



Énergie NB Power

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SENT BY COURIER AND E-MAIL

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Attention: Financial and Consumer Services Commission (New Brunswick)

To Whom It May Concern:

RE: CSA Staff Notice 91-303 Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives (the "Model Rule")

New Brunswick Power Corporation "NB Power" would like to thank the Canadian Securities Administrators OTC Derivatives Committee for the opportunity to provide written feedback on the Model Rule.

NB Power is supportive of the efforts to introduce appropriate and effective regulatory oversight of derivatives and derivatives market activities. At the same time, we have identified areas of the Model Rule which we felt it appropriate to comment on, as follows.

1. Section 11 Non Application

It appears that the intent of section 11 is to grant immunity from the Model Rule to governments and government-related entities. With respect to government-related entities, however, the immunity is only granted to those whose obligations are guaranteed by government. This section fails, however, to address government-related entities that are also agents of the Crown, such as New Brunswick Power Corporation.

NB Power is of the view that government-related entities that are also agents of the Crown should be granted the same immunity through section 11 as government. Agents of the Crown have the ability to bind the Crown to any obligations they enter into. As such, same are effectively obligations of the government.

In light of the foregoing, NB Power suggests that section 11 be redrafted as follows:

Non-Application

11. Section 4 does not apply to a transaction if one of the counterparties is:

- (a) the government of Canada, a government of a province or territory of Canada or an agent of the crown, or
- (b) a crown corporation or an entity wholly owned by the federal or provincial government whose obligations are guaranteed by the federal or provincial government.

2. Subsection 7(1) End-User Exemption

NB Power notes and appreciates the comments in CSA Staff Notice 91-303 to the effect that this subsection seeks to exempt from mandatory central counterparty clearing requirements any end-user which is not a "financial entity" and that is entering into a derivative transaction to hedge or mitigate commercial risk related to the operation of its business.

NB Power's concerns with subsection 7(1) are as follows:

- Is the end-user exemption subject to the approval of the Director under section 17 of the Model Rules or is an entity able to self-exempt on the basis that it is not a financial entity and is undertaking transactions to hedge or mitigate risk?
- If self-exemption is permitted and the Model Rules are modified to make it clear that this is permitted, NB Power is in agreement with the requirements of this subsection.
- If, however, approval under section 17 is contemplated under the Model Rules, not only does this need to be clarified, but also, NB Power has some concern as to the practical impacts of such an approach. As currently drafted, subsection 7(1) requires that an exemption be sought for each individual transaction. This would be particularly onerous for entities such as NB Power that have a high volume of transactions.

We wish to thank you for the opportunity to provide this input and are available to provide clarification on these positions and/or meet to discuss at your convenience.

Yours truly,



JONATHAN DOBSON

Director of Enterprise Risk & Treasury Management

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