



January 10, 2012

Feedback – “directly or indirectly” using outage records to trade

The MSA recently had a discussion with a market participant regarding the language of subsection 4(1) of the *Fair, Efficient and Open Competition Regulation*. In a sense, the discussion was considering the meaning of the words “directly or indirectly” in that provision.

Subsection 4(1) reads as follows: “A market participant shall not, directly or indirectly, use outage records to trade unless permitted to do so under this section.” The subsection works with the rest of section 4 toward creating a level playing field around outage records, because outages can have a material effect on pool prices. At its core, this subsection prohibits the use of outage information as part of trading before that information is made available to all market participants.

The discussion was around the following scenario: a trader creates a (long) forward position designed to benefit from a loss of supply in the market during a given period. The trader then lets this profit opportunity be known to those responsible for scheduling outages, seeking to locate a new outage in that period. An outage is scheduled accordingly. (To be clear, this scenario is not about the falsification of an outage, but relates to the timing of a legitimate outage, be it planned maintenance or a forced outage that does not have to be taken immediately.) It is the converse of the classic ‘front running’ scenario where the trader is told of an outage and then trades on the information before it is made available to other market participants. Here the trader is effectively determining the outage and using the outage to benefit the trading.

The MSA confirmed its view that this would be caught by the prohibition in subsection 4(1). The scheme would, in substance, be no different than the situation where the trader is given outage information and, before it is made public, transacts on that information – a clear contravention, in the view of the MSA.

The phrase “directly or indirectly” in subsection 4(1) can refer to various aspects. For example, instead of transacting directly itself a market participant may use another party to carry out a trading strategy, thus doing so indirectly. Another variant would be a scheme where the sequence of events indirectly amounts to use of outage information, such as described above. The point is that, insofar as subsection 4(1) is concerned, it would not be okay to do indirectly that which you cannot do directly.

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