

ORD. #2001/170
FILE #B25772
DOC. #873953

ALBERTA SECURITIES COMMISSION

IN THE MATTER OF the Securities Act
(S.A. 1981, c. S-6.1, as amended) (the "Act")

- and -

IN THE MATTER OF Alberta Watt Exchange Limited

ORDER
(Subsection 186(1))

1. WHEREAS Alberta Watt Exchange Limited ("Watt-Ex") has made application to the Alberta Securities Commission (the "Commission") pursuant to subsection 186(1) of the Act to extend Commission Order #2000/207 dated November 24, 2000 ("the Initial Order"), which expires December 1, 2001, a copy of which is attached as an appendix to this order;
2. AND WHEREAS Watt-Ex operates an electronic trading system that facilitates the trading in futures contracts for the purchase and sale of electricity or ancillary services in Alberta under the terms and conditions of the Initial Order;
3. AND WHEREAS the Commission is reviewing the manner in which electronic trading systems such as Watt-Ex are regulated under Alberta securities laws and this review will not be completed prior to the December 1, 2001 expiry date of the Initial Order;
4. AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;
5. IT IS HEREBY ORDERED pursuant to subsection 186(1) of the Act that the Initial Order is varied in the following manner:

5.1 in section 8, deleting "December 1, 2001" and substituting "June 8, 2002".

Dated at the City of CALGARY)
) _____ (original signed by)
in the Province of ALBERTA) Glenda A. Campbell, Vice-Chair
)
this 27th day of November, 2001) _____ (original signed by)
) David W. Betts, Member

Appendix

ORD. #2000/207
REC. #3981888
FILE #B25772
DOC. #641776

ALBERTA SECURITIES COMMISSION

IN THE MATTER OF the Securities Act
(S.A. 1981, c. S-6.1, as amended) (the "Act")

- and -

IN THE MATTER OF Alberta Watt Exchange Limited

ORDER (Subsections 116(1), 192(5) and Section 185.)

1. WHEREAS Alberta Watt Exchange Limited ("Watt-Ex") has made application to the Alberta Securities Commission (the "Commission") for:
 - 1.1 an order pursuant to section 185 of the Act to exempt Watt-Ex from the application of Part 4 of the Act and the rules made under the Act (the "Rules") to permit Watt-Ex to carry on business as an exchange in the Province of Alberta;
 - 1.2 an order pursuant to subsection 116(1) of the Act to exempt Watt-Ex from the requirements of section 54 and 81 of the Act in respect of contracts (the "Contracts") for the purchase and sale of electricity entered into by Watt-Ex or any customer (the "Customers") through the facilities of an electronic trading system developed by Watt-Ex (the "Trading and Clearing System") and all acts, advertisements, solicitations, conduct or negotiations made directly or indirectly in furtherance thereof; and
 - 1.3 an order pursuant to subsection 192(5) of the Act to hold in confidence certain information to be filed with the Commission in connection with this order;
2. AND WHEREAS it was represented by Watt-Ex to the Commission that:
 - 2.1 Watt-Ex is a private issuer incorporated under the laws of Alberta on June 13, 2000 as a wholly-owned subsidiary of AgraLink Exchange Ltd. and its principal offices are located in Calgary, Alberta;

- 2.2 Watt-Ex is not and does not intend to become a reporting issuer under the Act and none of its securities are listed or quoted on an exchange or market;
- 2.3 The Trading and Clearing System will have the following principal characteristics:
 - 2.3.1 access to the Trading and Clearing System will be provided through the Internet to Customers that have entered into a comprehensive agreement with Watt-Ex which incorporates the standard form Contracts, a detailed risk disclosure statement and the rules and procedures that govern all aspects of a Customer's dealings with Watt-Ex and the Trading and Clearing System (the "Customer Agreement");
 - 2.3.2 the Trading and Clearing System will facilitate Customers entering into standard form Contracts for the trading and supply of electricity and ancillary services on forward terms through employees designated by them;
 - 2.3.3 Watt-Ex may include a "market maker" that is a major participant in the electricity business. The "market maker" will be a credit category "A" Customer as outlined in the credit evaluation portion of the Customer Agreement. The "market maker" will be subject to additional guidelines outlining its particular duties and obligations as well as agreeing to abide by the rules and procedures of the Trading and Clearing System; and
 - 2.3.4 Watt-Ex will provide assurance to Customers as to payment of the purchase price to sellers in that Watt-Ex will act as the counterparty to every Contract;
- 2.4 Access to the Trading and Clearing System will be limited to Customers that satisfy the following criteria:
 - 2.4.1 all Customers must be a business associated with the commodity that the Customer wishes to trade, either as a generator, aggregator, transmission administrator, marketer or consumer. All Customers, except for those that will not take or deliver physical supplies of electricity, will be qualified participants ("Power Pool Participant") 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. Customers that do not intend to take or deliver physical supplies of electricity will either close out their positions with Watt-Ex or name a clearing agent that is a Power Pool Participant to take or deliver physical supplies of electricity;
 - 2.4.2 Customers must also consume, generate, aggregate, administer or market amounts

