

US Department of Energy

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF ENERGY FEB 29 2016
OFFICE OF ELECTRIC DELIVERY AND ENERGY RELIABILITY

Electricity Delivery and
Energy Reliability
OE Docket No. EA-216-D

TransAlta Energy Marketing (U.S.) Inc.

**APPLICATION OF TRANSALTA ENERGY MARKETING (U.S.) INC.
FOR RENEWAL OF AUTHORIZATION
TO TRANSMIT ELECTRIC ENERGY TO CANADA**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e) (2006), and Part 205, Subpart W of the U.S. Department of Energy's regulations, 10 C.F.R. § 205.300, et seq. (2010), TransAlta Energy Marketing (U.S.) Inc. ("TEMUS" or "Applicant") hereby requests renewal of its authorization to transmit electric energy from the United States to Canada for a period of five years. In support of this Application, TEMUS respectfully states as follows:

**I.
DESCRIPTION OF THE APPLICANT**

The exact legal name of the Applicant is TransAlta Energy Marketing (U.S.) Inc. TEMUS is a Delaware corporation with its principal place of business at 913 Big Hanaford Road, Centralia, Washington 98531-9111, and is currently authorized to do business in Washington, Delaware, Oregon, New York, Maryland, and the District of Columbia.

On August 31, 1999, DOE issued Order No. EA 216 authorizing TEMUS to transmit electric energy from the United States to Canada as a power marketer.¹ In

¹ *TransAlta Energy Marketing (U.S.) Inc.*, No. EA-216 (August 31, 1999).

2001, 2006, and 2011 in Order Nos. EA-216-A,² EA-216-B,³ and EA-216-C,⁴ DOE renewed the TEMUS authorization to export electric energy to Canada for five-year terms. TEMUS' current authorization to export electric energy to Canada expires on May 17, 2016.

TEMUS is a power marketer with authorization from the Federal Energy Regulatory Commission ("FERC") to market electric energy and capacity at wholesale pursuant to market-based rate authorization granted by letter order issued on June 25, 1998, in FERC Docket No. ER98-3184-000. TEMUS is an indirect subsidiary of TransAlta Corporation ("TAC"), a publicly traded Canadian corporation with headquarters in Calgary, Alberta.

TAC owns a 100% interest in TransAlta Energy Marketing Corporation, which was granted market-based rate authority by FERC on April 30, 2009, in FERC Docket No. ER09-884-000.

TAC indirectly owns a 100% interest in TransAlta Centralia Generation LLC ("TCG"), a Washington limited liability company with offices in Centralia, Washington. TCG is an exempt wholesale generator ("EWG") pursuant to a letter order issued by FERC on February 25, 2000, in FERC Docket No. EG00-49-000, and TCG holds market-based rate sales authority as granted December 16, 1999 in FERC Docket No. ER00-494-000.

² *TransAlta Energy Marketing (U S.) Inc.*, No. EA-216-A (August 16, 2001).

³ *TransAlta Energy Marketing (U S.) Inc.*, No. EA-216-B (May 17, 2006).

⁴ *TransAlta Energy Marketing (U S.) Inc.*, No. EA-216-C (May 17, 2011) ("Order No. EA-216-C").

In addition, TAC indirectly holds a 100% interest in TransAlta Wyoming Wind LLC ("TWW"), a Delaware limited liability company. TWW is an EWG pursuant to a letter order issued by FERC on August 5, 2003, in FERC Docket No. EG03-75-000,⁵ and TWW holds market-based rate sales authority originally granted on September 10, 2003 in Docket No. ER03-1025.⁶

TAC also indirectly holds a 100% interest in Lakeswind Power Partners, LLC ("Lakeswind"), a wind-powered electric generating project located in Clay, Becker and Otter Tail Counties, Minnesota. Lakeswind is an EWG pursuant to a letter order issued by FERC on January 9, 2014 in FERC Docket No. EG14-12-000,⁷ and was granted market-based rate authorization by FERC on November 4, 2013 in Docket No. ER13-2386-000.⁸

Further, TAC indirectly holds a 100% interest in Skookumchuck Dam, LLC, a Washington limited liability company with a 1 MW hydroelectric facility located in the vicinity of Centralia, Washington. Skookumchuck Dam is self-certified as a Qualifying Facility in FERC Docket No. QF05-1-000.

⁵ See *FPL Energy Wyoming, LLC*, 104 FERC ¶ 62,088 (2003) (granting EWG status to TWW's predecessor, FPL Energy Wyoming, LLC).

