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DELIVERED VIA ELECTRONIC MAIL

Alberta Securities Commission
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission

c/o:
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Dear Sirs/Mesdames:

RE: CSA Multilateral Notice and Request for Comment dated January 21, 2015 with respect to Proposed Multilateral Instruments 91-101 *Derivatives Product Determination* and 96-101 *Trade Repositories and Derivatives Data Reporting*

TransCanada Corporation (**TransCanada**) is pleased to submit its comments in response to:

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

(collectively, the "**Proposed Rules**") as published and solicited for comments by staff of the Alberta Securities Commission, the British Columbia Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the New Brunswick Financial and Consumer Services Commission and the Nova Scotia Securities Commission (each, an **Authority** and collectively, the **Authorities**).

TransCanada appreciates the opportunity to provide its comments on the Proposed Rules. The comments below are provided with the goals of achieving effective regulatory oversight of the OTC market while not unduly burdening market participants and ensuring that the Proposed Rules contain the necessary clarity to be effectively applied. TransCanada's comments include:

- Clarification that transactions that use Net Settlement Instructions are commodity contracts with the intention to physically deliver and are exempt under the Proposed Scope Rule section 2(1)(d)(i);
- Clarification that retail electricity contracts that provide for a true-up mechanism (as described below) are commodity contracts with the intention to physically deliver and are exempt under the Proposed Scope Rule section 2(1)(d)(i);
- Clarification that natural gas storage service contracts are not considered to be derivatives contracts and therefore not subject to trade reporting;
- Clarification with respect to the definition of a "derivatives dealer";
- A suggested transitional period of 1 year between the date on which the Proposed TR Rule becomes effective and the date that the first reporting obligations will apply; and
- Transactions between a parent company and its wholly owned subsidiaries or between entities that are wholly owned by a common parent should not be subject to trade reporting,

all as more fully described below.

I. TransCanada

With more than 60 years' experience, TransCanada is a leader in the responsible development and reliable operation of North American energy infrastructure including natural gas and liquids pipelines, power generation and gas storage facilities. TransCanada operates a network of natural gas pipelines that extends more than 68,000 kilometres, tapping into virtually all major gas supply basins in North America. TransCanada is one of the continent's largest providers of gas storage and related services with 368 billion cubic feet of storage capacity. A growing independent power producer, TransCanada owns or has interests in over 11,800 megawatts of power generation in Canada and the United States. TransCanada is developing one of North America's largest liquids delivery systems.

TransCanada constructs and invests in large infrastructure projects, purchases and sells energy commodities, issues short-term and long-term debt, including amounts in foreign currencies, and invests in foreign operations. These activities expose the company to market risk from changes in commodity prices, foreign exchange rates and interest rates. TransCanada uses derivatives as part of its overall risk management strategy to assist in mitigating the impact of these market risk exposures.

TransCanada would like to take this opportunity to provide the Authorities with some information related to Alberta's electricity and natural gas markets and our operations within those markets. These commodities and market structures create unique challenges with respect to derivatives regulation, and these comments are provided in an effort to develop a mutual understanding of these challenges.

II. Alberta Electricity Market Overview

Central to Alberta's electricity market is the Alberta Electric System Operator (**AESO**) who operates a "Power Pool" into which all electricity generated within or imported into Alberta is sold, and from which all electricity consumed in or exported from Alberta is purchased (with the exceptions of behind-the-fence generation and facilities not connected to the Alberta Interconnected Electric System, or AIES). The Power Pool therefore operates as a real-time spot market for the physical exchange of bulk wholesale electricity, matching demand with the lowest priced supply to establish an hourly pool price for all electricity exchanged through the pool during that hour. Due to the restrictions imposed by the Power Pool structure, most market participants cannot actually 'deliver' physical electricity – this can only be done by owners of Alberta's electric transmission and distribution systems.

Net Settlement Instructions

Since Alberta's electricity market uses the Power Pool structure, it does not permit bilateral point-to-point transactions of wholesale electricity as found in some other markets. However, in order to replicate this type of transaction, electricity market participants are permitted to use "Net Settlement Instructions" (**NSIs**) (under the AESO Rules) or "direct sales agreements" (under the *Electric Utilities Act* of Alberta (**EUA**)). NSIs allow electricity market participants to enter into forward physical contracts for the purchase and sale of electricity directly with other pool participants for an agreed quantity of power at a negotiated price over a specified period of time in the future. Due to the Power Pool structure, the "delivery" of the physical electricity subject to an NSI still occurs by the real-time exchange of electricity through the Power Pool.

