

NOTICE TO PARTICIPANTS AND STAKEHOLDERS

September 6, 2017

Re: Code of Conduct Regulation Investigation Report

Why we investigated

The MSA received a complaint regarding the conduct of a distribution service provider (DSP) that is a Rural Electrification Association (REA) associated with the transfer of an REA member's distribution service to another DSP that operates in the same service area. The complaint related specifically to the REA's refusal to transfer the member's distribution service to the new DSP until termination costs associated with the customer's fixed rate contract for retail electricity services (Fixed Rate Contract) with the REA had been paid.

One of the responsibilities of the MSA under the *Alberta Utilities Commission Act* is to investigate whether the conduct of market participants "...supports the fair, efficient, and openly competitive operation of the electricity market," which includes compliance with the *Code of Conduct Regulation (Code)*. The MSA can commence an investigation on its own initiative or on receipt of a complaint. This matter related to the prevention of unfair competitive advantages to an entity that engages in both regulated activities – distribution and the provision of the Regulated Rate Option (RRO) – and competitive activities – non-RRO retail electricity services.

What we investigated

The MSA investigated whether the REA was in compliance with the Code and section 6 of the *Electric Utilities Act (EUA)*. With respect to the Code, the MSA investigated specifically whether the REA was in compliance with section 17(3), which states:

An entity, including a rural electrification association, that carries on both the business of a distributor and the business of a regulated rate supplier or retailer shall not make an internal arrangement that creates an unfair competitive advantage for itself as a regulated rate supplier or retailer.

The MSA also reviewed the REA's compliance plan, approved by the Commission, which acknowledges that it must comply with section 17(3) of the Code. The MSA assessed the conduct of the REA against the compliance plan, the Code and the EUA. Specifically, the MSA set out to determine whether: the REA was a market participant and retailer; the Fixed Rate Contract was for a retail electricity service that competes with other retailers; and whether withholding the transfer of distribution service because of unpaid termination fees related to the Fixed Rate Contract constitutes an unfair competitive advantage. During the investigation the MSA issued a number of information requests to assist in understanding the scope of the conduct at issue and establish relevant facts. The MSA also provided the REA with a copy of its Facts and Findings and considered the REA's response before concluding its investigation.

What we found

Retailer and Market Participant

The MSA found that the REA was a market participant and retailer as defined in the EUA. The MSA's finding that the REA was a retailer was disputed by the REA, which argued that REA members engage in a form of self-supply through the REA. The MSA was not convinced by this argument because the EUA defines a retailer as a person who sells or provides retail electricity services directly to a customer, which includes the exchange of electric energy, hedging, distribution service, system access service, billing and metering (but excludes services related to the provision of the RRO). The Fixed Rate Contract provided by the REA is for the provision of retail electricity services and is not the RRO. As such, the MSA found that the REA was a retailer.

The REA undertakes its roles of distributor, regulated rate provider and retailer through a single entity, which is permitted for REAs by section 6.1 of the *Roles, Relationships and Responsibilities Regulation* (RRR Regulation). When it performs retail functions, however, section 6.1(2) of the RRR Regulation specifies that the REA "must comply with all enactments governing the carrying out of those functions by retailers." The MSA also found that as a retailer the REA must comply with section 111 of the EUA, which describes the functions and obligations of retailers, including debt collection.

Competitive Retail Offering

REA members, in this case, have three options to obtain retail electricity services: the RRO provided by the REA, the Fixed Rate Contract provided by the REA, or a contract rate provided by a competitive retailer that operates within the REA service area. The REA is required to provide its members with the RRO pursuant to the *Regulated Rate Option Regulation* and the EUA. The MSA found that the REA's Fixed Contract Rate competes with offerings of competitive retailers in the REA's service area.

Unfair Competitive Advantage

The Fixed Rate Contract provides REA members with a fixed multi-year electricity rate. In certain cases, on termination of the Fixed Rate Contract the member is required to pay termination costs. In this case, the MSA does not believe charging termination costs in accordance with a contract provision is offside the Code or EUA. The REA can use all legal avenues to recover debts, including a collection agency to recover unpaid termination costs. The issue arises when the REA uses its regulated functions (distribution) to collect debts associated with a competitive retail contract.

The MSA concluded that the REA used its distribution functions to attempt to collect debts owed under the REA's Fixed Rate Contract by refusing to transfer distribution facilities to the new DSP until payment was received. In doing so, the MSA was of the view that the REA breached section 17(3) of the Code because it "ma[de] an internal arrangement that creates an unfair competitive advantage for itself as a ...retailer."

The MSA found only one instance in which the transfer of a member's distribution service was refused because of unpaid termination fees associated with a Fixed Rate Contract. The MSA understands that the termination fee has been paid and the distribution service has been transferred. Furthermore, the MSA received written commitment from the REA that it would not withhold the transfer of distribution service because of unpaid termination fees associated with a Fixed Rate Contract going forward. As a result the MSA decided not to pursue enforcement action.

Conclusion

The MSA has the mandate to investigate any conduct that distorts competition in the retail and wholesale electricity markets, including unfair competitive advantages.

The MSA is of the view that REAs that offer retail electricity rates and services beyond the RRO are retailers under the EUA. As such, the sections of the Code and the EUA that apply to retailers also apply to REAs that carry out retail functions. Furthermore, the MSA wishes to emphasize that regulated entities that participate in competitive markets themselves or through an affiliate should pay close attention to the requirements of the Code and the EUA. These statutes and regulations exist in part to allow regulated entities, which have inherent advantages as a result of their regulated businesses, to participate in competitive markets on a level playing field.

The MSA considered a similar issue in 2016, where an RRO provider attempted to recover the (purchased) bad debt that had been incurred by the RRO provider's affiliated retailer. In that case the MSA advised the RRO provider of its concern and the practice of the RRO provider collecting the affiliate's debt ceased.¹

The MSA notes that its findings in this investigation do not constitute a formal guideline or opinion of the MSA. However, the MSA believes it is reasonable to report on its findings in this investigation so that stakeholders can understand the MSA's enforcement stance and provide transparency to the MSA's activities. Views expressed by the MSA do not supplant the role and authority of the courts, the Alberta Utilities Commission or another adjudicative body with jurisdiction over a given matter.

¹ [Q1/2016 Quarterly Report](#), pages 11-12.