

NOTICE TO PARTICIPANTS AND STAKEHOLDERS

March 17, 2017

Re: Consultation re Revocation of Offer Behaviour Enforcement Guidelines

Background

In 2011, following extensive stakeholder consultation, the MSA released its [Offer Behaviour Enforcement Guidelines](#) (OBEG). Among other things, this document sets out the MSA's enforcement approach in relation to "economic withholding." In late 2015, the MSA [requested](#) comments from stakeholders regarding a potential refresh of the OBEG. Subsequently, the MSA provided [notice](#) that this consultation had been delayed. Since that time some significant changes to the Alberta electricity market have either been announced or have occurred. Having considered the implications of this the MSA is today announcing a stakeholder consultation on the possible revocation of the OBEG that was published in 2011. While revocation of the OBEG would not result in a change of market rules or the legislative framework, it would signal a change in the MSA's enforcement stance in relation to "economic withholding."

Reasons for Consideration of Revocation

The analytical approach set out in the OBEG is based on efficiency being the core objective of the legislative framework that underpins the Alberta electricity market. In evaluating efficiency, the MSA distinguishes between static efficiency and dynamic efficiency, noting that the true benefits of competition will accrue from dynamic gains over time that outweigh static efficiency losses.

The OBEG states:

Given the absence of capacity markets or other mechanisms in Alberta the MSA believes giving too much weight to static efficiency concerns is not appropriate. Such an approach could chill the incentive to innovate or invest and therefore may harm dynamic efficiency. Conduct inconsistent with static efficiency can be acceptable so long as there is a corresponding benefit to dynamic efficiency, and thus a net efficiency gain, that results (or will likely result) from the forces of competition. The MSA will monitor the market for static efficiency losses caused by market structure, rules and/or market participant behaviour. Where static efficiency losses appear to have no corresponding dynamic efficiency gain the MSA will make recommendations aimed at eliminating or reducing efficiency loss.¹

¹ MSA, "Offer Behaviour Enforcement Guidelines." January 14, 2011, p. 9.

While Alberta has not yet implemented a capacity market, it is clear to the MSA that we are in a transition from one market design to another. The MSA is concerned that certain market participant conduct that results in static efficiency losses will now not result in dynamic efficiency gains from innovation and investment.

The AESO has stated:

During the transition period while a capacity market is being implemented, it is highly likely that a “bridging mechanism” will be required to ensure reliability before new supply supported by a capacity payment is added to the system (the period from 2021-2024). **No investments in new supply are expected until the details of the capacity market are determined.** (Emphasis added)²

The practical implication of this to market participants is that the exercise of market power, including “economic withholding” may no longer be consistent with achieving efficiency set out in the legislative framework. Simply, such conduct now would likely result in a loss of static efficiency with no corresponding benefit to dynamic efficiency. In addition, some other sections of the OBEG have since 2011 been rendered unnecessary or obsolete given changes in market rules and AUC decisions, most notably AUC Decision 3110-D01-2015. For these reasons the MSA is considering the revocation of the OBEG. While the exercise of market power may no longer be consistent with achieving efficiency, the question of whether the MSA would take enforcement action in a given set of circumstances would depend on whether the conduct had a deleterious effect on market outcomes.

Stakeholder Process

The MSA intends to follow its published [stakeholder consultation process](#) for this matter. For further clarity, we are in the “Initial Assessment” phase of the consultation. Comments are requested by April 7, 2017 and should be sent to stakeholderconsultation@albertamsa.ca. Comments received will be posted on the MSA’s website. The MSA requests that market participants specifically address the following points:

- Provide reasons for agreement or disagreement with the perspectives that are set out above, including but not limited to alternative rationales for the exercise of market power.
- Explain whether sections of the existing OBEG remain relevant.
- Explain whether a stakeholder meeting, following the submission of comments, would be desirable and, if so, what topics market participants wish to focus on and why.

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² AESO, “Alberta’s Wholesale Electricity Market Transition Recommendation.” October 3, 2016, p. 33. The AESO subsequently indicated in a public presentation on December 2, 2016 that it “does not anticipate the need for a bridging mechanism between now and 2020, but in keeping with its mandate will monitor vigilantly.”