

November 18, 2005

NOTICE RE: CODE OF CONDUCT TESTING - 2005

Pursuant to its mandate under the *Electric Utilities Act* (Act) and related regulations, the Market Surveillance Administrator (MSA) monitors the retail electricity market in Alberta, to help ensure the *fair, efficient and openly competitive* operation of that market.

The *Code of Conduct Regulation* (Code) was enacted to help ensure a level playing field for retailers, in furtherance of retail competition. The Code governs the relationships between owners of electric distribution systems and their affiliated retailers, as well as dealings with non-affiliated retailers, customers and customer information.

The Code contemplates that the owners and affiliated retailers will undergo a compliance audit on an annual basis, within the oversight of the MSA. The MSA also has the power to obtain information and conduct testing pursuant to its overall surveillance and investigation mandate under the Act.

There is a degree of discretion available to the MSA as to how compliance testing is undertaken.

There are a large number of market participants subject to Code obligations. At the same time, the obligations are similar or uniform as between market participants. Accordingly, the MSA designed a process to create efficiencies in the compliance testing.

As indicated by previous communications during 2005, the MSA elected to test Code compliance through one independent audit firm retained by the MSA (Grant Thornton LLP), utilizing one common testing plan. This was viewed as more efficient and less costly than a process involving a separate auditor and audit plan for each entity.

Scope

The period being tested was July 1, 2004 through June 30, 2005, inclusive, with an additional stub period for certain parties due to their operational status in May and June, 2004. The testing period was moved from a calendar year focus in order to avoid carrying out the testing during the first quarter of the calendar year, a time which tends to be very busy in relation to year end financial and other audits.

A total of 14 parties were subject to the testing, including the Direct Energy, ENMAX, EPCOR and Fortis organizations (listed in detail below re: Findings).

Nature of Testing

The testing plan was designed to focus on certain key areas and issues, as opposed to testing across the entire breadth of the Code. There were various reasons for this approach, including that the MSA wished to take advantage of other recent testing done by the MSA and also by the Alberta Energy and Utilities Board (EUB) in respect of utility and tariff matters.

The testing plan this period focused specifically on sections 3, 4, 6, 18, 19, 20, 21, 33 and 34 of the Code. In addition, where the MSA wished to follow up on matters arising from previous testing or from its regular monitoring, the scope of the compliance testing was augmented.

The Code sections referenced above can be described as dealing with the following matters: adherence to compliance plans; accuracy of compliance reporting; adherence to Code in relation to customer interactions; unfair competitive advantage through arrangements between owner and affiliated retailer; handling, disclosure and use of customer information; other issues.

In order to test how customer interactions are handled, Grant Thornton carried out random call centre ('mystery shopper') testing in June, 2005. The balance of the testing plan was carried out between August and October, 2005. The findings were then shared and discussed with the relevant parties; related reports for the MSA and the parties have been finalized accordingly.

The testing reports will not be published, but are summarized below.

Summary of Findings

The results of the compliance testing were positive and encouraging overall, with fewer and relatively less serious issues noted than in the previous test period. The MSA also notes the high degree of cooperation received from the parties being tested, which helped assure the efficiency of the process.

- The parties are generally following the systems, policies and mechanisms within their respective compliance plans (exceptions noted below), and those efforts toward compliance appear to be producing good results.
- Customer interactions tended to meet Code requirements (exceptions are noted below). Compliance reporting was generally accurate, although there were omissions arising from certain customer interactions (as noted below).
- In some cases, the testing done by Grant Thornton, and internal testing done by the parties themselves, found that customer interactions were not fully compliant with the Code. Specifically, the party did not provide the required disclosure(s) about retail choice when addressing inquiries about retail electricity services; this constitutes a breach of s. 18 of the Code, as well as the applicable compliance plan(s).
- Further, although the Code requires that all circumstances of non-compliance be disclosed in the regular compliance reporting, certain parties failed to make the related disclosure. This constitutes a breach of s. 34 of the Code, as well as the applicable compliance plan(s).

- No other material issues or areas of non-compliance were substantiated in the testing.
- In all cases, as a result of the testing, Grant Thornton had minor findings and recommendations pertaining to the compliance plans of the parties. In essence, the recommendations suggest minor improvements or changes.

Findings associated with specific parties are described further below (listed by organization and in alphabetical order).

Direct Energy Partnership (DEP)

Direct Energy Regulated Services, a division of Direct Energy Marketing Limited (DERS)

There were no material issues identified by the testing.

Certain recommendations were made regarding possible improvements to the compliance plans; these were considered minor in nature. The discussions on those matters will be part of regular compliance communications between the MSA and DEP/DERS.

ENMAX Energy Corporation (EEC)

ENMAX Power Corporation (EPC)

967051 Alberta Ltd. (967051)

Valeo Power Corporation (VPC)

In relation to EEC, there were some material issues identified.