in excess of an average of 250 kilowatts per hour for every hour in a year;

- 2.4.3 Customers have entered into a Customer Agreement;
 - 2.4.4 Customers must meet the financial criteria set out in the credit management policy contained in the Customer Agreement; and
 - 2.4.5 a Customer's aggregate ability to trade ("Aggregate Ability to Trade") as determined by the company risk profile will be limited by the security posted and the credit category of that Customer;
- 2.5 To satisfy the financial criteria set out in the credit management policy contained in the Customer Agreement:
- 2.5.1 each Customer will have their audited financial statements analyzed by Watt-Ex and be assigned a credit rating. The credit rating is determined by a point system based upon the Customer's working capital ratio, net worth, working capital amount, cash flow from operations, and debt/equity ratio;
 - 2.5.2 Customers will be placed in one of six categories. Each category will have a required security coverage ("Margin"). Customers with a weaker financial position will be required to post additional Margin to trade; and
 - 2.5.3 each Customer will post a letter of credit or indemnity bond according to their credit rating and their security coverage requirement to trade. The amount of the letter of credit or indemnity bond when multiplied by the inverse of the security coverage will establish the Customer's Aggregate Ability to Trade;
- 2.6 Watt-Ex will determine whether a Customer satisfies the financial criteria at the time a Customer applies for eligibility and Watt-Ex will also conduct on-going reviews of a Customer's financial status to determine continuing compliance;
- 2.7 The principal provisions of the Customer Agreement that address the Trading and Clearing System:
- 2.7.1 require Watt-Ex to provide the computer software required to access, and trade on, the Trading and Clearing System;
 - 2.7.2 require Watt-Ex to provide a trading manual and necessary training with respect to the operation of the Trading and Clearing System;
 - 2.7.3 specify the obligations of the Customers to provide on-going financial information;

- 2.7.4 contain restrictions on each Customer's ability to enter Contracts based on the amount of security deposited and the Customer's ability to make trades of certain sizes (the "Order Size Limit"). In addition, the Order Size Limit may be set for any trading day by Watt-Ex; and
- 2.7.5 specify the standards of conduct to be adhered to by Customers which address acts of fraud, bad faith, extortion, dishonest conduct, or material misstatement, or any other unlawful activity in respect of any information provided to Watt-Ex or matter pertaining to the performance of any Contract or in any other dealing with other Customers, manipulation or attempt to manipulate Contract prices by knowing spreading inaccurate information, reporting false transactions or any other act designed or intended to manipulate the price for electricity, or any unlawful activity or any other act detrimental to the interest, welfare or integrity of the Trading and Clearing System;
- 2.8 The Customer Documents also require Watt-Ex to provide for an extensive reporting system to give daily reports, statements of accounts and weekly reports and invoices in respect of the position of each Customer, including the following:
 - 2.8.1 on a daily basis, reports as to all Contracts entered into, the total net delivery or receipt obligations on all Contracts entered into, the amount of electricity delivered, the net position in respect of Margin, the gains and losses on Contracts, confirmed delivery schedules and a daily statement of account; and
 - 2.8.2 on a weekly basis, a summary of trades and deliveries;
- 2.9 Watt-Ex has established a surveillance and compliance office to:
 - 2.9.1 ensure compliance by all Customers with the Customer Agreement;
 - 2.9.2 monitor all activities in relation to the entering into of Contracts and all activities in respect of the performance of the Contracts;
 - 2.9.3 investigate any matter affecting the integrity of the business carried on by Watt-Ex or the Customers under the Customer Agreement; and
 - 2.9.4 report directly to an exchange governance committee of the Board of Directors of Watt-Ex;
- 2.10 Watt-Ex will operate a financial backstopping facility under which:
 - 2.10.1 each Customer will be monitored on an ongoing basis to assess their Aggregate Ability to Trade and their remaining available credit. A Customer will receive

notice from Watt-Ex when their available credit is reduced to 30%, 15% and 0%. Should a Customer reach 100% of their Aggregate Ability to Trade, Watt-Ex will begin liquidation of the Customer's open positions and restore the Customer's credit position;