Even though direct delivery of electricity from one counterparty to another counterparty in a transaction that uses NSIs is not possible due to the Power Pool's market structure, TransCanada believes that these transactions fit the nature of the exemption provided for in the Proposed Scope Rule under section 2(1)(d)(i). TransCanada kindly requests that the Authorities clarify in the Proposed Scope Rule or the Proposed Scope CP that NSIs and "direct sales agreements" as defined under the EUA are exempt from trade reporting.

Retail Electricity Contracts

Another aspect to Alberta's electricity market structure is that only transmission and distribution line owners can actually 'deliver' physical electricity to consumers, therefore all consumers must select a retailer to arrange for delivery of electricity from the Power Pool to the customer's meter through the transmission and distribution systems. Consumers may contract for their supply of electricity with such retailers at prices other than the hourly spot price, including at a fixed price.

Electricity is a unique commodity due to its physical nature. Electricity cannot be stored – at least not in a commercially practicable manner for consumers in Alberta. In addition, it is extremely difficult for any large electricity consumer to accurately forecast hourly electricity consumption over the term of a fixed price contract. These nuances create a need for fixed price retail electricity contracts to accommodate variations between contracted volumes and a consumer's actual consumption.

In order to manage the variations between contracted volumes and a consumer's actual consumption, retailers who offer fixed price contracts typically include financial true-up mechanisms in those contracts. These true-up mechanisms allow the retailer to provide the consumer with physical electricity volumes in excess of the fixed volume set by the contract; the retailer generally charges for excess electricity consumption at the prevailing Pool Price. When actual electricity consumption for the consumer falls short of the fixed volume contracted, the retailer will sell the excess volume back to the Power Pool (at Pool Price) on behalf of the consumer.

While these true-up mechanisms may be considered financial in nature, such mechanisms only serve the purpose of facilitating delivery of a physical commodity whose consumption cannot be accurately estimated and cannot be stored for future use. The mechanism is intended to account for (potentially frequent) minor variations from the contracted / permitted volume, or (very infrequent) unexpected and temporary large deviations from contracted / permitted volume. Although such true-up mechanisms permit some form of cash settlement, such provisions are industry standard and included in such contracts for practical and efficiency reasons due to the particular nature of the commodity (electricity). TransCanada believes that contracts of this nature fit within the description of commodities contracts, and are not subject to trade reporting pursuant to the exemption provided in the Proposed Scope Rule section 2(1)(d)(i). TransCanada kindly requests that the Authorities clarify in the Proposed Scope Rule or the Proposed Scope CP that these transactions are exempt from trade reporting.

III. Natural Gas Storage Services

TransCanada owns and operates two natural gas storage facilities in Alberta. These facilities accept physical natural gas from customers and store it in accordance with negotiated terms. Upon the expiration of the term, TransCanada delivers the physical gas back to the customer at the connecting pipeline. TransCanada's natural gas storage customers include utilities, aggregators, marketers, and producers who typically use gas storage services to provide

supply security and operational balancing, as well as risk management and price arbitrage. TransCanada provides a service to these customers but does not take a commodity position, and these gas storage contracts do not involve investment, hedging or speculation by TransCanada.

There is no 'market' for TransCanada's gas storage services – in other words, contracts for TransCanada's gas storage services are not transacted on any exchange, and they do not involve brokers or swap dealers. Prices for gas storage services are negotiated by TransCanada and the counterparty on a deal-by-deal basis. While underlying commodity prices are a material input, the price of the gas storage service is not explicitly or solely based on any one underlying interest. Other factors such as delivery point, type of service, interruptions in adjacent / neighbouring transport service, and company-specific commercial factors all affect the negotiated price for natural gas storage. Natural gas storage contracts are non-standard contracts, and each contract is unique.

In accordance with the guidance regarding "Additional contracts not considered to be derivatives" in the Proposed Scope CP, TransCanada believes natural gas storage contracts fit the description of provision of a service, and therefore does not consider such contracts to be "derivatives" as defined in the *Securities Act* (Alberta). On this basis TransCanada does not consider such transactions to be subject to trade reporting and kindly requests the Authorities confirm the accuracy of this conclusion.

