

NOTICE TO PARTICIPANTS AND STAKEHOLDERS

May 7, 2019

Re: Oral feedback re: Consultant's report on Advisory Opinion Programme

On February 27, 2019 the MSA held a stakeholder meeting where the MSA's Independent Economics Consultant Ian Nielsen-Jones was available to answer questions on his report entitled "Report to the Market Surveillance Administrator of Alberta regarding the merits of introducing an Advisory Opinion Programme". At the meeting the MSA took notes in order to document the feedback provided. Those notes are appended to this notice. The MSA requests stakeholders provide any corrections to this record by end of day May 10, 2019 via email to stakeholderconsultation@albertamsa.ca.

Once the MSA has received stakeholders' corrections on that document a decision will be made whether to pursue an Advisory Opinion Programme or take another action. That decision will be communicated to stakeholders by way of written notice within 10 business days.

/s/ Gordon Kaiser

Market Surveillance Administrator

Advisory Opinion Programme (AOP) Stakeholder Meeting

Notes from Stakeholder Meeting

Location: Sheraton Suites Calgary Eau Claire

Date: February 27, 2019

Time: 9:00 AM - 12:00 PM

Attendee List:

Market Surveillance Administrator (MSA)	Amy Siciliano
	Anders Renborg
	Brandon Esau
	Calder Watrich
	Gordon Kaiser
	James Conville
	Mike Nozdryn-Plotnicki
	Shanelle Sinclair
Consultant	Ian Nielsen-Jones
Alberta Federation of Rural Electrification Associations (AFREA)	Al Nagel*
	Dan Astner*
Alberta Electric System Operator (AESO)	Jodi Marshall
	Marcella Matzeit
Alberta Energy	Brittany Goulding
ATCO Electricity Generation (ATCO)	Kurtis Glazer
	Mark Nesbitt
The Balancing Pool	Ben Chappell
	Sharleen Traynor
Capital Power Corporation (Capital Power)	Jason Comandante
	Thomas Ng*
Direct Energy Regulated Services (Direct Energy)	Nicole Black*
EDC Associates Ltd.	Chris Best
ENMAX Corporation (ENMAX)	Mark McGillivray
EQUUS REA LTD.	Brian Hennings
Industrial Power Producers Society of Alberta (IPPSA)	Evan Bahry
NorthPoint Energy Solutions	Dean Jones*
Powerex Corporation	Kim Craven*
Suncor Energy Marketing Inc. (Suncor)	Horst Klinkenborg
	Pam Forgie-Thomson*
TransAlta Corporation (TransAlta)	Akira Yamamoto
	Carolyn Dahl-Rees
	Daryck Riddell
	Ted Nivolianitis
TransCanada Energy Ltd. (TransCanada)	Matthew Davies
	Travis Casorso

* : Indicates registration to attend via teleconference

The MSA opened the meeting with introductions and by explaining the purpose of the meeting. The MSA noted that the MSA had received nine written stakeholder submissions regarding the proposed Advisory Opinion Programme. Ian Nielsen-Jones then summarized the Advisory Opinion Programme (AOP) in place by the Competition Bureau (the Bureau) and his experience with that programme.

Questions Regarding the Advisory Opinion Programme

ATCO asked Mr. Nielsen-Jones to comment on the effectiveness of advisory opinions in civil matters as opposed to criminal matters based on his experience at the Competition Bureau.

Mr. Nielsen-Jones stated that he found that the AOP was more useful in dealing with civil matters, as more flexibility was afforded in these cases and the opinions were more valuable to industry participants. In the past, most opinions given by the Bureau were related to criminal matters. The majority of questions related to Resale Price Maintenance and false and misleading advertising. However, Resale Price Maintenance is now a civil matter so the number of opinions requested on these matters has declined dramatically.

TransAlta asked about the required length of submissions when requesting an opinion from the MSA. For context, the submissions procedure documents on the Bureau's website were in the hundreds of pages, and TransAlta was wondering if this was due to the scope of the Bureau.

Mr. Nielsen-Jones said that procedure documents at the Bureau were large due to the Bureau's scope. In the case of this AOP, submissions could be between 10 to 20 pages long. However, it is important for participants to understand the need for these requests to be sufficiently detailed to provide the MSA with sufficient information to issue an opinion.

TransAlta inquired about the decline in written opinions beginning around 2013 or 2015.

