

July 22, 2009

NOTICE TO MARKET PARTICIPANTS

FEOC Regulation – Section 3 - Preferential Sharing of Non-Public Records

Recently the Alberta government passed into law the *Fair, Efficient and Open Competition Regulation* (FEOC Regulation), which comes into force September 1, 2009. To the extent that the Market Surveillance Administrator (MSA) has particular responsibilities in respect of the FEOC Regulation, this notice is intended to convey related views and clarifications.

Section 3 of the FEOC Regulation sets out a general prohibition against the sharing of certain non-public records (information) – ie. records relating to any past, current or future price and quantity offer made to the power pool or for the provision of ancillary services - but allows under Subsection 3(2) for the sharing of such records in specific contexts and circumstances.

Section 3 also establishes a process whereby a market participant can bring an application to the Alberta Utilities Commission (Commission) seeking an order permitting the sharing of such non-public records on the grounds that:

- (i) the records will not be used for any purpose that does not support the *fair, efficient and openly competitive* operation of the market; and
- (ii) the sharing of the records is reasonably necessary for the market participant to carry out its business.

Notices to MSA re: Applications per Section 3

When bringing an application to the Commission under Section 3 of the FEOC Regulation, the market participant must concurrently notify the MSA of the matter. To facilitate delivery of that notice to the MSA, unless informed otherwise, market participants are asked to send the notice to the MSA Compliance mailbox – compliance@albertamsa.ca.

Comment re: Agency Approvals

The MSA notes that, notwithstanding the general prohibition set out in Section 3 of the FEOC Regulation, Subsection 3(2)(g) allows (for a period not exceeding one year after the legislation comes into force) the sharing of those non-public records pursuant to an agreement or arrangement previously approved by the Alberta Electric System Operator (AESO). To the extent that market participants might plan to rely on existing agency arrangement approvals issued by the AESO in this regard, insofar as joint venture or other commercial arrangements, the MSA encourages those parties to review their approved agency arrangement(s) to assess how the approved (agency) information sharing correlates to the Section 3 prohibition.

In particular, in the view of the MSA a market participant will only be able to rely upon an existing approved agency arrangement re: Subsection 3(2)(g) to the extent that it specifically allows for the sharing of price and quantity offer records otherwise prohibited under Section 3. Naturally, an agency arrangement approval which contemplates another manner of information sharing will not be relevant insofar as relief from the Section 3 prohibition.

Exchange of Views

The MSA encourages any market participant seeking MSA views in respect of Section 3 to contact us, and to do so well in advance of any applicable deadline. We are similarly open to discussions about matters arising from other provisions of the FEOC Regulation.

Specific contact information can be found on the MSA website www.albertamsa.ca.

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.