



February 20, 2008

Market Surveillance Administrator
#500, 400 – 5th Avenue S.W.
Calgary AB T2P 0L6

Attention: Wayne Silk
Vice-President, Chief Operating Officer

Dear Mr. Silk:

Re: Proposal for Revised MSA Investigation Procedures (“the Revised Procedures”)

I am writing in response to your letter of February 6, 2008 in which you invited comments on the Revised MSA Investigation Procedures. As a general comment, we find the Revised Procedures less helpful than the current MSA Investigation Procedures (5 October 2006) (“the Current Procedures”), as they provide significantly less detail about the actual procedures that will be used and internal records that will be prepared by the MSA in carrying out its investigations. We have the following additional comments.

- 1. Increased Use of MSA Guidelines.** While not specifically part of the investigation procedures used by the MSA, EPCOR request that the MSA increase its use of Guidelines in order that parties understand the types of behaviour which the MSA considers to be inappropriate. Such guidance would greatly assist parties in conducting themselves appropriately and could potentially likely lessen the need for MSA investigations.
- 2. Issue Resolution.** The Current Procedures establish the MSA objectives of attempting to resolve issues, to examine the market to ensure sufficient remedies exist to avoid untoward market conduct or activity as preliminary steps to investigating issues. Those objectives have disappeared from the Revised Procedures. EPCOR believes that these elements should continue to be part of the process employed by the MSA in achieving its mandate.
- 3. Assessment Procedures.** The Current Procedures contain more detail about the procedure used by the MSA than do the Revised Procedures. EPCOR requests that the MSA incorporate a level of detail into its assessment procedures, so that parties can understand what to expect if they are drawn into the assessment phase of an issue assessment. It should be a requirement of the process that the MSA communicate clearly to parties which phase of the investigation the MSA is at when the MSA contacts them to request information.
- 4. Timeline and Changes.** The Current Procedures provide that the MSA will attempt to expedite its investigations within 75 business days and that it will advise parties if revisions to the procedures are necessary. These requirements should be incorporated into the Revised Procedures, so parties can have a clear understanding of the length of time that the MSA expects its process will require, as well as any changes to its normal procedures that it believes will be necessary.
- 5. Investigation Considerations.** The Current Procedures go into great deal about the considerations that the MSA will use in conducting its investigations. These are completely absent from the Revised Procedures. An understanding of the considerations behind an MSA investigation is a critical element to fairness of the process. These elements have not, in our opinion, been superseded by changes in the legislation and should be restored to the Revised Procedures. If they are not included in the Investigation Procedures, they should be reflected in an MSA Guideline.

6. Confidentiality. The Revised Procedures state that “*As a matter of practice, during the course of an investigation the MSA will generally not identify by name any party whose conduct is under investigation.*” They then go to provide exceptions, which include, “*where the MSA considers that, on balance, the naming of the party is warranted*”. The MSA should publish a guideline about the considerations that it will use in making that determination. In addition, the Revised Procedures provide that, at the MSA’s discretion, it may publish a notice to the market and the public at large about the commencement, progress or completion of an investigation. The considerations that will enter into the exercise of that discretion should be the subject of a guideline.

7. Information Requests General information about the MSA’s normal practices in requesting information of parties, including timelines, would be helpful.

8. Interviews If parties are interviewed under oath and a transcript is made, the MSA should be required to provide a copy of that transcript to the party being interviewed as soon as the transcript is available.

9. Specified Penalties It would be helpful to have some information in the Revised Procedures about the extent to which they apply to specified penalties. It would also be helpful to have guidance from the MSA as to when it will exercise its discretion to seek a settlement, proceed to a hearing, a specified penalty or to forbear from enforcement action.

If you want to discuss this letter further, I can be reached at (403) 717-8943 or by e-mail at “lmeyer@epcor.ca”.

Yours truly,

EPCOR

<Unsigned, Original sent by e-mail>

K. Lynn Meyer
Director, Regulatory Policy