⁶ See *FPL Energy Wyoming, LLC*, Docket Nos. ER03-1025-000 and ER03-1025-001 (Sept. 10, 2003) (letter order granting MBR authority to TWW's predecessor, FPL Energy Wyoming, LLC). On January 8, 2014, as amended on January 31, 2014, TWW filed a revised market-based rate tariff reflecting the name change of FPL Energy Wyoming, LLC to TransAlta Wyoming Wind LLC. On March 27, 2014, FERC issued a letter order accepting the notice of succession and tariff revisions. TransAlta Wyoming Wind LLC, Docket Nos. ER14-963-000 and ER14-963-001 (Mar. 27, 2014) (letter order accepting notice of succession and tariff revisions).

⁷ See *Burgess Biopower LLC, et al.*, Docket Nos. EG14-1-000, *et al.* (Jan. 9, 2014) (unpublished blanket letter order providing notice of effectiveness of EWG status for Lakeswind in Docket No. EG14-12-000).

⁸ *Lakeswind Power Partners, LLC*, ER13-2386-000 (Nov. 4, 2013) (unpublished letter order granting market-based rate authority).

None of TEMUS' affiliates currently holds or is seeking authorization to export electricity to Canada.

II. **COMMUNICATIONS**

Communications regarding this application should be addressed to the following:

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III. **JURISDICTION**

The authority requested of DOE by TEMUS is a necessary condition for exporting under section 202(e) of the FPA.

TEMUS has obtained or will obtain any and all necessary Canadian federal and provincial authorizations to effect any proposed export that involves electricity sourced in Canada. No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this Application.

IV. RENEWAL AUTHORIZATIONS AND TECHNICAL DISCUSSION

By this Application, TEMUS seeks authorization to continue to transmit electric energy, on either a firm or interruptible basis, to Canada. TEMUS desires to continue its exports of electrical energy acquired from U.S. generating sources to Canada over international electric transmission facilities. The Presidential Permits under which the relevant border facilities were constructed and maintained, and details related thereto, are set forth in Appendix C.

Pursuant to Section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the U.S. electric system. DOE approves an application to export electricity unless it finds that "the proposed transmission would impair the sufficiency of electric supply within the United States," or that "the proposed transmission ... would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824(e). In applying these two criteria to requests for export authorizations submitted by electric power marketers such as TEMUS, DOE has declined to follow a rigid application of the information filing requirements set forth in DOE's regulations and instead has used a flexible approach to account for the unique nature of power marketers.⁹

TEMUS does not own any electric generation or transmission facilities and, as a power marketer, does not hold a franchise or service territory or native load obligation.

⁹ See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

Moreover, none of TEMUS' affiliates owns any electric transmission facilities other than generator interconnection facilities and TEMUS is not affiliated with an entity that holds a franchise or service territory. Thus, TEMUS has no "transmission system" of its own on which power exports could have a reliability or stability impact.

Specifically, with respect to the first criterion used to analyze applications to export electricity, TEMUS is a power marketer that will export electricity purchased from electric utilities, federal power marketing agencies, qualifying cogeneration and small power production facilities, independent power producers, and other sellers. As DOE has recognized, the "power purchased by a power marketer is, by definition, surplus to the needs of the selling entities" and "[w]ith no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export."¹⁰ Thus, an export of electricity "occurring under such circumstances" would not impair the sufficiency of electric supply within the U.S.¹¹

DOE has interpreted the second criterion used to analyze applications to export electricity "primarily as an issue of the operational reliability of the domestic electric transmission system."¹² As noted above, TEMUS does not own or control any electric power supply system in the United States. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity necessary to export electricity under the authorization requested herein, TEMUS will comply with existing industry procedures for obtaining transmission capacity, including reserving

¹⁰ Order No. EA-216-C at 2.

¹¹ *Id.*

¹² *Id.*

transmission service in accordance with FERC's Open-Access Same-Time Information System ("OASIS") and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) or Independent System Operator(s) and/or Balancing Authority areas.

TEMUS will schedule its exports from the U.S. in compliance with all applicable reliability criteria, standards and guides as are set out by the North American Electricity Reliability Corporation ("NERC") (or any successor organization), the North American Energy Standards Board (or any successor organization) and regional reliability councils and as applied by U.S. transmission providers.

V. CONSISTENCY WITH LAWS

Authorization of the exports proposed by TEMUS is consistent with NAFTA and U.S. energy policy and will foster development of a more efficient and competitive North American energy market. TEMUS will conduct all operations pursuant to this Authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder, and in conformity with the reliability criteria, standards and guidelines of the NERC, regional reliability councils, and Balancing Authorities, including any applicable regional transmission organizations or independent system operators. Compliance with these statutes, rules, regulations, and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operation.

TEMUS believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Application and that DOE's approval of this Application is eligible for categorical exclusion under

Appendix B to Subpart D, paragraph B4.2 of the revised DOE regulations implementing the National Environmental Policy Act of 1969.