Mr. Nielsen-Jones said that the number of opinions issued had dropped off twice in twenty years. The first instance was when the Bureau began to charge for opinions, where many smaller organizations stopped requesting opinions. The second instance occurred in 2011 or 2012, when the new Commissioner of Competition perceived there to be less value in issuing opinions than his predecessors. At that time, the Bureau decided not to publish the number of written opinions, and began reducing the number of opinions discussed in its annual report. With a new Commissioner being appointed in the near future, Mr. Nielsen-Jones believed the circumstances around the second decline in opinions could reverse. Nonetheless, the current statistics published by the Bureau understate the number of opinions granted.

TransAlta asked about the typical number of information requests that may be necessary after an initial submission is made under the AOP.

Mr. Nielsen-Jones said that in his experience one or two follow-up information requests may be necessary, but in 30-40% of cases no additional information was required. Some questions may

not be complicated, but some may involve a broad range of issues. Typically questions regarding civil matters require little follow-up. Often follow-ups were only for clarifications.

Shanelle Sinclair asked for any questions from any participants who had called in. No questions were received.

ATCO asked how binding the advisory opinions could be, given the lack of legislative underpinning of the programme.

Mr. Nielsen-Jones replied that the legislative provision for the Competition Bureau's AOP was only put in place in 2002, thirty years after the programme was initiated. The reason for the legislative underpinning of the Bureau's AOP was because the Bureau had begun charging fees for opinions. Many opinions had been issued prior to 2002.

Mr. Nielsen-Jones mentioned that one stakeholder had asked (as part of the current process) how often the Bureau went after organizations that had previously received a binding opinion from the Bureau. Mr. Nielsen-Jones said this occurred in perhaps as many as 5% of cases, but more likely 1-2% of cases. However, not one company challenged the Bureau's opinion during a subsequent enforcement proceeding.

ATCO then asked if the purpose of the Bureau's AOP was to look at whether legislation would be applicable to a company, or if the purpose was to determine whether the proposed conduct would lead to the Bureau opening an investigation if the conduct were implemented, and how often either might be examined.

Mr. Nielsen-Jones said that as part of every advisory opinion the Bureau would look at whether the proposed conduct would lead to an investigation. The Bureau would sometimes express concern with one or more matters raised in the proposal, which might lead to the company resubmitting a different proposal. The Bureau would then issue an opinion based on this change. Sometimes a company would remove a request then submit a revised request some months later.

TransCanada asked Mr. Nielsen-Jones about the time it might take to issue an opinion after a submission is made by a company, based on his experience at the Bureau.

Mr. Nielsen-Jones said that the Bureau has service standards regarding turnaround times only because it charges companies for the service. In the past when no service standards existed, the Bureau would informally advise the company that the opinion may be issued anywhere from 30 to 90 days after the submission; this would depend on the complexity of the submission and the number of information requests or meetings.

The Balancing Pool asked if there was any specific feedback on the comments provided by stakeholders prior to the meeting.

Mr. Nielsen-Jones said that he had not come prepared to directly respond to written comments. However, the comments were useful and some are covered in the question and answer session. He mentioned each and every comment had been looked at, and they will be considered going forward and adjustments may be made to the AOP based on them.

TransAlta asked if the MSA would provide a private opinion to a company without communicating that opinion to the broader industry if that proposed conduct may impact or apply to them. For context, Alberta has many joint ventures and interconnections between parties. In the past, TransAlta found it was difficult to get private opinions or responses on matters. One problem is that other participants might be impacted by certain behaviour.

Mr. Kaiser acknowledged that this was a legitimate concern. The Bureau achieved a balance by publishing a generic version of the question. The MSA wants to be neutral and fair; as the Bureau had done, the MSA's draft AOP intends for generic opinions to be published to guide the market. The intent of the MSA is to inform the submitting party what the MSA would say to the public and determine if they found that acceptable. If they do not find the public version acceptable the MSA would stand down from the public process. The goal of the MSA is to provide Real Time Regulation by answering questions regarding whether the MSA would start an investigation about proposed conduct.

Mr. Nielsen-Jones added that the Bureau might decline to issue an advisory opinion depending on circumstances and the facts put forward, and might instead embark on a guideline, bulletin or industry consultation regarding the proposed conduct. This was not the Bureau's preferred method, but they would occasionally do this.

Mr. Kaiser added that in these circumstances the MSA might approach the Alberta Utilities Commission and request a generic hearing on the proposed conduct.

