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VIA electronic submission

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission

Re: Consultation Paper 91-301: Model Provincial Rules – Derivatives Product Determination and Trade Repositories and Derivatives Data Reporting (the "Consultation Paper")

Just Energy Group Inc. ("Just Energy"), on behalf itself and its subsidiaries, welcomes the opportunity to comment on the Canadian Securities Administrator's Consultation Paper dated December 6, 2012 setting forth the proposals of the CSA Derivatives Committee (the "Committee") for the above-noted model provincial rules (the "Model Rules"). For convenience, we will refer to the Model Provincial Rule – *Derivatives Product Determination* as the **Scope Rule** and the Model Provincial Rule – *Trade Repositories and Derivatives Data Reporting* as the **TR Rule**.

Just Energy, through its subsidiaries, is an independent supplier of electricity and natural gas to residential and commercial consumers in Canada, the United States and England. In Canada, Just Energy markets power in Alberta and Ontario; and natural gas in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. Just Energy is also a retailer of carbon offset credits and renewable energy certificates in North America.

Just Energy provides power and natural gas to residential and commercial consumers under long-term fixed or variable priced contracts. It provides such services pursuant to Provincial utility regulations for the provinces in which it does business. Just Energy is not a traditional utility with a provincially-approved service territory. Instead, it provides approved retail services in competition with utilities as part of individual provincial efforts to open their power and natural gas markets to retail choice.

Just Energy purchases wholesale power and natural gas in order to secure supply to meet its obligations to its customers. Just Energy also periodically sells wholesale power and natural gas back into the wholesale markets in cases where it has more supply than is needed to meet its customers' demands.

Just Energy is a classic end user. While it has personnel that execute transactions, this is solely to meet its core energy supply and delivery needs. Just Energy does not have a trading desk, does not engage in proprietary trading or take speculative positions. However, the various entities within the Just Energy group often engage in back-to-back hedging transactions in the ordinary course of their business.

Just Energy wishes to make the following comments on the Model Rules:

The Scope Rule.

- Just Energy applauds the Committee's clarification in the Model Explanatory Guidance for the Scope Rule with respect to options regarding physical contracts, as the options and embedded options used by Just Energy generally relate to volume and location in order to meet delivery requirements established by the utilities. We note however that the Model Explanatory Guidance for the Scope Rule is silent with respect to transactions to “book out” or balance our purchases. These negotiated transactions allow us to cancel our commitments under physical commodity contracts. Although we have the intent to physically deliver at the time of the purchase of our physical commodity, we are obligated to respond to customer demand and utility requirements, which may require us to balance or “book out” our purchases. *Dodd Frank* recognizes that these book outs do not taint the original intent of the purchase for physical delivery and that the associated book out transactions, whether physical or financial, are exempt from the requirements thereunder.¹ We believe any Scope Rule should have the same exemption.
- In an electricity market such as Ontario, the provincially driven regulatory design seeks to promote competition among suppliers to consumers. However, Just Energy does not have the ability to physically supply electricity to its customers. It instead contracts with its customers to fix the price of their electricity supply and the utility continues to physically deliver electricity from the generator to the customer. Just Energy settles the difference in the fixed price and the floating commodity price with the utility. Just Energy hedges its exposure to this price difference in the financial derivatives markets. Given that these settlement and hedging transactions are related directly to the physical supply of electricity to consumers and arise because of the provincially mandated structure of the market and delivery systems, rather than any intention by Just Energy to avoid physical delivery, we believe that they should be expressly exempted under the Scope Rule in the same manner as “book out” transactions referred to above.
- We note that the Consultation Paper is currently silent with respect to the treatment of environmental or “green” commodities and seek clarification that the retirement of

¹ See CFTC and SEC Joint Final Rule – Further Definitions of “Swap Dealer”, “Security-Based Swap Dealer”, “Major Swap Participant”, “Major Security-Based Swap Participant” and “Eligible Contract Participant” 77 F.R. 48,208 (“Definitions Release”) at pp. 48, 228-48,229

instruments such as a renewable energy certificate or carbon offset credits will be considered physical delivery, as it is under *Dodd Frank*.²

- Many of the contracts that our customers have with Just Energy will be exempt as a result of the specific exclusion under the Model Explanatory Guidance for the Scope Rule of “a consumer contract or instrument to purchase products or services at a fixed, capped or collared price”, however we do have customer contracts where the purchase price is determined by reference to an index or variable rate and seek clarification from the Committee regarding these contracts. We do not believe that it would be in the best interests of consumers to include such contracts as derivatives for purposes of the Model Rules and are of the opinion that they too should be exempt.

