

ATLANTIC POWER CORP
Form SC TO-I/A
July 20, 2016

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(Amendment No. 3)

**Tender Offer Statement under Section 14(d)(1) or Section 13(e)(1)
of the Securities Exchange Act of 1934**

ATLANTIC POWER CORPORATION

(Name of Subject Company and Filing Person (Issuer) and Name of Filing Person (Offeror))

5.75% Series C Convertible Unsecured Subordinated Debentures due June 2019

(Title of Class of Securities)

04878QAQ6

(CUSIP Number of Class of Securities)

Jeffrey S. Levy, Esq.

Senior Vice President and General Counsel

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(617) 977-2400

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing person)

Copy to:

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CALCULATION OF FILING FEE

Transaction Valuation(1)

Amount of Filing Fee(2)

(1) Calculated solely for the purposes of determining the filing fee based upon a transaction value of \$62,725,000. The purchase price of the 5.75% Series C Convertible Unsecured Debentures due June 2019 (the Debentures), as described herein, is \$965 per \$1,000 principal amount outstanding. The Company is seeking to acquire up to \$65,000,000 of Debentures resulting in an aggregate maximum purchase price of \$62,725,000.

(2) The amount of the filing fee equals \$100.70 for each \$1,000,000 of the value of the transaction.

x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the

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Form or Schedule and the date of its filing.

Amount Previously Paid: \$6,316.41
Form of Registration No.: Schedule TO

Filing Party: Atlantic Power Corporation
Date Filed: June 17, 2016

Check the box if filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

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This Amendment No. 3 (this **Amendment**) amends and supplements the Tender Offer Statement on Schedule TO (the **Schedule TO**) previously filed by Atlantic Power Corporation (the **Company**) on June 17, 2016, as amended by Amendment No. 1, dated June 22, 2016, and by Amendment No. 2, dated July 6, 2016.

The Schedule TO relates to the offer (the **Offer**) by the Company to purchase up to \$65,000,000 aggregate principal amount of the Company's outstanding 5.75% Series C Convertible Unsecured Subordinated Debentures due June 2019 (the **Debentures**) for cash, at the purchase price of US\$965 per US\$1,000 principal amount of Debentures, plus accrued and unpaid interest to, but not including, the payment date, upon the terms and subject to the conditions set forth in the Offer to Purchase and related Issuer Bid Circular, each dated June 16, 2016 (as they may be amended and supplemented from time to time, the **Offer and Circular**), and the related Letter of Transmittal, as it may be amended and supplemented from time to time, copies of which were attached to the Schedule TO as Exhibits (a)(1)(i) and (a)(1)(ii), respectively. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Offer and Circular.

Items 1 through 11.

In the ultimate paragraph of the section of the Offer and Circular entitled Offer to Purchase 5. Conditions of the Offer the first sentence shall be replaced with the following sentence:

The foregoing conditions are for the exclusive benefit of the Company and may be asserted by the Company at any time prior to the Expiration Date in its reasonable discretion regardless of the circumstances giving rise to any such assertion (excluding any action or inaction by the Company), or may (subject to applicable law) be waived by the Company in whole or in part at any time prior to the Expiration Date in its discretion, without prejudice to any other rights which the Company may have.

The first seven sentences of the third paragraph in the section of the Offer and Circular entitled Issuer Bid Circular 5. Valuation of the Debentures Assumptions and Limitations are replaced with the following sentences:

Alexander Capital's Formal Valuation states that Alexander Capital shall have no responsibility whatsoever to any third party, that any use a third party makes of the Formal Valuation is entirely at its own risk, that the Formal Valuation has been prepared and provided solely for the use of the Board and for inclusion in the Offer and Circular, and that it may not be used or relied upon by any other person without Alexander Capital's express prior written consent (the **Disclaimer Statements**). The Disclaimer Statements are fully consistent with Canadian market practice for valuations prepared under Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions (**MI 61-101**), which is the Canadian legal instrument requiring the inclusion of a formal valuation in the Offer and Circular. The Formal Valuation is addressed to the Board of Directors of Atlantic Power, and was prepared solely for the purpose of providing advice to the Board of Directors in forming its view regarding the value of the Debentures. The engagement letter between Alexander Capital and Atlantic Power, which is governed by the laws of the Province of Ontario, Canada, specifically provides that the opinions, advice and materials, including any report, to be provided by Alexander Capital in carrying out its engagement are intended solely for the use of Atlantic Power, its Board of Directors and its affiliates. Alexander Capital has been advised by its Canadian legal counsel that under applicable Ontario contract law principles and the general principles of the law of negligent misstatement as it applies in Ontario

(including the House of Lords decision in *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1963] 2 All E.R. 575 and subsequent Ontario judicial decisions), holders of Debentures should not be able to rely on its Formal Valuation. Alexander Capital has indicated that it intends to assert the substance of the Disclaimer Statements as a defense to any claims by Debentureholders that might be brought against it under Ontario law or other applicable law. However, Alexander Capital is not aware of any legislation, administrative rule or judicial decision under the laws of the Province of Ontario or any other jurisdiction that has specifically addressed the availability of such a defense in connection with a claim brought by a securityholder against the preparer of a formal valuation prepared in accordance with the requirements of MI 61-101 and included in a public disclosure document. The issue necessarily would have to be resolved by a court of competent jurisdiction in the Province of Ontario or any other jurisdiction where a Debentureholder may advance such a claim. The availability or non-availability of such a defense will have no effect on the rights and responsibilities of the Company's Board of Directors under any applicable law, or the rights and responsibilities of the Board of Directors or Alexander Capital under the U.S. federal securities laws.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

