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ALBERTA UTILITIES COMMISSION

Market Surveillance Administrator Application to Make Public a Record that Identifies a Market Participant by Name, AUC Decision 29038-D01-2024

Offer Control – Calculation Method

Application

The Market Surveillance Administrator ("MSA") filed an application requesting the Alberta Utilities Commission ("AUC") to determine whether its decision to name a market participant in its Market Share Offer Control Report ("Report") was reasonable.

Decision

The AUC found that the MSA's determination was reasonable and that the MSA may identify the market participant by name when making the Report public.

Pertinent Issues

The MSA issues the Report to comply with s 5 of the *Fair, Efficient and Open Competition Regulation* ("FEOC Reg"), which requires the MSA to annually make available to the public an offer control report that must include the names and the percentage of offer control held by electricity market participants, where the percentage of offer control is greater than five per cent.

Pursuant to s 6(4)(c) of the *Market Surveillance Regulation* ("MSR"), the MSA must notify a market

participant before publicly releasing a document that names the market participant. This means that the MSA must notify any market participant who will be named in the Report as holding more than five per cent of offer control. In addition, the MSA's determination of offer control in the Report is relied on for the purpose of determining the applicability of the offer cap under the *Market Power Mitigation Regulation* ("MPMR"), which was enacted in March 2024. The MPMR offer cap limits the offer price into the power pool of the market participants with offer control greater than five per cent for the balance of any month when the net monthly revenues exceed a prescribed threshold.

The market participant in question objected to being publicly named in the Report to the MSA and expressed concerns regarding the application of the MPMR. More specifically, the market participant expressed concerns regarding the MSA's calculation of offer control and proposed an alternative method for calculating offer control consistent with the *FEOC Reg*.

Pursuant to s 6(4) of the MSR, before making public a record that will identify a market participant by name, the MSA must consider the following factors: the benefits of making public the name of the market participant; undue financial loss or significant harm to the competitive position of the market participant; the implications of not making public the name of the market participant to other market participants; any practical alternatives; any other relevant factors; and the benefits and the harms of disclosure.



AUC re MSA Public Record Application

The AUC assessed whether it was reasonable for the MSA to determine that the factors it assessed under s 6(4) of the *MSR* favoured the naming of the market participant in the Report. According to the AUC, the dispute between the MSA and the market participant turned on the meaning of “offer control” in the *FEOC Reg*. The AUC emphasized that it did not make any findings of law on the correct statutory interpretation of “offer control” in this decision and that it reviewed the MSA’s determination for reasonableness only. As a result, the AUC did not undertake a *de novo* analysis and did not ask what the correct decision would have been. Instead, it determined whether the MSA’s interpretation was defensible in light of constraints imposed by law.

The AUC determined that it was reasonable for the MSA’s not to calculate offer control on a company-by-company basis, as requested by the market participant. Furthermore, the AUC found that it was reasonable for the MSA to rely on the market participant’s calculations and previous representations to the AUC and the MSA for the purpose of assessing the market share offer control for the Report, which resulted in the calculated offer control being greater than five per cent.

The AUC concluded that the MSA’s calculation of offer control was justifiable, intelligible, and consistent with the *FEOC Reg* and that the MSA’s determination that the factors in s 6 of the *MSR* favoured naming of the market participant in the Report was reasonable.