

## NOTICE TO PARTICIPANTS AND STAKEHOLDERS

March 15, 2016

**Re:** IPPSA v. ISO Important Administrative Law Decision from the Court of Queen's Bench of Alberta

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In oral reasons delivered on February 9, 2016, the Alberta Court of Queen's Bench issued a significant administrative law decision in the case of Independent Power Producers' Society of Alberta v Independent System Operator (Alberta Electric System Operator), 2016 ABQB 133 (the "Decision"). The full text of the Decision, filed on March 7, 2016, is available [here](#).

The Decision provides a brief background summary to the dispute between IPPSA and the ISO relating to the ISO's early 2015 notice to the market that it proposed to modify the Historical Trading Report ("HTR") followed by IPPSA's application to the Court for judicial review of the ISO's proposed modifications to the HTR. As explained in the Decision, the MSA has had concerns about the HTR at least since 2011 and, exercising its statutory mandate as electricity market watchdog, the MSA brought an application to the Alberta Utilities Commission (the "AUC"), on December 2, 2015. The AUC has scheduled Proceeding 21115 commencing April 11, 2016 to consider all aspects of the matter.

The Decision has significant administrative law implications both for what it confirms and for what it rejects. The Decision recognizes the MSA's mandate to monitor the electricity and retail natural gas markets and to promote behavior that supports the fair, efficient and openly competitive operation of the market (see paragraph 6).

The Decision confirms the Court's inherent discretion to hear from those who may be made parties as well as from non-parties (paragraph 20). The Court recognized the MSA's key role in the electricity market in Alberta by allowing the MSA to intervene to provide the Court with important information and to speak in the public's interest. At paragraph 21 Madam Justice Nixon states:

The MSA was granted intervenor status in part because it plays a key role in the electricity market in Alberta. Further, the MSA is directly affected by the subject matter of the judicial review. As astutely observed by legal counsel for the MSA in its brief, the issue in the judicial review, namely the format and publication timing of the HTR, will directly affect many parties, including the Commission, electricity consumers, and electricity market participants. The MSA provided information important to the Court's decision whether to exercise its discretion to adjourn, stay or dismiss the Application for Judicial Review before it is heard.

In the Decision Justice Nixon held that the AUC is a specialized expert tribunal established by the legislature to consider and decide issues pertaining to Alberta's electricity regime and that

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not only should deference be accorded to its decisions, but also the right for it, not the Court, to make those decisions in the first instance (see paragraphs 25, 26, 27, 28, 29, and 34).

Regarding IPPSA's request for judicial review, Justice Nixon at paragraph 33 concluded:

There is no purpose for the judicial review other than to seek a judicial interpretation of s 6 of the FEOC Regulation and pre-empt the proceedings before the Commission. IPPSA asks the Court to interpret a regulation that is part of the home legislation of the Commission. As aptly stated by counsel for the MSA in its brief, what IPPSA is seeking in the judicial review is a declaration by the Court that the current format and publication timing of the HTR is required as a matter of law. Such a declaration would not only be binding on the Commission, making its proceeding nugatory, it would affect all those involved in the electricity market in Alberta, including consumers.

The Court rejected IPPSA's claims that the Court "is best-suited to interpret s.6 of the FEOC Regulation", that "the interpretation of s. 6 of the FEOC Regulation is straightforward, simple or clear" and that interpretation of s. 6 requires "neither specialized knowledge nor considerations of public policy underlying the statutory scheme governing the electricity market in Alberta" (see paragraphs 22 and 30). The Court reiterated the Supreme Court of Canada's well-established principle of statutory interpretation that "...the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (see paragraph 31).

In paragraph 32 of the Decision, Nixon J. states: "I do not agree with IPPSA's submission that because this is a regulation, no policy considerations are to be considered and no factual information regarding the electricity market is necessary. The FEOC Regulation is part of the overall statutory scheme established by the Legislature for regulation of the electricity market in Alberta. It must be interpreted in that context."

In summary, the Court declined to exercise its discretion to review the ISO decision respecting the HTR and granted the preliminary application brought by the ISO and the MSA to dismiss IPPSA's application for judicial review. The MSA was awarded costs in the amount of \$2,000 for its intervention in this matter.

Yours truly,

**/s/ Matt Ayres**

Market Surveillance Administrator