ATLANTIC POWER CORPORATION

By: /s/ James J. Moore, Jr.
Name: James J. Moore, Jr.
Title: President and Chief Executive Officer

Date: July 19, 2016

INDEX TO EXHIBITS

| Exhibit Number | Description |
|----------------|---|
| (a)(1)(i) | Offer to Purchase and Issuer Bid Circular, dated June 16, 2016. |
| (a)(1)(ii) | Letter of Transmittal, dated June 16, 2016. |
| (a)(5)(i) | Press Release, dated June 16, 2016 (incorporated by reference to the pre-commencement communication of the Company on Schedule TO, filed with the SEC on June 16, 2016). |
| (b) | Not applicable. |
| (d)(1) | Agreement between the Company and Polar Multi-Strategy Master Fund, dated June 16, 2016, to tender an aggregate of approximately US\$15,000,000 principal amount of Debentures pursuant to the Offer. |
| (d)(2) | Agreement between the Company, Twin Lake Total Return Partners QP L.P., Twin Lake Total Return Partners L.P., Iron Road Multi Strategy Fund, L.P. and Iron Road Diversified Fund, L.P., dated June 16, 2016, to tender an aggregate of approximately US\$14,661,000 principal amount of Debentures pursuant to the Offer. |
| (d)(3) | Trust Indenture Providing for the Issue of Convertible Unsecured Subordinated Debentures, dated as of December 17, 2009, between Atlantic Power Corporation and Computershare Trust Company of Canada (incorporated by reference to the Company's registration statement on Form 10-12B filed on April 13, 2010). |
| (d)(4) | Second Supplemental Indenture to the Trust Indenture Providing for the Issue of Convertible Unsecured Subordinated Debentures, dated as of July 5, 2012, between Atlantic Power Corporation and Computershare Trust Company of Canada (incorporated by reference to the Company's Current Report on Form 8-K filed on July 6, 2012). |
| (d)(5) | Sixth Supplemental Indenture to the Trust Indenture Providing for the Issue of Convertible Unsecured Subordinated Debentures, dated as of March 22, 2013, between Atlantic Power Corporation and Computershare Trust Company of Canada (incorporated by reference to the Company's Current Report on Form 8-K filed on March 26, 2013). |
| (d)(6) | Trust Indenture, dated as of October 11, 2006 between Atlantic Power Corporation and Computershare Trust Company of Canada (incorporated by reference to the Company's registration statement on Form 10-12B filed on April 13, 2010). |
| (d)(7) | First Supplemental Indenture to the Trust Indenture Providing for the Issue of Convertible Secured Debentures, dated November 27, 2009, between Atlantic Power Corporation and Computershare Trust Company of Canada (incorporated by reference to the Company's registration statement on Form 10-12B filed on April 13, 2010). |
| (d)(8) | Fourth Supplemental Indenture, dated as of August 3, 2012, by and among Atlantic Rockland Holdings, LLC, Atlantic Power Corporation, the Guarantors named therein and Wilmington Trust, National Association (incorporated by reference to our Annual Report on Form 10-K filed on March 1, 2013). |
| (d)(9) | Fifth Supplemental Indenture, dated as of November 29, 2012, by and among Atlantic Ridgeline Holdings, LLC, Atlantic Power Corporation, the Guarantors named therein and Wilmington Trust, National Association (incorporated by reference to the Company's Annual Report on Form 10-K filed on March 1, 2013). |
| (d)(10) | Shareholder Rights Plan Agreement, dated effective as of February 28, 2013, between Atlantic Power Corporation and Computershare Investor Services, Inc., which includes the Form of Right Certificate as Exhibit A (incorporated by reference to the Company's Current |

- Report on Form 8-K filed on February 28, 2013).
- (d)(11) Deferred Share Unit Plan, dated as of April 24, 2007 of Atlantic Power Corporation (incorporated by reference to the Company's registration statement on Form 10-12B filed on April 13, 2010).
 - (d)(12) Fifth Amended and Restated Long-Term Incentive Plan (incorporated by reference to the Company's Current Report on Form 8-K filed on April 11, 2013).
 - (d)(13) Amendment No. 1 to the Fifth Amended and Restated Long-Term Incentive Plan of the Company (incorporated by reference to Exhibit A to Schedule B of the Company's definitive Proxy Statement on Schedule 14A filed on April 30, 2014).
 - (d)(14) Participation Agreement and Confirmation (performance-based vesting) between the Company and Terrence Ronan, dated April 11, 2013 (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 8, 2013).
 - (d)(15) Participation Agreement and Confirmation (time-vesting) between the Company and Terrence Ronan, dated April 11, 2013 (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on August 8, 2013).
 - (d)(16) Transition Equity Grant Participation Agreement between Atlantic Power Services, LLC and James J. Moore, Jr., dated January 22, 2015 (incorporated by reference to the Company's Current Report on Form 8-K filed on January 23, 2015).

Previously filed as an exhibit to the Schedule TO filed on June 17, 2016.