



No Market is an Island Entire of Itself

Harry Chandler
Market Surveillance Administrator

Remarks as Prepared for the
14th Annual Alberta Power Summit
Calgary, AB

November 12, 2013

The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

No Market is an Island Entire of Itself¹

The theme of my remarks today is the connectedness of the Alberta power market with developments elsewhere, not in a physical sense but in terms of the broad policy envelope. That's why I borrow from John Donne and call it "No Market is an Island Entire of Itself".

I want to talk about:

- the importance of market monitors having an appreciation of the challenges and opportunities in other organized electricity markets;
- how the expectations with respect to market participant record retention policies can be informed by the standards south of the 49th parallel; and finally,
- initiatives by the Market Surveillance Administrator to formalize relationships with counterpart agencies.

I have just returned from meetings in Australia. The principal purpose of the trip was to meet with the other market monitors from 12 different electricity markets worldwide but I also had an opportunity to meet with members of the Australian Energy Markets Commission, to spend some time with the Chair of the Australian Competition and Consumer Commission and tell staff of the Australian Energy Regulator a little about the Alberta power market. The Markets Commission makes and amends rules in Australia's National Electricity Market. The Australian Energy Regulator is the MSA's equivalent and interestingly shares staff, resources and facilities with the Competition and Consumer Commission, Australia's counterpart to the Competition Bureau. There is a lot of interest about the Alberta market in Australia.

As you know from the MSA's State of the Market Report 2012, we see Australia's National Electricity Market as Alberta's reference case of a successful energy only market with most of the essential elements in place. We have always had good relations with our counterparts at the AER and now that has gone one step further with a six-month reciprocal staff exchange. Derek Olmstead, one of the MSA's bright young economists, is now in Melbourne enduring the rigours of spring going into summer in the southern hemisphere. Meanwhile, Joanna Gall, a Director of the Wholesale Markets Branch at the AER is being introduced to the balmy temperatures of a Calgary winter. Jo is in the audience and I hope you have a chance to speak with her.

The point about staying connected with other electricity markets through professional and personal relationships is a simple acknowledgement that electricity markets are still young in policy terms and the challenges and issues encountered in Alberta are not unique. Whatever we can learn from our colleague monitors is valuable. So in Adelaide we had an explanation from someone on assignment at Ofgem of the European Union regulation on market integrity and transparency to detect and deter market manipulation. This standard, known as REMIT, introduces for the first time the screening of energy trading at the EU level. We learned about a case of manipulation in the UK gas market, of squeezing in the New Zealand forward market and some nuances in the 2013 Deutsche Bank settlement with FERC. I was fascinated to learn that New Zealand, with a population and power market smaller than Alberta, is spending \$NZ15 million over a few years on a promotional campaign for retail markets.²

¹ Adapted from John Donne, "Meditation XVII".

² Electricity Authority, "Consumer Switching Fund".

The second topic I want to address this morning, record retention, is broad and complex so I am only going to scratch the surface by identifying some areas where the MSA believes there is a need for reform. Rest assured this is a subject where there will be plenty of opportunity for the exchange of views, most likely in the context of the review of the Market Surveillance Regulation that needs to be renewed next year, by November 30, 2014.

The MSA's experience with respect to access to market participant records in carrying out its mandate is mixed. It's a bit of a Tale of Two Cities; some experience that was not so good in Calgary but much better experience with a participant based in a large urban centre south of the border. I don't know if I need to remind you that retaining relevant business records is often the best defence that the business practice being investigated is benign and legitimate. If the records aren't available it usually means the MSA will press further and, of course, the senior executive time it takes to coordinate an investigation is time that could undoubtedly be better spent elsewhere contributing to the bottom line.

I want to talk about two areas: first, what kind of information should be retained, and second, how long the records should be retained.

One approach from the commodity and financial trading world is to categorize the information into transactional and non-transactional records: Transactional records are those associated with offer strategies and trades, or daily trading records. All of the records that make up a trade/offer are included. This is sometimes broken up into three phases: so pre trade/offer execution, trade/offer execution and post trade/offer execution records. Under this approach one would expect all oral (phone, voice mail) and written (email, chat, sms, fax) communication that led to trade/offer execution to be retained.

Non-transactional records would include business and financial records that demonstrate how the market participant is running its business. Included are governance documents, organizational charts, biographies and resumes of executives, job descriptions, audit and compliance, financial records and complaints.

When I spoke at the IPPSA compliance workshop a couple of months ago I was asked about the retention period and I didn't have an answer. What about six years? The Canada Revenue Agency requires businesses to keep all records and supporting documents required to determine tax obligations and entitlements for six years. The requirement to keep business records for 6 years is also a common time frame in the electricity context in Alberta. For example, under section 30 of the *Code of Conduct Regulation*, the owner of an electric distribution system and an affiliated retailer are required to keep records, accounts, financial transactions, reports and plans required by the Regulation for at least 6 years.

The intention of raising record retention as a topic is to put it on the radar screen for further discussion. As I said there are many aspects to consider. The Alberta Securities Commission has done some good work in the area under its proposed Rule 15-503 (Production of Records) addressing the issues of electronic and paper format and the basic 'legal hold' requirement.³ Stay tuned.

