TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. ("TransAlta") Complaint – Daily Contract Quantity ("DCQ") Obligation Interpretation – Preliminary Issues
Ontario Energy Board File No. EB-2014-0363

AFFIDAVIT

I, Joanna Kyriazis, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. THAT I am an Associate at Zizzo Allan DeMarco LLP, and as such, have personal knowledge of the facts and matters in this affidavit, except where stated to be based upon personal information and belief, in which case I believe them to be true.

2. THAT on March 26, 2015, I served the following parties via email with TransAlta's March 23, 2015 letter amending its requested relief in Board File Number EB-2014-0363, with appendices, and the Board's March 26, 2015 regarding the same:

   a) David Butters, President & CEO of the Association of Power Producers of Ontario ("APPrO");
   b) John Wolnik, Consultant for APPrO;
   c) Andrew Mandyam, Director of Enbridge Gas Distribution Inc. ("EGDI");
   d) Fred Cass, Counsel for EGDI;
   e) Shahrzad Rahbar, President of Industrial Gas Users Association ("IGUA"); and
   f) Ian Mondrow, Counsel for IGUA.

3. THAT a copy of my email is attached as Exhibit A to this affidavit.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 27th day of March, 2015)

Notary Public in and
for the Province of Ontario

Joanna Kyriazis
JOANNA KYRIAZIS

Exhibit A

Joanna Kyriazis <joanna@zadllp.com> 26 March, 2015 5:09 PM

To: David Butters <david.butters@appro.org>, John Wolnik <JWolnik@Elenchus.ca>, <egdregulatoryproceedings@enbridge.com>, <fcass@airdberlis.com>, <srahbar@igua.ca>, <ian.mondrow@gowlings.com>

Cc: Lisa DeMarco <lisa@zadllp.com>, "hubie@zadllp.com" <hubie@zadllp.com>, Laura-Marie Berg <Laura-Marie_Berg@transalta.com>, Pete Serafini <Pete_Serafini@transalta.com>, <csmith@torys.com>, <boardsec@ontarioenergyboard.ca>

EB-2014-0363 - TransAlta - Service of Amendment to Requested Relief

3 Attachments, 2.6 MB

Please see the attached correspondence sent on behalf of TransAlta in the above-referenced matter.

Best regards,
Joanna

Joanna Kyriazis B.Sc., J.D.
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ZIZZO ALLAN DEMARCO LLP

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March 26, 2015

Association of Power Producers of Ontario

David Butters
Association of Power Producers of Ontario
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John Wolnik
Elenchus Research Associates Inc.
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Enbridge Gas Distribution Inc.

Andrew Mandyam
Enbridge Gas Distribution Inc.
500 Consumers Rd
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Fred Cass
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Toronto, ON M5J 2T9

Industrial Gas Users Association

Shahrzad Rahbar
Industrial Gas Users Association
350 Sparks St, Suite 502
Ottawa, ON K1R 7S8

Ian Mondrow
Gowling Lafleur Henderson LLP
1 First Canadian Place
100 King S. W., Suite 1600
Toronto, ON M5X 1G5

Re: **TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. ("TransAlta") Complaint—Daily Contract Quantity ("DCQ") Obligation Interpretation—Preliminary Issues**
Service of Amendment to Requested Relief and Board Response
Board File No. EB-2014-0363

Pursuant to the attached letter of the Ontario Energy Board (the "Board") dated March 26, 2015 (Attachment 1), we are hereby providing you with service of TransAlta's March 23, 2015 letter amending its requested relief in EB-2014-0363 (Attachment 2), noting that the Board has provided the opportunity for you to make submissions on TransAlta's requested relief. Should you have any questions, please do not hesitate to contact me directly.

Yours very truly,

Lisa (Elisabeth) DeMarco

CC: Kirsten Walli
Laura-Marie Berg (TransAlta)
Peter Serafini (TransAlta)
Crawford Smith (Torys)

Encl.

