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VIA electronic submission

Ms. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marches financiers

Mr. John Stevenson
Secretary
Ontario Securities Commission

Re: CSA Staff Notice 91-303 – Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives

Dear Mesdames/Sirs:

Just Energy Group Inc. ("Just Energy"), on behalf of itself and its subsidiaries, welcomes this opportunity to submit comments to the Canadian Securities Administrators Derivatives Committee (the "Committee") on CSA Staff Notice 91-303 – *Proposed Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives* and the related explanatory guidance published on December 19, 2013 (together, the "Proposed Model Rule").

Just Energy

Just Energy, through its subsidiaries, is a leading independent supplier of electricity and natural gas to residential and small- to mid-size commercial consumers in Canada, the United States and the United Kingdom. In Canada, the Just Energy family of companies provides electricity in Alberta and Ontario and offers natural gas in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. Just Energy is also one of the largest competitive green energy retailers in North America.

To meet its delivery obligations to its Canadian customers, Just Energy purchases power and natural gas on a wholesale basis. Just Energy also periodically sells power and natural gas back into the wholesale markets when it has more supply than is needed to meet its customers' demands.

Just Energy provides power and natural gas to residential and commercial consumers under long-term fixed-price or price-protected contracts. The provision of such services is subject to Provincial utility regulations in each of the provinces in which Just Energy conducts its business.

In Ontario, these include the Market Rules for the Ontario Electricity Market and the Gas Distribution Access Rules. Just Energy is subject to supervision by the Ontario Energy Board, the Ontario Power Authority and the Independent Electricity System Operator. In the case of retail customers, it is also subject to applicable consumer protection laws.

The derivatives activities that Just Energy undertakes serve only to hedge its obligations to its customers. In particular, in an environment of variable market prices, it needs to balance the cost of its delivery obligations on its supply contracts with the cost of its customer delivery obligations.

The markets in which Just Energy operates are highly competitive. There are at least ten other companies in Ontario in each of the electricity and natural gas sectors with whom we compete for customers.

The Committee has requested specific feedback on Subsection 7(1) of the Proposed Model Rule. This contemplates an exemption from mandatory central counterparty clearing for end-users that are non-financial entities and that are entering into derivatives transactions to hedge or mitigate commercial risks related to the operation of their businesses.

Just Energy has several comments on the proposal.

AVAILABILITY OF END-USER EXEMPTION

Just Energy welcomes the exemption from mandatory clearing offered to end-users in Subsection 7(1) of the Proposed Model Rule but believes that further clarification of its availability is required.

Insofar as certain supply contracts with Just Energy's customers might be characterized as "derivatives" for purposes of the Proposed Model Rule[1], we expect that the customers concerned would not be "financial entities" within the meaning of that term in the Proposed Model Rule and would be entering into such transactions to hedge or mitigate commercial risk related to the operation of their businesses. Accordingly, no clearing requirement would apply.

However, insofar as a transaction between Just Energy (or an affiliate) and a financial entity counterparty is concerned, it is unclear whether the transaction would be able to benefit from the exemptions in Subsection 7(1) or 7(2).

Clause (f) of Section 1 of the Proposed Model Rule includes as a "financial entity" any person or company subject to a registration requirement, registered or exempted, under the securities legislation of a jurisdiction of Canada.

[1] For example, indexed supply contracts.

It appears that the reference to "securities legislation" is meant to encompass rules relating to the regulation of OTC derivatives and so would include registration as a derivatives dealer, derivatives adviser or large derivative participant, pursuant to the registration regime to be established as contemplated by Consultation Paper 91-407.

If Just Energy or its affiliates are subject to registration, mandatory clearing would be imposed on all of its transactions with other entities that are financial entities, even though all of these transactions would operate to hedge or mitigate the commercial risk Just Energy faces in its core electricity and gas supply business.

We understand that the primary purpose of mandatory clearing is to ensure the resilience and stability of the financial system and to reduce systemic risk. It appears that most of this risk resides in the large volume of inter-bank transactions. Leaving aside the constitutional issues the Proposed Model Rule raises in imposing mandatory clearing requirements on Canadian banks, we question the potential characterization of Just Energy as a "financial entity" and, implicitly, as a systemically important participant in the Canadian derivatives which should be subject to clearing requirements.

In this regard, we also wish to reiterate the comments made in our letter of June 17, 2013 regarding the potential application of registration requirements to Just Energy and its affiliates.

In particular:

- Just Energy is not in the business of trading derivatives, it is in the business of selling electricity and natural gas to consumers;
- It is not and does not hold itself out as a broker or market-maker;
- While it may intermediate supply to its retail customers from wholesalers, this is due to the design of the energy supply system in Canada; and
- While Just Energy seeks to profit from buying aggregated volume of a commodity at market and retailing it to its customers, this is functionally different from charging a broker fee or seeking to capture a spread by intermediating countervailing transactions.

