



TransAlta Corporation

Application for Debt Financing Approvals

June 30, 2022

Alberta Utilities Commission

Decision 27452-D01-2022

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Proceeding 27452

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The Commission may, within 60 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

Contents

1	Introduction.....	1
2	Regulatory framework	2
3	Should the Commission approve TransAlta’s application for debt financing?	3
4	Order.....	4
	Appendix 1 – Proceeding participants	6
	Appendix 2 – Summary of Commission directions.....	7

1 Introduction

1. On June 14, 2022, TransAlta Corporation filed an application with the Alberta Utilities Commission, pursuant to Section 101(2)(a)(ii) of the *Public Utilities Act*, requesting an order or orders of the Commission:

- authorizing TransAlta to offer and issue debt securities of up to US\$2 billion (the Debt Securities) in one or more offerings by way of:
 - (i) a public offering in the United States under its current U.S. base shelf prospectus filed with, and receipted and/or accepted by, securities regulators;
 - (ii) a public offering in Canada under its current Canadian base shelf prospectus filed with, and receipted and/or accepted by, securities regulators; and/or
 - (iii) a private placement in accordance with applicable securities laws (collectively, the Offering);
- approving the Offering as being made in accordance with law;
- approving the purposes of the Offering; and
- such further and other relief as TransAlta may request or the Commission may grant in the circumstances.¹

2. TransAlta submitted that the Debt Securities may have a maturity date of more than one year after their date of issuance.²

3. TransAlta is a designated owner of a public utility under the *Public Utilities Designation Regulation*³ and is subject to Section 101 of the *Public Utilities Act*, under which TransAlta may not issue bonds or other evidence of indebtedness, payable in more than one year from the date of their issuance, without the approval of the Commission.

4. The Commission issued notice of the application on June 15, 2022, which required parties to provide a statement of intent to participate by June 24, 2022. No statements of intent to participate were filed in response to the Commission's notice.

5. The Commission considers the record of this proceeding to have closed on June 24, 2022. The Commission reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered. For the

¹ Exhibit 27452-X0005, application, paragraph 1.

² Exhibit 27452-X0005, application, paragraph 14.

³ Section 1(1)(z) of the regulation.

reasons stated in Section 3 of this decision, the Commission approves TransAlta's application as filed.

2 Regulatory framework

6. In Decision 21555-D01-2016,⁴ the Commission approved Rule 031,⁵ which provides guidance to the application of a conditional exemption from the requirement to seek advance Commission approval for issuances of equities and long-term debt, and an exemption from certain operational reporting requirements.

7. Section 3 of Rule 031 exempts securities transactions from advance Commission approval if certain criteria are met, including whether the issuance is denominated in Canadian dollars.⁶ Section 3.4 of Rule 031 states:

If an issuance does not qualify for exemption under this rule, the designated owner must seek advance Commission approval for the issuance by way of a formal application filed in accordance with Rule 001: *Rules of Practice*.

8. Accordingly, should the debt or equity issuance not qualify for the exemption under Rule 031, the designated owner must seek approval of its securities transaction pursuant to Section 101(2) of the *Public Utilities Act*, which states:

101(2) No owner of a public utility designated under subsection (1) shall

(a) issue any

(i) of its shares or stock, or

(ii) bonds or other evidences of indebtedness, payable in more than one year from the date of them,

unless it has first satisfied the Commission that the proposed issue is to be made in accordance with law and has obtained the approval of the Commission for the purposes of the issue and an order of the Commission authorizing the issue,

...

9. TransAlta's proposed Debt Securities issuances are not denominated in Canadian dollars. Therefore, TransAlta is not exempt, under Rule 031, from seeking approval from the Commission for its Debt Securities issuances. In addition, TransAlta's Debt Securities may have a maturity date of more than one year after their date of issuance, which requires it to apply to the Commission under Section 101(2) of the *Public Utilities Act*.

⁴ Decision 21555-D01-2016: Conditional Exemption from Specific Financing and Reporting Requirements, Proceeding 21555, December 6, 2016.

⁵ Rule 031: *Conditional Exemption from Specific Financing and Reporting Requirements*.

⁶ Rule 031, Section 3.1(a).

3 Should the Commission approve TransAlta's application for debt financing?

10. TransAlta applied for an order of the Commission authorizing the Debt Securities issuances by way of the Offering to provide it with the ability to redeem, purchase or refinance, in whole or in part, its existing debt and/or its affiliates or subsidiaries, and for general corporate purposes not related to the ownership of transmission assets. TransAlta submitted that the Offering would not result in any change or impact to the ownership, operations or maintenance of transmission assets or affect the debt cost proxy used to determine the revenue requirement for transmission assets.⁷

11. TransAlta has an existing U.S. shelf prospectus⁸ received and/or accepted by securities regulators that permits the issuance of up to US\$2 billion of, among other securities, debt securities until the end of July 2023 (the U.S. Shelf Prospectus).⁹

12. TransAlta also has a Canadian shelf prospectus¹⁰ received and/or accepted by securities regulators that permits the issuance of an unlimited amount or number of, among other securities, debt securities until the end of June 2024 (the Canadian Shelf Prospectus).¹¹