Attachment...tter (104 KB)

Attachment...elief (2.2 MB)

Attachment 1

Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416-481-1967
Facsimile: 416-440-7656
Toll free: 1-888-632-6273

Commission de l'énergie de l'Ontario
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27e étage
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Toronto ON M4P 1E4
Téléphone: 416-481-1967
Télécopieur: 416-440-7656
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Ontario

BY E-MAIL

March 26, 2015

Ms. Elizabeth DeMarco
Zizzo Allan Demarco LLP
41-A Avenue Road
Toronto ON M5R 2G3

Dear Ms. DeMarco:

Re: TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. ("TransAlta")
Complaint - Daily Contract Quantity ("DCQ") Obligation Interpretation - Preliminary Issues
Amendment to Requested Relief – Board Response
Board File No. EB-2014-0363

The Board received a letter from TransAlta, dated March 23, 2015, requesting that the relief set out in its application, dated December 3, 2014, be amended. TransAlta asked the Board to review and resolve certain sector-wide obligated DCQ issues if the noted issues cannot be resolved between stakeholders through consultations with Union before June 30, 2015. TransAlta asked the Board to resolve the DCQ issues in the context of: (a) the Natural Gas Market Review (or a follow-up proceeding); or (b) the annual review of Union's rates (prior to 2016); or (c) a dedicated proceeding on obligated DCQ issues.

The Board will not make a determination on this request at this time. The Board will invite submissions from interested parties on TransAlta's relief amendment request at the Oral Hearing scheduled for April 7, 2015.

The Board directs TransAlta to serve its March 23, 2015 letter and the Board's response to Enbridge Gas Distribution Inc., the Association of Power Producers of Ontario, and the Industrial Gas Users Association. Any party that is interested in making submissions on TransAlta's relief amendment request will be given the opportunity to do so at the Oral Hearing.

Yours truly,

Original Signed by

John Pickernell
Applications Administration

Attachment 2

ZIZZO
ALLAN
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LLP

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March 23, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

Re: TransAlta Corporation, TransAlta Generation Partnership and TransAlta Cogeneration L.P. ("TransAlta") Complaint – Daily Contract Quantity ("DCQ") Obligation Interpretation – Preliminary Issues
Amendment to Requested Relief and Related Supporting Application Materials
Board File No. EB-2014-0363

We are writing with regard to the TransAlta complaint filed on December 3, 2014 with the Ontario Energy Board (the "Board) in relation to Union Gas Limited's ("Union") treatment of obligated delivery daily contract quantities of natural gas ("DCQ"), and the related application filed on February 6, 2015, at the instruction of the Board (the "Application"). The preliminary issues outlined in the Application will be heard by the Board on April 7, 2015. In light of recent developments relevant to the Application, TransAlta hereby wishes to amend its requested relief and related supporting materials in the Application in accordance with Rules 11 and 16 of the Board's Rules of Practice and Procedure, and hereby provides notice of same to the Board and the approved Intervenor, Union, in accordance with Rule 21 of the Board's Rules of Practice and Procedure.

Background

The Application raises issues relating to Union's discriminatory treatment of TransAlta[1] in relation to differing DCQ obligations, and requests that the Board address certain preliminary issues relating to Union's conduct and unsupported actions in 2014, which resulted in significant damages to TransAlta. The DCQ issues outlined in the Application are specific to TransAlta. However, Union's approach to imposing DCQ obligations on only certain electricity generators is also a significant and pressing sector-wide issue, which TransAlta understood to be a subject of the Board's review and redress pursuant to the Board-initiated Natural Gas Review ("NGR"). In addition, Union's stakeholder consultation was intended to address large customer challenges and impacts related to DCQ. TransAlta continues to work cooperatively with the Association of Power Producers of Ontario ("APPrO"), electricity generators, and other electricity sector stakeholders on the sector-wide DCQ issues and is engaged in both the NGR and Union's consultations.

[1] TransAlta Complaint, December 3, 2014, pages 4 and 5.

Recent Developments

During the winter of 2015, DCQ obligations have again resulted in customer challenges and inefficiencies, and DCQ continues to be a significant and pressing issue for the sector. We understand that APPrO has made several submissions on the broader DCQ policy issue in the context of the NGR proceeding. Specifically, APPrO's submissions, as well as excerpts from its PowerPoint and oral presentation to the Board on the DCQ issue, are attached at Appendices "A", "B", and "C". While the NGR and Union's Consultations are proceeding, there is little assurance that the DCQ issues will be addressed in an acceptable manner for generators going forward.

As noted above, TransAlta will continue to work cooperatively in the Union stakeholder consultation to resolve issues related to DCQ. However, if the DCQ issue is not adequately addressed in the consultation, TransAlta wants to ensure that it is addressed in another forum. TransAlta hereby wishes to amend its Application to reflect the requested path to resolve the sector-wide DCQ issues in its requested relief.

