



September 11, 2013

### Feedback – Sale of Genesee PPA

The MSA was asked by the Balancing Pool whether the sale of the Genesee PPA, in whole as an 800 MW generation asset or as several strip contracts, would be challenged by the MSA on competition grounds. The short answer we gave the Balancing Pool is that it depends on the details of the transaction(s) in question, the competitive circumstances in the Alberta market at the time and for the foreseeable future, and the degree to which the parties have market power in the Alberta wholesale market. Each proposed transaction would be reviewed on a case by case basis although those involving entities new to Alberta or without significant existing market power would not likely raise a competition issue.

The MSA would carry out an assessment as to whether a potential acquisition would raise competition concerns under either the 'unilateral effects' or 'coordinated effects' doctrines. If it does that could lead to an application to the Alberta Utilities Commission seeking to block or modify the transaction. (The effects analysis is described in various MSA documents and is set out in detail in the Competition Bureau's *Merger Enforcement Guidelines*.) Alternatively, the MSA could refer the matter to the Competition Bureau and make available relevant records pursuant to section 45 of the *Alberta Utilities Commission Act*.

The MSA does not view the market share offer control provision of the *Fair, Efficient and Open Competition Regulation* (section 5) as providing a safe harbour from merger review because we believe the measures of market power identified in the 2012 MSA report "Measuring Generator Market Power" are more appropriate for the detailed competition assessment required and in any event, the provision doesn't address a potentially anticompetitive outcome through coordinated effects. In this regard it is worth noting the Competition Bureau's Enforcement Guidelines distinguish mergers that are unlikely to have anti-competitive consequences from those that require a more detailed analysis, such that:

"The Commissioner generally will not challenge a merger on the basis of a concern related to a coordinated exercise of market power when

- the post-merger market share accounted for by the four largest firms in the market (known as the four-firm concentration ratio or CR4) would be less than 65 percent; or
- the post-merger market share of the merged firm would be less than 10 percent."

*Note to reader: This feedback does not constitute a formal guideline or opinion of the MSA. However, within the parameters of the applicable facts and absent any superseding view, we consider ourselves bound by feedback given. Views expressed by the MSA do not supplant the role and authority of the courts, the Alberta Utilities Commission or other adjudicative body with jurisdiction over a given matter. Questions or comments regarding this feedback can be sent to the MSA through the Contact Us link on our website.*