

September 23, 2016

**Sent By E-mail**  
**BoardSec@ontarioenergyboard.ca**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
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Our reference  
01026149-0018

Dear Ms. Walli:

**TransAlta (SC) L.P. ("TA(SC)")**  
**Leave to Transfer Electricity Generation Licence EG-2009-0287**  
**Leave to Transfer Electricity Retailer Licence ER-2014-0374**  
**Subsection 18(2) of OEB Act**

We are counsel to TA(SC). TA(SC) is licensed by the Ontario Energy Board (**OEB**) to generate electricity (EG-2009-0287) at its Sarnia Regional Cogeneration Plant (**SRCP**). TransAlta is also licensed by the OEB to retail electricity to large volume consumers (ER-2014-0374). TA(SC) holds these licences as transferee of SRCP pursuant to Decision and Order of the OEB dated April 30, 2015 in OEB files Nos. EB-2015-0131, EB-2015-0132 and EB-2015-0136.

As part of a further corporate re-organization within the TransAlta Corporation (Canada) (**TransAlta**) family of companies, TA(SC) will be transferring the SRCP to an affiliated limited partnership, Sarnia Cogeneration LP, the general partner of which will be Sarnia Cogeneration Inc. The broader corporate re-organization is being undertaken to organize TransAlta's ownership of subsidiaries and their respective assets in a tax efficient manner and to support future corporate initiatives.

The change is purely one of legal structure. As the OEB is aware, a limited partnership is comprised of at least one general partner and at least one limited partner. The general partner, Sarnia Cogeneration Inc. in this case, will have unlimited liability for partnership liabilities, and is responsible for managing the business of the limited partnership. The directors and officers of Sarnia Cogeneration Inc. are individuals that currently serve as directors and officers of other TransAlta entities with operations in Ontario (and licensed by the OEB as electricity generators), and each of the current directors and officers of Sarnia Cogeneration Inc. are also directors and officers of TransAlta (SC) Inc., the general partner of TA(SC).

This re-organization will have no impact on the day-to-day operations of the SRCP. In particular, following the re-organization:

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- (a) There will be no change in the management and operational support provided to SRCP, all of which will continue to be sourced through TransAlta entities. The personnel operating the SRCP and responsible for the retailing will continue to operate the SRCP and retailing function after the re-organization; and
- (b) There will be no change in the ultimate ownership or control of SRCP.

Therefore, pursuant to subsection 18(2) of the Ontario Energy Board Act, 1998 (**OEB Act**), TA(SC) hereby applies for leave to transfer its Electricity Generation Licence (EG-2009-0287) and its Electricity Retailer Licence (ER-2014-0374) to "**Sarnia Cogeneration Inc. on behalf of Sarnia Cogeneration LP**". No change is required to the description of the generation facilities in Schedule 1 to the existing Electricity Generation Licence (EG-2009-0287). The new licensed entity will be responsible for meeting all legal and regulatory requirements within the OEB's jurisdiction.

### **Facilities Comprising SRCP and Application of Sections 80 and 81 of the OEB Act to the Transfer of SRCP from TA(SC) to Sarnia Cogeneration LP**

As the OEB records will reflect, the SRCP is comprised of the following classes of assets as defined under the OEB Act:

1 **Generation Facility:** as described in OEB Licence EG-2009-0287 – the subject matter of this application;

2 **Distribution Facility:**

The SRCP "distributes" electricity to industrial buildings in accordance with a Notice of Proposal under Section 81 of the OEB Act (OEB file No. EB-2012-0298) and the OEB's decision not to review the proposal and not to issue a Notice of Review, dated August 17, 2012 (a copy of which is attached for reference purposes).

By Decision dated December 5, 2013 (OEB file No. EB-2012-0423) (a copy of which is attached), the OEB determined that TransAlta Generation Partnership (the TransAlta entity owning SRCP at that time and the predecessor owner to TA(SC)), was exempted from the requirement to hold a distribution licence.

3 **Transmission Facilities.**

Electricity generated by SRCP is transmitted to the Hydro One Networks Inc. Scott Street Substation in Sarnia by a 230 KV transmission line. The transmission is exempt from the requirement for a transmission licence pursuant to Section 4.0.2(1)(d)(i) of O.Reg. 161/99 which provides:

"4.0.2 (1) Clause 57 (b) of the Act and the other provisions of the Act listed in subsection (2) do not apply to a transmitter that transmits electricity for a price, if any, that is no greater than that required to recover all reasonable costs if,...

(d) the transmitter is a generator and transmits electricity only for,

(i) the purpose of conveying it into the IESO-controlled grid..."

By virtue of its ownership of SRCP, TA(SC) is currently a "generator", "distributor" and "transmitter" (as those terms are defined under the OEB Act) with respect to its ownership and operation of SRCP.

Similarly, on completion of the proposed re-organization, Sarnia Cogeneration LP will also be a "generator", "distributor" and "transmitter" as the transferee of the SRCP.

