

Market Surveillance Administrator

Re: EPCOR Merchant and Capital LP

EPCOR Energy Services Inc.

EPCOR Energy Services (Alberta) Inc.

Privileged and Confidential

March 15, 2005

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1 Introduction

1.1 Introduction and Background

Grant Thornton LLP was retained by the Market Surveillance Administrator (“MSA”) by letter dated October 4, 2004, to test the compliance of EPCOR Merchant and Capital LP (“EMC”), EPCOR Energy Services Inc. (“EESI”) and EPCOR Energy Services (Alberta) Inc. (“EESAI”) with certain sections of the Code of Conduct Regulation (the “Code”) under the Electric Utilities Act of Alberta (the “Act”) for the period January 1, 2004 to June 30, 2004 (the “Stub Period”). The MSA was established under the *Electric Utilities Act* with a mandate of surveillance and investigation to ensure a fair, efficient, and openly competitive market.

EMC, EESI and EESAI are part of the EPCOR group of companies which also includes EPCOR Distribution Inc. (“EDI”). Under the Code, EDI is considered an “Owner” while EESI, EESAI and EMC are considered “Retailers” and specifically, Affiliated Retailers. For convenience, we have referred to EMC, EESI and EESAI collectively as the “Affiliated Retailers”.

Throughout this report, we have referred to “EPCOR”. When doing so, we are referring to the EPCOR corporate group as a whole, which includes EDI, EESI, EESAI and EMC, as well as other companies owned by EPCOR Utilities Inc. There are certain process and policies which transcend the various corporate boundaries and apply to the larger corporate group that are relevant to our analysis. Therefore, we have adopted this convention.

It is understood by Grant Thornton LLP and the MSA that compliance with the Code is the responsibility of Affiliated Retailers. This includes ensuring that there are appropriate systems, procedures and activities (i.e. controls) in place which are designed and undertaken to be in compliance with the Code. The Code also requires the Affiliated Retailers to prepare and adhere to a Compliance Plan approved by the MSA. This report does not provide an opinion on the appropriateness, sufficiency or completeness of Affiliated Retailers’

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compliance with the Code or with their Compliance Plan but presents findings resulting from conducting certain procedures to test the controls that the Affiliated Retailers had in place during the Stub Period to comply with certain sections of the Code.

During the Stub Period, EMC, EESI and EESAI were Affiliated Retailers of EDI, providing services as follows:

- for the service area of EDI in the city of Edmonton and the town of Ponoka, EESI supplied Regulated Rate Tariff (“RRT”) and default supply services to end-use customers. This made EESI an affiliated retailer to Ponoka also;
- throughout much of the remainder of Alberta, excluding the Calgary area, EESAI supplied RRT and default supply services to end-use customers in the service area of FortisAlberta Inc., previously Aquila Networks Canada (Alberta) Ltd., and certain Rural Electrification Associations (“REAs”) and was therefore considered an affiliated retailer to FortisAlberta and those REAs as well; and,
- EMC did not provide RRT or default supply services to end-use customers, but provided retail electricity service to customers throughout Alberta to end-use customers under competitive contracts, as well as administering competitive contracts held within EESI and EESAI.

All three of the Affiliated Retailers also maintained competitive contracts during the Stub Period. Under a corporate reorganization subsequent to the Stub Period, the default and RRT customers of EESI and EESAI were moved to new entities, EPCOR Energy Inc. (“EEI”) and EPCOR Energy (Alberta) Inc. (“EEAI”) respectively and the competitive customers of EESI and EESAI were effectively transferred to another new entity, EMCC Limited (“EMCCL”). Consequently, we understand that EMC and EMCCL are currently the only EDI affiliated retailers with competitive contracts.

The Code requires that an Affiliated Retailer and its Owner must each file and obtain approval of a compliance plan with the MSA prior to the Affiliated Retailer providing electricity services to customers. The Affiliated Retailers each filed a draft compliance plan with the MSA prior to January 1, 2004, for which the MSA granted interim approval to February 29, 2004, subsequently extended to June 1, 2004. The Affiliated Retailers did not, however, have approved compliance plans in place until June 30, 2004. Consequently, the three

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organizations were non-compliant with the Code during the period June 1 to June 30, 2004. Regardless, we were informed they followed the draft compliance plans and were also largely dependent upon the procedures in the EDI plan during the entire Stub Period. This matter was included in the Affiliated Retailer's compliance reporting to the MSA.

1.2 Definitions

Any specific terms that are used in this report have the same meanings that are defined in the Code.

