



TransAlta Corporation

Application for Approval to Issue Shares

July 26, 2023



Alberta Utilities Commission

Decision 28331-D01-2023

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Proceeding 28331

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1 Decision summary

1. In this decision, the Alberta Utilities Commission approves an application filed by TransAlta Corporation (TAC) to issue shares under Section 101(2)(a)(i) of the *Public Utilities Act* for the reasons stated below.

2 Introduction and background

2. On July 10, 2023, TAC entered into an arrangement agreement with TransAlta Renewables Inc. (Renewables) (the Arrangement Agreement), which provides for the acquisition of Renewables by TAC (the Acquisition).¹ Pursuant to the Arrangement Agreement:

- TAC will acquire all of the issued and outstanding common shares of Renewables not already owned, directly or indirectly, by TAC (the Renewables Shares);² and
- the maximum aggregate amount of cash to be paid to Renewables shareholders is CAD\$800 million and the maximum aggregate number of common shares in the capital of TAC (the TAC Common Shares) that may be issued to the Renewables shareholders in exchange for the Renewables Shares is 46,441,779.³

3. On July 11, 2023, TAC filed an application with the Commission, pursuant to Section 101(2)(a)(i) of the *Public Utilities Act*, requesting an order or orders of the Commission:

- authorizing TAC to issue 46,441,779 TAC Common Shares together with such number of TAC Common Shares issuable to holders of a deferred share unit of Renewables (Renewables DSUs)⁴ in accordance with the Arrangement Agreement prior to or on the closing date of the Acquisition;
- approving the issuance of TAC Common Shares as being made in accordance with law;
- approving the purposes of the issuance of TAC Common Shares; and

¹ Exhibit 28331-X0002, application, paragraph 17.

² Exhibit 28331-X0002, application, paragraph 18. Each Renewables Share consists of either:

- 1.0337 common shares in the capital of TAC; or
- \$13.00 in cash per Renewables Share, subject to certain pro-ratoning.

³ Exhibit 28331-X0002, application, paragraph 19.

⁴ Exhibit 28331-X0002, application, paragraph 18. For all outstanding Renewables DSUs, an exchange for a combination, as elected or deemed to be elected by each holder of Renewables DSUs, of:

- such number of Renewables Shares equal to that number of Renewables Shares subject to each Renewables DSU, and the holder of such Renewables DSUs will be deemed to have elected to receive, in respect of each Renewables Share held, 1.0337 common shares in the capital of TAC; or
- a cash payment equal to \$13.00 per Renewables Share multiplied by that number of Renewables Share subject to each Renewables DSU.

- such further and other relief as TAC may request or the Commission may grant in the circumstances.⁵

4. TAC, as manager of TransAlta Generation Partnership, owns the legal interest to regulated electricity transmission assets situated on First Nation reserve lands in Alberta (the Transmission Assets). As a result, TAC is a transmission facility owner and has been designated as such under Section 101 of the *Public Utilities Act*, such that TAC requires Commission approval to issue shares absent an exemption.⁶

5. TAC submitted that, while Rule 031⁷ exempts certain share issuances from requiring Commission approval, TAC is cognizant of recent approaches taken by designated utilities in their respective applications under Section 101(2) of the *Public Utilities Act*.⁸ Given the time constraints of the impending Acquisition, TAC explained that, in applying for Commission approval of the issuance of TAC Common Shares, it is pursuing the most expedient process available to ensure the Acquisition is completed by the expected closing date.⁹ TAC requested that the Commission issue its decision on an expedited basis by August 25, 2023 and, in any event, no later than September 15, 2023,¹⁰ on the basis that the scope of any potential exemption through Rule 031 may be addressed in a future application.

6. The Commission issued notice of the application on July 12, 2023, which required parties to provide a statement of intent to participate by July 19, 2023. No statements of intent to participate were filed in response to the Commission's notice.

