



November 7, 2012

Feedback – Excess Energy / Increased Capacity Offers of PPA Units

This MSA Feedback note is directed to market participants that place Excess Energy / Increased Capacity offers into the power pool in relation to a Power Purchase Arrangement (PPA).

Under the terms of the thermal PPAs, the PPA Owner is entitled to the benefit of any Increased Capacity and Excess Energy; however, its offers are to be submitted to the power pool by the PPA Buyer and therefore the Buyer has access to the Owner's offer information (price and quantity) before this information is publicly available.

Section 3 of the *Fair, Efficient and Open Competition Regulation* (FEOC Regulation) prohibits market participants from sharing records not available to the public relating to future price and quantity offers into the power pool, subject to certain exemptions, or if allowed by an order of the Alberta Utilities Commission (AUC). *AUC Decision 2010-293* clarified that the sharing of offer information between the PPA Owner and PPA Buyer in relation to Excess Energy and Increased Capacity was within the scope of an exemption as set out in subsection 3(2)(e) of the FEOC Regulation, and was therefore not prohibited.

*AUC Decision 2010-293* did not directly address other aspects of the FEOC Regulation and in the view of the MSA market participants' obligation to support the fair, efficient and openly competitive operation of the market, as set out in section 6 of the *Electric Utilities Act* (EUA) and articulated in section 2 of the FEOC Regulation, remains an overarching requirement. The *Offer Behaviour Enforcement Guidelines* (OBEGs) published by the MSA in January, 2011 identified protection against coordinated behaviour among competitors as a foundational element of preserving the fair, efficient and openly competitive operation of the market. In section 4.6.1 of the OBEGs, the MSA specifically identified a concern with the inappropriate use of non-public Excess Energy / Increased Capacity offer information. In simple terms, the fact that the PPA Buyer is privy to non-public offer information of the PPA Owner, its competitor, raises a serious risk of coordinated offer behavior, whether intended or otherwise. In the view of the MSA, the risk becomes untenable when persons involved in setting offers for PPA Buyer assets are also privy to PPA Owner offers before submission to the AESO. Such sharing of records within the PPA Buyer is not reasonably necessary, and should be avoided.

All of the above leads to the following feedback: the MSA will continue to actively monitor the sharing and use of non-public PPA Owner offer information held within PPA Buyer organizations. Toward ensuring compliance with FEOC obligations, such sharing should be on need-to-know basis only and appropriate measures should be taken to avoid misuse of the information.

*Note to reader: This 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 other 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.*