As noted in our previous comment letter, we believe that the imposition of registration requirements on Just Energy or its affiliates, whether as a dealer, adviser or large derivative participant, would reflect a misunderstanding of the nature of its business activities and its relationship with its customers and is not warranted by either public interest concerns or Canada's G-20 commitments. Just Energy is already subject to regulatory regimes and laws designed to ensure both an orderly market in the commodities it sells and appropriate protection for consumers. The imposition of a further layer of regulatory requirements based on a perceived analogy between Just Energy's activities and those of a securities dealer or securities adviser or concerns that such activities might pose serious systemic risk to the Canadian financial markets are, in our view, not justified and would impose onerous and unnecessary regulatory burdens on Just Energy's business. The costs of compliance with these regulatory burdens would also be passed on to our customers.

The imposition of registration requirements on Just Energy (and, consequently, mandatory clearing requirements) would also mark a significant departure from the position taken by US regulators, who designate as "end-users", rather than as potential registrants, entities who, among other things, engage in derivatives trading to hedge or mitigate commercial risk. In this regard, we believe that the proposed registration regulation should be revised to make it clear that entities such as Just Energy are to be properly regarded as "end-users" rather than as potential registrants.

Accordingly, Just Energy believes that further clarity and refinement of the registration requirements, in particular as they relate to mandatory clearing, are required to avoid unintended consequences with respect to the derivatives activities of entities such as Just Energy and its affiliates.

HEDGING OR MITIGATING COMMERCIAL RISK

The availability of the exemption in Subsection 7(1) is premised upon the transaction being entered into to hedge or mitigate commercial risks related to the operation of an entity's business but clause 3(b)(ii) of the Proposed Model Rule indicates that it will not be available to offset or reduce the risk of another derivative transaction unless that position is itself held for the purpose of hedging or mitigation of commercial risk.

The positions Just Energy holds with its customers (and which are required to be hedged) are not held for the purpose of hedging or mitigating commercial risk – they are the contracts which represent Just Energy's core business.

It is unclear whether some of Just Energy's transactions with its customers might be characterized as derivatives. If they were, it appears that all of Just Energy's transactions with its wholesale counterparties, which clearly serve to hedge or mitigate the commercial risk of Just Energy's contracts with its customers, would be rendered ineligible for the exemption and liable to mandatory central party clearing. This seems contrary to the policy underlying the Proposed Model Rule.

Accordingly, we believe that clause 3(b)(ii) should be modified so that the disqualification applies only where the party concerned is hedging in its capacity as an intermediary or market-maker in derivatives, rather than hedging to mitigate a commercial risk of another kind.

INTERPRETATION OF HEDGE OR MITIGATION OF COMMERCIAL RISK

In the proposed explanatory guidance to the Proposed Model Rule, the Committee outlines its interpretation of the meaning of hedging or mitigating commercial risk and includes a brief discussion of the need for correlation. The Committee states that "[a] counterparty should be able to justify…why they expect the derivatives to qualify as clearly correlated or highly effective…and be able to explain how they will assess effectiveness in the future." The Committee adds that "[c]orrelation should not be understood to be limited to linear correlations,

but rather to encompass a broad range of co-dependence or co-movement in relevant economic variables." The Committee also anticipates that entities needing to rely on the exemption will develop policies and procedures to, among other things, assess the effectiveness of hedging, and how hedge ineffectiveness will be measured and corrected as appropriate.

In our view, this guidance presents a too restrictive account of how market participants hedge their exposure. For example, commercial entities will not always enter into hedges which are correlated to the underlying exposures. In some circumstances, the only hedge available may not be correlated, but is better than no hedge at all. Moreover, the variable being hedged (e.g. weather) may not transpire, which makes measurement of the correlation and ineffectiveness difficult.

In this regard, the extensive comments received in the United States on the CFTC's proposed *Position Limits for Derivatives*[2] and in particular the discussion around "bona fide hedging positions" should be considered. We note it has been recommended that, rather than enacting prescriptive rules which attempt to govern how commercial firms are to measure and mitigate risk to commodity pricing, it would be better to simply allow market participants to evaluate their portfolios and reduce their exposure in accordance with risk management procedures they deem appropriate in their business judgment.[3]

We believe that more flexible guidance is required in respect of what is a very complex area of activity and that an emphasis on the need for correlation will result in unnecessary uncertainty in the application of the Proposed Model Rule.

We also note that the requirement for extensive documentation to support the characterization of transactions as being for hedging purposes (and therefor eligible for exemption) will encounter difficulties similar to those faced in connection with hedge accounting, which is one of the reasons it was largely abandoned by companies that attempted it.

Annual Filing of Form F1 statements

Finally, we question why Form F1 needs to be filed on an annual basis. Section 8(5) requires notification to the applicable local regulator of any change in the information contained in a previously filed Form F1. Accordingly, until withdrawn, the originally filed Form F1 together with any change notifications should be sufficient. The requirement for further annual filings therefore appears redundant.

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[2] http://www.cftc.gov/LawRegulation/DoddFrankAct/Dodd-FrankProposedRules/index.htm.

[3] See, for example, the comment letter dated February 10, 2014, on *Position Limits for Derivatives, RIN 3038A099*, submitted by Sutherland, Asbill & Brennan LLP to the CFTC on behalf of The Commercial Energy Working Group http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59693&SearchText=sutherland; .

Just Energy asks the Committee to reflect on these comments. Please contact us if you have any questions or concerns regarding these comments.

Respectfully submitted,

/s/ Stephanie Bird
Stephanie Bird
SVP, Corporate Risk Officer