

File No.: 2019-13

IN THE MATTER OF A HEARING UNDER SECTIONS 179 AND 198 OF THE
SECURITIES ACT, R.S.A. 2000, C S.4 AND SECTIONS 104 AND 127 OF THE
SECURITIES ACT, R.S.O. 1990, C S.5

IN THE MATTER OF

MANGROVE PARTNERS

-and-

IN THE MATTER OF

TRANSALTA CORPORATION

NOTICE OF MOTION
(TransAlta Corporation's Motion re Ontario Nexus)

A. ORDER SOUGHT

1. The Moving Party, TransAlta Corporation ("**TransAlta**" or the "**Company**") requests, with notice, that the Ontario Securities Commission (the "**OSC**") make the following Orders:

- (a) an Order declining to assume jurisdiction over the Application of Mangrove Partners ("**Mangrove**") dated April 8, 2019, as amended on April 11, 2019 (as amended, the "**Application**");
- (b) in the alternative, and to the extent necessary, an Order directing a joint hearing in respect of the Application to be heard in Alberta by the Alberta Securities Commission (the "**ASC**") and the OSC;

- (c) such further and other relief as counsel may advise and this Commission may deem just.

B. GROUNDS

2. The grounds for the motion are as follows:

- (a) Mangrove commenced the Application as a joint Application before the OSC and the Alberta Securities Commission (the “**ASC**”);
- (b) the ASC is TransAlta’s principal regulator, and Mangrove has acknowledged that the ASC has the jurisdiction to deal with Mangrove’s complaints, to the extent necessary;
- (c) the ASC is seized of Mangrove’s complaints, and fully capable of considering the complaints and allegations raised in the Application;
- (d) the legal questions at issue in the Application are substantively identical whether considered under the securities law of Alberta or of Ontario;
- (e) there are no compelling grounds for proceeding with the Application on a joint basis before both TransAlta’s principal regulator, the ASC, and an additional regulator;
- (f) the involvement of an additional regulator is entirely duplicative and not an efficient use of resources;

- (g) the facts and allegations underlying the Application lack the substantive and meaningful connection or nexus to Ontario that would justify intervention by the OSC through the assertion of its public interest jurisdiction;
- (h) TransAlta is an Alberta-based company, with a 110 year history of operations in Alberta;
- (i) TransAlta's head office and registered office are located in Calgary, Alberta, and all of its key executives work out of that office – Calgary is the location of TransAlta's directing mind;
- (j) Mangrove's complaints relate to:
 - (i) TransAlta's 2019 annual and special meeting of shareholders (the "**2019 Meeting**"), which will be held on April 26, 2019, at the TELUS Convention Centre in Calgary, Alberta;
 - (ii) the strategic partnership (the "**Brookfield Investment**") between TransAlta and Brookfield Renewable Partners (collectively, with its institutional partners, "**Brookfield**"), including the Investment Agreement between TransAlta and Brookfield made as of March 22, 2019 (the "**Investment Agreement**");
 - (iii) a support and voting commitment agreement between TransAlta and RBC Global Asset Management Inc. dated March 24, 2019 (the "**RBC Agreement**").

- (k) Mangrove's complaints relate to matters that are fundamentally centred on and connected to Alberta, and that have no substantive or meaningful connection to Ontario:
- (i) the 2019 Meeting will occur in Calgary, Alberta (and not in Ontario), in accordance with the Company's by-laws;
 - (ii) the Investment Agreement is an Alberta contract governed by Alberta law (and not by Ontario law);
 - (iii) the assets included within the scope of the Investment Agreement include TransAlta's Alberta-based hydro assets (and do not include, or affect, any of TransAlta's Ontario-based assets);
 - (iv) the RBC Agreement is an Alberta contract governed by Alberta law (and not by Ontario law);
 - (v) TransAlta's executives negotiated the Investment Agreement and the RBC Agreement out of TransAlta's head office in Calgary, Alberta (and not in Ontario);
 - (vi) virtually all of the conduct of TransAlta that Mangrove has sought to challenge occurred out of the Company's head office in Calgary, Alberta (or in any event, outside of Ontario);
 - (vii) there is no suggestion, and no basis for suggesting, that any aspect of the Brookfield Investment was structured in a manner designed to

attenuate the connections that would otherwise exist between the transaction and Ontario;

- (viii) the enforcement or effect of all of the remedies sought by Mangrove will occur in Alberta;
- (l) none of TransAlta's Ontario operations or assets are the subject of Mangrove's complaints, and TransAlta's Ontario-based securityholders are not affected in a manner that is different than any other TransAlta securityholders across Canada;
- (m) the legal issues properly engaged by Mangrove's Application can be resolved in accordance with substantively similar principles, regardless of whether the matter is addressed pursuant to the securities laws of Alberta or Ontario;
- (n) Mangrove itself is a Cayman Islands entity, based in New York, New York. Its only affiant is Mr. August, who is also based in New York;
- (o) such further and other grounds as counsel may advise and this Commission may deem relevant.

C. EVIDENCE

3. TransAlta intends to rely on the following evidence for the motion:

- (a) the Affidavit of John Kousinioris, sworn April 13, 2019, together with the exhibits thereto;

- (b) the Affidavit of Tanya Barbiero, sworn April 13, 2019, together with the exhibits thereto;
- (c) the Application of Mangrove dated April 8, 2019;
- (d) the Amended Application of Mangrove dated April 11, 2019;
- (e) such further and other evidence as counsel may advise and the Commission may admit.

Dated this 13th day of April, 2019.

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Kent E. Thomson (LSO# 24264J)

Tel: 416.863.5566
Email: kentthomson@dwpv.com

Derek Ricci (LSO# 52366N)

Tel: 416.367.7471
Email: dricci@dwpv.com

Tel: 416.863.0900
Fax: 416.863.0871

Lawyers for the Respondent/Moving Party,
TransAlta Corporation

OSLER, HOSKIN & HARCOURT LLP

Suite 2500
TransCanada Tower
450 – 1st St. S.W.
Calgary AB T2P 5H1

Tristram Mallett

Tel: 403.260.7041
Email: tmallett@osler.com

Olivia Dixon

Tel: 403.260.7038
Email: odixon@osler.com

Tel: 403.260.7000
Fax: 403.260.7024

Lawyers for the Respondent/Moving Party,
TransAlta Corporation

TO: **BLAKE, CASSELS & GRAYDON LLP**
Barristers & Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

855 – 2nd Street SW
Suite 3500, Bankers Hall East Tower
Calgary AB T2P 4J8

Michael Barrack (LSO# 21941W)
Tel: 416-863-5280
Email: michael.barrack@blakes.com

Seumas M. Woods (LSO# 30169I)
Tel: 416-863-3876
Email: seumas.woods@blakes.com

Darren J. Reed
Tel: 403-260-9640
Email: darren.reed@blakes.com

Lawyers for the Applicant/Responding Party,
Mangrove Partners

AND TO: **STAFF OF THE ONTARIO SECURITIES COMMISSION**
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, Ontario
M5H 3S8

Attention:
Naizam Kanji
Jason Koskela,
Katrina Gustafson