VI. PROCEDURAL ISSUES

If required by DOE, TEMUS agrees to abide by general conditions consistent with those set forth in TEMUS' existing DOE electricity export authorizations, as applicable.¹³ TEMUS respectfully submits that it satisfies the requirements of Section 202(e) of the FPA and Part 205, Subpart W of DOE's regulations applicable to applications for authorization to transmit electric energy from the United States to Canada. TEMUS respectfully requests waiver of the requirement to file this application six months in advance of the authorization requested herein to allow issuance of an order renewing TEMUS' authorization to transmit electric energy to Canada on or before May 17, 2016, when TEMUS' current authorization expires. TEMUS also requests any additional waivers deemed necessary for DOE to issue the order requested herein.

VII. EXHIBITS

The following exhibits identified in the DOE's regulations are attached hereto as follows:

Exhibit A: Agreements

(Not Applicable)

Exhibit B: Legal Opinion of TEMUS' Counsel

Exhibit C: Transmission system information (submitted in lieu of maps)

¹³ *Id.* at 5-13.

Exhibit D: Irrevocable Limited Power of Attorney

(Not Applicable)

Exhibit E: Statement of any Corporate Relationship or Existing Contract which in any way Relates to Control or Fixing of Rates for the Purchase, Sale or Transmission of Electric Energy

(Not Applicable)

Exhibit F: Operating Procedures Regarding Available Capacity and Energy

(Not Applicable)

Exhibit G: Verification

To the extent necessary, TEMUS requests a waiver of the requirement to provide the exhibits that are not applicable to this application, as noted above.

VIII. **CONCLUSION**

For the foregoing reasons, TEMUS respectfully requests that the Department of Energy issue an order renewing TEMUS' authorization to transmit electric energy to Canada for a period of five years, effective upon issuance of the order but no later than May 17, 2016.

Respectfully submitted,
/s/ Catherine P. McCarthy

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February 29, 2016

EXHIBIT B

Opinion of Legal Counsel

February 29, 2016

Mr. Christopher Lawrence
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Application by TransAlta Energy Marketing (U.S.) Inc. for Authorization to
Transmit Electric Energy to Canada

Dear Mr. Lawrence:

We have acted as special counsel to TransAlta Energy Marketing (U.S.) Inc., a Delaware corporation (the "Company"), in connection with the Company's February 29, 2016 application to the United States Department of Energy for renewal of its authorization to transmit electric energy to Canada (the "Application"), which was originally granted in Order No. EA-216 and renewed by Order Nos. EA-216-A, EA-216-B, and EA-216-C. We are providing this opinion pursuant to 10 C.F.R. § 205.303(b).

In our capacity as counsel to the Company, and for purposes of rendering the opinions set forth in this letter, we have examined the following documents (the "Documents"):

1. a copy of the Certificate of Incorporation of the Company, as amended through and including the date hereof, certified by the Secretary of State of the State of Delaware on February 24, 2016;
2. an undated copy of the Bylaws of the Company, as amended through and including the date hereof, certified to us by an officer of the Company as being complete and correct and in full force and effect on the date hereof;
3. a good standing certificate for the Company, dated February 24, 2016, issued by the Office of the Secretary of State, State of Delaware;
4. the Application (including the Verification) by the Company dated February 25, 2016.

The Documents specified in clauses 1 through 3 above are referred to herein

collectively as the "Certified Organizational Documents".

We have assumed the genuineness of all signatures and the authenticity, accuracy and completeness of all Documents submitted to us as originals, and that such Documents have not been amended or modified. We have also assumed that and Documents submitted to us as copies conform to the originals of such Documents and we have assumed the authenticity of all such Documents. We note that we have undertaken no investigation or verification of any of the matters set forth herein beyond obtaining and examining such Documents and that we have not been hired by the Company to undertake any further investigations or verification in regard to the Application or the opinions or statements set forth in this letter.

Based solely upon, subject to, and in reliance upon the foregoing and the additional assumptions, qualifications, limitations and exceptions set forth below, we are of the opinion that, as of the date hereof:

1. The Company is validly existing and in good standing as a corporation.
2. The Company has the corporate power and authority to execute and deliver the Application and to export electric energy as proposed in the Application.

In addition to the assumptions, qualifications, limitations and exceptions set forth above, the opinions set forth in this letter are also subject to the following assumptions, qualifications, limitations and exceptions:

- (i) we have assumed that all statements of fact contained in the Documents are true, correct and complete;
- (ii) we have assumed that each natural person executing any of the Documents is legally competent to do so;
- (iii) we have assumed that there are no oral or written modifications of or amendments to any of the Documents and there has been no waiver of any provisions thereof, by actions or conduct of the parties or otherwise;
- (iv) in connection with the opinions expressed in opinion paragraph 1 above, we have relied upon and such opinion is limited solely to the Certified Organizational Documents.
- (v) we express no opinion as to any laws other than the Delaware General Corporation Law, as currently in effect in the State of Delaware;
- (vi) this Firm is not licensed to practice law in the State of Delaware, but this firm has researched issues as they pertain to the Delaware General Corporation Law, as currently in effect in the State of Delaware, and the opinions expressed herein; and
- (vii) we have assumed that it is lawful for the Company to export electric energy as proposed in the Application.