IV. Comments to Specific Questions Posed by the Authorities

Below are TransCanada's comments relating to certain specific questions posed by the Authorities with respect to the Proposed Rules.

Contracts and Instruments Subject to Trade Reporting (question 1)

TransCanada appreciates the inclusion of the Proposed Scope CP to aid in the understanding of the Proposed Scope Rule. We are, however, of the view that transferring some critical wording from the Proposed Scope CP into the Proposed Scope Rule itself would provide additional clarity and commercial certainty with respect to the contracts and instruments that are (or are not) subject to trade reporting. TransCanada suggests adding the following words to section 2(1)(d) of the Proposed Scope Rule:

> "or where cash settlement of a physical commodity contract is triggered by a termination right arising as a result of the breach of the terms of the contract or an event of default thereunder."

TransCanada also encourages the Authorities to move the list of "Additional contracts not considered to be derivatives" from the Proposed Scope CP to the Proposed Scope Rule to provide more clarity and commercial certainty on these particular exclusions.

Embedded Optionality (question 2)

TransCanada supports the notion that optionality embedded in an agreement to purchase a commodity for future delivery should not, in itself, result in the agreement being deemed to be a derivative. TransCanada suggests that in this section of the Proposed Scope CP, it would be appropriate to clarify that contracts such as retail electricity contracts that provide for a true-up mechanism do not negate the intention to deliver a physical commodity as discussed above.

We would also welcome clarification in the Proposed Scope CP that physical commodity contracts that allow for a zero delivery obligation fall within the exemption provided if the other factors relating to intent to physically delivery or receive the commodity are present. Certain operational considerations for end-users of electricity and natural gas may lead to situations where it is reasonable in the circumstances for a party to deliver or receive a zero quantity of the commodity on a given day or month (plant outages for significant maintenance for example). Allowing for a zero delivery obligation to fall within the provisions of the exemption for commodity contracts intended to be physically delivered meets the needs of end-users of such commodities who do not know their exact consumption requirements on a daily or hourly basis, but who wish to fix their commodity costs for periods when they do require the delivered commodity.

Exclusion of Derivatives Dealers (question 4)

TransCanada respectfully submits that a fundamental issue affecting the question of whether a "derivatives dealer" should be excluded from the definition of a local counterparty is the lack of clarity surrounding the definition of a "derivatives dealer". Although beyond the scope of this letter, the current definition of derivatives dealer is vague and difficult to apply with certainty. In particular, it is not clear how the Authorities will define the concept of "engaging in the business of trading in derivatives", nor whether that concept will be applied on a transaction-specific basis or more generally based on the entity's collective business activities. The concept of being "in the business of trading in derivatives", that was borrowed from securities markets and lies at the heart of the derivatives dealer definition in the Proposed TR Rule, requires significant modification and clarification in the context of the derivatives markets. Derivatives markets are fundamentally different from securities markets in many key respects. Therefore, concepts applicable to securities markets, such as elements determinative of securities dealing activity, when applied with only nominal changes to elements intended to be determinative of derivatives dealing activity, are poorly suited to derivatives markets.

Additionally, TransCanada notes that this current definition also does not clearly state the jurisdiction in which an entity must be "…engaging in the business of trading in derivatives…". Adding this clarification would eliminate potential confusion in the future, and would be consistent with the multilateral instrument in effect in Manitoba, Ontario and Quebec.

End-user Commodity Transactions Exemption (question 9)

TransCanada appreciates the Authorities' efforts with respect to the proposed commodity reporting exemption in section 40 of the Proposed TR Rule. This threshold is significantly greater than the $500,000 amount in effect in Manitoba, Ontario, and Quebec, and the recognition of the need to increase the threshold is commendable. From a practical perspective however, it may be unlikely that many end-users could benefit from this exemption as it is unlikely that both counterparties to a transaction would fall below the $250 million threshold. It may be more common for end-users to be transacting with larger entities that do not qualify for the reporting exemption. TransCanada respectfully suggests that the Authorities consider making the reporting exemption available for transactions where only one counterparty to the transaction is below the $250 million threshold and neither party is a derivatives dealer given that the Authorities acknowledge that these small end-user transactions do not give rise to significant systemic risk.

