



Markets, Agencies & Advocates

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The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

I thank Evan Bahry and the organizers of the annual IPPSA Conference for the opportunity to speak to you this morning - and particularly Bryan Duguid for his efforts in the lead up to bring a measure of coherence to the session. The title of this panel is: "Agencies: What is their Role in Preserving the Market". I think the term should be 'promoting' rather than 'preserving' but I will explain that in a moment. Anyway, to kick off we each agreed to speak for a few minutes on the principles by which regulatory agencies should be assessed.

I will speak about the Market Surveillance Administrator and it may surprise some of you that I don't consider the MSA to be a regulatory agency...well in the classical sense of the term.¹ There is no question that the MSA's statutory mandate allows it to potentially have an impact on the behaviour of market participants and the Independent System Operator; however, I believe the role of the MSA is more properly described as 'competition advocate'. This is an important distinction and it flows from Alberta's choice of a market mechanism to dispatch electricity, set the wholesale commodity price and, more fundamentally, promote economic efficiency in the sector. Under this model, the market and the market players should be allowed to tick along relatively undisturbed as long there are no distortions caused by anticompetitive practices or market structures and rules / policies that impede effective competition.

The techniques of a competition advocate differ from those of what I choose to caricature as a 'regulator' because the former prods and promotes competitive solutions whereas the latter approves and prescribes service offerings and outputs. Of course, as an advocate of competition the MSA is not just dancing around making helpful suggestions here and there. Let's be clear: the core mandate of the MSA is always compliance with Alberta's "fair, efficient and openly competitive" standard. However there are creative ways to accomplish this that many times can avoid costly adversarial proceedings.

The distinction I am really making is what is known as principles-based as opposed to rules-based regulation. This is well described in the Expert Report on Securities Regulation of a few years ago:

Principles-based regulation establishes high-level principles for business conduct, which articulate desired regulatory outcomes. Businesses are given greater freedom to develop and manage internal compliance systems to achieve those outcomes. Regulators work more with businesses to provide guidance on appropriate regulatory practices.

Under the rules-based approach, businesses must adhere to a strict body of rules to achieve compliance. Businesses have less freedom to organize their regulatory affairs. Regulators are thereby focused on ensuring that businesses comply with the rules and are prone to a more adversarial role. The emphasis of regulatory efforts may be more on compliance with the rules and process rather than on the broader objectives and outcomes.²

In my view where the legislators have chosen to manage a sector through the forces of market competition it behooves the market facing agencies to apply the principles-based approach.³ The MSA has taken this road. Even in the technical domain of ISO rules and Alberta Reliance Standards, we have

¹ I made comments in the same vein in 2010. See *Neither Flat Forward Nor Over Backwards*.

² *Creating an Advantage in Global Capital Markets*, pp.17-18.

³ Recall, subsection 5(h) of the *Electric Utilities Act* states that one of the purposes of the Act is:
to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

consistently focused on the ultimate objective of smooth operations and reliability rather than obsessing on the number of found breaches and the quantum of financial penalties.

This is expressed in the MSA's most recent review of compliance activities:

Penalties may be necessary and appropriate in certain circumstances to remind participants of their obligations and to promote good compliance practices; however, the MSA is committed to working with participants in a cooperative fashion to resolve their compliance issues. Where non-compliance stems from a lack of clarity in language or expectations, the MSA has and will continue working to correct these situations.⁴

In the competition or FEOC part of the MSA's mandate we have also made strides in enunciating principles, clearly through the Offer Behaviour Enforcement Guidelines⁵ but also in the State of the Market Report⁶ where we propose the scope of analysis for judging whether the wholesale market is effectively competitive, or not.

These documents are outcome or objective based. They take the long view and that of course is that effective market-based competition is expected to drive economic efficiency. The goal of efficiency is clearly articulated in the purpose clause of the *Electric Utilities Act*. The market is a means to achieve that end not the end in itself. This is the reason I would substitute 'promote' for 'preserve' in the title of this session – so, "Agencies: What is their Role in Promoting the Market". Surely it is not about preserving the market at any cost; more accurately the job, at least for the Market Surveillance Administrator, is identifying and promoting sector solutions that are least restrictive of competition, that foster the development of an effectively competitive market and which in turn forces economic efficiency.

The electricity market in Alberta and the equivalents around the world are still in transition from the pre-existing state of high levels of market power, vertical integration and rate base regulation. Market facing agencies such as the MSA have an important and continuing role to play in the successful adoption of market models. The character of this work: 1) shaping the structures that allow competition to unfold (or, conversely do not facilitate anticompetitive conduct), 2) identifying the boundaries of unacceptable conduct, and 3) forcing changed behaviour and seeking remedies and deterrence when the line is crossed, is quite different from the traditional regulatory model. It follows, therefore, that the assessment criteria for the competition advocate / agency need to acknowledge this difference.

Let me close by very briefly announcing three MSA initiatives that you will hear more about shortly. They reflect our commitment to the competition advocacy role I have highlighted:

First, we will begin work with interested stakeholders in developing MSA guidelines for assessing market harm or market impact. The objective of this exercise is to identify a set of principles and analytic techniques that the MSA will apply, when required in the future, to assess the impact on the market and consumers of anticompetitive conduct or other distortions, such as congestion.

Second, we plan to release an information document on Power Purchase Arrangements. This is meant to be a reader's guide to the typical PPA to educate stakeholders on key provisions, how these instruments work and perhaps what lies ahead as the terms expire over the next several years.

Third, we will consult with stakeholders on a MSA statement of principles meant to guide our assessment of proposed (and occasionally) existing ISO rules from the perspective of competition and efficiency. This

⁴ *MSA Compliance Review 2012*, p.1.

⁵ *Offer Behaviour Enforcement Guidelines*.

⁶ *State of the Market Report*.

is essentially screening criteria to help pick and choose those matters where the MSA would formally intervene to explain our perspective in the rule making or rule approval process.

Appendix A

MSA Strategic Framework

Vision¹

A self-sustaining competitive market that delivers fair and efficient outcomes.

Mission²

Taking action to promote effective competition and a culture of compliance and accountability in Alberta's electricity and retail natural gas markets.

Values³

We are committed to excellence in all we do. As such we live by, and are prepared to be judged by, the following core values:

Integrity We are honest and ethical in all we do and engage in responsible decision-making that reflects the highest standards of conduct.

Open We strive to be accessible, transparent, objective, and principle-based.

Timely We demonstrate a sense of urgency in our resolve and decision-making.

Accountable We are committed to measuring, reporting and achieving results while prudently and efficiently managing our resources.

Progressive We value forward thinking and learning as we strive for continuous improvement and development at all levels of the organization.

We embrace creative approaches to finding solutions.

We value diversity and work hard to create a collaborative environment where we understand and benefit from the views of others.

¹ What we aspire to achieve.

² Our fundamental purpose; it provides a path to realize our Vision.

³ Beliefs that are shared among our stakeholders, are deeply held and do not change over time. They shape how we carry out our Mission.

References

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