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MSA NOTICE OF APPLICATION AND DECISION

Application No. 2004 - 00102
ATCO Electric Ltd.
Request for Extension
to Decision 2003-00101
Code of Conduct Regulation
AR 160/2003

27 February, 2004

MARKET SURVEILLANCE
ADMINISTRATOR

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MARKET SURVEILLANCE ADMINISTRATOR

ATCO Electric Ltd.

Request for Extension to Approval given in MSA Decision 2003 – 00101

1 INTRODUCTION

On November 25, 2003, the Market Surveillance Administrator (“MSA”) issued its Decision in relation to Application 2003 – 00101 (“Decision”). The Decision was issued pursuant to section 43 of the *Code of Conduct Regulation* AR 160/2003 (“Code”).

The Decision granted approval for the disclosure and use of customer information upon certain conditions, including conditions which effectively established an end date to the approval.

Condition 5 g) stipulated as follows: *In the event that the retail sale transaction involving ATCO and the Direct parties does not close by February 29, 2004, all customer information received from ATCO pursuant to this exemption, and all information derived from that customer information, will be returned to ATCO or destroyed, and the return and destruction will be confirmed to ATCO in writing by the Supervisory Person.*

Condition 6 stipulated as follows: *In the event that the retail sale transaction involving ATCO and the Direct parties does not close by February 29, 2004, ATCO will confirm in writing to the MSA that all customer information provided by ATCO pursuant to this exemption, and all information derived from that customer information, has been returned to ATCO or destroyed, as confirmed to ATCO in writing by the Supervisory Person.*

A copy of the Decision is available on the MSA website www.albertamsa.ca.

1.1 Application and Process

1.1.1 Application

By letter dated February 27, 2004, ATCO Electric Ltd. (“ATCO”) requested an extension to the date contained in condition 6 of the Decision (“Application”). The extended date would be April 15, 2004.

In support of its request, ATCO enclosed an excerpt from correspondence received from Direct Energy Marketing Limited (“DEML”), providing the rationale for extending the date. The correspondence also makes reference to Direct Energy Regulated Services (DERS).

A copy of the letter and enclosure received by the MSA from ATCO are attached as Appendix A hereto.

1.1.2 Process

After due consideration of the circumstances, including timing constraints and the extent of due process, the MSA came to the conclusion that the Application should be handled through a concurrent Notice of Application and Decision.

2 EXEMPTION APPLICATION

Section 43 of the Code allows the certain powers in relation to the approval of an exemption or alternate compliance plan.

Section 43 is set out below, for reference.

Alternative compliance arrangements

43(1) An owner or affiliated retailer may apply to the Market Surveillance Administrator

- (a) for an exemption from all or any provision of this Regulation,*
 - (b) for approval of an alternative compliance plan that meets the objectives of this Regulation but in a way that is different from the requirements of this Regulation, or*
 - (c) an exemption from some provisions of this Regulation and an alternative compliance plan for others.*
- (2) The Market Surveillance Administrator must not approve an exemption or an alternative compliance plan unless the Market Surveillance Administrator is satisfied that it is in the public interest to do so and*
- (a) any exemption does not significantly affect the obligations of the applicant or that the obligations can be or will be met in other ways, and*
 - (b) any alternative compliance plan*
 - (i) contains overall, requirements and responsibilities that are at least as stringent as this Regulation,*
 - (ii) is enforceable,*
 - (iii) is in the best interests of customers, and*
 - (iv) would not have any appreciable anti-competitive effects.*
- (3) The Market Surveillance Administrator may approve an exemption or alternative compliance plan with or without changes and with or without conditions, and the exemption or alternative compliance plan remains in effect for the period of time specified by, or until revoked by, the Market Surveillance Administrator.*

3 VIEWS OF THE MSA

Pursuant to section 43 of the Code, the MSA is given the power to approve an exemption where certain criteria are met. While section 43 does not directly address the notion of extending an exemption already granted, in the view of the MSA this power is implied by the wording set out in the regulation. The criteria applicable to the extension would be the same as those applicable to the granting of the exemption at first instance.

