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March 23, 2015

**VIA ELECTRONIC MAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Financial and Consumer Services Commission (New Brunswick)  
Nova Scotia Securities Commission  
(collectively, the "**Authorities**")

c/o: Mr. Michael Brady  
Senior Legal Counsel, Capital Markets  
British Columbia Securities Commission  
P.O. Box 10142 Pacific Centre  
701 West Georgia Street  
Vancouver, B.C. V7Y 1L2  
e-mail: mbrady@bcsc.bc.ca

Dear Sirs/ Mesdames:

**Re: CSA Multilateral Notice and Request for Comment dated January 21, 2015**

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ENMAX Corporation, together with its subsidiaries (collectively "**ENMAX**"), provide this comment letter in response to the CSA Multilateral Notice and Request for Comment dated January 21, 2015, requesting comments on the following instruments:

- proposed Multilateral Instrument 91-101 Derivatives: *Product Determination* (the "**Scope Rule**");
- proposed Companion Policy 91-101 *Derivatives: Product Determination* (the "**Scope CP**");
- proposed Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (the "**TR Rule**"); and
- proposed Companion Policy 96-101 *Trade Repositories and Derivatives Data Reporting* (the "**TR CP**");

(collectively, the "**Proposed Instruments**").

ENMAX appreciates the opportunity to comment on the Proposed Instruments and commends the Authorities for seeking input from stakeholders. ENMAX supports the regulatory progress which has been made towards meeting Canada's G-20 commitments and we encourage the

Authorities to continue to work collaboratively with stakeholders to meet those commitments without unduly burdening market participants.

### **ENMAX – who we are**

ENMAX Corporation is an electric utility company headquartered in Calgary, Alberta. ENMAX Corporation, through its subsidiaries and predecessors, has a history of delivering electricity to Calgarians for over 100 years and, with deregulation, now provides retail services to approximately 886,000 electricity and gas customer sites throughout Alberta. ENMAX Power Corporation is a regulated subsidiary of ENMAX Corporation which owns, operates and maintains the electricity distribution and transmission network in and around Calgary. ENMAX Energy Corporation is a subsidiary of ENMAX Corporation which operates in Alberta's competitive electricity market, and provides electricity and natural gas products and retail services to residential, businesses and industrial clients. As at April 1, 2015 ENMAX will control approximately 2,755 MW of generation capacity from a diverse asset base consisting of coal, wind and natural gas generation facilities.

ENMAX uses derivative transactions to hedge its retail supply obligations and manage risk associated with price fluctuations in commodity markets. ENMAX trading activity is primarily related to the purchase and sale of electricity and natural gas. Where commercially prudent, ENMAX engages in financial derivative transactions, including interest rate and foreign exchange derivatives. Derivative transactions are entered into primarily to mitigate risk associated with ENMAX's core business activity in Alberta's energy markets, and are not used for speculative trading or investment purposes. ENMAX's trading counterparties include other participants in the electricity or natural gas markets and financial institutions. Trading activity takes place primarily through electronic exchanges and clearing platforms, including the Intercontinental Exchange ("ICE"), Chicago Mercantile Exchange ("CME"), Natural Gas Exchange ("NGX"), and Alberta Watt Exchange Limited ("WattEx"). The remainder are transacted directly or indirectly with counterparties over the counter, primarily via brokerage transactions.

### **The Alberta electricity market**

The electricity market in Alberta operates under a robust and comprehensive regulatory regime. This market is primarily regulated through the *Electric Utilities Act*, but also by other legislation including the *Alberta Utilities Commission Act*, *Rural Utilities Act*, *Fair Trading Act*, *Hydro and Electric Energy Act*, *Small Power Research and Development Act* and the *Gas Utilities Act*. A number of entities are involved in the regulation and operation of this industry, including the Alberta Utilities Commission, the Alberta Independent System Operator, the Market Surveillance Administrator, the Utilities Consumer Advocate, and the Balancing Pool. The structure of the Alberta electricity market is unique in Canada in that it is a market based system which encourages competition between market participants, rather than the traditional system of government owned and controlled utilities.

Application of the Proposed Instruments to Alberta's unique electricity market will result in interpretive challenges. Consideration on the structure of this market is provided in the letter prepared by Capital Power Corporation commenting on the Proposed Instruments. ENMAX has reviewed that letter in draft and agrees with Capital Power Corporation's description of the structure of Alberta's electricity market and for the need to clarify the Proposed Instruments and provide exceptions for certain transactions and agreements specific to the electricity market,

where appropriate. ENMAX appreciates the opportunity to contribute to the development of the Proposed Instruments and provides the following additional comments.

**1. The Scope Rule and Scope CP**

Transactions for the delivery of a commodity may contain optionality simply because supply and demand requirements cannot always be accurately known in advance. As such, commodity contracts that allow for optionality are necessary to respond to market realities. ENMAX agrees with the Authorities that embedded optionality with respect to the volume or quantity, or the timing or manner of delivery, of a commodity to be delivered should not, in itself, result in an agreement being treated as a derivative. So long as the embedded optionality does not undermine the overall nature or primary intent of the transaction(s) as being settled predominantly by delivery of a physical commodity, the mechanism by which such embedded optionality is itself settled should not change the overall characterization of an agreement. For example, if a user of electricity consumes either more or less of that commodity than anticipated, then the volumes above or below estimated consumption may be settled against market. This embedded optionality cannot be severed from the overall agreement, but may be viewed as constituting a financial component additional to the delivery of the physical product.

