

December 21, 2006

To Market Participants

Notice Re: Code Of Conduct Testing - 2006

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 level of interaction increased in respect of the 2006 audit.

Government led discussions about rationalizing the gas and electricity Code regulations, and the possibility that the EUB will take over some electricity Code responsibilities, led the MSA to invite the EUB to participate as an observer in the 2006 Code audit planning. The goal was to facilitate a smooth transition of responsibilities in the event that the EUB does assume some responsibility for the electricity Code (particularly regarding the utilities subject to regulation by the EUB), through acquainting the EUB with the approaches taken by the MSA and by Grant Thornton. Additionally, the planning process benefited from insights garnered from the EUB, as pertained to its own utility audit process. The EUB does not regulate the rural electrification associations (REAs).

Scope of 2006 Audit

The period being tested was July 1, 2005 through June 30, 2006, inclusive, with shorter audit periods for those parties who commenced retailer functions during those 12 months (the two REAs). 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.

Parties Tested

A total of 13 parties were subject to the testing, including entities within the Direct Energy, ENMAX and EPCOR organizations, and also including Battle River REA and Central Alberta REA.

Of further note, as allowed by regulation specifically applying to the rural electrification associations, Battle River REA and Central Alberta REA each provided their 'owner' and 'retailer' functions through operating divisions within their single REA entity (see *Roles, Relationships and Responsibilities Regulation, 2003 Amendment Regulation*).

The specific parties are named below, grouped by common ownership.

Battle River Rural Electrification Association Limited

Central Alberta Rural Electrification Association Limited

Direct Energy Partnership

Direct Energy Regulated Services, a division of Direct Energy Marketing Limited

ENMAX Energy Corporation

ENMAX Commercial Energy Marketing Inc. (previously 967051 Alberta Ltd.)

ENMAX Power Corporation

Valeo Power Corporation

EPCOR Distribution Inc.

EPCOR Energy Inc.

EPCOR Energy Alberta Inc.

EPCOR Merchant and Capital L.P.

EMCC Limited

Nature of Testing

The testing plan this period largely focused 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 May and June, 2006. The balance of the testing plan was carried out between August and October, 2006. 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, showing improvement over the results of the previous audit for the 2004/2005 test period (and those previous results were themselves generally positive). Key test results are set out below.

- 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. Most deviations from the compliance plans were inadvertent, and all were minor in nature.
- Customer information was subject to appropriate safeguards, although certain failures were noted. One of the entities had some system challenges which caused the information release to go back further than specifically requested by the customer; another had inadvertently bundled regulated customer information with information pertaining to contract customers. However, there was no finding that information had been used inappropriately for sales or marketing from the Code perspective.
- In some cases, the testing done by Grant Thornton or internal testing done by the entity itself found that customer interactions were not fully compliant with the Code. Specifically, where 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).
- Section 34 of the Code requires that all circumstances of non-compliance be disclosed in the regular compliance reporting. In a few 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.

- No other material issues or areas of non-compliance were substantiated in the testing.
- Based upon its findings, Grant Thornton suggested minor improvements or changes to the systems, policies and mechanisms employed by the parties toward assuring 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.

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 regulation, as well as other enactments. This stakeholder process may result in changes during 2007 or (perhaps more likely) 2008.

2007 Audits

The MSA and Grant Thornton will review the overall process as part of planning for the next round of testing (for the July 1, 2006 through June 30, 2007 period). It is anticipated that the EUB will again be involved as an observer (particularly regarding the utilities subject to regulation by the EUB), toward facilitating any transition of responsibilities pursuant to changes arising from the DOE efforts around electricity/gas harmonization.

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.