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**Re: MSA Investigation Procedures – Strawdog Draft Dated 05 March, 2008**

Dear Wayne,

In response to the above noted document, TransCanada would like to express our surprise and disappointment with the overall direction the MSA is taking. Rather than bringing greater clarity and transparency to the process, your Strawdog Draft gives even less guidance to the market than the MSA Investigation Procedures published on October 5, 1996. Rather than providing insight into the MSA's process and procedures, the Strawdog Draft merely reiterates the MSA's enabling legislation. The comments submitted by IPPSA, EPCOR and ATCO regarding the February draft of this document appear to have been largely ignored in this new draft. We believe that this "black box" approach the MSA is adopting is contrary to the spirit and intent of the new *Alberta Utilities Commission Act*, *Alberta Electric Utilities Act* and the *Market Surveillance Regulation AR 226/2007*.

Because there is so little content to the Strawdog Draft, there is little room for specific comments. However, TransCanada notes that:

- **Section 1.1 Mandate of the MSA:** refers to "*the MSA strives to ensure that a person bringing a complaint or referral to the MSA is also accorded a fair process.*" "Fairness" has proven to be a nebulous concept. We believe the MSA should strive to provide due process to all rather than an ill-defined "fair process" to some.
- **Section 1.2 Changes to Investigation Procedures:** As has already been noted by IPPSA in its previous comments, the MSA's proposal to vary its procedures at its discretion is inconsistent with Section 7 of the MSA Regulation, which says:

7(1) The MSA must make public the procedures to be used in its interactions with market participants during investigations.

- 7(2) If the MSA decides to materially change its investigation procedures referred to in subsection (1), the MSA must consult with market participants on the proposed changes and make public any revised investigation procedures.

This approach is also contrary to the purpose of these Investigation Procedures as set out by the MSA in its Introduction to the Strawdog Draft.

- **Section 2.1 Matters to be Investigated:** says that “the identification of an issue or potential issue is the starting point for the “Investigation Procedures”. We note that the MSA is careful not to make transparent those activities it undertakes prior to formally identifying an issue. TransCanada suggests that market participant confidence in the fairness of the MSA’s process would be enhanced if the MSA were to be more open concerning the activities it undertakes when identifying issues, such that these parties will not feel exposed to arbitrary “fishing expeditions”.
- **Section 4.5 Notice to Market regarding Investigation:** overstates the MSA’s authority to publish investigative materials. The *Market Surveillance Regulation* grants the MSA a limited ability to publish such information in certain circumstances, it does not grant the MSA unfettered “discretion” of the nature described in this paragraph.

As a general principle, persons who make investigations and form opinions must act fairly and ought to give those who would be adversely affected an opportunity to understand the process to which they are being subjected. Procedural fairness requires that the MSA adopt a fair procedure in the exercise of its duties. Market participants have a legitimate interest in an open and transparent MSA process. Accordingly, TransCanada urges the MSA to table a new Draft Strawdog that gives sufficient details about and insight into the MSA’s internal practices and procedures to make the Investigative Procedures document a meaningful guide to the industry and the public.

If you have any further issues or concerns on this matter please feel free to contact me at (403) 920-2087.

Regards

TransCanada Energy Ltd.

*(Original sent by e-mail)*

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