7. The Commission considers the record of this proceeding to have closed on July 19, 2023.

3 Should the Commission approve TAC's application to issue shares under Section 101(2)(i) of the Public Utilities Act?

8. TAC has applied for the authorization of the issuance of TAC Common Shares to enable the Acquisition, which is to be effected by way of an arrangement under the *Canada Business Corporations Act*. Pursuant to the Acquisition, TAC will acquire all of the issued and outstanding common shares of Renewables not already owned by TAC directly.¹¹

9. TAC submitted that the issuance of the TAC Common Shares to facilitate the acquisition of Renewables is in furtherance of the following purposes, among others:

- TAC and Renewables sharing a common strategic path to achieve TAC's overarching clean electricity growth objectives;
- unified interests in a diversified portfolio of wind, hydro, solar, storage and natural gas generation assets;

⁵ Exhibit 28331-X0002, application, paragraph 1.

⁶ Exhibit 28331-X0002, application, PDF page 1 and paragraph 3.

⁷ Rule 031: *Conditional Exemption from Specific Financing and Reporting Requirements*.

⁸ For example, see Proceeding 25455, AltaLink Investment Management Ltd. 2020 Debt Application (April 2020); and Proceeding 28137, Canadian Utilities Limited Corporate Reorganization (April 2023).

⁹ Exhibit 28331-X0002, application, paragraphs 6-7.

¹⁰ Exhibit 28331-X0002, application, paragraphs 16 and 34.

¹¹ Exhibit 28331-X0002, application, paragraph 5.

- stronger access to capital markets and investors along with increased trading liquidity; and
- enhanced access to capital, tax and corporate synergies.¹²

10. TAC stated that the Acquisition:

- is not for any purpose related to the provision of utility services and does not affect TAC's approved or future rates;
- will not impact the Transmission Assets or the provision of utility services in any way; and
- does not involve any sale, lease, mortgage or other disposition or encumbrance of TAC's property, franchises, privileges of rights, or any part of them.¹³

11. In addition, TAC confirmed that the Arrangement Agreement does not require:

- the Transmission Assets to be pledged as security;
- TAC shares to be pledged as security;
- any change in the ability to elect directors to TAC's board of directors; or
- any of TAC's partnership interest in TransAlta Generation Partnership to be pledged as security.¹⁴

12. In accordance with Section 101(2)(a)(i) of the *Public Utilities Act*, the Commission may grant an order authorizing the issuance of shares, may approve such issuance as being made in accordance with law, and may approve the purposes of such issuance.

13. Section 101(2)(a)(i) 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 share issuance described in the application.

14. In ascertaining whether a proposed issuance of shares will be made in accordance with applicable law, 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 owner of the public utility is duly authorized by its directors to undertake the issuance of the proposed shares, and that the form and content of the issuance is in compliance with applicable laws. Upon review of the July 11, 2023, opinion provided by TAC'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 TAC Common Shares issuance will be made in accordance with law.

¹² Exhibit 28331-X0002, application, paragraph 30.

¹³ Exhibit 28331-X0002, application, paragraphs 31-32.

¹⁴ Exhibit 28331-X0002, application, paragraph 32.

¹⁵ Exhibit 28331-X0004.

15. The Commission accepts TAC's submitted purpose of the TAC Common Shares issuance. The Commission is satisfied that no part of the issuance will impact the Transmission Assets, TAC's approved or future transmission rates, or the provision of utility services. The Commission is also satisfied with the level of detail provided in the application to support the purposes of the TAC Common Shares issuance.

16. The Commission approves TAC's issuance of TAC Common Shares, as filed, for the purposes of Section 101(2)(a)(i) of the *Public Utilities Act*.

4 Order

17. It is hereby ordered that:

- (1) TransAlta Corporation's application to authorize the issuance of up to 46,441,779 TAC Common Shares, together with such number of TAC Common Shares issuable to holders of Renewables DSUs, in accordance with the Arrangement Agreement, is approved, as filed. The Commission approves the purposes of the issuance and the steps taken to ensure the issuance will be made in accordance with law.

Dated on July 26, 2023.

Alberta Utilities Commission

(original signed by)

Vincent Kostas
Acting Commission Member

Appendix 1 – Proceeding participants

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

Alberta Utilities Commission
Commission panel V. Kostaskey, Acting Commission Member
Commission staff F. Alonso E. Davis J. Schimke