AUC
Alberta Utilities Commission

Market Surveillance Administrator

Application to Make Public a Record that Identifies a Market Participant by Name

May 28, 2024

Alberta Utilities Commission
Decision 29038-D01-2024
Market Surveillance Administrator
Application to Make Public a Record that
Identifies a Market Participant by Name
Proceeding 29038
Application 29038-A001

May 28, 2024

Published by the:
Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282) in Alberta
1-833-511-4AUC (1-833-511-4282) outside Alberta
Email: info@auc.ab.ca
Website: www.auc.ab.ca

The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

Contents

Alberta Utilities Commission

Calgary, Alberta

Market Surveillance Administrator	**Decision 29038-D01-2024**
Application to Make Public a Record that	**Proceeding 29038**
Identifies a Market Participant by Name	**Application 29038-A001**

1 Decision summary

1. In this decision, the Alberta Utilities Commission considers whether a determination made by the Market Surveillance Administrator (MSA) under subsection 6(4)(b) of the *Market Surveillance Regulation* to make public a record that identifies a market participant by name is reasonable.

2. For the reasons set forth below, the Commission finds that the determination of the MSA is reasonable, and pursuant to subsection 6(10)(a), the MSA may identify the market participant by name when making the document public.

2 Introduction and procedural background

3. Section 5 of the *Fair, Efficient and Open Competition Regulation* requires the MSA to calculate and report publicly on offer control held by electricity market participants, at least annually. The *Fair, Efficient and Open Competition Regulation* provides a definition of "offer control" and a formula for its calculation, which are described in greater detail below. The *Fair, Efficient and Open Competition Regulation* also stipulates that the MSA's public report must include the names and percentage of offer control held by electricity market participants, where the percentage of offer control is greater than five per cent.

4. To comply with the requirement to report on offer control, the MSA issues a Market Share Offer Control Report (MSOC report). The MSA last published its MSOC report on June 2, 2023, and is required to publish the next report on or before June 2, 2024.

5. In accordance with subsection 6(4)(c) of the *Market Surveillance Regulation*, 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 MSOC report as holding more than five per cent of offer control.

6. On March 7, 2024, the Minister of Affordability and Utilities made the *Market Power Mitigation Regulation*. The *Market Power Mitigation Regulation* establishes an offer cap that limits electricity market participants' offer price into the power pool for the balance of any month when net monthly revenues exceed a prescribed threshold. The offer cap does not apply to "any price offers submitted by an electricity market participant that has offer control of less than 5% of the total maximum capability of generating units in Alberta, as determined by the MSA under section 5(3) and (4) of the [FEOC Regulation]." In other words, the MSA's determination of offer control in the MSOC report is relied on for the purpose of determining the applicability of the offer cap under the *Market Power Mitigation Regulation*.

7. On April 19, 2024, a market participant sent a letter to the MSA in which it raised concerns about the *Market Power Mitigation Regulation*, and in which it provided the MSA information about its offer control as of April 16, 2024. The MSA subsequently sent an information request asking the market participant to confirm its offer control by no later than May 9, 2024.

8. On April 29, 2024, prior to receiving the information request response, the MSA notified the market participant of the MSA's intent to name the market participant in the MSOC report as an electricity market participant holding greater than five per cent offer control.

9. Subsection 6(5) of the *Market Surveillance Regulation* states that if a market participant objects to being publicly named in a record, it must file an objection with the MSA within seven days of the MSA's notice. On May 7, 2024, the market participant in question filed an objection with the MSA to being named in the MSOC report. In its objection, the market participant indicated that it intended to respond to the outstanding information request by May 9, 2024, and that its response would (i) outline a number of differences and discrepancies in the determination of offer control for units under contract by the market participant (ii) identify a series of concerns with the MSA's calculation of offer control and (iii) propose a reasonable alternative method of calculating offer control, that the market participant considered to be consistent with the *Fair, Efficient and Open Competition Regulation*.

