

December 19, 2008

To Market Participants

**Notice Re: Code of Conduct Testing - 2008**

As part of its mandate under the *Alberta Utilities Commission Act* (Act) and other enactments, the Market Surveillance Administrator (MSA) monitors the retail electricity market in Alberta, to help ensure its *fair, efficient and openly competitive* operation.

The electricity *Code of Conduct Regulation* (Code) was enacted under the *Alberta Electric Utilities Act* 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.

While there are several market participants subject to the Code obligations, those obligations are similar or uniform as between the different market participants. Accordingly, the MSA designed a process to create efficiencies in the compliance testing – the testing utilized a common testing plan and was carried out by the MSA with the assistance of Grant Thornton LLP. In total, 8 market participants were tested.

Overall, this again resulted in an efficient and cost effective process (as compared to utilizing a different auditor and audit plan for each entity). It also created another opportunity for the MSA to spend time in the offices of market participants, facilitating ‘question and answer’ dialogue regarding the Code and other matters of interest.

**Scope and Nature of 2008 Code Testing**

The period being tested was July 1, 2007 through June 30, 2008, inclusive. 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.

The testing plan this period largely focused on sections 4, 6, 18, 33 and 34 of the Code. Where the MSA wished to follow up on matters arising from regular compliance reporting during the period, from previous Code testing (2007) 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 the Code in relation to customer interactions; other issues.

In order to actively test how customer interactions were being handled, Grant Thornton carried out random call centre ('mystery shopper') testing in Q2, 2008. The balance of the testing plan was carried out through field visits between August and October, 2008. The findings were then shared and discussed with the relevant parties; related testing reports for each of 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 overall. Key testing results include:

- The parties largely followed the systems, policies and mechanisms within their respective compliance plans, and those efforts toward compliance appear to be producing good results. Deviations from the approved compliance plan(s) appeared to be inadvertent, and all were considered to be minor and transitory in nature – for example, changes to internal compliance training had evolved over time but had not been documented through changes to the approved compliance plan(s).
- Testing of call centre interactions showed good compliance with Code obligations.
- In certain instances, website or written communications did not have the disclosures required under s. 7 and s. 18 of the Code, as well as the applicable compliance plan(s). These omissions appeared to be limited and inadvertent, as most such communications were compliant.
- 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 and the Code were not documented as required. There did not appear to be any intent to misrepresent the status of compliance in that reporting however.
- No other material issues or areas of non-compliance were substantiated in the testing.
- Based upon findings arising from the testing, recommendations were offered for improvements or changes to the systems, policies and mechanisms employed by the parties toward assuring Code compliance. The relevant compliance plan(s) will be amended as necessary, and subject to review and approval by the MSA. Other matters arising from the testing have already been addressed, again as applicable.

The MSA wishes to note the high degree of cooperation received from the parties being tested, which helped assure the efficiency of the process.

**Possible Changes to Code Regulation(s)**

As referenced above, the Alberta Department of Energy (DOE) has commenced a stakeholder process to discuss possible changes to the electricity and gas Code regulations, as well as other enactments. This stakeholder process may result in changes during 2009.

**Next Steps**

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.