



ORDER NUMBER
G-357-23

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

TransAlta Corporation, Energy Capital Partners III, LLC and Heartland Generation Ltd.
Continuing Exemption under Section 88 of the *Utilities Commission Act*

BEFORE:

B. A. Magnan, Panel Chair
E. A. Brown, Commissioner

on December 20, 2023

ORDER

WHEREAS:

- A. On November 8, 2023, TransAlta Corporation (TransAlta), Energy Capital Partners III, LLC (ECP), and Heartland Generation Ltd. (Heartland) filed an application with the British Columbia Utilities Commission (BCUC), pursuant to section 99 of the *Utilities Commission Act* (UCA), for continued exemption from Part 3 of the UCA (Application);
- B. TransAlta intends to purchase from Heartland Lower Holdings I, LP (HLH), an entity indirectly owned by ECP, its indirect interest in Heartland;
- C. Heartland currently holds a 50 percent interest in the McMahon Cogeneration Plant (the Project) located in Taylor, British Columbia;
- D. The remaining 50 percent interest in the Project is held by McMahon Power Holding Limited Partnership (MPHLP), which is owned by NorthRiver Midstream Inc. (NRMI);
- E. TransAlta, Heartland, and HLH entered into a Share Purchase Agreement (SPA), effective November 1, 2023, whereby TransAlta agreed to acquire 100 percent of HLH's indirect interest in Heartland and thereby Heartland's 50 percent ownership interest in the Project;
- F. Immediately following the closing of the SPA, Heartland would become a wholly-owned subsidiary of TransAlta;
- G. MPHLP and Heartland (the successor in interest of ATCO Power Canada Ltd., or APCAN) are presently exempt from Part 3 of the UCA to the extent that those provisions would apply by reason of each party's ownership and operation of the Project;
- H. On July 10, 1991, the BCUC issued Order G-58-91 pursuant to Order in Council 975, 1991, exempting Westcoast Power Inc. and CU Power Canada Limited from the application of provisions of Part 3 of the UCA to the extent those provisions would apply by reason of their ownership and operation of the Project (Original Exemption);
- I. The Original Exemption was subsequently varied by BCUC Orders G-58-02, G-68-02, G-135-19, and G-230-19 to continue the exemption following changes in the direct and indirect ownership of the Project;

- J. Order G-230-19 specifies that MPHLP, APCAN, and each of their respective successors in interest to the Project (provided that at all times the ownership interests of such successors in interest are held directly or indirectly by NorthRiver Midstream Holdings Inc. or ECP) are exempted from the application of the provisions of Part 3 of the UCA to the extent that those provisions would apply by reason of their ownership and operation of the Project;
- K. Following TransAlta's acquisition of HLH's indirect ownership interests in Heartland, an order is required to continue to exempt the Project from the application of Part 3 of the UCA as the transaction will ultimately transfer ownership of the Project from the current owners of Heartland to TransAlta, and the Project may be the subject of future restructuring while remaining under the indirect control of TransAlta;
- L. Section 88(3) of the UCA provides that the BCUC may grant an exemption from the UCA with the advance approval of the minister responsible for the administration of *the Hydro and Power Authority Act*, and section 99 of the UCA provides that the BCUC may reconsider, vary, or rescind an order made by it;
- M. By Ministerial Order M428 dated December 18, 2023, attached as Appendix A to this order, the Minister responsible for the administration of *the Hydro and Power Authority Act* granted advance approval to the BCUC to vary the existing exemption order in relation to the Project; and
- N. The BCUC has reviewed the Application and determines approval is warranted.

NOW THEREFORE pursuant to sections 88(3) and 99 of the UCA, the BCUC orders as follows:

1. The BCUC, having been granted advance approval by the Minister responsible for the administration of the *Hydro and Power Authority Act* varies and replaces the operative clause on page 2 of Order G-58-91 as follows:
 - MPHLP, Heartland, and each of their respective successors in interest to the Project (provided that at all times the ownership interests of such successors in interest are held directly or indirectly by NRMI or TransAlta) are exempt from the application of the provisions of Part 3 of the UCA to the extent that those provisions would apply by reason of their ownership and operation of the Project.
2. This order will become effective on the closing date of the SPA in which TransAlta will acquire 100 percent of HLH's indirect ownership in Heartland.
3. The applicants (Heartland, ECP, and TransAlta) are directed to provide notice in writing to the BCUC that the SPA has closed, no later than five business days after the closing occurs.
4. TransAlta, Heartland, and their respective successors in interest to the Project must notify the BCUC in writing within 90 days of any subsequent changes to their direct and or indirect interest in the Project to which the exemption under this order applies.
5. The exemption referred to in Directive 1 of this order remains in effect until the BCUC orders that the exemption no longer applies.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of December 2023.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE MINISTER OF ENERGY, MINES
AND LOW CARBON INNOVATION

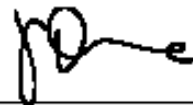
Utilities Commission Act

Ministerial Order No. M428

I, Josie Osborne, Minister of Energy, Mines and Low Carbon Innovation, order that pursuant to section 88(3) of the *Utilities Commission Act*, approval is given to the British Columbia Utilities Commission to vary the existing exemption order from the provisions of the *Utilities Commission Act* in relation to the to the McMahon Cogeneration Plant, as set out in the attached draft order of the British Columbia Utilities Commission.

