

December 1, 2004

NOTICE TO MARKET PARTICIPANTS

RE: TPG/IDP – PPA OWNER/BUYER DISCLOSURES

In the context of the Trading Practices Guideline (TPG) and the Information Disclosure Procedure (IDP), some parties noted that existing disclosure requirements might have the effect of disadvantaging a PPA Owner. The reasoning is described below.

The combined effect of the Power Purchase Arrangement (PPA) and the ISO Rules is that outage information typically flows from the Owner to their counterparty Buyer, and from that party to the Independent System Operator (AESO). The Buyer will thus be directly aware of when an outage has been disclosed to the AESO, but the Owner will not be certain that the disclosure has occurred unless advised by the Buyer.

The Market Surveillance Administrator (MSA) recognizes that it would be inappropriate for an Owner, having made the Buyer aware of an outage, to be left uncertain as to when the Buyer has made disclosure to the AESO.

During discussions around the TPG and IDP earlier in 2004, the MSA indicated that we would watch to see whether the potential disclosure issue effectively resolved itself. It appeared to us that the affected parties should be able to work out a satisfactory solution.

We are pleased to note that Buyers appear to have now broadly adopted the approach of advising their counterparties of the outage disclosure concurrent with the disclosure to the AESO, leaving both parties then free to trade in a manner compliant with the TPG and the *fair, efficient and openly competitive* operation of the market. In the view of the MSA, this is an excellent and encouraging outcome, and we commend all parties who have shown leadership on the issue.

In accordance with its mandate, the MSA remains interested in these matters and in continuing to hear from Owners and Buyers about how disclosure is working in practice. We will continue to support reasonable and fair outcomes like the approach described above. We also want to signal our intention to *actively* monitor the situation, should that be necessary, and to take other appropriate action, again if necessary.

For example, should an Owner complain to the MSA that their Buyer is failing to inform them on a timely basis of the outage disclosure, a preliminary assessment will be initiated under the *MSA Investigation Process and Assessment Guidelines*. At the discretion of the MSA, the Owner would be required to copy the MSA on their outage communications to the Buyer. The information would be requested pursuant to the *Electric Utilities Act*, and would thus be disclosed to the MSA in accordance with the provisions of the PPA. The Buyer's disclosures would also come under scrutiny.

Receipt of such information would allow the MSA to track and assess, among other things, the timeliness and adequacy of the subsequent disclosures by the Buyer in the context of AESO OPP 601, the IDP, and the *fair, efficient and openly competitive* operation of the market.

The information received would also be available for the outage reporting currently facilitated by the MSA, and would be used to help ensure the greatest quality and accuracy possible. Accordingly, the MSA will take the view that the information has been sufficiently disclosed at that point so as to allow both Owner and Buyer to then trade in a manner compliant with the TPG and the *fair, efficient and openly competitive* operation of the market.

To be clear, the targeted monitoring would not relieve any party of their obligations under the PPA or ISO Rules. For example, the Buyer would still be obliged to make disclosure to the AESO in accordance with OPP 601. The Buyer's interactions with the Owner would also be expected to meet the required standard. Again, insofar as the IDP and the TPG are concerned, disclosure would under these circumstances be deemed to have occurred through provision of the outage information in response to the request of the MSA.

The duration of the monitoring, including the pulling of outage information from the Owner, will be at the discretion of the MSA in accordance with its mandate. At such point as the MSA is satisfied that there is no further need for continued monitoring in that fashion, the Owner will be instructed to stop providing the outage information directly to the MSA. Naturally, to the extent that additional action is required, the MSA will act accordingly.

We trust that this is clear and helpful. In any event, as always, please feel free to contact us as needed. In closing, the MSA again appreciates the cooperation and assistance shown by parties in these and other matters, in furtherance of the *fair, efficient and openly competitive* operation of the market.

Yours truly,

“Original signed by Robert F. Spragins”

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