2.10.2 if a Customer breaches its financial obligations (e.g. is unable to pay an invoice sent by Watt-Ex, fails to post margin, etc), Watt-Ex may liquidate the Customer's letter of credit or indemnity bond, liquidate any open positions, or both;

2.10.3 Watt-Ex will maintain additional credit insurance, administered by a trustee which will cover the difference between the Customer's letter of credit or indemnity bond and the Customer's Aggregate Ability to Trade;

2.11 Watt-Ex will be carrying on business as an exchange and as such cannot be a clearing agency within the meaning of the Act. The Contracts to be traded through the Trading and Clearing System will not be exchange contracts within the meaning of the Act;

3. AND WHEREAS the Commission is satisfied that:

3.1 the Customers are sophisticated entities;

3.2 the Customers are familiar with the electricity market in Alberta;

3.3 the Customers have significant financial capacity as demonstrated through satisfaction of the prudential requirements of the Power Pool and the credit policies of Watt-Ex;

3.4 as a consequence, it is not necessary for the Commission to duplicate the on-going prudential regulation of Customers conducted by the Power Pool and Watt-Ex;

3.5 notice that the Commission will not oversee prudential regulation of Customers will be given to all Customers by Watt-Ex in the Customer Agreement;

4. AND WHEREAS the Commission is satisfied that to do so would not be prejudicial to the public interest;

5. IT IS HEREBY ORDERED pursuant to section 185 of the Act that the Trading and Clearing System operated by Watt-Ex is exempt from the application of Part 4 of the Act and Rules provided that:

5.1 Watt-Ex file with the Commission any revisions to the Customer Agreement within two business days of the date that such revision becomes effective under the provisions of the

Customer Agreement;

- 5.2 Watt-Ex files with the Commission:
 - 5.2.1 unaudited financial statements, comprised of a balance sheet, income statement and statement of changes in cash flows, on a quarterly basis within 60 days of the end of each quarter; and
 - 5.2.2 audited financial statements on an annual basis within 140 days of the end of its fiscal year;
 - 5.3 Watt-Ex continues to provide the Commission on a monthly calendar basis the following information regarding the operation of the Trading and Clearing System:
 - 5.3.1 any changes in the number and identity of Customers;
 - 5.3.2 confirmation that each Customer has satisfied the eligibility criteria set out in the Customer Agreement;
 - 5.3.3 the identity of any Customer who has been denied access to, has withdrawn, or been suspended from the Trading and Clearing System and the reasons therefore;
 - 5.3.4 the number of failures to pay fees, failures to deliver or accept delivery of a commodity and Watt-Ex's response, if any;
 - 5.3.5 a summary of any investigations carried out by Watt-Ex and the actions taken by Watt-Ex, if any; and
 - 5.3.6 a summary of trading volume and price volatility data during that period;
 - 5.4 Watt-Ex provides 30 days prior written notice to the Commission of any contemplated material change in the operation of the Trading and Clearing System to permit staff of the Commission to evaluate its position;
 - 5.5 Watt-Ex undertakes to keep trading and financial records, to make them available and to submit data promptly to the Commission upon request; and
 - 5.6 Watt-Ex provides 30 days written notice to the Executive Director of any proposed change in the beneficial ownership of the securities of Watt-Ex;
6. AND IT IS FURTHER ORDERED pursuant to subsection 116(1) of the Act that the entering into of the Contracts by any Customer are not subject to sections 54 and 81 of the Act;

- 7. AND IT IS FURTHER ORDERED pursuant to subsection 192(5) of the Act that any materials filed with the Executive Director pursuant to sections 5.2 to 5.6 are to be held in confidence;
- 8. AND IT IS FINALLY ORDERED that this Order will expire on December 1, 2001.

Dated at the City of EDMONTON)
) _____ (original signed by)
in the Province of ALBERTA) Eric T. Spink, Vice-Chair
)
this 24th day of November, 2000)
) _____ (original signed by)
) Thomas G. Cooke, Q.C., Member