

July 23, 2009

## NOTICE TO MARKET PARTICIPANTS

### **Effect of FEOC Regulation on MSA Trading Practices Guideline (TPG)**

#### Background

On February 18, 2004 the Market Surveillance Administrator (MSA) established the *Trading Practices Guideline* (TPG), which relates to the use of non-public outage information for trading. The specific wording of the TPG is as follows:

*Market participants must not trade on the basis of known but not public information about the status of supply, load or transmission assets that can reasonably be expected to have a material impact on market price. Trading shall be understood to include any type of financial or physical transaction or operational strategy designed to extract value from known but not public information about the status of supply, load or transmission assets.*

To facilitate the ability of market participants to make outage information public so as to be able to then trade on that information in a manner consistent with the TPG, the MSA proposed the implementation of an *Information Disclosure Procedure* (IDP), which deemed that outage information would be considered ‘public’ at the point when it had been provided to the Alberta Electric System Operator (AESO). The methodology relating to the IDP evolved over subsequent years to the current period, insofar as the manner of providing outage/availability information to the AESO and the subsequent publishing of aggregated outage information. However, the fundamental premise underlying the TPG and IDP remained intact – market participants should not trade on non-public outage information.

#### FEOC Regulation

Recently the Alberta government passed into law the *Fair, Efficient and Open Competition Regulation* (FEOC Regulation), which comes into force September 1, 2009. Section 4 of the FEOC Regulation largely creates the same prohibition as that set out in the TPG, and also sets out the requirement for market participants to disclose “outage records” to the AESO and the requirement for the AESO to make outage records available to the public (those requirements thus dealing with matters similar to the IDP).

#### Planned Revocation of TPG

Given Section 4 of the FEOC Regulation, the MSA is of the view that the TPG (and related IDP) will no longer be needed after September 1, 2009. Accordingly, coincident with the FEOC Regulation coming into force September 1, 2009, the MSA will consider the TPG to be revoked.

The IDP was not issued as a guideline *per se*, and so does not require formal revocation. However, it will (when the TPG is revoked) also no longer have effect.

### MSA Views on Section 4 of FEOC Regulation

As indicated above, the MSA believes that the fundamental premise underlying the TPG is largely continued in Section 4 of the FEOC Regulation, notwithstanding that the language is not identical to that in the TPG. There are some important differences though.

Section 4 of the FEOC Regulation sets out that market participants shall not, directly or indirectly, use outage records to trade until those outage records have been made available to the public by the AESO, unless otherwise permitted under that section. However, Section 4 contemplates that the AESO (after having regard for the views of the MSA as applicable) may exempt certain records from the general disclosure requirement where particular grounds for exemption are met.

Specifically, Subsection 4(6) of the FEOC Regulation allows the AESO to exempt a market participant from the requirement to provide outage records where, in the opinion of the AESO,

- (a) the records would not reasonably be expected to have a material impact on market prices, and
- (b) the records are not necessary to carry out the duties of the AESO under the *Electric Utilities Act*.

Also of note, Section 4 differs from the TPG/IDP in that outage records can only be traded on after they have been made available to the public by the AESO through its outage reporting (as noted above, the IDP deemed that outage information was public once provided to the AESO).

Finally, it is worthwhile to note that Subsection 4(2) of the FEOC Regulation stipulates that outage records are to be provided to the AESO as soon as reasonably practicable, irrespective of whether the market participant intends to trade on those outage records. The MSA views this as meaning that, at a minimum, once an outage (availability) has a reasonable degree of probability attached to it, once it is known with reasonable certainty, it must be disclosed. Further, disclosure is seen as a continuing obligation and thus outage records should on a timely basis be revised, as necessary, to reflect changes warranted as more information becomes available to the market participant.

### Next Steps

The MSA will address any specific interpretation issues pertaining to Section 4, or other issues that arise, after the FEOC Regulation comes into force.

We trust that this will be of assistance. In any event, we encourage you to contact us as needed.

Yours truly,

***“Original signed”***

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