

## **NOTICE TO PARTICIPANTS AND STAKEHOLDERS**

February 5, 2019

**Re:** Oral feedback re: consultant's report on Offer Behaviour Guidelines prior to the implementation of the capacity market.

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On January 17, 2019 the MSA held a stakeholder meeting where staff from Charles River Associates were available to answer questions on their report entitled "Offer Behaviour Guidelines prior to the implementation of a capacity market" (the Report). 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 February 8, 2019 via email to [stakeholderconsultation@albertamsa.ca](mailto:stakeholderconsultation@albertamsa.ca).

Once the MSA has received stakeholders' corrections on that document a decision will be made whether to pursue guidelines prior to the implementation of capacity market or take another action. That decision will be communicated to stakeholders by way of written notice.

/s/ Gordon Kaiser

Market Surveillance Administrator

## Offer Behaviour Enforcement Guideline (OBEG) Stakeholder Meeting

### Notes from Stakeholder Meeting

**Location:** Sheraton Suites Calgary Eau Claire

**Date:** January 17, 2019

**Time:** 9:00 AM - 12:00 PM

#### Attendee List:

Market Surveillance Administrator (MSA)	Angela Bentley
	Brandon Esau
	Calder Watrich
	Gordon Kaiser
	Grace Wong
	Matt Ayres
	Mike Nozdryn-Plotnicki
	Shanelle Sinclair
Charles River Associates (CRA)	Adonis Yatchew
	Chris Russo
	Jordan Kwok
Alberta Electric System Operator (AESO)	Grant Freudenthaler
AltaGas Ltd. (AltaGas)	Cameron Hughes
ATCO Electricity Generation (ATCO)	Kurtis Glasier
	Mark Nesbitt
The Balancing Pool	Ben Chappell
	Sharleen Traynor
Capital Power Corporation (Capital Power)	Jason Comandante
EDC Associates Ltd.	Chris Best
ENMAX Corporation (ENMAX)	Bruce Borwick
Industrial Power Consumers Association of Alberta (IPCAA)	Richard Penn
Industrial Power Producers Society of Alberta (IPPSA)	Evan Bahry
NorthPoint Energy Solutions	Wayne Tressel
Powerex Corporation	Clarke Lind
	Kim Craven
Suncor Energy Marketing Inc. (Suncor)	Horst Klinkenborg
TransAlta Corporation (TransAlta)	Akira Yamamoto
	Daryck Riddell
	James O'Connor
	Ted Nivolianitis
TransCanada Energy Ltd. (TransCanada)	Mark Thompson
	Travis Casorso

The MSA opened the meeting with introductions and by summarizing the purpose of retaining CRA and hiring consultants.

CRA then made a brief presentation on its expert report attached as Appendix A.

### **Discussion on Questions for CRA**

IPPSA stated that its view is that the revoked OBEGs had provided welcome guidance and accepted CRA's view that new OBEGs would be disruptive. However, IPPSA's view is that the market design has not changed and recommended that the revoked OBEGs be reinstated. IPPSA asked if CRA has a view on the re-introduction of the revoked OBEGs.

CRA replied that the OBEGs were revoked because the electricity market is in a transition period. Based on CRA's analysis which balanced various considerations, CRA has recommended against implementing new guidelines. CRA added that it would be technically and administratively difficult to re-introduce the revoked OBEGs. A new consultation would have to take place to adapt the revoked OBEGs to the transition period with the forthcoming capacity market in mind.

IPPSA emphasized that we are currently in an energy-only market and asked if CRA agreed.

CRA stated that investment decisions are not based on energy-only market expectations during the transition period.

IPPSA asked if investors can make returns from the energy market and if economic withholding is acceptable conduct.

CRA replied that it does not see why this would not be the case.

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The Balancing Pool asked a question regarding its role in the conclusion of the report. The Balancing Pool stated that it has initiated a Request for Information to outsource its offer control. The Balancing Pool inquired as to how much of the CRA report's conclusion was premised on the Balancing Pool retaining offer control and the Balancing Pool's offer behavior.

CRA replied that it did not assume the Balancing Pool would maintain a previous offer strategy. Instead, a range of offer behavior was considered for the report, with certain conclusions based on the possible scenario in which Balancing Pool offer behavior did not change considerably. The conclusion is that the MSA will need to have flexibility in its enforcement role. Should the Balancing Pool's offer behavior change, the MSA may need to provide oversight.

The Balancing Pool responded by asking if CRA means oversight of the Balancing Pool or of the energy market in general and what the oversight would look like.

CRA replied that the MSA would provide oversight in general and it does not know what the specifics would look like.

The Balancing Pool affirmed that it would like clarity on this matter as swiftly as possible.

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IPCAA stated that consumers have concerns about the role of PPAs until the capacity market is implemented. IPCAA asked CRA if it would be possible to implement the proposed ISO Rules on energy mitigation in January 2021, 10 months prior to the implementation of capacity market rules in November.

CRA replied that the idea was not included in the scope of its report, though it could be discussed further. CRA's response would depend on what the mitigation regime would be for the capacity market.

