



March 19, 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: Revised MSA Investigation Procedures (“the Revised Procedures”)

I am writing in response to your Notice of March 5, 2008 in which you invited further comments on the Revised MSA Investigation Procedures. One general comment is that EPCOR is disheartened by the general reluctance of the MSA to increase the transparency of its processes to at least the level of the Investigation Procedures that are currently in place. An additional general comment which we did not make in our initial comments that may be self-evident, but for which we have no visibility is with respect to coordination of processes among the ISO, MSA and AUC. Each of these agencies is responsible for administration of a portion of an overall compliance framework. If any of the agencies have a piece of the process which is inconsistent or not coordinated with the process of the other agencies, the overall framework will suffer. EPCOR urges the MSA to work with the AUC and ISO in the development of its procedures to ensure that the processes and rules of all the agencies are coordinated. Our detailed comments are provided below.

- 1. Lack of Detail regarding MSA Processes.** The MSA references section 7 of the MS Regulation in its “Formal Response to Comments Received on the Strawdog Draft” (“MSA Response”) as justification for removal of detail about its processes from its publicly available procedures. Section 7 provides as follows:

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

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.

Section 7 does not require the MSA to eliminate detail from its description of its procedures. Additional detail would assist market participants in understanding the nature of the process which the MSA uses and would likely encourage greater cooperation by market participants, as the process would then be clearly understood.

- 2. Increased Use of MSA Guidelines.** EPCOR is gratified that the MSA accepts and acknowledges the usefulness of additional guidelines from the MSA to understand the MSA’s views. We anticipate that we will see greater use made of this tool in the future.
- 3. Interviews** EPCOR appreciates the MSA’s commitment to provide transcripts of interviews to parties under investigation, as provides a degree of transparency to MSA practices.

4. **Issue Resolution.** EPCOR understands that the MSA is unwilling to incorporate the objectives of the MSA in its investigation procedures; however, that rationale for their removal is unclear to us. We believe that the objectives guiding an investigation are a fundamental component of the MSA's conduct and that they should be clearly articulated in the Investigation Procedures in order that market participants have the goals of the investigation and the procedures clearly communicated in one document, rather than having to hunt through the website to find the information.
5. **Assessment Procedures.** EPCOR is reassured by the MSA's agreement that it is appropriate to communicate clearly regarding the relevant phase of the process when requesting information from market participants. It is not clear to us that this is incorporated into section 3.3, as discussed in the MSA Response. An explicit recognition of these communication requirements should be added to section 3.3.
6. **Timeline and Changes.** EPCOR appreciates the MSA's reluctance to maintain the 75 business day deadline if it has proven to be unworkable in practice. However, a commitment in the Procedures to attempt to expedite investigations would be useful. In addition, if the MSA's experience has shown that some timeframe other than 75 days is more workable in most instances, the MSA should incorporate that timeframe as a goal of its investigations. Being investigated, particularly in light of the onerous penalties to which parties can be exposed, can raise a significant level of anxiety among the organizations and individual employees being investigated. The MSA's commitment to expedition would alleviate some of these concerns.
7. **Investigation Considerations.** As stated above, EPCOR has a different view of s. 7 of the MS Regulation than the MSA. We believe that it supports a more open approach to the MSA's investigation procedures. If investigation considerations are not included in the Investigation Procedures, they should be reflected in a separate MSA guideline.
8. **Information Requests.** EPCOR has had the opportunity to review the ISO's proposed Compliance Rules and would commend to the MSA an approach similar to that outlined in proposed Rule 12.2.3.
9. **Specified Penalties** Although Appendix A sets out the broad elements of the specified penalties process, EPCOR continues to believe that 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. Further detail about the hand-off process between the AESO and the MSA would also be helpful. For example, once the file has been referred to the MSA by the AESO, there should be some additional communication between the market participant and the MSA prior to issuance of a specified penalty in order that the MSA is able to have a direct understanding of the market participant's conduct.

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