TransAlta asked if there could be petitions by participants to re-examine the binding nature of the opinions. These petitions may be desirable if participants found they would be impacted by the proposed conduct described in an opinion.

Mr. Kaiser said that the binding nature does not imply an opinion could not be reversed. The MSA's feedback note programme was not binding. Furthermore, the opinions are only binding on the MSA, not the Alberta Utilities Commission.

Mr. Nielsen-Jones said that the Bureau was occasionally approached by parties who had questions on an already issued advisory opinion. These participants would meet with the Bureau about the opinion issued on the proposed conduct and would present their point of view on the conduct. During his time at the Bureau only once did the Bureau rescind an opinion based on feedback from other participants.

IPPSA asked when the market could expect the MSA to release a decision on the Offer Behaviour Enforcement Guidelines (OBEGs) and if this decision was conditional on the decision regarding the AOP.

Mr. Kaiser said that he wanted to make a decision on the AOP at the same time as making a decision on the OBEGs, but that the decision on the OBEGs would not be conditional on the decision on the AOP. He confirmed that while the two matters were related they were separate and the decisions on each would be made separately. Mr. Kaiser added that the timeline for issuing the MSA's decision on whether to implement the AOP or guidelines may be impacted by the recent government directive to not issue public statements prior to an election, except for those mandated by law. The MSA will be seeking legal advice on the timeline issue.

IPPSA then asked if the MSA had been asked by the government to not release any decisions or directives.

Mr. Kaiser responded that such a directive from the provincial government is standard protocol when approaching an election period, and that all agencies have received such a directive. This directive means that no discretionary statements should be released.

IPPSA then asked if the MSA then cannot release any decisions until after the election, and if these decisions would be included as part of that directive.

Mr. Kaiser said that the two decisions (on OBEGs and the AOP) may not fall within the government's directive, and he will be seeking legal clarification to determine whether that may be the case.

Ms. Sinclair clarified that the government's directive was a policy direction and not a requirement given that the MSA is not subject to the Alberta Elections Act. The MSA was working with the Department of Energy on this matter.

Mr. Nielsen-Jones said the Bureau would generally not release discretionary decisions during a federal election.

EDC Associates Ltd. said that while they fully supported sharing learnings publicly, they felt that if the facts provided by a participant to inform an opinion are then redacted when releasing the opinion publicly, the market may not be able to rely on the opinion based on the lack of detail provided publicly.

Mr. Kaiser said that by releasing such a redacted opinion publicly, this might incent a participant to request their own opinion if they have a similar proposal to that described in the public opinion. The purpose of releasing the opinions publicly is to encourage discussion. Participants may not find the generic public opinions reliable but it will alert them to an opinion.

Mr. Nielsen-Jones said that the Bureau would take such matters into account when releasing public opinions. Some public opinions may be more fulsome if the opinion is applicable to a wider audience.

EDC Associates Ltd. asked if behaviour had been employed in the past (perhaps seasonally) would a participant be able to request an opinion on whether than behaviour could be employed in the future. If a participant asked for such an opinion would they be opening themselves up to a review of all past activities after a negative opinion is provided by the MSA?

Mr. Nielsen-Jones replied that the Bureau would not provide opinions on conduct that had previously taken place, as this could involve an admission of questionable past conduct.

EDC Associates Ltd. asked if any materials provided to the MSA could be used by the MSA going forward.

Mr. Kaiser expressed that it would be preferable to not discuss conduct that has taken place in the past. However, any such discussion would be undertaken with solicitor-client privilege. The programme is designed to cover future conduct.

EDC Associates Ltd. thanked the MSA for the opportunity to comment on these matters. They expressed their desire to continue this conversation. In the past, they found the MSA's annual meetings helpful.

Mr. Kaiser stated that he expected to consult with industry when the Commission has released their decision on the capacity market.

TransCanada asked if the MSA intended to publish stakeholder comments on the AOP process.

Mr. Kaiser said that the comments have already been published. The issues raised from this meeting would be published, along with a decision of whether or not the AOP would go forward.

TransCanada asked if either Mr. Kaiser or Mr. Nielsen-Jones have experience with this type of programme as applied to energy or wholesale commodity markets.

Mr. Kaiser said that Mr. Nielsen-Jones works with the Ontario ISO.

Mr. Nielsen-Jones said that the Bureau has issued opinions for participants who are in the petroleum and commodities markets in the past.

Conclusion

Mr. Kaiser thanked stakeholders for attending the meeting, and said the MSA would release a decision as quickly as possible.