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Headnote

Mutual Reliance Review System for Exemptive Relief Application - relief from registration and prospectus requirements in connection with certain transactions relating to a debenture issued to secure a guarantee provided by a subsidiary to its parent – secured guarantee gives the commercial paper of the parent a higher credit rating - the commercial paper is issued to the public relying on the commercial paper exemptions in sections 46(d) of the Securities Act and BC Instrument 32-501

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 34(1)(a), 48, 61 and 76

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

AND

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

AND

**IN THE MATTER OF TRANSALTA CORPORATION AND TRANSALTA
UTILITIES CORPORATION**

MRRS DECISION DOCUMENT

1. WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the “Jurisdictions”) has received an application from TransAlta Corporation (“TransAlta”) and TransAlta Utilities Corporation (“TAU”) (collectively, the “Applicants”) for a decision under the securities legislation in each of the Jurisdictions (the “Legislation”) that the registration requirement and the prospectus requirement (the “Registration and Prospectus Requirements”) shall not apply to certain transactions in the Series W Debenture (defined below) issued in connection with the New CP Program (defined below);

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2. AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”), the Alberta Securities Commission is the principal regulator for this application;
3. AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions* or in Autorité des marchés financiers notice 14-101;
4. AND WHEREAS the Applicants have represented to the Decision Makers that:
 - 4.1 each of TransAlta and TAU is
 - 4.1.1 a corporation organized and subsisting under the laws of Canada, with its head office in Calgary, Alberta; and
 - 4.1.2 a reporting issuer in the Jurisdictions;
 - 4.2 TransAlta is the holding company for the TransAlta group of companies. TAU is a wholly owned subsidiary of TransAlta, and one of the operating companies of the TransAlta group. TAU was previously the holding company and the principal operating company for the TransAlta group. Pursuant to a plan of arrangement implemented in December 1992, TransAlta became the holding company for the TransAlta group;
 - 4.3 the common shares of TransAlta are listed and trade on the Toronto Stock Exchange and the New York Stock Exchange;
 - 4.4 in September 1999, TransAlta adopted a commercial paper program (the “Previous CP Program”). The Previous CP Program contemplated the issuance of short term notes in a maximum amount of \$1 billion at any time. In November, 2003, the credit rating of the notes issuable under the Previous CP Program was reduced below R-1-L by Dominion Bond Rating Services Limited (“DBRS”) and, as a result of the lower rating, TransAlta suspended the operation of the Previous CP Program at that time;
 - 4.5 TAU previously was the principal entity involved in financing the TransAlta group. TAU has issued debt securities in Canadian capital markets, and currently has outstanding secured debentures (the “Debentures”) issued pursuant to a trust indenture (the “Trust Indenture”) dated as of May 1, 1970, as amended, with the CIBC

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Mellon Trust Company, as successor to The Royal Trust Company. The Debentures are secured by a floating charge on all of TAU's assets and undertakings. An aggregate of \$448.4 million principal amount of Debentures are currently outstanding;

- 4.6 as a direct operating company, TAU is regarded by applicable credit rating agencies as having superior creditworthiness than TransAlta. As a result, commercial paper either issued or guaranteed by TAU is able to sustain a DBRS rating of at least R-1-L;
- 4.7 in order to continue to access Canadian money markets for short term funding, TransAlta proposes to adopt a new commercial paper program (the "New CP Program"), which will have the following features
 - 4.7.1 a maximum of Cdn.\$200 million principal amount of negotiable short term notes (the "Notes") may be issued at one time, and the Notes may be denominated in either Canadian or U.S. dollars;
 - 4.7.2 repayment of the Notes will be guaranteed by TAU pursuant to an unconditional guarantee (the "Guarantee") to be given to holders of Notes (the "Noteholders");
 - 4.7.3 TAU will secure its obligations pursuant to the Guarantee by issuing a Debenture (the "Series W Debenture") under the Trust Indenture. The Series W Debenture will be the sole Debenture under a new series of Debentures to be established under the Trust Indenture;
 - 4.7.4 the Series W Debenture will be issued in fully registered form to a trust company as collateral agent for the Noteholders (the "Collateral Agent"); and
 - 4.7.5 concurrent with the granting of the Guarantee and the issuance of the Series W Debenture, TAU and the Collateral Agent will enter into
 - 4.7.5.1 a debenture pledge agreement (the "Debenture Pledge Agreement"), which will provide for the pledging of the Series W Debenture by TAU to the Collateral Agent on behalf of the Noteholders, and

