

September 06, 2013

VIA electronic submission

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

Dear Sirs/Mesdames:

Re: Comment Letter to CSA Staff Notice 91-302: *Updated Model Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting*

TransAlta Corporation ("**TransAlta**") and its affiliates hereby respectfully submit comments on the Canadian Securities Administrators ("**CSA**") Staff Notice 91-302 ("**CSA Paper 91-302**") published by the CSA OTC Derivatives Committee (the "**Committee**") on June 6, 2013, providing an overview of the Committee's updated model rules (the "**Model Rules**") that define derivative products, and that impose a trade reporting regime on derivatives market participants. TransAlta appreciates this opportunity to comment on CSA Paper 91-302 and looks forward to further dialog following the submission and consideration of these comments.

TransAlta Background:

TransAlta is a publicly traded generator and marketer of electricity and renewable power. TransAlta owns, operates and manages a highly contracted and geographically diversified portfolio of assets that utilize a broad range of generation fuels including coal, natural gas, hydro, wind and geothermal. TransAlta's major markets are Western Canada, the Western U.S., and Eastern Canada. TransAlta uses OTC derivatives transactions to manage its exposure to price volatility in organized electricity markets and reduce price risks associated with fuel inputs. TransAlta's primary objective as a generation company is to manage revenue risk due to fluctuations in short-term, spot market power prices.

Wholesale marketing is conducted by TransAlta Energy Marketing (U.S.) Inc. ("**TEMUS**") and TransAlta Energy Marketing Corp. ("**TEMC**"). Market activity is composed of asset hedging and optimization of our power generation portfolio and securing our fuel requirements, electricity retailing to mid to large sized commercial and industrial customers, and proprietary trading of electricity and natural gas. TransAlta utilizes a variety of instruments to manage price exposure,

including physical forward contracts for electricity, natural gas and environmental commodities, and financial derivative transactions based on those same commodities. Most of TransAlta's trading activity takes place on regulated electronic exchanges and clearing platforms, such as Intercontinental Exchange (ICE), Chicago Mercantile Exchange (CME) and Natural Gas Exchange (NGX), with the remainder via brokered transactions or directly with counterparties. Interest rate and foreign exchange derivatives are transacted by our centralized treasury function organized within TransAlta Corporation ("TAC"), which is our ultimate parent company. Treasury transactions are entered into for the purpose of risk mitigation and are not used for speculative trading or investment.

For the interest of the Committee, TransAlta's companies with derivative activity are classified under the Dodd-Frank regime implemented by the CFTC as "Non-Swap Dealers / Non-Major Swap Participants / Non-Financial Entities". Under the Dodd-Frank regime, TEMUS is a "US Person" through its incorporation in Delaware but operates from our office in Calgary, Alberta. TEMC and TAC are "Non-US Persons", being incorporated under the Canada Business Corporations Act with a registered office in Calgary, Alberta. In general, TEMUS, TEMC and TAC represent themselves as a "Qualified Party" and/or an "Eligible Contract Participant" ("ECP"), as applicable, in our ISDA master enabling agreements.

General Comments:

First, we would like to state that we support the efforts of the CSA to design and implement a regulatory regime that will "strengthen Canada's financial markets and manage specific risks related to OTC derivatives, implement G-20 commitments in a manner appropriate for our markets, harmonize regulatory oversight to the extent possible with international jurisdictions, all while avoiding causing undue harm to our markets."¹ We also commend the Committee for amending the Model Rules to address many of the comments already submitted by affected market participants. The specific comments raised below address areas in the Model Rules that TransAlta feels are still of concern.

TransAlta would in general, recommend close alignment with regimes being implemented by Canada's G-20 peers and, in particular, the US. TransAlta currently complies with the US swap data recordkeeping reporting regime, using dedicated technology that was costly and complicated to build and configure. Wherever possible we urge the Committee to propose Model Rules that limit deviations from US standards so we do not have to rebuild our trade reporting technology and/or introduce costly and potentially error-prone manual trade reporting and reconciliation processes.

