

Process Relating to Preferential Sharing of Records Not Available to the Public
Stakeholder Comments and AUC Response Matrix
Comment Period – July 29, 2009 to August 14, 2009

Issue/Topic	AUC Response
<i>Issue 1: Minimum Application Requirements</i>	
<p>Capital Power Corporation</p> <p>We have reviewed the AUC’s proposed minimum application requirements and note that with the exception of requirement (g) the requirements are appropriate obligations to impose upon a market participant in order for the AUC to make the necessary determinations about the information sharing arrangement. Requirement (g) requires a senior officer to provide a representation “that the Preferential Information Sharing provides no party to the arrangement or agreement with information that does not support the Fair, Efficient and Openly Competitive (FEOC) operation of the electricity market”. No senior officer of a company acting as a market participant is in a position to make representations about FEOC of the entire electricity market; this representation is far too broad and is more appropriately made by the Market Surveillance Administrator (MSA). Moreover, a senior officer is not in a position to make representation about another party’s future actions, particularly under circumstances where the other party is not controlled by the market participant and could choose to contravene FEOC. The other requirements of this section, particularly the representations by all parties that the records will not be used for any purpose that does not support FEOC, should provide the AUC with sufficient assurances about the nature of the information and the arrangements for its sharing. We suggest that this requirement be eliminated.</p>	<p>Section 3(3) of the FEOC Regulation states the following:</p> <p style="padding-left: 40px;">The Commission may, on application by a market participant that is otherwise prohibited from sharing records referred to under subsection (1), issue an order permitting the sharing of those records on any terms and conditions the Commission considers appropriate <u>where the market participant establishes that</u></p> <p style="padding-left: 40px;">(a) <u>the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market</u>, including the conduct referred to in section 2, and</p> <p style="padding-left: 40px;">(b) the sharing of the records is reasonably necessary for the market participant to carry out its business. (emphasis added)</p> <p>As noted above, the regulation requires a market participant that seeks an order from the Commission regarding the sharing of records to establish that the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market.</p> <p>The representation requested in requirement (g) of Appendix D relates to the parties to the arrangement or agreement regarding the Preferential Information Sharing, namely the party seeking to share the records and the party or parties that will receive the shared records. The representation is not intended to address the</p>

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<p>Market Surveillance Administrator</p> <p>1. Appendix D, and Bulletin 2009-18 overall, should be more explicit about which market participant(s) must file and support the Application. Section 3 of the FEOC Regulation appears to put the obligation to seek a Commission order under Section 3(3) on the market participant seeking to disclose (share) the records. However, insofar as representations or undertakings about use of the shared records, it would seem that it is the market participant receiving the records who will be uniquely placed to give such assurances.</p>	<p>entire electricity market.</p> <p>Commission staff propose to remove requirement (g) of Appendix D and amend requirement (b) to read as follows:</p> <p>(b) the grounds on which the application is made, including a representation by a senior officer of each party to the Preferential Information Sharing that the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, including the conduct referred to in section 2 of the FEOC Regulation, and a representation by a senior officer of the Applicant that the sharing of the records is reasonably necessary for the market participant to carry out its business.</p> <p>For the convenience of parties, a revised Appendix D is attached to this stakeholder matrix.</p> <p>1. Appendix D outlines the proposed minimum filing requirements for a Preferential Information Sharing application. Section 3(3) of the FEOC Regulation states that the Commission may issue an order permitting the sharing of records “... on application by a market participant that is otherwise prohibited from sharing records referred to under subsection (1)...” As such, the Commission agrees with the Market Surveillance Administrator (MSA) that the FEOC Regulation appears to put the obligation to seek a Commission order on the market participant seeking to disclose (share) the records (the Applicant). The Applicant would then be responsible to obtain the necessary representations required of the proposed recipients of the shared records as outlined in Appendix D.</p> <p>Please also see the response to Capital Power Corporation above</p>

