

April 16, 2004

Notice to Interested Parties

RE: MSA Decision 2003-00101 (ATCO Electric Request for Exemption from Certain Provisions of the Electric Utilities Act Code of Conduct Regulation, AR 160/2003), and MSA Notice of Application and Decision 2004-00102 (Request for Extension to Decision 2003-00101), and Application 2004-00104 (Request for Extension to Decision 2004-00102).

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

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 Decision 2003-00101 is available on the MSA website www.albertamsa.ca.

By letter dated February 27, 2004, ATCO Electric Ltd. (“ATCO”) requested an extension to the date contained in condition 6 of the Decision. The MSA issued its approval for the extension via email on February 27, 2004 subject to the following stipulation:

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.

A copy of Decision 2004-00102 is available on the MSA website www.albertamsa.ca

In a letter dated April 14, 2004, ATCO notified the MSA that it was requesting another extension to the date by which Direct Energy Marketing Limited (“DEML”) must return certain “scrambled” customer information to ATCO and to request approval to update the “scrambled” customer information which is currently in DEML’s possession.

A copy of the letter received by the MSA from ATCO is attached as Appendix A hereto.

The MSA acknowledged the new requests made by ATCO in a letter dated April 15, 2004 (attached as Appendix B hereto), and indicated that it is treating the requests as a new application. For administrative purposes, the new application has been designated Application 2004-00104 (“Application”).

At this point in time, the MSA has not yet determined how to proceed on this matter. However, the MSA believes it is appropriate under the circumstances to clarify its expectations of how the customer information will be handled after April 15, 2004. Pending a formal decision on how to proceed, the MSA will allow the customer information to continue to reside with the Direct parties in the manner contemplated by Decision 2004-00102, provided that the following conditions are met:

1. The customer information will not be used in any manner by the Direct parties or any person acting on their behalf;
2. The Supervisory Person will forthwith confirm in writing to ATCO that the customer information will not be used in any manner by the Direct parties or any person acting on their behalf during the Application Period;
3. ATCO will forthwith confirm in writing to the MSA that the customer information will not be used in any manner by the Direct parties or any person acting on their behalf during the Application Period; and
4. These confirmations will be delivered to the MSA, attention Rob Spragins, Manager, Investigations, via fax or courier not later than close of business April 19, 2004.

In the event that the foregoing conditions are not met, the MSA has specified that the customer information should be handled as required by Decision 2004-00102.

The MSA will be issuing further communications as to the Application in due course.

Please do not hesitate to contact me with any questions or clarifications in relation to these matters.

Robert F. Spragins
Manager, Investigations



APPENDIX A TO MSA NOTICE DATED APRIL 16, 2004

April 14, 2004

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

Sent via email

Attention: Douglas Wilson, Legal Counsel

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

I am writing this letter to update you on the status of our work on achieving an agreement under which DEML will assume responsibility for providing regulated retail services within the ATCO Gas and ATCO Electric service areas; to request another extension of the date by which DEML must return certain "scrambled" customer information to ATCO Electric; and to request approval to update the "scrambled" customer information which is currently in DEML's possession.

Although both DEML and ATCO are working hard to complete the necessary agreements to transfer the regulated retail services of ATCO Gas and ATCO Electric to DEML, we have not yet completed the necessary agreements. However, in anticipation of successful completion of the agreements, DEML has filed an Energy Price Setting Plan with the EUB. The Plan, which has the support of representatives of consumer groups, contains the terms under which DERS will provide a RRT transition rate to eligible customers in the ATCO Electric service area between July 1, 2004 and June 30, 2006.

As described more fully in the attached letter from Direct Energy Regulated Services (DERS), DERS requires continued access to the data which was provided to them as a result of your decision 2003-00101. This is necessary to fulfill their obligations under the Energy Price Setting Plan. Specifically, DERS is asking ATCO Electric, and ATCO Electric is asking the MSA for permission to:

- 1) Allow DEML to retain the ATCO Electric data already provided to them in "scrambled" form beyond the April 15, 2004 date (which was set in your letter to me of February 27, 2004) to July 1, 2004.

- 2) Provide an additional “scrambled” data set to DEML that reflects ATCO Electric RRT customer information from January 1, 2003 to March 31, 2004.
- 3) Provide REA customer information to DEML that reflects the RRT customer information (again from January 1, 2003 to March 31, 2004) for those REAs which have consented in writing to ATCO Electric granting DEML the right and licence to perform the RRT function on closing of the transaction between the ATCO Group and DEML. This request is supported by an email from Mick Davies, which is included with the DEML correspondence.

ATCO Electric supports the requests of DERS, and respectfully requests MSA approval for these requests.

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,

Original Signed by W. James Beckett

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

WJB/pc

Att. (1)

M\Data\Jim\Letter 2003-04-14 to MSA Compliance with 2003-00101 date extension1.doc

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

Mick Davies, Partner
Collins Barrow Red Deer LLP, Chartered Accountants

APPENDIX B TO MSA NOTICE DATED APRIL 16, 2004

April 15, 2004

Delivered via email to: jim.beckett@atcoelectric.com

ATCO Electric Ltd.
10035-105 Street
Edmonton, Alberta
T5J 2V6

ATTENTION: W. JAMES BECKETT

Dear Jim:

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

On behalf of the Market Surveillance Administrator (MSA), I am responding to your letter of April 14, 2004 in relation to these matters.

For reference purposes, I first note that the April 15, 2004 date mentioned in your letter reflects an extension to certain conditions set in Decision 2003-00101. The extension to April 15, 2004 was granted in Decision 2004-00102, dated February 27, 2004.

Also by way of clarity, references to “ATCO”, “Direct parties” and “Supervisory Person” in this letter will have the same meaning as in those Decisions.

As your letter and attachments set out, the extension granted in Decision 2004-00102 requires that if the retail sale transaction between ATCO and the Direct parties does not close by April 15, 2004, the customer information at issue, and all related information, (collectively, the “customer information”) will be returned or destroyed. I would refer to Condition 5g) and Condition 6 of the Decision for the precise wording.

The MSA acknowledges the requests brought forward by your letter of April 14, 2004, and the critical nature of the timing. I can confirm that your letter is being treated as a new application (the “Application”).

Having only received the Application on this timing, the MSA has not concluded its process for review. However, given that the existing extension will expire at the end of today, the MSA does feel it appropriate under the circumstances to clarify its expectations of how the customer information will be handled after today’s date.

While a formal decision in relation to the Application is pending and until further written notice from the MSA in this regard (the "Application Period"), the MSA will allow the customer information to continue to reside with the Direct parties in the manner contemplated by Decision 2004-00102, provided that the following conditions are met:

1. The customer information will not be used in any manner by the Direct parties or any person acting on their behalf;
2. The Supervisory Person will forthwith confirm in writing to ATCO that the customer information will not be used in any manner by the Direct parties or any person acting on their behalf during the Application Period;
3. ATCO will forthwith confirm in writing to the MSA that the customer information will not be used in any manner by the Direct parties or any person acting on their behalf during the Application Period; and
4. These confirmations will be delivered to the MSA, attention Rob Spragins, Manager, Investigations, via fax or courier not later than close of business April 19, 2004.

The MSA will be issuing further communications as to the Application in due course.

In the event that the foregoing conditions are not met, the customer information should be handled as required by Decision 2004-00102.

I trust that the foregoing is clear, and will be of assistance. Please do not hesitate to contact me with any questions or clarifications in relation to these matters.

Yours truly,

"Original signed"

W.W. (Wayne) Silk,
Vice President, C.O.O.,
Market Surveillance Administrator.

cc. Martin Merritt