IPCAA asked CRA to provide its thoughts on the matter assuming a robust energy market mitigation regime was approved by the AUC.

CRA stated that it is complicated and depends on what the energy market mitigation rules will look like. CRA believes that a benchmark to short-run marginal cost (SRMC) would not be appropriate to implement before the implementation of the capacity market. It would likely be more appropriate to rely on long-run marginal cost (LRMC) benchmark in the energy market context and possibly a SRMC in a subsequent capacity market context.

IPCAA stated that it assumes there will be rigorous mitigation and does not think that the 10 month interim period will incent investment.

CRA replied that it would be better to wait until the proposed capacity market rules were published prior to addressing this question with specificity. Details of the capacity market are critical with respect to investment signals.

IPCAA asked if clarity will come in 6 months.

CRA replied that it was not asked to consider the issue. CRA would be able to perform such an assessment once the proposed capacity market rules are known.

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ENMAX asked whether the Balancing Pool's offer behavior, which results in lower prices, constitutes market manipulation.

CRA replied that the Balancing Pool's current offer behavior is not a concern nor does the current behavior indicate that new guidelines are needed. CRA reiterated that it drew its conclusions assuming that Balancing Pool offer behavior did not change considerably, and noted in several places that changes in Balancing Pool offer behavior could lead to changes in market outcomes that warrant re-visiting CRA's conclusions.

ENMAX asked if the Balancing Pool's offer behavior constituted commercially reasonable behavior.

CRA stated that it was not asked to consider the question, nor did it review bidding behaviour. However a range of offer behaviours could be understood to be reasonable

The Balancing Pool affirmed that it has behaved and will continue to behave in a commercially reasonable manner.

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Capital Power asked what CRA's definition of a problem was in answering the first question the MSA posed to CRA. If there was no problem, does it mean that there is not enough market concentration to suggest a problem?

CRA replied that this is the kind of problem where "you know it when you see it." CRA elaborated that if price outcomes reached such a level that they were inconsistent with historical price trends and market volatility that could suggest that there is an issue requiring further analysis. CRA acknowledge that this could be seen as vague, but is similar to monitoring practices in other markets. CRA reaffirmed that changes in the market prompt a requirement for flexibility for the MSA. CRA expressed that it could exclude the possibility that a problem could potentially arise, as many outcomes are possible.

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Suncor stated that in determining whether conduct is appropriate, the conduct requirements should be based upon regulations and rules and not based on the conditions in the market at the time.

CRA affirmed that high prices alone do not suggest that conduct is improper and that the best solution for high prices is high prices. Prices inconsistent with the past may suggest inappropriate conduct, but they also may be the result of a variety of factors not directly related to conduct. Furthermore, prices are one metric to consider in an assessment of conduct and conclusions cannot be based on price alone. The original OBEGs were intended to promote dynamic efficiency in an energy-only market. While the rules governing the market are the same, the current behavior and expectations of investors are not based solely on considerations tied to the energy-only market.

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ATCO stated that the report focused on benchmarks and outcomes while the MSA's enforcement practices are more conduct based. ATCO asked if the MSA's enforcement practices should change.

CRA replied that the MSA would speak for itself and that there are no indications that things should change.

ATCO asked if CRA's view would change if the situation were to change.

CRA replied that then it would look for indications, which could in turn lead to further analysis and a recommendation for new guidelines. But it does not want to prejudge the situation.

ATCO affirmed that investment decisions are still being made today in particular, for example, with respect to coal to gas conversions.

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IPCAA questioned the value of high prices between today and the implementation of the capacity market, and if high prices in this transition period would just be a wealth transfer.

CRA replied that the need for investment recovery in the transition period was not in scope for consideration in the report.

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IPPSA stated that the CRA report did not incorporate an indication of costs compared to historical power prices to account for revenue sufficiency and investors not recovering their investments in the transition period. IPPSA affirmed that a significant portion of the costs accrued in 2018 were from the carbon tax which in its view should be stripped out. IPPSA expressed concerns over investors not recovering their investments in the transition period as the same investors are needed in the capacity market. IPPSA questioned why the CRA report did not include a reference to costs compared to pool prices.

CRA replied that this was outside the scope of the report. CRA does not see a direct link between the lack of guidelines and low prices. CRA also referenced page 23 of the report which included a graph highlighting that in recent periods prices have been low but elaborated that prices were substantially higher in prior periods. Thus, there have been opportunities for investment cost recovery. CRA suggested that the Advisory Opinion Programme (AOP), if implemented, would provide an opportunity to for market participants to discuss this issue with the MSA.

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TransAlta asked if CRA considered forecasted reserve margins in its analysis. TransAlta also asked CRA if there was a crowding out affect due to government backed procurement and if that negates the need for merchant generation.

CRA stated that it relied on forecasts from the AESO. CRA acknowledged that the government backed procurement plays a role, but the question as a whole was not in scope for consideration.