Currently, affiliates of TA(SC) own and operate generation facilities in Ontario which also include distribution facilities and/or transmission facilities as part of the licenced generating facility. To the extent that these facilities are comprised of distribution and/or transmission facilities, the distribution and/or transmission components of those facilities are exempt from the licencing requirements of Clauses 57(a) or (b) of the OEB Act pursuant to applicable exemptions as provided for in O.Reg. 161/99. No affiliate of TA(SC) owns distribution facilities or transmission facilities which do not comprise part of the operation of a licenced generating facility.

In the circumstances described in this application, since SRCP is simply being transferred from one TransAlta affiliate to another, there will be no change in the allocation of ownership of generation, distribution and transmission facilities within TransAlta, on a consolidated basis. The generation facilities, distribution facilities and transmission facilities comprise part of the one SRCP facility which will be owned by one entity, Sarnia Cogeneration LP. By extension, as a result of the re-organization, there will be no change in the allocation or ownership of generation, distribution or transmission facilities within the Ontario electricity market, regulated by the OEB.

In addition to the foregoing, we note the application of the sections in question have the potential to result in conflicting notice requirements.

In its capacity as an affiliate of a transmitter or distributor, Sarnia Cogeneration LP may proceed to acquire its interest in SRCP without notice of its proposal to do so pursuant to Section 80 of the OEB Act in reliance on:

- (i) Section 4.0.1(1)(a) of O.Reg. 161/99, in its capacity as a distributor, which provides as follows:

“4.0.1 (1) Clause...80...of the Act [does] not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,

(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located: ...

3. An industrial, commercial or office building...

(b) with respect to a distribution system owned or operated by the distributor that is entirely located on land owned or leased by the distributor;”

- (ii) Section 4.0.2(1)(d) of O.Reg. 161/99, in its capacity as a transmitter, which provides as follows:

“4.0.2 (1) Clause 57 (b) of the Act and the other provisions of the Act listed in subsection (2) do not apply to a transmitter that transmits electricity for a price, if any, that is no greater than that required to recover all reasonable costs if, ...

(d) the transmitter is a generator and transmits electricity only for,

(i) the purpose of conveying it into the IESO-controlled grid...”

If, however, the acquisition by Sarnia Cogeneration LP of the ownership of SRCP is seen in isolation to be the solely the acquisition by an affiliate of a generator in a transmission or distribution system, then Section 81 of the OEB Act would have application for which there does not appear to be a corresponding regulatory exemption pursuant to O.Reg. 161/99.

Ms. Kirsten Walli  
September 23, 2016

It is therefore respectfully requested that, in the context of this application, the OEB confirm that, to the extent that Section 80 or Section 81 of the OEB Act may have application to the transfer of SRCP in the re-organization, the notice of the proposed re-organization provided by this application is sufficient notice pursuant to Section 81 of the OEB Act without the requirement of filing the form established by the OEB under Section 13 of the Act: *"Preliminary Filing Requirements for a Notice of Proposal under Sections 80 and 81 of the Ontario Energy Board Act, 1998"*.

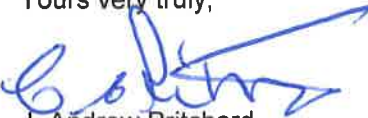
Given that no one will be adversely affected in a material way by the OEB's decision in this application, TA(SC) requests that the OEB exercise its authority under paragraph 21(4)(b) of the OEB Act to dispose of this application without a hearing.

Finally, the corporate re-organization is currently scheduled to take place by October 31, 2016. TA(SC) respectfully requests that the OEB dispose of this matter by that date, but that the effective date of the transfer be the actual date of the completion of the re-organization as subsequently confirmed in writing to the OEB.

We look forward to the OEB's disposition of the applications herein, all of which are respectfully submitted.

Please contact the undersigned if you have any questions in regard to the foregoing.

Yours very truly,

  
J. Andrew Pritchard

JAP/saz

Enclosures

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**BY E-MAIL**

August 17, 2012

Mr. Richard King  
Norton Rose Canada LLP  
Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, ON M5J 2Z4

Dear Mr. King:

**Re: TransAlta Generation Partnership  
Notice of Proposal under Section 81 of the *Ontario Energy Board Act, 1998*  
Board File No. EB-2012-0298**

On June 25, 2012, TransAlta Generation Partnership filed a notice of proposal under section 81 of the *Ontario Energy Board Act, 1998*.

The notice of proposal relates to the construction of a distribution line that will connect new and existing load at the LANXESS generating facility located in Sarnia, Ontario.

This letter is to inform you that the Board will not review the proposal and therefore will not issue a Notice of Review.

In regards to your request for determination on whether or not TransAlta falls under the distribution licence exemption stipulated in section 4.0.1 of Ontario Regulation 161/99, the Board is considering the matter and will provide further procedural direction at a later date.

