1 and Q3 2016 MD&A, contrary to section 5.8 of NI 51-102;
- (c) Electrovaya failed to provide an accurate description of the development of its business in its 2015 AIF, contrary to Item 4 of 51-102F2 *Annual Information Form*;
- (d) Das Gupta, a director and officer of Electrovaya, authorized, permitted or acquiesced in Electrovaya's non-compliance with Ontario securities law, as set out in subparagraphs (b) and (c), above, and is deemed not to have complied with Ontario securities law under section 129.2 of the Act; and
- (e) as set out in subparagraphs (a) through (d), above, the Respondents engaged in conduct contrary to the public interest.

16. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto, Ontario, June 28, 2017.