10. The market participant provided the MSA with further details of its objection on May 9, 2024, through its information request response, and on May 13, 2024, and May 14, 2024.

11. On May 14, 2024, the MSA filed an application under Section 6 of the *Market Surveillance Regulation*, requesting that the Commission determine whether its decision to name the market participant in the MSOC report was reasonable, based on the MSA's consideration of the various factors identified in the *Market Surveillance Regulation* and the objection it received from the market participant.

3 Relevant legislation

12. Subsection 6(2)(a) of the *Market Surveillance Regulation* enables the MSA to publicly disclose the following activities, provided it has considered the factors in subsection 6(4):

> **(2)** The MSA may make public the following:
>
> (a) reports created by the MSA on matters relating to its mandate, including its findings and views on market events or conditions, and such reports may contain references to or reproductions of, in whole or in part, any record provided to or obtained by the MSA, except records provided to the MSA by a market participant as part of an investigation.
>
> …
>
> **(4)** Before the MSA makes public a record that will identify a market participant by name, the MSA must, except when disclosure of the name of a party is permitted or required under the rules of the Commission or the Court,
>
> (a) consider

(i) the benefits that might reasonably be foreseen of making public the name of the market participant for the purpose of carrying out the mandate of the MSA,

(ii) whether making public the name of the market participant could reasonably be expected to

(A) result in undue financial loss to the market participant, or

(B) harm significantly the competitive position of the market participant,

(iii) the implications of not making public the name of the market participant to other market participants,

(iv) any practical alternatives reasonably known to the MSA, and

(v) any other factors the MSA considers relevant,

(b) determine that, on balance, the factors considered under clause (a) favour making public the name of the market participant, and

(c) give written notice to the market participant of its intention to make the record public, and the notice

(i) must include a copy of the content of the record that it intends to make public, and

(ii) must provide at least 7 days for the market participant to file an objection with the MSA in respect of being identified by name in the record that the MSA intends to make public.

13. Subsection 6(5) of the *Market Surveillance Regulation* outlines the process for a market participant to object:

> **(5)** An objection referred to in a notice given under subsection(4)(c) must be filed with the MSA in writing within the period specified in the notice and must include reasons for the objection.

14. If a market participant objects, subsection 6(7) of the *Market Surveillance Regulation* gives the MSA two options:

> **(7)** If an objection is filed in accordance with subsection (5), the MSA must, within 7 days of receiving the objection, either
>
> (a) decide not to identify the market participant by name when making the record public and notify the market participant of that decision, or
>
> (b) give written notice to the Commission, pursuant to section 51(1)(b) of the Act, requesting that the Commission initiate a proceeding in private to review whether or not the determination made by the MSA under subsection (4)(b) is reasonable.

15. On receipt of an application from the MSA, the Commission must assess the application in accordance with subsection 6(9) of the *Market Surveillance Regulation*:

> **(9)** The Commission, in respect of a proceeding initiated in response to a request under subsection (7)(b),
>
> (a) must not consider any new reasons for an objection other than those contained in the objection filed by the market participant, and
>
> (b) must conclude the proceeding and provide the MSA and the market participant with a decision within 14 days of receiving the notice requesting the proceeding, unless otherwise agreed to by the parties.

16. Subsection 6(10) of the *Market Surveillance Regulation* permits the MSA to make public a record identifying the market participant if the Commission finds that the MSA's determination under subsection 6(4)(b) is reasonable. Any decision made by the Commission pursuant to subsection 6(9)(b) is final and not subject to appeal.[1]

4 The scope of the objection and proceeding record

17. When considering an application under Section 6(7)(b) of the *Market Surveillance Regulation*, the Commission "must not consider any new reasons for an objection other than those contained in the objection filed by the market participant."

18. In the current circumstances, the MSA explained that the market participant filed its objection on May 7, 2024, and filed additional reasons for its objection on May 9, 2024, May 13, 2024, and May 14, 2024. Each of these filings falls outside of the seven-day time period for an objection provided by the MSA in its initial notice.