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TransCanada expressed its confusion with the conclusion of the report that LRMC should be used as a benchmark instead of solely SRMC. TransCanada expressed that it is unsure of what to report to its staff as to what constitutes appropriate conduct. TransCanada affirmed that investment decisions are not onetime decisions and that what is happening today is considered for future investment decisions. TransCanada expressed its concerns over the lasting effects of government agency behavior and noted the adverse effects of uncertainty on the part of government agencies. TransCanada further suggested that there is more uncertainty at present than when the OBEGs were revoked. TransCanada questioned the long term impacts of the uncertainty created by the MSA and asked for CRA's thoughts on the matter.

CRA stated the guidelines were merely guidelines and that the primary cause for uncertainty is the development of the capacity market. CRA expressed disagreement to the sentiment that the absence of guidelines is adding uncertainty, and suggests it is maintaining the status quo. CRA suggested that creating new guidelines may create greater uncertainty. CRA affirmed that choosing not to create new guidelines doesn't preclude the MSA from introducing them later.

TransCanada expressed concerns over regulatory uncertainty and questioned the value of guidelines if participants do not know how long a guideline will be in place and affirmed that this consultation is an opportunity for the MSA to maintain credibility.

CRA replied that on balance, creating new guidelines before the design of the capacity market design is released would not be beneficial.

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Suncor inquired about the role of guidelines versus regulations. Suncor expressed that its understanding was that guidelines were created to help interpret the rules and regulations of the energy market. Suncor expressed that it didn't understand why the MSA would alter guidelines if the rules and regulations have not changed. Suncor further stated that guidelines are not intended to replace regulatory processes and it is not within the mandate of the MSA to change the rules.

CRA replied that guidelines are merely guidelines and added that comments on the roles of agencies were outside of the scope of the report.

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TransAlta expressed that with heightened uncertainty in the transition period, it is important for the MSA to provide information that assists market participants. TransAlta questioned if there is a change in the MSA enforcement stance.

CRA replied that this was outside the scope of the report and that this was a question better directed to the MSA.

The MSA stated that it does not want contribute to uncertainty and wants to ensure that solutions help market participants. The MSA expressed that rules require a good reason to change. The MSA suggested that it is open to the idea of implementing the energy market mitigation rules prior to 2021. The MSA affirmed that guidelines promote investment, although mistakes in creating guidelines would create larger problems, whereas not creating guidelines would not add to the uncertainty.

TransAlta asked if the MSA's enforcement stance is changing.

The MSA replied that this will be addressed in the AUC proceeding on the capacity market.

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IPPSA asked if a decision with respect to implementing guidelines was being made during the meeting and added that it appears the decision is to not implement a new guideline.

The MSA affirmed that no decision would be made in the meeting, although there will be in the future.

IPPSA asked when a decision will be made.

The MSA replied that a decision will be made in one month. There is a lot of confusion due to the introduction of the capacity market and the MSA is expecting that the AOP will provide greater certainty. In the AUC proceeding on the capacity market, regulatory oversight is an important topic. The decision on what regulatory oversight process will exist post-2021 is a decision made by the AUC not the MSA. The MSA expressed that perhaps creating and then abolishing guidelines had been a mistake. However, the legal framework is there for the MSA to institute guidelines. The MSA asked if participants want a new guideline or continuation of the status quo. The MSA reiterated that it could consider implementing the market mitigation rules that are to come with the forthcoming capacity market at an earlier date.

IPCAA stated that when the revoked OBEGs were first implemented market participants complained that it would be the death of the market. However, the same market participants would now like to reinstate the OBEGs. IPCAA suggested that what market participants want is certainty.

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TransAlta acknowledged that creating guidelines is a lengthy process, and the AOP may be a better alternative. TransAlta asked what the timeline for creating the AOP is and if the AOP would be a better alternative to guidelines.

The MSA stated that creating the AOP is undergoing a consultation. The AOP is not an alternative to guidelines but a supplement. The AOP is optional and creates guidelines that do not apply to everyone for specific issues. However, the MSA acknowledged that it is the AUC's jurisdiction to make binding opinions [decisions?]. The MSA stated that it is trying to figure out how to reduce regulatory uncertainty. The MSA expressed that that the generators in the meeting appear to be in favour of reinstating the revoked OBEGs rather than creating new guidelines or not having any guidelines.

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AltaGas commented that some market uncertainty comes from changes to the MSA and requested if there was something the MSA could do, in terms of governance, within his term to lessen the uncertainty.

The MSA explained that he was looking into an advisory board and asserted the importance of liaising with the industry to determine the best steps moving forward.

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ATCO questioned if the AOP would be an appropriate avenue to address broad offer behavior issues.

The MSA replied that it would not be. The MSA identified that unlike guidelines requesting advice from the AOP would be optional. The OBEGs would serve as general guidelines for market participants, whereas the AOP, if implemented, would only apply to specific planned conduct by individual participants.

### **Conclusion**

MSA staff outlined process-related matters. MSA staff concluded the meeting and thanked parties for their participation.

Appendix A-

[CRA Presentation](#)