1.3 Scope of our Engagement

The MSA asked Grant Thornton LLP to focus on and we designed our testing around the following sections of the Code:

- Section 10 dealing with the disclosure of Customer Information with consent by Owners or Retailers;
- Section 11 dealing with the disclosure of Customer Information to two or more Retailers by an Owner or Regulated Rate Provider;
- Section 12 dealing with the conditions for the disclosure of Customer Information by an Owner or Regulated Rate Provider;
- Section 13 dealing with the disclosure of a customer's historical energy consumption by an Owner or Regulated Rate Provider;
- Section 14 dealing with the provision of aggregated Customer Information by an Owner or Regulated Rate Provider;
- Section 15 dealing with the equal treatment of Retailers by Owners;
- Section 20 dealing with the non-disclosure of Customer Information for marketing or sales purposes between an Owner and an Affiliated Retailer; and,
- Section 34 dealing with compliance reporting.

1.3.1 Available Information/Documents

We reviewed and relied on the following in preparing our report:

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- (1) The following individuals were interviewed to gain an understanding of the policies and procedures in place during the Stub Period. The representations made by these individuals were relied on in completing this engagement:
 - a. Glenn R. Kosak, Chief Compliance Officer, EPCOR Utilities Inc.;
 - b. Deborah Kennedy, Office Administrator, Compliance Office, EPCOR Utilities Inc.;
 - c. Ray Williams, Compliance Coordinator, EDI;
 - d. John Dunnett, Vice President Energy Services, EESI;
 - e. Kenneth B. Grimes, Controller Regulated Businesses and Conduct Leader, EDI;
 - f. Diane Greening, Manager Special Initiatives, EMC;
 - g. Dave Hunka, Envest Program Manager, EMC;
 - h. David Marinucci, Director, Origination, EMC;
 - i. Jeff Bertram, Manager Energy Marketing Northern Alberta, EMC;
 - j. Shun Fung, Manager Load Settlement & Market Interface Services, Competitive Market Infrastructure, EDI;
 - k. Megan Young, Customer Relations Advisor, EPCOR Utilities Inc. Corporate Marketing;
 - l. Rob Rossi, Human Resources System Advisor, EPCOR
 - m. Bryan Carter, Manager of Energy Marketing – Southern Alberta, EMC; and,
 - n. Edrea Cox, Manager Workplace Learning, EESI.
- (2) Record of charges for customer information made to retailers;
- (3) Information contained in the “Service Request Binders” related to consent to release customer information, including customer consent forms;
- (4) On-screen review of account information to identify the retailer of record;
- (5) E-mails and Compliance Office files related to Code complaints;

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- (6) Customer files for all “new” customers signing contracts during the Stub Period;
- (7) Listings provided of all R3 customers, all R3 customers within EDI’s service area and customer files for those customers selected for further review;
- (8) Listings provided of all “upsell” customers and customer files for those customers selected for further review;
- (9) EPCOR policies in relation to employee ethics, privacy, customer information, conduct requirements and employee roles and responsibilities;
- (10) Binder containing marketing materials provided by EPCOR Corporate Marketing staff;
- (11) The training material, logs and staff acknowledgments provided by the Compliance Office;
- (12) List of new employees and employee transfers provided by EPCOR Human Resources;
- (13) Report detailing EPCOR staff access, by group, to information systems within EPCOR;
- (14) The management representation letters from the Affiliated Retailers:
 - a. For EMC, signed by Amanda Rosychuk, Vice President, Customer Care and Business Systems, Conduct Leader for EMC, and Glenn R. Kosak, Chief Compliance Officer, EPCOR Utilities Inc. dated January 21, 2005;
 - b. For EESI, signed by Brian Gerdes, General Manager for RRT and Default Operations, Conduct Leader for EESI, and Glenn R. Kosak, Chief Compliance Officer, EPCOR Utilities Inc. dated January 21, 2005; and,
 - c. For EESAI, signed by Brian Gerdes, General Manager for RRT and Default Operations, Conduct Leader for EESI, and Glenn R. Kosak, Chief Compliance Officer, EPCOR Utilities Inc. dated January 21, 2005;

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- (15) A binder containing a report on website content and changes to that content during the Stub Period; and,
- (16) Files containing mid-management certificates regarding compliance principles signed monthly by EPCOR management employees.

1.3.2 Scope Limitations

We encountered the following limitations in conducting our analysis:

- (1) Due to the nature of the engagement, we have been unable to assess the completeness of the information reviewed and relied upon. In other words, we have been unable to ensure that the population from which we selected our samples for testing purposes was complete.