The testing found that customer interactions failed in some cases to comply with Code requirements. Specifically, the call centre personnel did not provide the required disclosure(s) about retail choice when addressing inquiries about retail electricity services; this constitutes a breach of s. 18 of the Code as well as the compliance plan. The call centre personnel are employed by Accenture Business Services – Utilities Customer Care Inc. (Accenture), an unaffiliated third party contractor.

Further, insofar as non-compliance turned up through internal testing by Accenture, the EEC compliance reporting failed to disclose the matters as required. This constitutes a breach of s. 34 of the Code, as well as the compliance plan, as EEC is from a Code perspective responsible for the conduct of its contractors.

Other findings regarding EEC were minor in nature and were addressed through recommended changes to the compliance plan.

The findings in relation to EPC were minor in nature, and were addressed through recommended changes to the compliance plan.

There were no negative findings in relation to 967051.

There were no negative findings in relation to VPC.

The follow up discussions on minor compliance plan recommendations will be part of regular compliance communications between the MSA and ENMAX.

In relation to the material issues found in the compliance testing, public disclosure is the first implication. The MSA will continue specific discussions with ENMAX around the breaches of the Code and compliance plan(s). The MSA will require satisfactory assurance that the matters have been appropriately dealt with by ENMAX, by training, process improvements and other means. At this time, no specific penalties or sanctions will be sought, although the breaches would be taken into account in relation to any subsequent conduct issues.

EPCOR Distribution Inc. (EDI)

EPCOR Energy Inc. (EEI)

EPCOR Energy Alberta Inc. (EEAI)

EPCOR Energy Services Inc. (EESI)

EPCOR Energy Services (Alberta) Inc. (EESAI)

EPCOR Merchant and Capital L.P. (EMC)

EMCC Limited (EMCCL)

The findings in relation to EDI were minor in nature, and were addressed through recommended changes to the compliance plan.

Pursuant to a corporate reorganization, EESI and EESAI ceased to exist as at September 1, 2004. To the extent that the business of EESI and EESAI was brought into the operations of EEI, EEAI and EMCCL, related findings and recommendations are subsumed in the reporting on those parties.

The testing looked at EEI, EEAI and EMC separately, as applicable; however, all three entities were reported on collectively as the affiliated retailers within the EPCOR organization.

In relation to those affiliated retailers, there were some material issues identified.

The testing found that EEI/EEAI customer interactions failed in some cases to comply with Code requirements. Specifically, the call centre personnel did not provide the required disclosure(s) about retail choice when addressing inquiries about retail electricity services; this constitutes a breach of s. 18 of the Code as well as the compliance plan.

Further, insofar as non-compliance turned up through internal testing, the compliance reporting failed to disclose the matters as required. This constitutes a breach of s. 34 of the Code, as well as the compliance plan.

Other findings were minor in nature and were addressed through recommended changes to the compliance plan.

There were no negative findings in relation to EMCCL.

The follow up discussions on minor compliance plan recommendations will be part of regular compliance communications between the MSA and EPCOR.

In relation to the material issues found in the compliance testing, public disclosure is the first implication. The MSA will continue specific discussions with EPCOR around the breaches of the Code and compliance plan(s). The MSA will require satisfactory assurance that the matters have been appropriately dealt with by EPCOR, by training, process improvements and other means. At this time, no specific penalties or sanctions will be sought, although the breaches would be taken into account in relation to any subsequent conduct issues.

FortisAlberta Inc. (Fortis)

There were no material issues identified by the testing.

Certain recommendations were made regarding possible improvements to the compliance plans; these were considered minor in nature. The discussions on those matters will be part of regular compliance communications between the MSA and Fortis.

Next Steps

The MSA and Grant Thornton will review the overall process as part of planning for the next round of testing (for the July 1, 2005 through June 30, 2006 period). There are additional parties subject to testing for this period. Apart from a broader scope, the testing plan may contemplate 'spot audits' throughout the year; for example, periodic call centre testing.

Further, as a result of discussions between the EUB, MSA, Alberta Department of Energy (DOE) and market participants, an industry initiative (now being finalized) will change the manner in which consumption information is made available to retailers. This will affect both the electricity and natural gas retail markets. In order to provide assurance that the parties are requesting and providing the consumption information appropriately, the MSA would expand its compliance testing to include non-affiliated retailers on the electricity side. The MSA may also be carrying out the compliance testing on the gas side, by agreement with the EUB and other stakeholders, or by changes to the relevant enactments. Additional information in this regard will, as applicable, be provided by the MSA, EUB and DOE in coming months.

Please feel free to contact the MSA with any questions or comments in relation to these matters.

Yours truly,

“Original Signed”

W.W. (Wayne) Silk,
Vice President, Chief Operating Officer
Market Surveillance Administrator.