



Date: March 2, 2016

Feedback Note – Forward Market Purchases Prior to PPA Termination Due to Change in Law¹

The MSA received an inquiry related to non-public information about the termination, due to a change in law, of a Power Purchase Arrangement (“PPA”). More specifically,

A market participant, who is a buyer under a PPA, has non-public knowledge of a PPA termination notice as a result of a change in law. The market participant engages in buying forward power to fulfill existing sales obligations. Would this fact pattern cause the MSA concern?

To the extent that the non-public knowledge does not constitute possession of non-public outage records, it would be unlikely to raise any potential concerns under Section 4 of the *Fair, Efficient and Open Competition Regulation* (“FEOC Regulation”). Note that this would not be true in the case of non-public knowledge of a PPA being terminated for economic destruction, or any other operational capacity-related matter.

Under the circumstances described above, presumably no offer information is being shared between market participants, such that the fact pattern is unlikely to raise concerns relating to Section 3 of the FEOC Regulation. However, market participants terminating a PPA are likely to talk to other parties, including the owner and Balancing Pool. Therefore, the MSA would advise they seek legal advice on how to best manage these conversations. Sharing of offer related information could result in a breach of Section 3 of the FEOC Regulation and more generally information sharing might result in harm to competition that would result in a breach of Section 2 of the FEOC Regulation and Section 6 of the *Electric Utilities Act* (“EUA”).

The example presented above does not pose any self-evident potential breaches of Section 6 of the EUA. Market participants should be cognizant of the fact that individual circumstances and facts will vary on a case by case basis and market participants are advised to seek scenario-specific legal advice.

¹This feedback does not constitute a formal guideline or opinion of the MSA. However, within the parameters of the applicable facts and absent any superseding view, we consider ourselves bound by feedback given. Views expressed by the MSA do not supplant the role and authority of the courts, the Alberta Utilities Commission or another adjudicative body with jurisdiction over a given matter. Questions or comments regarding this feedback can be sent to the MSA through the Contact Us link on our website.