The final topic I wanted to share with you relates to steps to formalize relations with counterpart agencies outside of Alberta. I am speaking particularly of the Competition Bureau and the U. S. Federal Energy Regulatory Commission (FERC).

Those of you who have looked at section 45 of the *Alberta Utilities Commission Act* (AUCA) recently will recognize that there is an obligation placed on the MSA after starting an investigation to "notify" a "body" of the matter if it is in that body's jurisdiction.⁴ The provision also allows the MSA to "...make

³ ASC, Proposed Rule 15-503.

⁴ Section 45 is provided in the Appendix.

available to that body any records in its possession that are relevant to the matter.” Subsection 45(1)(b) specifically identifies (what is) the Competition Bureau as one of those eligible bodies.

Another provision in the AUCA, subsection 34(4), empowers the MSA to “...enter into arrangements or agreements with responsible authorities outside Alberta...” on the MSA’s powers and mandate or cooperative enforcement.⁵ Some of you will recall that in 2010 we used this authority to enter into an agreement with the Western Electric Coordinating Council, Salt Lake City, Utah.⁶

I believe more formalized arrangements between the MSA and both the Competition Bureau and FERC will benefit Albertans. However, the arrangements for each would be of a different order.

Earlier this year the Competition Bureau announced an “Action Plan on Transparency” that included the following statement under the heading of “Collaboration”:

The Bureau commits to working with other government officials and Canadians, with the goal of promoting and protecting a competitive marketplace. Particularly, the Bureau is developing stronger working relationships with regulators, who have shared responsibility with respect to particular industry sectors, to provide additional clarity and predictability for the business community.⁷

There is a shared responsibility and a shared jurisdiction between the MSA and the Competition Bureau with respect to promoting competition and enforcing each agency’s respective statute in the Alberta power market. Formalizing this relationship has the prospect of lowering the regulatory burden for stakeholders by providing that clarity and predictability.

The United States is clearly Alberta’s key energy partner on many levels. As you all know FERC with the enactment of the *Energy Policy Act of 2005* has become an aggressive enforcer, particularly with respect to its Anti-Manipulation Rule. That is an approach that has emerged from the statute and the particular regulatory construct in the United States. It is not necessarily the same approach that exists in Alberta. Nevertheless, there is much to be learned about how energy markets operate, the techniques of market surveillance and investigation and the analysis of market power. The arrangement to be worked out with FERC is in the early stages of discussion but it is essentially one of exchange of information on processes and methods, staff insights and analyses, and the discussion of energy issues of mutual interest. An overriding principle for the MSA entering into these discussions will be reciprocity.

I don’t want to end with John Donne’s closing stanza about for whom the bell tolls. That would be altogether too gruesome and I have already mangled his poem. But I do want to reiterate that Alberta has much to learn from other markets and other competition advocates, not necessarily to emulate them but to situate our market in a broader context. The MSA will continue its efforts to stay connected.

⁵ Subsection 34(4) is also provided in the Appendix.

⁶ WECC Service Agreement.

⁷ Competition Bureau, “Action Plan”.

Appendix

Excerpts from the *Alberta Utilities Commission Act*

Natural person powers

34(4) The Market Surveillance Administrator may enter into arrangements or agreements with responsible authorities outside Alberta relating to

- (a) the powers and mandate of the Market Surveillance Administrator, or
- (b) the co-operative enforcement of legislation relating to enactments affecting the electric industry or the natural gas industry.

Notice to another body having jurisdiction

45(1) If after starting an investigation the Market Surveillance Administrator determines that a matter is within the jurisdiction of one or more of

- (a) the Commission,
- (b) the person or persons responsible for administering the Competition Act (Canada), or
- (c) another body,

the Market Surveillance Administrator shall notify the appropriate body of the matter and may make available to that body any records in its possession that are relevant to the matter.

(2) The Market Surveillance Administrator may

- (a) discontinue an investigation if the matter appears to be within the jurisdiction of another body and in that event shall notify the person who made a complaint or referral of the discontinuance, giving reasons for the decision, or
- (b) continue an investigation
 - (i) for the purpose of carrying out its mandate, or
 - (ii) for the purpose of collaborating with any body notified under subsection (1).

References

Alberta Securities Commission, "Notice and Request for Comment: Proposed ASC Rule 15-503 (Production of Records)" January 18, 2013.

<http://www.albertasecurities.com/Regulatory%20Instruments/4412673-v1%20Notice%20and%20Request%20for%20Comment%20Final%20Jan%202013.pdf>

Competition Bureau, "Action Plan on Transparency", May 3013.

http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_03568.html

Market Surveillance Administrator, "MSA WECC Service Agreement", April 30, 2010.

http://albertamsa.ca/uploads/pdf/Archive/Services_Agreement_MSA-WECC_041910.pdf

New Zealand Electricity Authority, "Consumer Switching Fund", January 2013.

<http://www.ea.govt.nz/consumer/csf/background/>



The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.