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indicate the circumstances whereupon the Collateral Agent may seek payment of the Series W Debenture; and

4.7.5.2 a collateral agent retainer agreement (the “Collateral Agent Retainer Agreement”), which will provide for further terms pursuant to which the Collateral Agent will hold the Series W Debenture on behalf of the Noteholders;

4.8 it is contemplated under the Guarantee that Noteholders (or the Collateral Agent on their behalf) may demand payment from TAU under the Guarantee upon the occurrence of any of the following events of default (collectively, “Events of Default”)

4.8.1 a payment default by TransAlta under any of the Notes;

4.8.2 the occurrence of certain bankruptcy events in relation to TransAlta; and

4.8.3 the occurrence of an “event of default” in relation to TAU under the Trust Indenture which include

4.8.3.1 a payment default by TAU under any outstanding Debentures (principal, interest or other amounts payable);

4.8.3.2 the occurrence of certain bankruptcy events in relation to TAU; and

4.8.3.3 the occurrence of covenant defaults under the Trust Indenture (including supplemental indentures thereto);

4.9 the Debenture Pledge Agreement will not permit a claim by the Collateral Agent upon the Series W Debenture on behalf of the Noteholders until such time as the Noteholders (or the Collateral Agent on their behalf) are permitted to make demand upon TransAlta under the Guarantee and payment is not made in response to that demand. At that time, the Collateral Agent will be permitted to seek repayment of the Series W Debenture to the extent there are unpaid Notes. Under the Collateral Agent Retainer Agreement, the Collateral Agent will seek repayment rateably of

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all outstanding amounts owing to of all holders of Notes at that time;

- 4.10 transactions that will or may occur in relation to the Series W Debenture (collectively, the “Series W Debenture Transactions”) include
 - 4.10.1 the issuance and pledge of the Series W Debenture by TAU under the Debenture Pledge Agreement;
 - 4.10.2 the acquisition of an interest in a Series W Debenture by a Noteholder in connection with the acquisition of a Note;
 - 4.10.3 the acquisition of a beneficial interest in the Series W Debenture by a Noteholder upon the occurrence of an Event of Default; and
 - 4.10.4 resale of an interest in the Series W Debenture by a Noteholder either before or after the occurrence of an Event of Default;
 - 4.11 an unsecured guarantee obligation from TAU would rank subordinate to the claim of holders of TAU’s Debentures because the Debentures are secured by a floating charge on all of TAU’s assets;
 - 4.12 the sole purpose of securing the Guarantee with the Series W Debenture is to ensure that the claims of Noteholders against TAU’s assets rank *pari passu* with the claims of holders of TAU’s Debentures;
 - 4.13 but for the securing of the Guarantee with the Series W Debenture, relief from the Registration and Prospectus Requirements in connection with the New CP Program would not be necessary as the Notes, guaranteed by an unsecured guarantee obligation from TAU, would be issued in reliance upon registration and prospectus exemptions applicable to negotiable promissory notes or commercial paper contained in the Legislation (the “Commercial Paper Exemptions”);
5. AND WHEREAS under the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the “Decision”);

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6. 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;
7. THE DECISION of the Decision Makers under the Legislation is that the Registration and Prospectus Requirements shall not apply to any of the Series W Debenture Transactions provided that the Notes are issued in reliance upon the Commercial Paper Exemptions.

DATED at the City of Calgary)
in the Province of Alberta) Glenda A. Campbell, Q.C., Vice-Chair
this 12th day of May, 2004.)
)
) Stephen R. Murison, Vice-Chair
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