Additional Requested Relief

TransAlta believes that the broader policy issues resulting from requiring obligated DCQ from only certain generators must be addressed, and hereby amends the requested relief set out in its Application to reflect a proposed path for the Board to resolve the sector-wide DCQ issues. TransAlta hereby requests that its requested relief included in the Application be amended to include: *(iv) in the event that the sector-wide DCQ issues cannot be resolved with all stakeholder consensus through the Union Consultations on or before June 30, 2015, TransAlta hereby requests that the Board expressly review and resolve the sector-wide DCQ issues in the context of: (a) the NGR or as part of a follow-up proceeding to address issues raised through the NGR, or alternatively, (b) in the context of the annual review of Union rates prior to 2016, and/or in the further alternative (c) a dedicated proceeding of the Board on obligated DCQ issues.*

Yours very truly,

Lisa (Elisabeth) DeMarco

CC: Laura-Marie Berg (TransAlta)
Peter Serafini (TransAlta)
Crawford Smith (Torys)

Encl.

Appendix 'A'

25 Adelaide St. E
Suite 1602
Toronto ON, M5C 3A1

September 30, 2014

APPrO
ASSOCIATION OF POWER PRODUCERS OF ONTARIO

Ontario Energy Board
P.O. Box 2319
2200 Yonge St.
Toronto, ON, M4P 1E4
Attention: Kirsten Walli, Board Secretary

September 30th 2014

Dear Ms. Walli,

Re: EB-2014-0289 2014 Natural Gas Market Review – APPrO Comments

The Board issued a letter dated September 19th, 2014, related to the Board's intended scope for the 2014 Natural Gas Review (NG Review). The Board invited stakeholders to submit additional issues they believed ought to be addressed in this NG Review. APPrO is pleased to submit the following issues to be considered as part of the 2014 NG Review.

Summary of the Issues

1. Changes are required to the current utility services
    a. All dispatchable generators in Union South and Union North should be eligible for an unobligated delivery commitment to the utility.
    b. Services for 'Large and Medium Volume' rate classes in Union North need to reflect upcoming changes in generator operating characteristics as NUGs renegotiate their power contracts with the OPA to become dispatchable. In addition Union should introduce the billing contract demand concept (a bypass competitive rate structure) in Union North to avoid potential by-pass applications. This concept is already in place in Union South and Enbridge's franchise.
2. The sufficiency of the upstream gas supply infrastructure into Dawn over the next 5+ years should be evaluated to accommodate Ontario's growing natural gas market at Dawn.
3. Bottlenecks in infrastructure downstream of Dawn need to be eliminated to allow all generators in Northern and Eastern Ontario access to Dawn supply.

4. In the US, FERC is looking closely at changes to the Gas Day in consultation with NAESB and other interested parties. The potential implications of changes should also be considered in the consultation.

Further Elaboration on the Issues

1. Changes to utility services

The nature of the gas-fired power generation market in Ontario is changing and the services that the utilities (primarily Union South & North) offer, must adapt to reflect these changes. Many of the NUGs have been operating since the 90's and have been operating at high load factors. The Minister of Energy has directed the OPA to renegotiate the associated power purchase contracts for continuation of service when the original term expires. These new power purchase contracts will require these generators to become dispatchable which will significantly lower their respective load factors. This will in turn require them to purchase gas much differently than they have in the past. The utility service tariffs ought to be adapted to recognize these changes. More specifically:

a) Changes to Union South – Eliminate the Obligation to Deliver for Dispatchable Generators

Dispatchable generators only operate when the price of electricity is high enough to support the conversion of natural gas, at the then current price, into electrical energy. Unlike industrial customers that operate at high load factors, dispatchable generators often operate at load factors less than 40%. Dispatchable generators often do not run for many days at a time. They may even not run during times of the year that are the peak for the natural gas industry.

An obligated delivery requires customers to purchase and supply gas each day of the year on a firm basis year round, independent of their actual consumption needs on any day. Industrial customers and the original NUG generators generally consume a fairly consistent amount of gas each day throughout the year, and this service feature was designed to reflect this consumption profile. Dispatchable power generators on the other hand, operate intermittently so arranging for a consistent amount of gas to be delivered to the utility creates a huge financial liability to acquire this gas when they do not need it. Under the contracts that generators have with the OPA, generators only get compensated for the amount of gas that they consume in any day at the price of gas on such day. While Union does notionally inject gas, that is in excess of the generators actual need in the day, into the generators storage account, the gas can only be withdrawn for consumption over longer periods of time and it may be withdrawn when the price of gas is much lower. A good example of this is the weekend of March 1-2 2014. The price of gas was in excess of $78/GJ and dispatchable generators generally were not running. If they had an obligated delivery, they would have had to purchase gas at these prices and they would have subsequently used the gas over the following weeks and months after the price had fallen substantially. They would have had to absorb the difference between what they paid for gas under the obligated delivery arrangement and what they would have been able to recover when they actually generated power.