19. In addition to these four filings, the MSA provided the Commission with the April 19, 2024, letter sent to the MSA by the market participant, a copy of the MSA's initial information request to the market participant, and a copy of a contractual agreement between the market participant and a client, which was appended to the market participant's May 14, 2024, correspondence.

20. The Commission has assessed whether it can properly consider the entirety of the documents provided by the MSA in making its determination in this proceeding. Specifically, the Commission has assessed whether it may treat the entirety of the reasons provided by the market participant in its four separate filings as collectively comprising "the objection" within the meaning of Section 6(7)(b), notwithstanding that these filings were staggered, and were provided after the deadline set out in the MSA's notice. The Commission has also assessed whether it can consider the background documents (i.e., the April 19, 2024, letter and information request) to form part of the proceeding record.

21. The Commission has concluded that the entirety of these documents should properly be considered by the Commission in reviewing the reasonableness of the MSA's determination. The

[1] Market Surveillance Regulation, subsection 6(11).

Commission is satisfied that allowing each of these documents to remain on the proceeding record is consistent with the *Market Surveillance Regulation*.

22. First, the Commission finds that the intent of Section 6(7)(b) is to support a summary process whereby the Commission's review is confined to the application materials provided by the MSA, and the Commission does not establish any additional process or elicit additional submissions. In the current circumstances, the entirety of the materials on the record were provided by the MSA in its initial application. No additional process was required to accommodate these documents.

23. Second, the Commission finds that the entirety of the materials are relevant to the Commission's understanding of how the MSA considered the factors identified in Section 6(4)(b). The materials document an ongoing exchange between the MSA and the market participant that ultimately culminated in the MSA's determination and the market participant's objection. The MSA appears to share the view that the entirety of the materials collectively form the objection and response. The Commission notes that while the MSA initially provided only seven days for the market participant to provide its objection, seven days is the minimum period set in the *Market Surveillance Regulation*, and the MSA has discretion to allow a market participant a longer period of time to file an objection.

24. Accordingly, in rendering its decision, the Commission has considered the entirety of the materials provided by the MSA with its application, including the four separate documents providing the market participant's reasons for its objections. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

5 The Market Surveillance Administrator's determination

25. Before the MSA makes public a record that will identify a market participant by name, the MSA must consider several factors enumerated in the *Market Surveillance Regulation*. The Commission briefly summarizes each of these factors, and the MSA's position on how each factor was considered, in the paragraphs that follow. The Commission's analysis on whether the MSA's determination was reasonable in light of the objections of the market participant, is provided in Section 6.3.

5.1 Benefits: subsection 6(4)(a)(i)

26. Subsection 6(4)(a)(i) of the *Market Surveillance Regulation* requires the MSA to consider the benefits that might reasonably be foreseen of making public the name of the market participant for the purpose of carrying out the mandate of the MSA.

27. The MSA stated that the benefits from publishing the market participant's name and offer control within the MSOC report are: that the MSA will comply with its statutory obligations; and that other electricity market participants, the Commission and the public will have access to information the legislature specifically directed the MSA to make public.

5.2 Financial loss or competitive harm: subsection 6(4)(a)(ii)

28. Subsection 6(4)(a)(ii) of the *Market Surveillance Regulation* requires the MSA to consider whether making public the name of the market participant could reasonably be expected to result in undue financial loss to the market participant, or harm significantly the competitive position of the market participant.

29. While the MSA appeared to acknowledge that the publication may result in financial harm to the market participant or its clients, the MSA submitted that the harms alleged by the market participant do not arise from the MSA's publication of its report, or the naming of the market participant. Rather, the alleged harms arises from the operation of the *Market Power Mitigation Regulation*, which relies on offer control determinations made by the MSA under subsections 5(3) and (4) of the *Fair, Efficient and Open Competition Regulation*.