A request to extend an exemption can be treated as a distinct application for exemption. Alternatively, such a request may be treated as a new part of the original process.

The MSA has chosen to administer this request for extension as a distinct application. The record of the original proceeding (2003 – 00101) is brought into the new proceeding in order to provide the necessary context and record in relation to this Application.

Based upon the information provided by ATCO in its letter, and for the reasons set out in the Decision, the MSA is satisfied that the approval granted in the Decision can properly be extended as requested.

The February 29, 2004 date set in the Decision provided certainty to the approval granted. That is, condition 5 g) and condition 6 would ensure that the customer information did not remain outside the hands of ATCO if the transaction between ATCO and DEML does not close as contemplated.

The following is excerpted from Section 4.4 of the Decision, in respect of conditions attached to the approved exemption:

The MSA is concerned that the exemption should have a clear expiration date, being some reasonable time after the approval of an exemption by the MSA. The evidence did not show why the Direct parties would need the customer information past the initial testing period and subsequent time needed to make any necessary configuration changes.

The MSA notes that in the event that the retail sale transaction is approved by the EUB and the parties close their transaction as contemplated, the requested disclosure of customer information to the Direct parties would be allowed pursuant to the Code of Conduct Regulation. The exemption therefore seeks to take this into account.

As set out in letter from ATCO (Appendix A), the parties are still working toward closing their transaction.

In addition, DEML has indicated that the customer information data obtained under the Decision continues to be used for system testing and load forecasting purposes.

Further, the correspondence indicates that a purge of this data from the DEML (DERS) systems, along with the removal of all information derived from that data, would represent a significant burden.

The MSA is convinced that there is no need to impose such a burden on the parties at this time, given the circumstances. However, the MSA does see the value of having some end date by which the matters will be closed one way or the other. The April 15, 2004 date suggested by ATCO appears to be a reasonable substitute for the February 29, 2004 date.

4 MSA DECISION

Given the proximity between the date of the request for the extension and the February 29, 2004 end date, the MSA issued its approval for the extension via email on February 27, 2004.

The approval granted on February 27, 2004 is as follows:

The MSA has agreed to extend the exemption to and including April 15, 2004 (that is, amending the February 29, 2004 date in the relevant conditions accordingly), as requested, on the condition(s) that DEML provide to ATCO Electric the revised form of written undertaking contemplated in the request for extension (as set out in the letter from Jim Beckett of today's date) and that ATCO Electric provide written confirmation of same to the MSA, not later than March 5, 2004.

All other terms and conditions attached to the exemption remain as before, except to the extent altered by the change of date from February 29, 2004 to April 15, 2004 agreed to herein.

The MSA thus gives notice that the within Application is approved, and the exemption approved in the Decision therefore extended, as set out above.

Dated at Calgary, Alberta on February 27, 2004.

MARKET SURVEILLANCE ADMINISTRATOR

“Original signed by”

Martin J. Merritt
Market Surveillance Administrator

Appendix A



February 27, 2004

Market Surveillance Administrator
Suite 500, 400 - 5th Avenue S.W.
Calgary, Alberta
T2P 0L6

Sent via Email

Attention: Douglas Wilson, Legal Counsel

Dear Sir:

RE: MSA Decision 2003-00101 (ATCO Electric Request for Exemption)

I am writing this letter to inform the MSA of the current status of our provision of confidential customer information to Direct Energy Marketing Limited ("DEML"), and to request an extension to the date contained in the condition requiring the return of the information to ATCO Electric if the retail sale transaction between ATCO and DEML has not closed by February 29, 2004.

The first condition of the approval (condition number 1 in section 6 of the Decision) required ATCO Electric to confirm in writing that Site IDs and Postal Codes information was scrambled prior to providing the customer information to DEML. I can confirm that this condition was met.

