

December 18, 2007

To Market Participants

**Notice Re: Code Of Conduct Testing - 2007**

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 electricity *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 several 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 in the prior Code audit, 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.

**Involvement of EUB**

There is also a *Code of Conduct Regulation* pertaining to the distribution and retailing of natural gas in Alberta. The Alberta Energy and Utilities Board (EUB) is responsible for oversight in relation to the gas Code.

By virtue of our similar Code related responsibilities, the MSA and the EUB have interacted and cooperated on compliance matters since the regulations came into force (2003). The EUB does not regulate the rural electrification associations (REAs).

## **Parties Tested**

A total of 5 parties were subject to the testing, all of them REAs. Other owners with affiliated retailers were not included in the Code testing this period, in part because of a proven track record of Code compliance evidenced by previous audit testing (the REAs began offering retail electricity services more recently than other owners with affiliated retailers, and thus to date have been subject to fewer Code related audits).

In accordance with the *Roles, Relationships and Responsibilities Regulation, 2003* each REA provided their 'owner' and 'retailer' functions through operating divisions within their single REA entity.

The specific parties tested were:

Battle River Rural Electrification Association Limited  
Central Alberta Rural Electrification Association Limited  
North Parkland Power Rural Electrification Association Limited  
Rocky Rural Electrification Association Limited  
South Alta Rural Electrification Association Limited

## **Scope of 2007 Audit**

Generally speaking, the period being tested included the 12 months running July 1, 2006 through June 30, 2007, inclusive. In the case of parties who had not been tested for the prior period, the test period(s) varied to take into account the particular date when they commenced offering retail electricity services.

As in previous audits, the test period was moved from a calendar year focus in order to avoid carrying out the audits 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.

## **Nature of Testing**

The testing plan this period largely focused on sections 3, 4, 6, 7, 15, 17, 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.

The testing was carried out during August and September, 2007. 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 very positive and encouraging overall. Areas of non-compliance and other comments are set out below.

- In general, the parties followed the systems, policies and mechanisms within their respective compliance plans, and those efforts toward compliance appeared to produce good results. In one case, personnel changes significantly disrupted efforts by the REA to administer their compliance plans; this affected the completeness of training, reporting and other measures.
- In some instances the parties did not provide the required disclosure(s) about retail choice as part of communications regarding their retail electricity services; this constituted a breach of Section 18 of the Code, as well as the applicable compliance plan(s).
- Section 34 of the Code requires that all circumstances of non-compliance be disclosed in the regular compliance reporting. In some instances, deviations from the compliance plan or the Code were not documented as required. However, in all cases the reporting omissions were found to be inadvertent.
- In the view of the MSA, there were no instances of non-compliance which would have materially undermined the *fair, efficient and openly competitive* operation of the market.
- Based upon its findings, Grant Thornton made certain recommendations intended to help the parties assure Code compliance. The MSA will be following up in this regard, as applicable. Other matters arising from the testing have already been addressed, as applicable.

The MSA also notes and appreciates the high degree of cooperation received from the parties being tested, which helped assure the efficiency of the process.

No specific feedback is required in relation to the matters discussed in this notice. However, please feel free to contact the MSA with any questions or comments.

Yours truly,

***“Original Signed”***

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