2 Summary of Findings

Based on the procedures conducted, our summary of significant findings is as follows:

- EMC made requests throughout the Stub Period for historical customer information from EDI. We tested a sample of 35 such requests. In 32 instances, customer consent was not required as EMC was the retailer of record at the time of the request. In three instances there was no evidence of customer consent and therefore the information should not have been released as EMC was not the retailer of record; however, there was no indication that EMC signed contracts with these customers. This appears to be a violation of Section 21 of the Code; however, none of these instances of non-compliance were included in the reporting to the MSA;
- In one of the three instances referred to above, the information we reviewed indicated that staff at both EMC and EDI were aware that EMC was not the retailer of record, but the information was released regardless;
- In addition to the findings referred to above, we noted one additional instance where EMC staff was able to obtain historical customer information without customer consent. In this instance, a signed consent form was obtained approximately two weeks after the information had been released to EMC and a contract was signed with EMC. This appears to be a violation of Section 21 of the Code; however, this instance of non-compliance was not included in the reporting to the MSA;
- For each of the three above findings, we believe that it is primarily the responsibility of EDI staff to ensure consent has been obtained prior to releasing customer information to a retailer. However, staff of EMC should be aware that they should not be requesting this information without customer consent;

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- EMC was required to report to the MSA on a monthly basis regarding the R3 program, which extended past the Stub Period. As part of the R3 program, EMC obtained customer consents which enabled them to access customer information for which they were not the retailer of record, where EMC representatives dealt with customers whose sites may not have been under contract with EMC. These consent forms utilized by EMC contemplate that sales and marketing discussions may take place and contain a statement advising the customer that the electricity market is competitive. In the above noted circumstances, while the customer has consented to EMC having access to the information for a specific purpose, the boundaries of what the customer is consenting to, and how EMC may use the information, in relation to sales and marketing, are not clear. This may be a violation of Section 20 of the Code;
- It does not appear that EESI's main information system containing customer data, UIS, completely separates access to regulated rate and default customer information from access to customers under contract. This was identified as a weakness in the previous report completed by KPMG and EESI took steps in late 2003 to remove this access to Energy Marketers. We were also informed that, subsequent to the Stub Period, EMC began implementing their own billing system and migrating the competitive customers from UIS to this new system which will further reduce the possibility of inappropriate access;
- Between June 1 and June 30, 2004, the Affiliated Retailers were not in compliance with Section 31 of the Code as they did not have compliance plans approved by the MSA until June 30, 2004 and the interim approval of their draft compliance plan had expired on June 1, 2004. This matter was included in the Affiliated Retailer's compliance reporting to the MSA;
- We found no other apparent instances of Code violations at the Affiliated Retailer's during the Stub Period; and,
- Although we were not prevented from gaining access to information, other than as noted in the scope limitations above, EPCOR raised concerns on several occasions regarding the process of our work and the level of scrutiny they were under by the MSA. In addition, we encountered some delay in receiving information requested from the

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Affiliated Retailers that, in turn, resulted in delays in finalizing our analysis and preparing this report.

Based on our findings, we have the following recommendations:

- As a result of our work completed on the disclosure of historical customer information, we identified four instances of non-compliance. Consequently, we recommend that EMC sales and marketing staff be retrained on the Code in relation to customer information. As well, we have made recommendations for EDI contained in the report on EDI;
- We were informed that, although unusual, requests for historical customer information may be sent directly to the Affiliated Retailers. In order for the processes and controls in place within the Load Management Group of EDI to be effective, the Affiliated Retailers should not respond to these requests, and ensure that they are forwarded to the Load Management Group of EDI in all circumstances;
- The MSA and EMC should review the customer consent forms utilized by EMC in the R3 program in order to clarify the purpose of including the competition statement and the boundaries of EMC's utilization of this customer information for sales and marketing purposes; and,
- EESI's main information system containing customer data, UIS, should completely separate access to regulated rate and default customers from access to customers under contract so that the risk of inappropriate access to and use of customer information is limited. As noted above, EESI took steps in late 2003 to remove this access to Energy Marketers. We were also informed that, subsequent to the Stub Period, EMC began implementing their own billing system and migrating the competitive customers from UIS to this new system which will further reduce the possibility of inappropriate access..

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3 Restrictions and Limitations

This Report was prepared for the Market Surveillance Administrator in relation to the testing of the compliance of EPCOR Merchant and Capital LP, EPCOR Energy Services Inc. and EPCOR Energy Services (Alberta) Inc. with certain sections of the Code of Conduct Regulation under the Electric Utilities Act of Alberta for the period January 1, 2004 to June 30, 2004. This report is not to be used for any other purpose and we specifically disclaim any responsibility for losses or damages incurred through use of this Report for a purpose other than as described in this paragraph. It should not be reproduced in whole or in part without our express written permission, other than as required by the MSA in relation to compliance matters.

We reserve the right, but will be under no obligation, to review and/or revise the contents of this Report in light of information which becomes known to us after the date of this Report.

Yours truly,

GRANT THORNTON LLP

The image shows a handwritten signature in black ink that reads "Grant Thornton LLP". The signature is written in a cursive, flowing style.

David J. Elzinga, CA-IFA, CFE
Partner