



450 - 1st Street S.W.
Calgary, Alberta, Canada T2P 5H1
Tel: (403) 920-5005
Fax: (403) 920-2464
Email: markj_thompson@transcanada.com

January 21, 2019

Via email

Market Surveillance Administrator
#500, 400 – 5th Avenue SW
Calgary, AB T2P 0L6

Attention: Mr. Gordon Kaiser, Market Surveillance Administrator

Dear Mr. Kaiser,

**Re: Market Surveillance Administrator (“MSA”) Request for Comments – *Report to the Market Surveillance Administrator of Alberta Regarding the Merits of Introducing an Advisory Opinion Program* (the “Report”):
TransCanada Energy Ltd. (“TCE”) Comments**

TCE writes in response to the MSA’s December 14, 2018 Notice to Participants and Stakeholders in which the MSA requested written feedback from stakeholders regarding a report prepared by Independent Economics Consultant Ian Nielsen-Jones (the “Consultant”). TCE has reviewed the Report and provides its comments below.

Timeliness of Response

TCE notes that Section 7 of the Report recommends the MSA “should delay establishing strict service standards until it has sufficient experience with the process and timelines associated with preparing different types of opinions to enable it to set meaningful standards.” While this rationale is a reasonable approach to the immediate implementation of firm service standards, it is nonetheless critical that feedback from the Advisory Opinion Program (“Opinions”) be produced as quickly as possible, and that applicants have a general understanding of the amount of time needed for the MSA to produce a response.

If general timelines were not established, participants may be incented to not participate in the program. Wholesale energy market strategies can often be implemented very quickly, and can produce near-immediate results – the time required for the Opinion process to complete may therefore result in significant opportunity loss. The shareholders of most market participants demand timely execution of strategies, and these participants may choose to act on their own legal interpretation of regulations regarding market behavior – as they do currently – to avoid such opportunity loss. This would diminish the utility of the Program. TransCanada suggests that, while expectations will undoubtedly vary based on the details of each application, a turnaround timeline as short as 1 month may even be too long in many circumstances.

TransCanada would be interested to learn whether the Report's author or the MSA are aware of similar programs being applied in other wholesale commodity marketing jurisdictions, and what the results of the programs in those markets have been.

Publication of Advisory Opinions

Section 8 of the Report addresses the ability of the MSA to make the Opinions public, either in entirety or in edited format. In the interest of maintaining symmetry of access to information and a level playing field for all participants in the spirit of the *Fair, Efficient and Open Competition Regulation*, TCE supports the Report's suggestion to make Opinions publicly available. TCE proposes that, if the subject matter of the Opinion unavoidably reveals the identity of the applicant, that the MSA would find other mechanisms to ensure the salient facts are made available to all interested parties.

Consistency of Opinions

From a practical perspective, the structure of the proposed Program appears to rely on market participants' appetite to explain a strategy in full and surrender the determination for that strategy's permissibility to the MSA. While enforcement certainty is of great importance in Alberta's energy market, the willingness of market participants to 'lay their cards on the table' for pre-approval would require a very high degree of faith in the consistency of the MSA's Opinions.

Recently, the MSA revoked the Offer Behaviour Enforcement Guidelines ("OBEG"). These OBEG were heavily relied upon by market participants, and the revocation proceeded despite unanimous written opposition from market participants. Between September 2017 and September 2018, four different individuals held the Administrator chair, and the position also sat vacant for nearly 4 months. Those four individual Administrators demonstrated significantly differing approaches in those short periods of time, particularly toward offer behaviour and market participant consultation. Significant staff turnover within the MSA also occurred during that same period. TCE recognizes and welcomes the stability offered by the appointment of a full-term MSA, but historical observations suggest that market participants have reason to be concerned that as the approaches, influences, and opinions of the MSA's Administrators and staff change, so too might the MSA's interpretation of the appropriateness of various strategies.

Based on such historical observations, market participants may require additional encouragement to restore the confidence required to fully embrace the proposed Program. Additional comfort may be gained through the inclusion of detailed procedures on analysis and general approach to evaluating applications in any Advisory Opinion Program the MSA chooses to adopt.

TCE appreciates the opportunity to provide feedback on this matter. If you would like to discuss this further, please feel free to contact me at (403) 920-2038 or via e-mail at matthew_davies@transcanada.com.

Yours truly,

Delivered by email

Matt Davies
Compliance Manager, Energy