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary



**EB-2012-0423**

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15 (Schedule B) (the "Act");

**AND IN THE MATTER OF** an application by TransAlta Generation Partnership ("TransAlta") for an electricity distribution licence under section 60 of the Act and a request in the alternative for confirmation of a distribution licence exemption.

**BEFORE:** Emad Elsayed  
Presiding Member

Ellen Fry  
Member

**DECISION**  
**December 5, 2013**

**Background**

TransAlta Generation Partnership ("TransAlta") is a Board-licensed generator. On October 29, 2012, TransAlta filed an application with the Board seeking an electricity distribution licence under section 60 of the Act or, in the alternative, confirmation that TransAlta is, pursuant to section 4.0.1 of Ontario Regulation 161/99, exempt from requiring a distributor licence.

At TransAlta's request, the application was held in abeyance from April 11, 2013 until it was further amended by TransAlta on November 20, 2013.

The Board assigned file number EB-2012-0423 to this proceeding.

## The Application

TransAlta currently owns and operates the Sarnia Regional Cogeneration Plant in Sarnia, Ontario (the “SRCP site”). In the application, as originally filed, TransAlta advised that it wished to supply power to a new load on the SRCP site and that it wished to construct distribution facilities from the SRCP site to supply potential new and existing load at a neighbouring site immediately to the north, owned by LANXESS Inc. (the “LANXESS site”).

On March 21, 2013, the Board issued a Notice of Request for Confirmation of Distribution Licence Exemption (the “Notice”). The Notice indicated the Board’s intention to dispose of this proceeding without a hearing pursuant to section 21(4)(a) of the Act and stated that any objections to proceeding without a hearing or requests that the Board hold a hearing in this matter, be filed in writing by April 10, 2013.

The Board required TransAlta to post the Notice on its website as well as to send the Notice to the following parties: LANXESS Inc., Bluewater Power Distribution Corporation (“Bluewater”), The Corporation of the City of Sarnia, Hydro One Networks Inc., Bioamber Inc., and CSX Transportation. TransAlta was also required to serve persons that hold registered interests in property neighbouring the SRCP site and the LANXESS site.

On April 10, 2013, Bluewater filed a letter requesting a hearing on TransAlta’s application. TransAlta filed a letter on April 11, 2013 asking that the Board delay issuing any procedural orders to advance the hearing process in order to provide TransAlta and Bluewater with an opportunity to resolve their issues. The application was placed in abeyance as requested, and, in accordance with further requests by TransAlta, remained in abeyance until November 2013.

Bluewater filed a letter on November 15, 2013 notifying the Board that it was withdrawing its request for a hearing provided that the Board’s determination of the threshold question (as to whether TransAlta requires a distribution licence) is restricted to the LANXESS site.

On November 20, 2013, TransAlta filed a letter with the Board amending the application by advising that TransAlta is applying for a determination by the Board of the threshold

question only with respect to the supply of power to the LANXESS site. In other words, TransAlta was withdrawing its application to make a determination on the threshold question with respect to the supply of power to a load on the SRCP site. TransAlta filed another letter on November 26, 2013 confirming that it is also no longer applying to the Board for a distribution licence with respect to the supply of power to the SRCP site.

## Legal Provisions

Clause 57(a) of the Act provides that a person wishing to own or operate a distribution system in Ontario must first obtain a licence to do so from the Board. This general requirement is, however, subject to certain exemptions. The exemptions are set out in Ontario Regulation 161/99, "Definitions and Exemptions" ("O.Reg. 161/99").

The section of O.Reg 161/99 relevant to this proceeding is s. 4.0.1 (1) (a) 3, which provides as follows:

*4.0.1 (1) Clause 57 (a)...of the Act [does] not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,*

*(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located:*

*...*

*3. An industrial, commercial or office building.*

## Submissions of TransAlta

TransAlta submits that it should be exempted from the requirement to hold a distribution licence in order to supply existing or potential new load at the LANXESS site because:

- The distribution facilities would be located on land on which only industrial buildings are located. Moreover, there is no requirement in subsection 4.0.1 of O.Reg 161/99 that the land be a single parcel or that the buildings be on land owned by a single (or related) entities; and



- TransAlta will not be seeking to charge either LANXESS Inc. or any new load on the LANXESS site for distribution.

### **Board Findings**

The application and evidence filed by TransAlta indicate that its proposed distribution system will be located on the SRCP site, on which a cogeneration plant is located, and on the LANXESS site, on which two substations are located.

While the Act does not contain a definition for “industrial building”, the Board agrees with the submissions made by TransAlta that the buildings located on the lands where the distribution system is to be located are industrial, as the word “industrial” is commonly understood.

Accordingly, the Board finds that TransAlta may operate a distribution system to supply electricity from its SRCP site to the LANXESS site without a distribution licence as long as TransAlta distributes the electricity for a price no greater than that required to recover all reasonable costs. ✓

**DATED** at Toronto, December 5, 2013

### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary