

ALBERTA SECURITIES COMMISSION

IN THE MATTER OF the *Securities Act*,
R.S.A. 2000, c. S-4 (“Act”)

- and -

IN THE MATTER OF Alberta Watt Exchange Limited

- and -

IN THE MATTER OF The Canadian Energy Clearing Trust

ORDER

(Section 144, 213 and 214)

1. WHEREAS Alberta Watt Exchange Limited (“Watt-Ex”) and The Canadian Energy Clearing Trust (the “Trust”) have jointly made an application to the Alberta Securities Commission (the “Commission”) for:
 - 1.1 an order pursuant to section 213 of the Act to exempt Watt-Ex and the Trust from the prohibition in section 62 of the Act against carrying on business as an exchange in Alberta unless recognized by the Commission as an exchange;
 - 1.2 an order pursuant to section 213 of the Act to exempt Watt-Ex, the Trust and parties that contract with Watt-Ex or the Trust from the prohibition in section 106 of the Act against trading in exchange contracts on an exchange unless: (i) the exchange is recognized by the Commission under section 62; and (ii) the form of exchange contract has been accepted by the Commission;
 - 1.3 an order under subsection 144(1) of the Act to exempt trades in Commodity Contracts (as hereinafter defined) by Watt-Ex, the Trust and parties that contract with Watt-Ex or the Trust through the electronic trading system operated by Watt-Ex and the clearing trust operated by the Trust from the registration and prospectus requirements in sections 75 and 110 of the Act respectively; and
 - 1.4 an order under section 214 of the Act to revoke Commission order 2002/98 dated June 7, 2002 under which Watt-Ex is currently operating an electronic trading system (the “Current Order”);

2. AND WHEREAS it was represented by Watt-Ex and the Trust to the Commission that:
 - 2.1 Watt-Ex operates an electronic trading system (“the Trading System”) in Calgary, Alberta for trades in electricity and ancillary services futures contracts (“Commodity Contracts”) by Watt-Ex and its contracting parties (“Contracting Parties”);
 - 2.2 Watt-Ex has operated the Trading System since January 1, 2001 in accordance with the terms and conditions of prior orders of the Commission;
 - 2.3 access to the Trading System is currently limited to Contracting Parties that are qualified participants within the Power Pool of Alberta (“Power Pool”) and meet the qualifications set by the Electric Utilities Act (Alberta), the Power Pool Rules and the Power Pool code of practice, and have entered into a comprehensive customer agreement (the “Customer Agreement”) with Watt-Ex;
 - 2.4 Watt-Ex intends to expand the operation of the Trading System to allow for trades in both physically and financially settled futures contracts involving energy or energy based commodities, provided that access to the Trading System for trading in any particular energy commodity will be limited to contracting parties who produce, process, purchase, sell or otherwise use or deal with that commodity in their business and who satisfy any other applicable regulatory requirements for trading in such commodities. In addition, each contracting party will be required to be a “Qualified Party” within the meaning of the Over-the-Counter Derivatives Transactions and Commodity Products blanket order issued by the Commission on August 4, 2000 or otherwise entitled to exemption from all applicable requirements of Alberta securities laws relating to trading in an energy commodity;
 - 2.5 Watt-Ex also intends to reorganize its operations to establish the Trust as a clearing trust to take on direct responsibility for the clearing functions of Watt-Ex. The Trust is an open-ended trust established by Trust Indenture dated July 23, 2003 under the laws of Alberta for the benefit of the Contracting Parties;
 - 2.6 except for trades in electricity futures contracts in effect on the date of this order (“Existing Trades”) and activities related to ancillary services, Watt-Ex will operate the Trading System for the purpose of listing energy or energy based futures contracts for trading, matching bids and offers for such listed contracts and “giving up” trades arising through matched bids and offers to the Trust for clearing. Watt-Ex will continue to carry on its activities as presently conducted with respect to Existing Trades until they are assigned to the Trust and with respect to trading in ancillary services futures contracts;

- 2.7 the Trust will enter into agreements with counterparties satisfying the requirements set out in section 2.3 for trading in and clearing both physically and financially settled futures contracts involving energy or energy based commodities and will clear trades “given up” to it by Watt-Ex or by other sources.
 - 2.8 the exchange matching, risk management and systems management functions necessary to trade other energy commodities on the Trading System and to clear through the Trust are substantially the same as the functions carried on by Watt-Ex in the electricity and ancillary services market;
 - 2.9 Watt-Ex and the Trust are capable of complying with the operating principles listed in Appendix A and will comply with the operating principles for the duration of this order;
 - 2.10 Watt-Ex and the Trust have undertaken to keep trading, financial records and other records sufficient to demonstrate compliance with the operating principles listed in Appendix A, make them available and submit data promptly to the Commission on request;
3. AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;
 4. IT IS HEREBY ORDERED that:
 - 4.1 pursuant to section 213 of the Act, Watt-Ex and the Trust are exempt from the prohibition in section 62 of the Act against carrying on business as an exchange in Alberta unless recognized by the Commission as an exchange;
 - 4.2 pursuant to section 213 of the Act, Watt-Ex, the Trust and parties that contract with Watt-Ex or the Trust are exempt from the prohibition in section 106 of the Act against trading exchange contracts on an exchange unless: (i) the exchange is recognized by the Commission under section 62; and (ii) the form of exchange contract has been accepted by the Commission;
 - 4.3 under subsection 144(1) of the Act, trades in Commodity Contracts by Watt-Ex, the Trust and parties that contract with Watt-Ex or the Trust through the Trading System and clearing trust operated by Watt-Ex and the Trust respectively, are exempt from the registration and prospectus requirements in sections 75 and 110 of the Act;

provided that:

- 4.4 Watt-Ex and the Trust must comply with the operating principles listed in Appendix A which are applicable to their respective activities and keep trading, financial and other records sufficient to demonstrate compliance with the operating principles in Appendix A;
 - 4.5 Watt-Ex and the Trust must immediately inform the Commission of any event, circumstance or situation that materially affects Watt-Ex's or the Trust's ability to continue to comply with the operating principles listed in Appendix A;
 - 4.6 the Trust must file with the Commission any additions or revisions to the trust indenture for the Trust, the rules and regulations governing the Trust, the trading agreements and the futures contracts between the Trust and the contracting parties within 2 business days of the effective date of the revision;
 - 4.7 Watt-Ex and the Trust must immediately inform the Commission of any material change in the operation of the Trading System or the clearing system through the Trust or in the beneficial ownership of the securities of Watt-Ex or of the Trust;
5. AND IT IS FURTHER ORDERED, pursuant to section 214 of the Act, that the Current Order is revoked;

DATED at the City of Calgary)
)
in the Province of Alberta) "original signed by"
) Glenda A. Campbell, Q.C., Vice-Chair
this 3rd day of October, 2003)
)
) "original signed by"
) Stephen R. Murison, Vice-Chair
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Appendix A Operating Principles

- 1. Financial Resources** - Maintain adequate financial, operational and managerial resources to operate the Trading System and support its trade execution and clearing functions.
- 2. Operational information relating to trading system and contracts** - Provide public disclosure of information about contract terms and conditions, trading conventions, mechanisms and practices, financial integrity protections and other information relevant to participants.
- 3. Market oversight** - Establish appropriate minimum standards for participants and programs for on-going monitoring of the financial status or credit-worthiness of participants; monitor trading to ensure an orderly market; and maintain authority to collect or capture and retrieve all necessary information and to intervene as necessary to ensure an orderly market.
- 4. Rule Enforcement** - Maintain adequate arrangements and resources for the effective monitoring and enforcement of the rules of the facility and for resolution of disputes and have the capacity to detect, investigate and enforce those rules (including the authority and ability to discipline, limit, suspend or terminate a participant's activities for violations of system rules).
- 5. System Safeguards** - Establish and maintain:
 - a program of oversight and risk analysis to ensure automated order entry and clearing systems function properly and have adequate capacity and security, including emergency procedures and a plan for disaster recovery to ensure daily processing, clearing and settlement of transactions.
 - a program of periodic objective system testing and risk review to assess the adequacy and effectiveness of the Trading System's internal control systems and financial integrity protections, including a risk review of every new service and significant enhancement to existing services.
- 6. Transparency** - Make information on settlement prices, price range, trading volume, open interest and other related market information available daily to participants.
- 7. Record keeping** - Maintain records of all activities related to the trading system's business in a form and manner acceptable to the Commission for a period of five years and provide an undertaking to make books and records available for inspection by Commission representatives on request.
- 8. Risk management** - Identify and manage the risks associated with clearance and settlement through the use of appropriate tools and procedures such as risk analysis tools and procedures, collateral, margin and credit limits.
- 9. Settlement procedures** - Prescribe standards and procedures to protect and safeguard participants' funds and limit concentration of risk, including the safekeeping of funds in accounts in depositories or with custodians, that meet industry standards.