The TR Rule

- While, as an end user, Just Energy will likely not be required to report the majority of its hedging transactions with third parties, it will nevertheless be required to develop the infrastructure and procedures necessary to comply with applicable reporting obligations. As the TR Rule is drafted at present, it will require Just Energy to, among other things:
 - identify an appropriate trade repository or securities regulator(s) to report to;
 - monitor the reporting by its counterparties or any delegee and report if they do not, as well as correct any errors or omissions in their reporting;
 - report information “as soon as technologically practicable”; at the latest, the next business day;
 - obtain LEIs and unique transaction identifiers;
 - provide creation and life-cycle data;
 - report valuation data quarterly for uncleared transactions;
 - maintain records and make them accessible for inspection by securities regulators;
 - pay TRs and delegee fees as well as incur the costs of developing the infrastructure and employing the personnel needed to comply with these requirements.

Taken together, these obligations can be quite burdensome. The trading activity engaged in by entities such as Just Energy represents only a small portion of the Canadian derivatives market and poses little, if any, systemic risk. Accordingly, we believe that the Model Rules should be tailored so that the regulatory burdens faced by entities such as Just Energy are more proportionate to the risks their activities pose. These adjustments should include not being required, in effect, to police the reporting activities of counterparties and provide for less frequent reporting. In particular, the requirement for “real time reporting” by end users such as Just Energy should be relaxed as it serves no clearly identified public interest purpose.

² Definitions Release at pp. 48,233-48,235

- At present, the TR Rule does not exempt inter-affiliate transactions from reporting. Since these transactions will “wash out” on any risk analysis, we can see no justification for requiring that they each be reported. Indeed, the application of such requirements to transactions among affiliates appears to defeat any mitigating effect for end users of the reporting hierarchy set out in Section 27 of the TR Rule.³
- We note that the TR Rule as currently drafted could require reporting in Canada of, for example, a transaction between one of our UK subsidiaries and a non-Canadian third party on the basis that our UK subsidiary is a “local counterparty” for purposes of the Canada rules. We are concerned that, unless such trading activity clearly poses systemic risk to the Canadian derivatives markets, this constitutes an unwarranted extra-territorial extension of Canadian regulatory requirements. Moreover, it is possible that the UK subsidiary could be subject to its own reporting obligations under applicable UK law and that these obligations may be inconsistent with those imposed in Canada. Overlapping regulation which requires reporting in multiple jurisdictions, duplicative record keeping and compliance with other possibly conflicting requirements should be avoided. The Committee should give further consideration to the definition of “local counterparty” in the TR Rule to ensure that it only captures those entities whose activities pose genuine systemic risk to Canada.
- It is essential that the reporting regime (both as between different jurisdictions within Canada) and as between Canada and other jurisdictions, be as similar as possible for a variety of reasons, including the avoidance of regulatory arbitrage, conflicts among inconsistent rules and to ensure that the information collected can be easily aggregated by trade repositories in a manner which will in fact be useful to regulators in the performance of their regulatory functions. We are concerned about the potential for variations between reporting obligations arising from the promulgation of separate rules on a province-by-province basis as well as potential inconsistencies with international reporting requirements and standards. Major participants in the global derivatives markets have spent a substantial amount of time and money over the last few years developing systems that will permit them to comply with reporting regimes in, for example, the US and Europe. Inconsistencies between Canadian reporting requirements and global reporting requirements could therefore constitute a substantial disincentive to trading with Canadian counterparties and decrease liquidity in the Canadian markets.
- The Committee has specifically requested comment with respect to the exemption from trade reporting of physical commodity transactions if the local counterparty concerned has less than \$500,000 aggregate notional value, without netting, under all outstanding transactions. We believe that the proposed limit is too low. Indeed, a single physical supply transaction could easily exceed the limit. We note that *Dodd Frank* has used \$8 billion of notional value as a materiality threshold for certain purposes and are of the opinion that further thought must be given by the Committee as to a more appropriate (and much higher) *de minimis* threshold in this context.

³ On reporting of inter-affiliate transactions, see also the earlier comments to the Committee of Shell Energy North America (Canada) Inc. on CP 91-402 (September 12, 2011)

- Just Energy is also of the opinion that there should be clarity that exempted contracts (such as the commitments for delivery of physical commodities identified in Paragraph 2(d) of the Scope Rule) are not considered derivatives for purposes of the calculation of any *de minimis* exemption. Just Energy also notes that there are complications being sorted through currently as to calculations of notional value (particularly for physical and financial basis swaps) under *Dodd Frank* that will need to be considered should the Committee continue with this exemption

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

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