TransAlta also recommends that the Committee take up these amendments to their trade reporting rules directly within the Model Rules, as opposed to offering after-the-fact exemptive relief. CSA consideration of exemptive relief on a case-by-case basis creates potential uncertainty regarding which transactions to report, while amendments within the Model Rules

¹ CSA Consultation Paper 91-401 on Over-the-Counter Derivatives Regulation in Canada, November 2, 2010

apply to all participants equally and are manageable to implement when clear and broadly known.

Specific Comments:

DERIVATIVES PRODUCT DETERMINATION (the “Scope Rule”)

TransAlta respectfully make the following comments regarding the Scope Rule:

- We ask the Committee to consider an exclusion within the Model Rules for electricity products traded directly with an organized independent system operator (ISO)², similar to that granted by the CFTC. The CFTC exempts specifically defined “financial transmission rights,” “energy transactions,” “forward capacity transactions,” and “reserve or regulation transactions” that are offered or sold in a market administered by one of the petitioning RTOs or ISOs pursuant to a tariff or protocol that has been approved or permitted to take effect by FERC or PUCT³. Some of these same products are currently offered within Canadian wholesale electricity markets (such as IESO Transmission Rights, or TRs), and as electricity markets continue to evolve other similar transactions may be offered in future. The markets managed by the ISOs are subject to regulation, market surveillance and enforcement by provincial energy agencies or boards. The products are transacted on electronic platforms administered by the ISO and the ISO takes the other side (i.e. is the counterparty) on the transaction.

TRADE REPOSITORIES AND DERIVATIVES DATA REPORTING (the “TR Rule”)

TransAlta respectfully make the following comments regarding the TR Rule:

- We ask the Committee to consider an exclusion from reporting obligations for companies organized under the laws of a foreign jurisdiction, but that have their principal place of business in a Canadian province. For TransAlta specifically, we are concerned that derivatives transacted by our TEMUS affiliate, which as stated above, is incorporated in Delaware (and so is considered a “U.S. Person” under the CFTC’s rules thereby requiring its swaps to be reported), but that operates out of our Calgary head office, would be required to be reported separately under different standards in the US and Canada. This would be duplicative considering that the CSA considers global trade repositories to be sufficiently capable of providing repository services under the local Canadian regime, as well as prone to error, because the trade reporting definitions and minimum data requirements are not aligned between the CFTC and the CSA.

² Such as the Alberta Electric System Operator (AESO) and Ontario’s Independent Electric System Operator (IESO).

³ 78 FR 19879: *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations to Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission or the Public Utility Commission of Texas From Certain Provisions of the Commodity Exchange Act Pursuant to the Authority Provided in the Act; Notice*