ENMAX requests clarification that this type of arrangement, the dominant characteristic being for physical delivery of a commodity, may properly be considered as "additional contracts not considered to be derivatives" pursuant to Section 2.1 of the Scope CP (specifically as consumer contracts to purchase non-financial products or services at a fixed, capped or collared price) or, in the alternative, commodity contracts pursuant to Section 2.1(d) of the Scope CP. ENMAX views these agreements as commercial agreements which are essential to the electricity market, and does not believe that an arrangement which provides for the delivery of a commodity, but contains optionality of the kind described above, presents a source of systemic risk to Canada's financial system and accordingly should not be treated in the same manner as other derivative products which may. ENMAX does not believe these agreements should be subject to the Proposed Instruments.

**2. Reporting counterparty waterfall and the concept of "derivative dealer"**

Further amendment to and guidance on the concept of "derivative dealer" is required as this definition is too broad. Characterization as a dealer has significant and potentially costly consequences under the Proposed Instruments. As drafted, there is significant uncertainty as to the scope and applicability of this definition.

ENMAX believes this concept is not intended to apply to entities which engage in derivative transactions for the sole or primary purpose of hedging and managing commercial risk or to entities which engage in proprietary trading directly associated with optimizing physical assets. However, the definition of derivative dealer as an entity "... engaging in the business of trading in derivatives as principal or agent" is potentially broad enough to have application to all entities which engage in the trade of derivatives. ENMAX takes the position that trading does not equate to dealing, and an important distinction exists between an entity which engages in the business of trading in derivatives and an entity which engages in the business of dealing in derivatives. Rather than have the Scope CP limit the definition of who is and is not a "derivative dealer", ENMAX submits that the Scope Rule should clearly denote such a distinction.



### **3. End-user commodity transaction exemption threshold**

ENMAX agrees with the Authorities proposal to include an exemption from trade reporting for counterparties with commodity-based derivatives transactions below a threshold of \$250,000,000. ENMAX submits that this threshold better reflects market realities than the \$500,000 threshold proposed in the alternative. However, if the Authorities wish to relieve this class of market participant from trade reporting obligations, then a threshold higher than the \$250,000,000 may be justified. This is especially the case if the threshold is determined based on aggregate notional value, without netting. ENMAX submits that it may be appropriate to allow netting in determining the threshold as this may provide a better measure by which to gauge counterparty and portfolio risk, especially in markets which are highly liquid as is often the case with regard to energy commodities. As derivative transactions between two end-users related to the physical delivery of a commodity are unlikely to create the type of systemic risk the Proposed Instruments are intended to address, a further increase may be appropriate. Indeed, many entities engaged in commodity-based derivatives transactions do so to hedge or manage commercial risk. Setting the threshold too low may cause those entities to reassess the value of participating in such transactions in light of the regulatory burden, potentially creating a situation which results in an increase, rather than lessening, of market risk.

Additional clarification on the consequences of an entity exceeding, or, in the alternative, dropping below the defined threshold would also be appreciated. In this event, what reporting or other obligations under the Proposed Instruments become applicable or inapplicable?

### **4. Implantation and transition period**

ENMAX supports the staged implementation of reporting obligations under the Proposed Instruments. Many entities will become reporting counterparties for the first time under the Proposed Instruments, and all market participants will need to analyze, build, adjust and test systems and amend operational procedures before reporting obligations commence. Entities will, among other things, need to develop or amend business and governance processes and procedures, review agreements to determine the applicability of the Proposed Instruments, determine the reporting status of counterparties, enter into agreements to allocate reporting obligations, acquire new or modify existing derivatives trade data capture systems, and become enabled with trade repositories. These preparations will require the dedication of significant financial, technical and human resources, all of which will increase with shorter implementation dates.

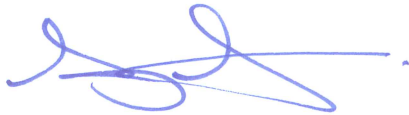
ENMAX suggests that a one year transition period between the effective date of the Proposed Instruments and the start of reporting obligations is an appropriate and sufficient period to allow for compliance. To the extent the Authorities are able to provide advance guidance on anticipated timelines for implementation, this will better enable market participants to prepare and would allow market participants the advance notice required to plan and budget for the work associated with compliance.

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ENMAX appreciates the opportunity to comment on the Proposed Instruments and commends the Authorities for seeking public input. ENMAX supports the regulatory progress and looks forward to working collaboratively with the Authorities to continue to work towards meeting Canada's G-20 commitments.

Yours very truly,

**ENMAX Corporation**



Andrew Grant  
Legal Counsel, ENMAX Corporation

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