

March 11, 2010

NOTICE TO MARKET PARTICIPANTS AND STAKEHOLDERS

Re: Market Participant Offer Behaviour – Next Steps

Introduction and Scope of Review

As promised following the February 18, 2010 Roundtable discussion with stakeholders on market participant offer behaviour, here are the MSA's views on the next steps. First, we define the outcome the MSA is trying to achieve. Next we reflect on and adopt some of the points (and reject others) made during the Roundtable meeting and in subsequent written comments. These are the parameters the MSA will observe going forward. Finally, we set out the main pieces for consideration by stakeholders to help us achieve the outcome, together with a proposed schedule and next steps.

The objective and planned outcome of the consultative exercise is a MSA statement that describes how we identify and assess when electricity market participant offer behaviour may not support section 6 of the *Electric Utilities Act* – the fair, efficient and openly competitive operation of the market. The statement is meant to:

- build on the learning from past consultations;
- take into consideration the evolution of the Alberta market and the current policy framework within which it operates; and
- revise, as appropriate, and codify in one place past guidance of the MSA in the area of offer behaviour.

The nature and the shape of the eventual MSA statement will be determined in close consultation with stakeholders over the next few months through a staggered release of documents by the MSA. These are described briefly below but first we provide point-form feedback on the views expressed by stakeholders to date.

Feedback on Consultation to Date

1. We note the view of some members of the generator community that the MSA would be outside its mandate if we interfered in any way with the freedom of market participants to make offers. However, we would respectfully suggest that the generators not pre-judge the outcome of the consultation before it gets underway in earnest.
2. The MSA accepts that the onus rests with it to identify the problem that may result from unfettered offer behaviour (other than the existing mechanisms such as the price cap and the dispatch control cap) and to take into consideration the feasibility of remedies and the likelihood of false positives and false negatives in developing its enforcement position.
3. We understand that the Alberta Utilities Commission decides the meaning of the provisions of the *Electric Utilities Act*, such as section 6, and the Minister of Energy sets the policy and statutory framework. However, we believe that it is worth the effort for the MSA to try to articulate its enforcement stance as clearly as possible, understanding that there will always be an element of judgment in applying the framework and not all scenarios can be anticipated.
4. The MSA believes the principle of symmetry is important in fostering competition. Symmetry may minimize the need for guidelines and intervention from the MSA. For example, the MSA's enforcement stance with respect to intertie conduct should in principle be similar to its approach to conduct within the province, or if not, the reasons why should be explained. We also accept the need to provide guidance on both supply-side and load conduct, applying the same preference for symmetry unless there are clearly distinguishable circumstances.
5. The MSA wishes to make clear its current view that market participants offering below or above cost would not, in the absence of other factors, be viewed as contrary to section 6 of the EUA. Getting clarity on these 'other factors' is the purpose of the current initiative. Stakeholders should note that during the period of the consultation the MSA will continue to monitor, investigate and enforce section 6 of the EUA.

Proposed Schedule and Next Steps

The MSA's next steps will be to establish two foundational elements before moving towards a draft statement.

1) Interpretation of Section 2(j) and 2(k) of the Fair, Efficient, Open Competition Regulation:

The MSA intends to develop a short focused paper providing the MSA's views of subsections 2(j) and 2(k) of the FEOC regulation. Both of these provisions are relevant to offer behaviour, describing prohibitions of 'manipulation' (2(j)) and 'gaming' (2(k)). Having completed this step the MSA will focus on behaviour that might fall within section 2(j) but we believe it is important at the outset to distinguish the two to avoid confusion.

An opportunity will be provided for stakeholder comment.

2) Issue definition – Offer Behaviour and Manipulation:

The MSA will provide its view of the perceived problem, including an empirical assessment of its presence. Key to articulating that concern is a definition of efficiency (both static and dynamic) and how, as a consequence, conduct might be inconsistent with a fair, efficient and openly competitive market. The MSA will also provide some details of the analytical framework for monitoring offer behaviour that would flow from the identified concern.

An opportunity will be provided for stakeholder comment.

3) Draft statement:

Once comments have been received on both foundational elements we plan to revise both into a draft document consolidating and summarizing our views on offer behaviour. At this point we will provide a further opportunity for stakeholder comment before finalizing and publishing our views.

We expect to release a draft of the first element within one month from the date of this notice, followed approximately one month later by the second element. If you have comments or questions on any of the aspects described herein, please contact Matt Ayres (matt.ayres@albertamsa.ca, 403-705-3182).

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