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<p>2. The information fields (a) through (k) are generally helpful, but do not go far enough or may be confusing in some cases.</p> <ul style="list-style-type: none"> • Representations given under (b), and confirmations under (k), are important but will not, in the view of the MSA, fully answer questions about how <u>use</u> of the records will be controlled and monitored. For example, details of any relevant “program for internal compliance” would assist in that regard. • The language in (e) is fairly broad and may, for example, capture larger commercial agreements which naturally include covenants about confidentiality but which are not, in the main, about “Preferential Information Sharing”. • The information (representation) required by (g) may be impossible to provide, as it appears to ask the senior officer to say that there will be no information provided (shared) that does not support FEOC – however, the FEOC Regulation itself seems in Section 3 to say that <i>prima facie</i> the sharing of sensitive price/quantity offer information is inconsistent with FEOC. 	<p>regarding the representations with respect to the use of shared records.</p> <p>2.</p> <ul style="list-style-type: none"> • Please see the response to Capital Power Corporation above regarding the amendment to requirement (b) of Appendix D. Commission staff propose to amend requirement (k) to read as follows: (k) a representation by a senior officer of the party who obtains records pursuant to the Preferential Information Sharing that a formal program for internal compliance is in place regarding the information sharing requirements under the FEOC Regulation, and relevant details of the internal compliance program including a description of how the use of the records will be controlled and monitored. • The language in requirement (e) is necessarily broad, as an agreement regarding Preferential Information Sharing may be captured in more than one manner. The Commission is seeking a copy of the agreement between the parties regarding the Preferential Information Sharing. In responding to the request, the Applicant may make a request for confidentiality pursuant to the Commission’s Rules of Practices to the extent that the document requested in requirement (e) contains any confidential information. • Commission staff proposes to remove requirement (g) of Appendix D.

Issue/Topic	AUC Response
Issue 2: Template Process for Preferential Information Sharing Proceedings	
<p>Capital Power Corporation</p> <p>Insofar as the AUC’s proposed Template Process for Preferential Information Sharing Proceedings appears to be consistent with other AUC proceeding processes, we think that it is also appropriate. We encourage the AUC to develop a proceeding process that would allow for a shorter process for circumstances where the MSA does not file a Statement of Intent to Participate or does not raise an issue with the Preferential Information Sharing arrangement. Our key concern is that lead time for an AUC order may be as long as five months or more, which could make it more difficult to enter into new commercial relationships that require information sharing between parties.</p> <p>We also note that the Paragraph 13 of the Discussion Paper alludes to the possible use of an oral proceeding but the Template Process in Appendix C does not contemplate an oral hearing. We would like to understand the process timelines when an oral hearing is required and would appreciate a template schedule that shows this possible scenario.</p> <p>Market Surveillance Administrator</p> <p>1. The Timeframe appears to overlap or conflict somewhat. For example, per stage 5, the MSA would be required to file the SIP within 10 days from Notice of Proceeding (or as specified in Commission Schedule) whereas, per stage 6, Information Requests to</p>	<p>As noted in the discussion paper, the development of a template is only a guide. The final determination of any hearing or other proceeding process will be determined by the Commission on a case by case basis.</p> <p>The Commission anticipates that information requests, MSA evidence and rebuttal evidence may not be required in many cases. This will depend, in part, on the completeness of the application in the first instance.</p> <p>If there are circumstances where the MSA does not file a Statement of Intent to Participate or does not raise an issue with the Preferential Information Sharing arrangement, and the Applicant is under a specific time constraint, the Commission encourages the Applicant to make the Commission aware of the circumstances and request an amendment of the original schedule. The Commission will address such circumstances on a case by case basis.</p> <p>To the extent that an oral hearing is required, the template would replace step 12 with an oral hearing (1 day), which would take place approximately 2 weeks filing following the filing of Information Request responses (if any) or as specified in the Commission Schedule. Oral argument and reply argument may take place during the oral hearing.</p> <p>1. The template in Appendix C has been revised to reflect the concerns noted by the MSA. The timeframe for step 5 has been adjusted to 1 week following Notice of Proceeding or as specified in Commission Schedule. The timeframe for step 6 has been adjusted to 2 weeks following Notice of Proceeding or as specified</p>

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<p>Applicant would be issued within 1 week after the filing of the Application – it thus seems that the MSA would be required to file an Information Request before filing its SIP.</p> <p>2. The Commission appears to contemplate Information Requests as a possible, but not mandatory, feature of the Process. The MSA supports this discretionary approach. Further, the MSA would respectfully suggest (as the Commission does in Bulletin 2009-20) that factors such as the complexity of the proceeding and whether there is substantial pre-filed evidence are useful considerations when determining whether the Commission should allow a party to issue an Information Request in a proceeding.</p> <p>3. The Timeframe as presently drafted may not allow adequate time for parties to consider and respond to matters, such as Information Requests.</p>	<p>in Commission Schedule. For the convenience of parties, a revised Appendix C is attached to this stakeholder matrix.</p> <p>2. The Commission appreciates the comments of the MSA. Provisions for information requests are at the discretion of the Commission panel, and will address a variety of factors, including those identified by the MSA.</p> <p>3. The Commission has established overall timelines for MSA proceedings and proceedings regarding objection and complaint applications. The Commission will undertake to have 75% of MSA proceedings reach the hearing stage within 60 days of the completed application and 75% of objection and complaint applications reach the hearing stage within 75 days of the completed application. Applications regarding Preferential Information Sharing have not previously been conducted by the Commission, and as such, overall timelines have not been set. However, the timeline outlined in the template is generally within the timelines set for MSA, objection and complaint applications.</p> <p>To the extent that parties have concerns with the dates established by the Commission on a case by case basis, they are encouraged to raise the concerns with the Commission at that time.</p>

TEMPLATE PROCESS

The following is a template for a Preferential Information Sharing proceeding. The template illustrates the maximum duration of the process assuming that each step is required. The development of the template is only a guide. The final determination of any hearing or other proceeding process will be determined by the Commission on a case by case basis and the Commission anticipates that information requests (steps 6, 7, 9 and 10), MSA evidence (step 8) and rebuttal evidence (step 11) may not be required in many cases.