An unobligated delivery only requires that the customer deliver gas to the utility on the days that it is operating an amount that matches its daily consumption.

Under the NGEIR settlement agreement, the parties agreed that certain customers would be eligible for unobligated deliveries:

> ***Delivery Obligations***
> *a) West of Dawn: For new T1 or U7 customers and for existing customers with new firm incremental loads greater than 1,200,000 m3 per day, at the customer's option there will be no obligated DCQ requirement, subject to the facilities required to support the incremental load being economic*[1].

It should be noted that this unobligated delivery provision does not apply to existing generators nor does it apply to generators that do not meet the arbitrary volume threshold.

There are a number of existing generators that are west of Dawn that are either now dispatchable or will become dispatchable as the existing NUG contracts are renegotiated, or are less than the 1,200,000 m^3/d threshold. They should have access to an unobligated delivery provision.

b) Changes to Union North – Eliminate Obligation to Deliver, Introduce the Billing Contract Demand and Recognize That Changes in Operating Characteristics May Required Changes in Service Characteristics

Similar to customers in Union South, all dispatchable generators in Union North should have access to an unobligated delivery.

In addition, most NUG generators in Union North currently operate under a Rate 100 contract, which is a high volume, high load factor (>70%) service. As they become dispatchable, their load factor will drop to 40% or less. They will lose their eligibility for Rate 100 and under the current tariff provisions, will have to take service under Rate 20, which is about 20% more expensive than rate 100. Rate 20 is designed as a medium volume service. Similarly, any new dispatchable generator in Union North will also be forced into this lower volume higher cost service. Customers may also require additional access to balancing services to manage the variability in demand. Service characteristics ought to be revisited to avoid this potential rate increase for a generator to continue to obtain service.

Generators in Union North should also be eligible for a Billing Contract Demand service that was introduced in Union South and Enbridge. This feature was intended to be a bypass competitive rate. Without access to this service, there is an increased potential for these customers to apply for direct interconnections with TransCanada.

APPrO contends that the service attributes in Union North need to adapt to the changing requirements of the marketplace.

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[1] EB-2005-0551 Settlement Agreement page 17

2. Sufficiency of the Natural Gas Infrastructure

There are a variety of market and supply factors that will influence Ontario's access to economically priced natural gas. The Board should help ensure that sufficient supplies are, or will be in place for Ontario as market demand for natural gas grows and under changing supply conditions. These factors include but are not limited to:

- The proposed Energy East project will transfer certain natural gas transmission facilities to crude oil service which could reduce the capacity to transport natural gas from Western Canada by up to 1.5 bcfd. This project could have more direct consequences in some regional areas of Ontario.
- The market for natural gas, especially the design day market, in Ontario continues to grow. In particular in the gas-fired power generation market, there are two new plants being developed; a 900 MW plant in Napanee and a 300 MW plant in Sarnia. These plants will require gas on peak. The commercial agreements that these parties enter into with the OPA will require these parties to purchase their gas at Dawn.
- Ontario's nuclear power generation fleet will undergo significant refurbishment commencing in several years. This will require natural gas-fired generators to supply an increase share of the power that would have otherwise have been supplied by these nuclear power plants. This will increase both the on peak day gas requirements as well as the total annual amount of natural gas required for power generation.
- US shale gas has had a significant impact on the pricing of natural gas as well as the North American flow patterns. In order for Ontario industry to be competitive, access to competitively priced US shale gas will be important. The desire to access natural gas source in Ontario at Dawn is growing in importance. Access to sufficient economically priced supplies at Dawn is required. No new pipelines have been built into Dawn since 2000, yet more and more parties want to source gas at Dawn. There several projects in the planning stages[2] to deliver shale gas into Dawn. It is not clear what the process nor timing is to have one or more of these projects proceed. This should be understood by the Board.

3. Bottlenecks Downstream of Dawn

As generators in Eastern and Northern Ontario become dispatchable the renegotiated power contracts they have with the OPA only recognizes the cost of gas at Dawn. Therefore they will need increased access to Dawn supplies to fuel their plants in the future. Currently there are bottlenecks in and around the GTA that may prevent further access to Dawn supplies. While this is currently in front of the NEB for adjudication, this may not come to a successful resolution. If so this could impact

[2] NEXUS and ET Rover

the security of supply of the power market. In the event this issue is not favourably resolved, then a made in Ontario solution may be required.