5.3 Potential implications of not naming the market participant: subsection 6(4)(a)(iii)

30. Subsection 6(4)(a)(iii) of the *Market Surveillance Regulation* requires the MSA to consider the implications of not making public the name of the market participant to other market participants. The MSA noted that other market participants with greater than five per cent offer control will be named in the MSOC report. Withholding the name of the market participant involved in this proceeding would be unfair to other market participants.

5.4 Practical alternatives: subsection 6(4)(a)(iv)

31. Subsection 6(4)(a)(iv) of the *Market Surveillance Regulation* requires the MSA to consider any practical alternatives reasonably known to the MSA. The MSA submitted that, as the body charged with the enforcement of the *Fair, Efficient and Open Competition Regulation*, it has no practical, reasonable, or lawful alternatives other than complying with its statutory obligations.

5.5 Other factors: subsection 6(4)(a)(v)

32. Subsection 6(4)(a)(v) of the *Market Surveillance Regulation* requires the MSA to consider any other factors it considers relevant. The MSA did not specifically enumerate other relevant factors, although it did provide its position on the market participant's offer control. The MSA maintained that it properly calculated offer control using the formula set out in the *Fair, Efficient and Open Competition Regulation*, based on information provided by the market participant to both the AUC in other proceedings, and to the MSA.

5.6 Balance of considerations: subsection 6(4)(b)

33. On balance, the MSA relied heavily on its statutory obligation to publish the MSOC report and name market participants with greater than five per cent offer control.

6 Commission findings

6.1 Standard of review is reasonableness

34. The regulation has specifically enabled the Commission to act in the role of a reviewing body concerning the determination of the MSA and requires the Commission to assess the MSA's determination on the basis of whether it was reasonable.

35. The Supreme Court of Canada has set out what is required by a reviewing body when conducting a reasonableness review. The court stated in *Vavilov*:[2]

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
>
> …
>
> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

36. The MSA has been recognized by the Court of King's Bench of Alberta as a body that possesses considerable expertise in carrying out its mandate.[3] As such, it is entitled to deference.

37. Consequently, the Commission is not determining whether it would have reached the same decision as the MSA. Rather, the Commission is considering whether the MSA's determination is transparent, intelligible and justified, and as such, falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and law.[4]

6.2 How to perform review for reasonableness

38. The court in *Vavilov* provided further direction regarding the analysis that must be conducted by a reviewing body:

> [91] A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do "not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred" is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an

[2] Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 [*Vavilov*], paragraph 13.
[3] Alberta (Market Surveillance Administrator) v. Enmax Energy Corporation, 2008 ABQB 54.
[4] *Vavilov*, paragraph 86.

> administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.
>
> [99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision.
>
> [101] What makes a decision unreasonable? We find it conceptually useful here to consider two types of fundamental flaws. The first is a failure of rationality internal to the reasoning process. The second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it. There is however, no need for reviewing courts to categorize failures of reasonableness as belonging to one type or the other. Rather, we use these descriptions simply as a convenient way to discuss the types of issues that may show a decision to be unreasonable.
>
> [102] To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error": However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived" Reasons that "simply repeat statutory language, summarize arguments made, and then state a peremptory conclusion" will rarely assist a reviewing court in understanding the rationale underlying a decision and "are no substitute for statements of fact, analysis, inference and judgment. [references and footnotes omitted]
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision …

39. Because this decision also involves the interpretation of the term "offer control" the Commission also takes guidance from the Supreme Court's description of the role of a reviewing body on a question of statutory interpretation:

> Where the meaning of a statutory provision is in dispute, the administrative decision maker must demonstrate in their reasons that they were alive to the "essential elements" of statutory interpretation: "the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision. Because those who draft statutes expect that the statute's meaning will be discerned by looking to the text, context and purpose, a reasonable interpretation must have regard to these elements — whether it is the court or an administrative decision maker tasked with the interpretative exercise. In addition to being harmonious with the text, context and purpose, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative rules arising from other sources of law.[5]

[5] Canada Post Corp. v. Canadian Union of Postal Workers, 2019 SCC 67, paragraph 42.