- We ask the Committee to consider an exclusion from reporting obligations for inter-affiliate transactions where the financial results of the affiliates are reported on a consolidated basis, relief similar to that granted by the CFTC⁴. Such inter-affiliate transactions (or “interbooks”) are commonly used by affiliated companies to report the value of transactions within an appropriate accounting profit center. For TransAlta specifically, we are concerned that interbook transactions between our TEMUS and TEMC affiliates (which are incorporated under separate jurisdictions but operate out of the same Calgary head office, are executed by the same trading staff, guaranteed by the same parent and reported on a consolidated basis in internal and external financial reporting) would be subject to unnecessary trade reporting. We consider these transactions as not contributing to systemic risk. Further, many data fields would not be applicable to such entries (for example, master agreement type and version, transaction identifier, collateralization, confirmation timestamp). Finally, misalignment with foreign trade reporting rules creates the potential for errors in trade reporting. However, we do consider inter-affiliate transactions where the affiliates report their financial statements separately to be akin to an external third-party trade and subject to the trade reporting requirements proposed by the Committee.
- Under 35 (1), the Committee proposes that for cleared transactions, valuation data must be reported to the designated trade repository daily by both the clearing agency and the local counterparty. The inclusion of the local counterparty in this reporting obligation must surely be an error, for it is not in alignment with 27 (1) (a) which stipulates the clearing agency as the reporting party, nor is it in alignment with 35 (1) (a) which creates an obligation on dealers to provide daily valuation data. Clearing agencies and dealers are sophisticated entities that can comply with a daily valuation requirement, while local counterparties who are not dealers or who wish to avail themselves of the comprehensive services offered by clearing agencies may not be, and should not be penalized for clearing their transactions.
- Under 35 (2) (b), the intent of the Committee appears to require both local counterparties to a trade to report valuation data for uncleared transactions. Given that the real-time reporting obligation is on the reporting counterparty, it does not appear appropriate or efficient to require the non-reporting counterparty to then provide valuation data to a trade repository. Many end-users do not wish to become participants of trade repositories, for cost reasons or lack of sophistication. It may be suggested that they turn to dealers for their needs instead, but this ignores specific cases in which local end-users transact commercial risk-mitigating arrangements between themselves that are financial or that contain embedded optionality. Ultimately, the imposition of a valuation reporting burden on both parties is unnecessary.
- Under 36 (1), the Committee proposes that transaction records must be kept for seven years after the date on which the transaction expires or terminates. TransAlta is

⁴ CFTC Letter No. 13-09: *No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers Nor Major Swap Participants from Certain Swap Data Reporting Requirements Under Parts 45, 46, and Regulation 50.50(b) of the Commission’s Regulations*

concerned that this standard is two years longer than the equivalent CFTC requirement⁵. This not only imposes additional record retention costs on all trading records (which are filed together as a matter of course) but, in light of our comments above about foreign incorporated entities with principal operations in Canada, risks compliance errors if staff believed they were honestly complying with US rules that apply to US affiliates (but that may be reporting/local counterparties under Canadian rules).

- Under 37 (3), we believe that the burden imposed on local counterparties who must “take any action necessary” (to ensure that the appropriate local securities regulator has access to all derivatives data reported to a designated trade repository for transactions involving the local counterparty) is impractical and confusing. It is an unreasonably high burden on a local counterparty, who may not be the reporting counterparty, nor aware of specific arrangements between regulator and depository. Clarification or removal of this new statement is needed.
- Under Appendix A (Minimum Data Fields...), TransAlta remains concerned that the Confirmation timestamp may not be available for some transactions given the differences between proposed real-time reporting timelines and industry-standard confirmation timelines. If the ICE eConfirm /Trade Vault linked solution is used by both reporting counterparties, the confirmation timestamp is available, known, and intrinsic to reporting. However, if the non-reporting counterparty is not enabled with eConfirm (known as “single-sided reporting”), these trades may not have a confirmation timestamp available within the real-time reporting timelines imposed by the Committee. Further, it is unclear if trade reporting occurs as proposed (next business day for end-users), then does the subsequent confirmation count as a life-cycle event?
- Under Appendix A (Minimum Data Fields...), TransAlta is concerned that there are two separate valuation data fields (i.e. “Value of contract calculated by the reporting counterparty” and “Value of contract calculated by the non-reporting counterparty”). We believe the imposition of a valuation reporting burden on both parties is unnecessary, and that only the first field is required.

Conclusion:

TransAlta would like to thank the Committee for the opportunity to provide comments on CSA Staff Notice 91-302 and we support the great undertaking of OTC derivatives market reform.

TransAlta looks forward to additional opportunity for comment and consultation on the Committee’s efforts to design and implement OTC reform. If you have any questions or concerns regarding our comments, or require further assistance, please contact either of the undersigned.

⁵ 77 FR 2136: *Swap Data Recordkeeping and Reporting Requirements, Final Rule*

Sincerely,

/s/ Daryck Riddell

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