13. TransAlta stated that it would not issue more than US\$2 billion of Debt Securities, in total, under both shelf prospectuses in one or more issuances over the lives of the shelf prospectuses¹² in relying on any order that may be granted by the Commission. TransAlta also stated that the Offering would be made under the U.S. Shelf Prospectus, under the Canadian Shelf Prospectus and/or pursuant to a private placement. The Offering would be subject to all applicable securities laws, rules and filings in the United States and Canada, which are regulated, monitored and enforced by the securities regulatory authorities in the United States and Canada.¹³

14. TransAlta submitted that its board of directors will determine the terms of the Debt Securities at the time of issuance, including the total amount, pricing, issuance date and interest rate having regard to various factors, including, but not limited to, prevailing capital and debt market conditions and the credit ratings attributable to TransAlta and its debt. In addition, TransAlta affirmed that the Debt Securities may have a maturity date more than one year after their date of issuance.¹⁴

15. Section 101(2)(a)(ii) of the *Public Utilities Act* requires that the Commission determine (a) whether the proposed issuance is to be made in accordance with law; and (b) whether the Commission is satisfied regarding the purposes of the proposed debt issuance described in the application.

⁷ Exhibit 27452-X0005, application, paragraphs 15-16 and 22. TransAlta has a Commission-approved revenue requirement, which includes rate base for transmission assets.

⁸ Exhibit 27452-X0001.

⁹ Exhibit 27452-X0005, application, paragraph 11.

¹⁰ Exhibit 27452-X0002.

¹¹ Exhibit 27452-X0005, application, paragraph 12.

¹² The date of the U.S. Shelf Prospectus is June 28, 2021 (Exhibit 27452-X0001). The date of the Canadian Shelf Prospectus is May 24, 2022 (Exhibit 27452-X0002). The U.S. Shelf Prospectus and the Canadian Shelf Prospectus both set a 25-month period for debt security issuances, which commences from the date of each prospectus.

¹³ Exhibit 27452-X0005, application, paragraphs 12-13.

¹⁴ Exhibit 27452-X0005, application, paragraph 14.

16. In ascertaining whether a proposed issuance of debt will be made in accordance with applicable laws, the Commission focuses primarily on whether the proposed issuance meets the corporate and securities law requirements applicable to such transactions. The Commission typically requests, and relies upon, the opinion of the applicant's legal counsel to confirm that the utility is duly authorized by its directors to undertake the issuance of the proposed securities, and that the form and content of the securities issuance is in compliance with applicable laws. Upon review of the June 14, 2022, opinion provided by TransAlta's legal counsel, Norton Rose Fulbright Canada LLP,¹⁵ the Commission is satisfied that due diligence is being exercised and steps have been taken to ensure that the Debt Securities issuances by way of the Offering will be made in accordance with law.

17. The Commission finds that the requirements of Section 101(2)(a)(ii) of the *Public Utilities Act* have been met. The Commission accepts TransAlta's submitted purposes of the Debt Securities issuances by way of the Offering. The Commission is satisfied that no part of the Offering will impact transmission assets or their revenue requirements and that no portion of the cost of the Debt Securities issuances will be billed to TransAlta's rate base.¹⁶ The Commission is also satisfied with the level of detail provided in the application to support the purposes of the issuances and approves TransAlta's issuances of Debt Securities, as filed.

18. The Commission retains its ability to exercise its regulatory oversight and to review the prudence of the Debt Securities issuances during its consideration of any general tariff application, other proceeding or as part of the Commission's review of the affairs, earnings and accounts of TransAlta in the absence of a general tariff application.

19. In addition to the documents appended to its application, TransAlta stated that it will file with the Commission following the issuances of Debt Securities, a resolution of TransAlta's board of directors (or a committee thereof) that authorized the issuances.¹⁷ The Commission directs TransAlta to file this resolution onto the record of this proceeding, as a post-disposition filing, within one month after the resolution is passed.

4 Order

20. It is hereby ordered that:

- (1) TransAlta Corporation's application to authorize the issuance of debt securities of up to US\$2 billion, as specified in paragraph 1 of this decision, is approved, as filed. The Commission approves the purposes of the offerings and steps taken to ensure that the issuances by way of offering will be made in accordance with law.

¹⁵ Exhibit 27452-X0003.

¹⁶ Exhibit 27452-X0005, application, paragraph 22.

¹⁷ Exhibit 27452-X0005, application, paragraph 18.

Dated on June 30, 2022.

Alberta Utilities Commission

(original signed by)

Vincent Kostas
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
TransAlta Corporation (TransAlta) Norton Rose Fulbright Canada LLP

Alberta Utilities Commission
Commission panel V. Kostaskey, Commission member
Commission staff A. Sabo (Commission counsel) F. Alonso

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. In addition to the documents appended to its application, TransAlta stated that it will file with the Commission following the issuances of Debt Securities, a resolution of TransAlta's board of directors (or a committee thereof) that authorized the issuances. The Commission directs TransAlta to file this resolution onto the record of this proceeding, as a post-disposition filing, within one month after the resolution is passed..... paragraph 19