Table 1. Template Process – Preferential Information Sharing Proceeding

	Submission Type	Timeframe	Comment	Public / Not Public
1.	Market participant files Preferential Information Sharing application with the Commission	Not applicable	Application must include information that enables the Commission to address the provisions of subsections 3(3)(a) and (b) of the FEOC Regulation	Not Public
2.	Commission issues Notice of Filing	Within 7 days of Market Participant filing with the Commission		Public, without revealing sensitive information
3.	Commission issues Notice of Proceeding	Flexible	Commission to appoint panel and establish process	Public, without revealing sensitive information
4.	Commission issues Schedule	Flexible	May be combined with Commission Notice of Proceeding	Public
5.	Market Surveillance Administrator (MSA) files Statement of Intent to Participate (SIP).	1 week following 10 days from Notice of Proceeding or as specified in Commission Schedule		Public, without revealing sensitive information.
6.	Information Requests issued to Applicant by Commission and MSA (if any)	2 weeks following 1 week following the filing of the Application or if provided additional material Notice of Proceeding or as specified in Commission Schedule	Provisions for Information Requests are at the discretion of the Commission panel	Not Public

	Submission Type	Timeframe	Comment	Public / Not Public
7.	Applicant files Information Request responses	1 week following the filing of Information Requests		Not Public
8.	MSA files Evidence (if any)	2 weeks from receipt of Applicant Information Request responses		Not Public
9.	Information Requests to MSA (if any)	1 week following the filing of MSA evidence	Provisions for Information Requests are at the discretion of the Commission panel	Not Public
10.	Information Request Response	1 week following the filing of Information Requests		Not Public
11.	Rebuttal Evidence (if any)	10 days following filing of Information Request Response		Not Public
12.	Written Argument (if any)	2 weeks following filing of Information Request responses (if any) or as specified in Commission Schedule	Provisions for an Oral Hearing are at the discretion of the Commission panel	Not Public
13.	Written Reply Argument (if any)	10 days following Written Argument		Not Public
14.	Notice of Order of the Commission	Up to 90 days following Written Reply Argument	Includes sufficient details to allow a reasonable understanding of the nature of the hearing and the findings of the Commission	Public

PROPOSED MINIMUM FILING REQUIREMENTS FOR PREFERENTIAL INFORMATION APPLICATION

The following minimum information must be included in an application:

- (a) a description of the approval or order applied for and the duration of the approval or order applied for;
- (b) the grounds on which the application is made, including a representation by a senior officer of each party ~~all parties~~ to the Preferential Information Sharing that the records will not be used for any purpose that does not support the fair, efficient and openly competitive operation of the electricity market, including the conduct referred to in section 2 of the FEOC Regulation, and a representation by a senior officer of the Applicant that the sharing of the records is reasonably necessary for the market participant to carry out its business;
- (c) a reference to the statutory provision under which the application is made;
- (d) a clear and concise statement of the facts relevant to the application, including a general description of the Preferential Information Sharing between the parties, the authority of parties to submit price and quantity records to the AESO, and the “offer control” of parties as that term is defined in the FEOC Regulation;
- (e) a copy of ~~the any~~ agreement between the parties regarding Preferential Information Sharing;
- (f) a list of the applicant’s affiliates who are pool participants (if any), the agent and agent’s affiliates who are pool participants (if any);
- ~~(g) a representation by a senior officer that the Preferential Information Sharing provides no party to the arrangement or agreement with information that does not support the fair, efficient and openly competitive operation of the electricity market;~~
- (h) any other information that may be useful in explaining or supporting the application;
- (i) the applicant’s name, mailing address, telephone number, fax number and, if available, e-mail address;
- (j) if the applicant is represented by a representative, the representative’s name, address in Alberta, telephone number, fax number and, if available, e-mail address
- (k) a representation by a senior officer of the party confirmation that any other person who obtains records pursuant to the Preferential Information Sharing Application has that a formal program for internal compliance is in place regarding with the information sharing requirements under the FEOC Regulation, and relevant details of the internal compliance program including a description of how the use of the records will be controlled and monitored.