The fifth condition of the approval required ATCO Electric to obtain from DEML, DERS and DEP a written undertaking in the form outlined in the condition prior to providing any customer information to those parties. I can confirm that this condition has been met.

The sixth condition of the approval required ATCO Electric to confirm to the MSA that all customer information was returned to ATCO Electric or destroyed if the retail sale transaction involving ATCO and the Direct parties does not close by February 29, 2004. As will be discussed subsequently, it is this condition for which ATCO Electric is seeking an extension to the date.

Condition seven of the approval required ATCO Electric to inform the MSA if greater conditions around the provision of the information than those contained in the decision were imposed by ATCO Electric. I can confirm that no such greater conditions were imposed.

As discussed above, ATCO Electric hereby requests an extension to the date contained in condition six of Decision 2003-00101. I have attached a portion of correspondence received from DEML providing the rationale for extending the date. DEML and ATCO Electric have agreed that an extension of the date to April 15, 2004 would be appropriate, given the current status of the discussions on closing the transaction between our two companies. DEML has advised ATCO Electric that it is prepared to provide a revised form of undertaking to ATCO Electric as contemplated in Condition 5(g) and Condition 6 of the approval in a manner that would reflect an extension of the date to April 15, 2004. ATCO Electric supports the request of DEML, and respectfully requests the indicated date extension.

If I may be of assistance to the MSA on this issue, please do not hesitate to contact me. I would like to express my appreciation in advance of your consideration of this issue.

Yours truly,

W. JAMES BECKETT, P. ENG.
EXECUTIVE VICE PRESIDENT, REGULATORY

WJB/pc
Att.
M:\Data\Jim\Letter to MSA Compliance with 2003-00101 date ext.doc

cc: Robert Hemstock
Vice-President, Regulatory Affairs, Western Region
Direct Energy Marketing Limited

(Extracted from an email from Robert Hemstock to Jim Beckett Friday, February 27, 2004)

The scrambled ATCO Electric customer information DERS received, and the information derived by DERS from the ATCO Electric customer information, represents the base data set that the DERS load forecasting system applications currently draw from and rely upon. The ATCO Electric data, and the DERS information derived from it, continues to be used for system testing and load forecasting purposes. This data represents a full set of data that is essential for proper system testing and load forecasting. In contrast, DERS will receive unscrambled ATCO Electric data in increments of 1/20th each day during the transition month such that DERS will not have a full data set of regulated electricity customer data until 20 business days after it assumes the RRT function from ATCO Electric. DERS cannot be without a full set of ATCO Electric customer data between Feb 29 and approximately 20 business days after closing and at the same time carry on with required system testing and forecasting work that is in progress.

Even though the RRT energy rate will be a pool price flow through until July 1, 2004 the work related to the DERS electricity load forecasting system development, testing, and refinement of the resulting forecasts themselves is an ongoing process that is never entirely completed. The electricity load forecasting DERS is developing today is drawn from the ATCO data set and aggregated consumption data DERS assembled from this data set was relied on by DERS in our recent negotiated settlement process with consumers groups on the RRT fixed price rate design. DERS' next obligation in that process is to present load profiles that will also be derived from the ATCO Electric customer data to the interested parties in May. Without continued use of the ATCO Electric data, and the DERS analysis work that relies on this data, DERS will not have any reliable data set upon which to prepare these load profiles and that work will also be delayed.

The key message is that any contemplation of DERS implementing a purge of the ATCO Electric data, and the deletion by DERS of other analysis it has undertaken using the ATCO Electric data, would represent a significant burden on DERS and delay completion of very time sensitive work that is continuing. Although the AEUB did not specify a definitive date for return

or destruction of the ATCO Gas data, the same justification for DERS to retain the scramble ATCO Gas customer information exists.

Regards,

Robert Hemstock

Vice-President, Regulatory Affairs, Western Region

Direct Energy Marketing Limited

Phone: 403-290-8863

Email: Robert.Hemstock@na.centrica.com