December 18, 2023

Date



*Minister of Energy, Mines and
Low Carbon Innovation*

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Utilities Commission Act, R.S.B.C. 1996, s. 88(3)

Other: _____

APPENDIX B



bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER
G-xx-23

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

TransAlta Corporation, Energy Capital Partners III, LLC and Heartland Generation Ltd.
Continuing Exemption under Section 88 of the *Utilities Commission Act*

BEFORE:

B. A. Magnan, Panel Chair
E. A. Brown, Commissioner

on [date]

ORDER

WHEREAS:

- A. On November 8, 2023, TransAlta Corporation (TransAlta), Energy Capital Partners III, LLC (ECP), and Heartland Generation Ltd. (Heartland) filed an application with the British Columbia Utilities Commission (BCUC), pursuant to section 99 of the *Utilities Commission Act* (UCA), for continued exemption from Part 3 of the UCA (Application);
- B. TransAlta intends to purchase from Heartland Lower Holdings I, LP (HLH), an entity indirectly owned by ECP, its indirect interest in Heartland;
- C. Heartland currently holds a 50 percent interest in the McMahon Cogeneration Plant (the Project) located in Taylor, British Columbia;
- D. The remaining 50 percent interest in the Project is held by McMahon Power Holding Limited Partnership (MPHLP), which is owned by NorthRiver Midstream Inc. (NRM);
- E. TransAlta, Heartland, and HLH entered into a Share Purchase Agreement (SPA), effective November 1, 2023, whereby TransAlta agreed to acquire 100 percent of HLH's indirect interest in Heartland and thereby Heartland's 50 percent ownership interest in the Project;
- F. Immediately following the closing of the SPA, Heartland would become a wholly-owned subsidiary of TransAlta;
- G. MPHLP and Heartland (the successor in interest of ATCO Power Canada Ltd., or APCAN) are presently exempt from Part 3 of the UCA to the extent that those provisions would apply by reason of each party's ownership and operation of the Project;
- H. On July 10, 1991, the BCUC issued Order G-58-91 pursuant to Order in Council 975, 1991, exempting Westcoast Power Inc. and CU Power Canada Limited from the application of provisions of Part 3 of the UCA to the extent those provisions would apply by reason of their ownership and operation of the Project (Original Exemption);

Order G-xx-23

- I. The Original Exemption was subsequently varied by BCUC Orders G-58-02, G-68-02, G-135-19, and G-230-19 to continue the exemption following changes in the direct and indirect ownership of the Project;
- J. Order G-230-19 specifies that MPHLP, APCAN, and each of their respective successors in interest to the Project (provided that at all times the ownership interests of such successors in interest are held directly or indirectly by NorthRiver Midstream Holdings Inc. or ECP) are exempted from the application of the provisions of Part 3 of the UCA to the extent that those provisions would apply by reason of their ownership and operation of the Project;
- K. Following TransAlta's acquisition of HLH's indirect ownership interests in Heartland, an order is required to continue to exempt the Project from the application of Part 3 of the UCA as the transaction will ultimately transfer ownership of the Project from the current owners of Heartland to TransAlta, and the Project may be the subject of future restructuring while remaining under the indirect control of TransAlta;
- L. Section 88(3) of the UCA provides that the BCUC may grant an exemption from the UCA with the advance approval of the minister responsible for the administration of the Hydro and Power Authority Act, and section 99 of the UCA provides that the BCUC may reconsider, vary, or rescind an order made by it; and
- M. The BCUC has reviewed the Application and determines approval is warranted.

NOW THEREFORE pursuant to sections 88(3) and 99 of the UCA, the BCUC orders as follows:

1. The BCUC, having been granted advance approval by the Minister responsible for the administration of the *Hydro and Power Authority Act* varies and replaces the operative clause on page 2 of Order G-58-91 as follows:
 - MPHLP, Heartland, and each of their respective successors in interest to the Project (provided that at all times the ownership interests of such successors in interest are held directly or indirectly by NRMI or TransAlta) are exempt from the application of the provisions of Part 3 of the UCA to the extent that those provisions would apply by reason of their ownership and operation of the Project.
2. This order will become effective on the closing date of the SPA in which TransAlta will acquire 100 percent of HLH's indirect ownership in Heartland.
3. The applicants (Heartland, ECP, and TransAlta) are directed to provide notice in writing to the BCUC that the SPA has closed, no later than five business days after the closing occurs.
4. TransAlta, Heartland, and their respective successors in interest to the Project must notify the BCUC in writing within 90 days of any subsequent changes to their direct and or indirect interest in the Project to which the exemption under this order applies.
5. The exemption referred to in Directive 1 of this order remains in effect until the BCUC orders that the exemption no longer applies.

DATED at the City of Vancouver, in the Province of British Columbia, this [XX] day of [Month Year].

BY ORDER

B. A. Magnan
Commissioner