

January 11, 2019

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Via Email: stakeholderconsultation@albertamsa.ca

RE: ATCO RESPONSE TO OFFER ENFORCEMENT BEHAVIOUR GUIDELINES CONSULTATION

ATCO Power Canada Ltd. (ATCO) appreciates the opportunity to provide comments and applauds the MSA's initiative to reassess its position on offer behaviour and the Offer Enforcement Behaviour Guidelines (OBEG) in the capacity market implementation period.

This consultation is preceded by a consultation in spring 2017 on the status of the OBEG, which resulted in the OBEG's withdrawal. The MSA justified its decision to withdraw the OBEG based on the concern "that certain market participant conduct that results in static efficiency losses would now not result in dynamic efficiency gains from innovation and investment."¹ The current market design has not changed and will not change until 2021. As such, ATCO continues to disagree with the MSA's justification for removing the OBEG and believes that the importance of the offer behaviour guidance provided by the OBEG remains. ATCO submits that the most reasonable and efficient outcome of this consultation would be renewed guidance regarding the permissibility of economic withholding, which could be accomplished through immediate reinstatement of the sections of the OBEG related to offer behaviour, or the entire document.

ATCO believes that this should be addressed immediately and not delayed until the capacity market is implemented, as recommended by Charles River Associates in their December 10, 2018 report (CRA Report). The revocation of the OBEG led to an uncertain regulatory and enforcement framework regarding offer behaviour in Alberta, which has reduced investor certainty and confidence in the market. This consultation should be seized as an opportunity to return clarity to the MSA's enforcement stance on offer behaviour as soon as practicable, prior to the implementation of the capacity market.

ATCO's further comments below are organized as follows: (i) long run marginal cost as a benchmark; (ii) the Balancing Pool's effect on the market; and (iv) effectiveness of the advisory opinion programme as a substitute.

i) Long run marginal cost as a benchmark

ATCO supports the continued use of long run marginal cost as a benchmark for the evaluation of market competitiveness. Investments in the energy-only market were made based on the expectation that there would be a reasonable opportunity to earn a fair return, which can be equated to prices at LRMC on average. ATCO does not agree with the CRA Report that the market is in a "transition period." Instead, the market remains

¹ <https://albertamsa.ca/uploads/pdf/Archive/00000-2017/2017-05-26%20MSA%20decision%20and%20response%20to%20stakeholder%20comments%20re%20OBEG%20consultation%20New.pdf>

an energy-only market where investments must be recouped solely through the energy price until capacity payments start in November 2021. Offers in this “implementation period” are subject to the same rules and regulations as before the announcement of the capacity market; any change to MSA interpretation of these rules is unfounded and increases investor risk today and going forward. Maintaining the assessment of costs at the LRMC benchmark would give investors the potential to earn a fair rate of return based on appropriate energy market rules, until the implementation of the capacity market.

ii) Effectiveness of the advisory opinion programme as a substitute

On December 14, 2018 the MSA published a report by Ian Nielsen-Jones regarding the potential for an Advisory Opinion Programme.² ATCO has concerns regarding the efficacy of the proposed program and does not believe it is a viable replacement for clear, well defined guidance on offer behaviour.

While ATCO’s concerns will be further articulated in its comments specific to the Advisory Opinion Programme consultation, in brief ATCO is concerned that the opinions will:

- not be binding because the legislative framework does not contemplate binding MSA opinions;
- opine on whether the market rules or regulations “would be applicable to the proposed conduct or course of action.” ATCO is concerned that the market rules and regulations are broadly applicable to offer strategy and an MSA opinion would offer no new information related to probability of enforcement action.

ATCO is unclear why it would be more efficient or effective to address offer behaviour issues through a program under development, rather than the stakeholder consultation framework already in place. Further, the Advisory Opinion Programme as contemplated will be significantly less transparent than the stakeholder consultation process and may only address the concerns of one market participant at a time. Since the MSA’s offer behaviour enforcement stance is an issue of broad interest in the industry, it should be addressed in an open and transparent forum.

Concluding remarks

ATCO appreciates the MSA’s initiative to reassess its position on offer behaviour enforcement and the revocation of the OBEG in the capacity market implementation period. ATCO supports the continuing use of LRMC as a benchmark to assess the competitiveness of the energy market but submits that it must be assessed over the long run and in conjunction with historically observed prices and trends. Finally, ATCO is concerned that the Advisory Opinion Programme may not offer a viable substitute to achieve sufficient clarity on offer behaviour for all market participants, compared to a guideline established through stakeholder consultation.

ATCO submits that the MSA should adopt some form of offer behaviour guidance in the capacity market implementation period. This could most readily be achieved by reinstating the OBEG, excluding out of date

² <https://albertamsa.ca/uploads/pdf/Archive/000000-2018/Report%20to%20MSA%20re%20Merits%20of%20Introducing%20an%20Advisory%20Opinions%20Program.pdf>

or irrelevant sections, but could also be achieved through a brief guideline stating that economic withholding is permissible and a clear articulation that market outcomes will be evaluated against a benchmark of LRMC.

Sincerely,

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