We assume no obligation to supplement this opinion if any applicable laws change after the date hereof or if we become aware of any facts that might change the opinions expressed herein after the date hereof.

We have been engaged by the Company to represent it solely for purposes of rendering the opinions expressed in this letter, but we caution you that we are not the sole outside counsel to the Company or its affiliates. Our representation of the Company is limited to certain specified discrete matters selected by them. The Company and its affiliates have in the past used, and to our knowledge continue to use, other law firms to represent them in connection with other matters, including without limitation, litigation, corporate, securities and regulatory matters. Accordingly, the scope of this opinion is limited to the matters addressed herein. No inference with regard to other matters should be drawn from our representation of the Company or its affiliates for purposes of rendering the opinions expressed in this letter.

Our opinions are limited in all respects to Applicable Laws. This opinion letter shall be interpreted in accordance with the customary practice of United States lawyers who regularly give opinions in transactions of this type, and United States lawyers who regularly advise opinion recipients regarding such opinions.

The opinions expressed in this letter are solely for the use of the Office of Electricity Delivery and Energy Reliability at the Department of Energy, and these opinions may not be relied on by any other persons or entities or used, copied or otherwise published or disseminated for any other purpose without our prior written approval. The opinions expressed in this letter are limited to the matters set forth in this letter, and no other opinions should be inferred beyond the matters expressly stated. The foregoing opinions are legal opinions only and do not constitute a guaranty or warranty of the matters discussed therein.

Very truly yours,

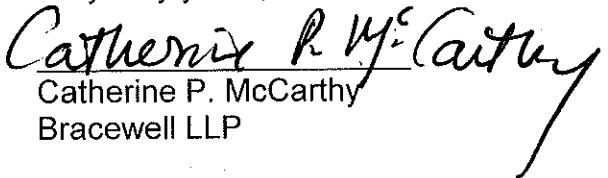

Catherine P. McCarthy
Bracewell LLP

EXHIBIT C

Transmission System Information

International Electric Transmission Facilities for TEMUS Exports to Canada

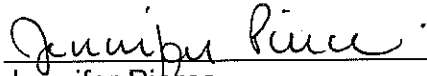
Present Owner	Location	Voltage	Presidential Permit No.
Bangor Hydro-Electric Company	Baileyville, ME	345-kV	PP-89
Basin Electric Power Cooperative	Tioga, ND	230-kV	PP-64
Bonneville Power Administration	Blaine, WA Nelway, WA Nelway, WA	2-500-kV 230-kV 230-kV	PP-10 PP-36 PP-46
Eastern Maine Electric Cooperative	Calais, ME	69-kV	PP-32
International Transmission Company	Detroit, MI Marysville, MI St. Claire, MI St. Claire, MI	230-kV 230-kV 230-kV 345-kV	PP-230 PP-230 PP-230 PP-230
Joint Owners of the Highgate Project	Highgate, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME Fort Fairfield, ME Madawaska, ME Aroostook, ME	69-kV 69-kV 138-kV 2-69-kV	PP-12 PP-12 PP-29 PP-29
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230-kV	PP-61
Montana Alberta Tie Ltd.	Cut Bank, MT	230-kV	PP-305
New York Power Authority	Massena, NY Massena, NY Niagara Falls, NY Devils Hole, NY	765-kV 2-230-kV 2-345-kV 230-kV	PP-56 PP-25 PP-74 PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND Roseau County, MN Rugby, ND	230-kV 500-kV 230-kV	PP-45 PP-63 PP-231
Sea Breeze Olympic Converter LP	Port Angeles, WA	± 450-kV DC	PP-299
Vermont Electric Power Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	± 450-kV DC	PP-76

EXHIBIT G

Verification

VERIFICATION OF APPLICATION

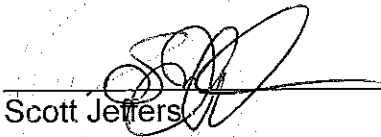
I, Jennifer Pierce, having knowledge of the matters set forth in the above Application of TransAlta Energy Marketing (U.S.) Inc. for Renewal of Authorization to Transmit Electric Energy to Canada, hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.



Jennifer Pierce

Senior Vice President, Trading & Marketing

SUBSCRIBED AND SWORN before me, a notary public in and for the Province of Alberta, this 26 day of February 2016.



Scott Jeffers

My Commission does not expire.

Scott T. Jeffers
Barrister & Solicitor