Sincerely,

David Butters
President & CEO

Appendix 'B'

Natural Gas Market Review 2014

EB-2014-0289

November 23, 2014

APPrO

ASSOCIATION OF POWER PRODUCERS OF ONTARIO

Changes to Utility Services

APPrO
ASSOCIATION OF POWER PRODUCERS OF ONTARIO

- Moving to Unobligated DCQ ("UDCQ") for all Dispatchable Generators
  - Union South Obligated DCQ (ODCQ) deliveries were established at the onset of deregulation for customers that had relatively well known consumption characteristics
  - Historically all obligated deliveries were at Parkway (or other pipelines), Parkway obligations being phased out which eliminates the 'transportation' need for ODCQ
  - Dispatchable generators only run when the power price is high enough to recover the current commodity cost of gas.
  - Dispatchable plants may not run even on days that are peak for the rest of the industry, and typically run 10-40% load factor. They can be idle for many days at a time
  - ODCQ gas brought in, that is in excess of current needs, are deemed injected into storage and withdrawn at a later time, creating a financial liability (e.g. Late Feb/Mar prices were \$30-\$45/GJ when injected into storage and withdrawn in April when prices were \$5/GJ)

Changes to Utility Services (continued)

APPrO
ASSOCIATION OF POWER PRODUCERS OF ONTARIO

- Current DCQ Policy for T1/T2/T3 (<1.2 million m^3/d or otherwise not eligible for Firm Billing Contract Demand)
  - New customers east of Dawn ODCQ at Parkway
  - New large customers (> 1.2 million m^3/d) west of Dawn can choose an UDCQ
  - New customers (< 1.2 million m^3/d) west of Dawn ODCQ at Dawn or Parkway
- Existing generators (at the time of the NGEIR policy change) not eligible for UDCQ
- Storage allocation methodology may need updating
  - Aggregate Excess methodology may not result in any storage being allocated
  - Large volume customers have additional storage options
- APPrO proposes all dispatchable generators be eligible for UDCQ
  - Union has commenced consultation with customers on an UDCQ

'Appendix C'

Ontario

ONTARIO ENERGY BOARD

FILE NO.: EB-2014-0289

VOLUME: 2014 Natural Gas Market Review – Stakeholder Conference

DATE: December 3, 2014

capacity, and they don't really provide any incentive to invest in flexibility. And if you're looking at flexibility, this is an important point to keep in mind. So just keep that out there. It is not that we shouldn't do it, but we should be making sure that we don't repeat some of the mistakes that our colleagues in the U.S. have gone through.

I think we have talked a lot about this and I don't think I really need to go through it. We have talked about the growing role of gas -- sorry, the growing role of natural gas. You can see in this slide here how that is increasing and becoming increasingly important.

So in summary, at least on that side of the ledger, demand for gas, for natural gas for the power fleet will continue. New plants, higher capacity factors, I think we will see higher capacity factors during nuclear refurbishment. Capacity auctions, as I mentioned, we're not sure how that will play together with gas.

And the bottom line there is, as you see here, we're saying that existing utility services don't fully meet the needs of generators. So let me just go through this quickly. This is a busy slide.

Basically, what it says is that we should see gas generators moving to unobligated DCQs, instead of the obligated. And I will move on to the last point here on page 14.

We're actually in the process of working with Union Gas on this right now. Union has a stakeholder initiative.

I think we have seen good progress here. I think we will -- hopefully we can get to a place where we can see that take place.

But we do work closely with the utilities to make sure that we've got the right services.

If there are any really detailed questions, ask my wingman John Wolnik. John knows all about this. Don't ask me.

[Laughter]

Union North services is another one, but here again, we are working in a discussion with Union and we'll see how that plays out. But I think we can arrive at a reasonable solution on this one as well too. And again, John is certainly more expert on this than I am.

This is the one that I probably should take out, I understand. We had raised this as a potential issue, the changes in the gas nomination, FERC and NAESB. Union assure us that they can work around that, work through it. So if that is the case, then we're happy to take their word for it.

We want to make sure always that we have sufficient upstream infrastructure to bring gas into Ontario and to minimize price volatility, because the more robust the infrastructure, the less opportunity, the less chance there is for constraints and better pricing and less price volatility.

The same thing with downstream infrastructure. Again, we're not going to go into all of the details here, but