6.3 Was the MSA's determination reasonable?

40. The Commission must decide whether it was reasonable for the MSA to determine that the factors it assessed under subsection 6(4) of the *Market Surveillance Regulation* favour the naming of the market participant within the MSOC report.

41. The MSA's assessment of the factors places substantial weight on the fact that the MSA is obligated by the *Fair, Efficient and Open Competition Regulation* to report on offer control, and to identify the name of any market participant whose percentage of offer control is greater than five per cent. The MSA maintains that it calculated offer control in accordance with the *Fair, Efficient and Open Competition Regulation*, and that its determination to name the market participant was reasonable, because it has no other lawful choice.

42. The market participant disputes this assessment on several grounds. The market participant suggests that there is at least one alternative method for calculating offer control that would be consistent with the *Fair, Efficient and Open Competition Regulation*, while not resulting in it being named in the MSOC report. The market participant also disputes whether it actually holds offer control for some of the assets that the MSA attributes to it.

43. The market participant explained that it manages the asset portfolio of clients who are also market participants in their own right. The market participant characterized itself as acting as an agent for the clients that it represents. Absent its representation through an agency arrangement, each of its clients would have their offer control calculated on a company-by-company basis. Instead, the MSA has attributed the offer control of these clients to the market participant. The market participant argued that aggregating its clients' offer control in this manner is discriminatory, and ignores the fact that the market participant manages the assets independently, and not in a coordinated or consolidated basis.

44. The market participant also identified that [redacted] particular assets (which operate under a single power plant approval) are material to the dispute, because these assets alone account for [redacted] that the MSA attributes to the market participant. But for the inclusion of these assets, the market participant would not hold five per cent offer control. [redacted], and the market participant submitted that offer control remains with the asset owner [redacted], as evidenced by the fact that the owner is identified as the party with offer control on the Alberta Electric System Operator's Energy Trading System. The market participant also submitted that it would have no offer control regarding a significant portion of these assets' total capacity [redacted].

45. The dispute between the MSA and the market participant turns on the meaning of "offer control" within the *Fair, Efficient and Open Competition Regulation*. The *Fair, Efficient and Open Competition Regulation* defines offer control as follows:

> (e) "offer control" means the ultimate control and determination by an electricity market participant of the price and quantity offers made to the power pool of all or a portion of the maximum capability of one or more generating units or energy storage resources, which
>
> (i) includes the maximum capability associated with each generating unit or energy storage resource where an electricity market participant is required by the

> ISO to make a price and quantity offer to the power pool, including minimum stable generation and must run volumes, and
>
> (ii) excludes the maximum capability associated with a generating unit or energy storage resource where an electricity market participant is not required by the ISO to make a price and quantity offer to the power pool.

46. The MSA suggested that the market participant's objection to being named in the MSOC report is, in substance, a matter of statutory interpretation, and that an objection under subsection 6(5) of the *Market Surveillance Regulation* is not the proper method to bring a statutory interpretation question before the Commission.

47. The Commission emphasizes that it is not making any findings of law on the correct statutory interpretation of "offer control" in this proceeding. Instead, it is reviewing the MSA's determination for reasonableness. When performing reasonableness review, a reviewing body does not undertake a *de novo* analysis or ask itself what the correct decision would have been.[6] Instead, the Commission must examine how the MSA arrived at its interpretation, and determine whether its interpretation is defensible in light of the interpretive constraints imposed by law.

48. The Commission's review of the MSA's determination leads it to conclude that the determination made by the MSA was reasonable.