TransCanada also notes certain practical considerations with respect to applying the proposed commodity reporting exemption which arise when trying to calculate a fluctuating aggregate notional value:

- If an entity temporarily exceeds the commodity reporting exemption threshold, at what point in time do the reporting requirements apply to that entity? Can the entity qualify for the exemption again at a later date if the aggregate notional value of outstanding commodity derivatives falls below $250 million?
- Is this exemption meant to be a 'snapshot in time" observation, or rather an average notional quantity calculated over a certain period of time?
- Does the $250 million aggregate notional value calculation include transactions entered into on an exchange, transactions with Canadian financial institutions, and transactions with affiliated entities?

With respect to whether the $250 million threshold is appropriate, TransCanada is concerned that the threshold amount remains too low and such a low threshold may result in reporting for derivatives users who pose little or no systemic risk. TransCanada respectfully requests that the Authorities provide details of the underlying analysis conducted to determine the $250 million threshold so that the methodology can be reviewed.

Finally, TransCanada respectfully requests that the Authorities consider allowing the aggregate notional value be calculated on a net basis of exposure for transactions executed with the same counterparty under the same master agreement. Incorporating this principle would more accurately reflect the true aggregate systemic risk created by individual users' derivatives transactions.

Implementation and Transition Period (questions 10 & 11)

Significant time and resources will be required to perform analysis, develop processes and procedures and implement system changes to comply with the reporting requirements under the Proposed Rules. Counterparties must enter into agreements to designate who will be the reporting counterparty in accordance with the Proposed TR Rule under section 25(1)(d). In addition, trade repositories will have to seek and obtain recognition and implement a process to on-board entities in the affected provinces. Many of these changes cannot be initiated until the rules have been finalized. It is therefore important for the transitional provisions of each of the Proposed Rules to allow adequate time for companies to prepare. TransCanada suggests 1 year from the date final rules are released until trade reporting requirements commence. Any transition period of less than 1 year may have significant detrimental effects on the entities that will be affected by the obligations set out in the TR Rule. Staged implementation for reporting by derivatives dealers and others is not considered necessary if sufficient time is given between finalization of the Proposed Rules and the start of trade reporting.

V. Additional Comments

Inter-affiliate Trade Reporting Exemption

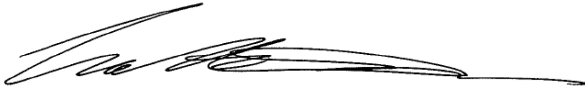
Since transactions between a parent company and its wholly owned subsidiaries or between entities that are wholly owned by a common parent company do not create systemic risk, TransCanada suggests that such transactions should not be subject to the reporting requirements set out in the Proposed Rules. This inter-affiliate reporting exemption would be consistent with both the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act in the US and the clearing exemption available for transactions between affiliated entities under Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*. TransCanada also notes that section 41 of the Proposed TR Rule provides an exemption for reporting trades between a government and a crown corporation that forms part of a consolidated entity within that government. The same exemption should be afforded to other non-government affiliated entities that are a parent company and a wholly owned subsidiary or between affiliated entities which share a common parent since no systemic risk is created within such an arrangement. The webcast hosted by the Authorities on February 26, 2015 suggested an exemption could apply where the two entities are included within the same consolidated financial statements; however, TransCanada suggests that the test should be with respect to ownership (i.e., a parent company and a wholly owned subsidiary or two entities wholly owned by the same parent) as standalone entity financial reporting requirements may exist that could complicate a test based on financial reporting practices.

Reporting Timelines

TransCanada respectfully requests that the Authorities consider changing instances of the term “as soon as technologically practicable” appearing in the Proposed Rules. While technological limitations are an important factor in the process of reporting information to a trade repository, such limitations are neither the only factor nor, arguably, the most important / limiting factor. Despite clarifications in the Proposed TR CP (notably sections 26(8) and 31(2)), by definition the phrase “as soon as technologically practicable” suggests that reporting be done as soon as the fastest available technology allows – it does not permit consideration of intermediary administrative steps on behalf of the derivatives user or consideration of costs. By definition, it is also inconsistent with the guidance offered in the Proposed TR CP. TransCanada submits that use of terms such as “as soon as commercially reasonable” or “as soon as reasonably practicable” would allow for a suitably realistic timeframe, and would better describe the expectations as elicited in the Proposed TR CP.

TransCanada hopes these comments will be useful to the Authorities in their deliberations. If you have any questions or would like to discuss any of these matters, please do not hesitate to contact the undersigned.

Sincerely,



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