49. First, the Commission finds that it was reasonable for the MSA not to calculate offer control on a company-by-company basis. As noted by the MSA, the prescribed definition of offer control is based on two factors: the identity of the market participant who has "ultimate control and determination" of offers to be made in respect of "all or a portion" of the capacity of a generating unit, and whether the electricity market participant is required to make offers from a generating unit. The MSA determined that the plain language of the *Fair, Efficient and Open Competition Regulation* requires it to inquire whether a market participant holds "ultimate control and determination" of offers, and that there is no statutory basis in the *Fair, Efficient and Open Competition Regulation* to look beyond that criteria and towards factors such as asset ownership. While it is unknown if the *Fair, Efficient and Open Competition Regulation* was deliberately intended to preclude the MSA from calculating offer control on a company-by-company basis, there is also no language in the *Fair, Efficient and Open Competition Regulation* requiring or explicitly authorizing the MSA to adopt the company-by-company approach suggested by the market participant. On balance, the Commission finds that the MSA's position is reasonable, and consistent with the text, context and purpose of the *Fair, Efficient and Open Competition Regulation*.

50. The remaining question is whether it was reasonable for the MSA to conclude that the market participant does in fact hold "ultimate control and determination" of offers to be made in respect of the assets the MSA attributes to it. Until very recently, the market participant characterized itself in various forums as having offer control over [redacted], which includes the assets that are [redacted]. The market participant now states that developments have taken place that have caused it to re-examine this characterization.

51. The Commission observes that the definition of offer control has remained unchanged at all material times. Similarly, there is no evidence to suggest that the market participant's

[6] *Vavilov,* paragraph 116.

contractual relationship to its client(s) or degree of offer control has been altered. Rather, the developments referenced by the market participant appear to relate primarily to its realization that holding offer control over five per cent would have implications under the *Market Power Mitigation Regulation*.

52. The market participant points to evidence suggesting that it does not, in fact, hold offer control for the assets [redacted]. This evidence includes an excerpt from the Alberta Electric System Operator's Energy Trading System identifying the asset owner as the offer control party.

53. The market participant acknowledged that this evidence conflicts with materials tendered by the market participant in recent AUC proceedings, and offered to file an amendment application with the AUC to rectify the discrepancy and reflect its new understanding of its offer control. In response, the MSA maintained that, as per the commercial agreement between the parties and the plain language of the *Fair, Efficient and Open Competition Regulation*, the market participant is the entity responsible for establishing offers and therefore holds offer control for the assets.

54. The Commission acknowledges that there is disagreement over whether the market participant can be said to hold offer control for the assets, [redacted]. While the Commission agrees with the market participant that the assets [redacted] are currently identified on the Alberta Electric System Operator's Energy Trading System as being subject to offer control by the asset owner, the Commission does not consider that this is determinative. The Commission observes that the MSA's initial calculation of offer control is to be based on information available from the Alberta Electric System Operator, as per the MSA's *Annual Market Share Offer Control Process*. This calculation indicated to the MSA that the market participant had less than five per cent offer control. The market participant subsequently sent a letter to the MSA in which it provided information on its offer control as of April 16, 2024. In that letter, the market participant stated that its offer control, for the purposes of the *Fair, Efficient and Open Competition Regulation*, is [redacted]. This figure was arrived at by the market participant on its own, and includes [redacted].

55. It appears that the MSA then decided to rely on the market participant's calculation for the purpose of assessing market share offer control for its upcoming report. This resulted in the calculated offer control being greater than five per cent.

56. Following this, in accordance with its process, the MSA provided an opportunity for the market participant to make any corrections to the calculated offer control through an information request. Several minor corrections were provided by the market participant, none of which had the effect of placing the market participant below the 5 per cent threshold. It was at or around this time that the market participant adopted the position that it did not have offer control, and would not have offer control in the future, [redacted].

57. While the MSA initially relied solely on Alberta Electric System Operator data to calculate offer control, it now places heavy emphasis on other information, namely representations previously provided by the market participant to the AUC and the MSA. The Commission recognizes that the Alberta Electric System Operator does not currently assign offer control for the units [redacted] to the market participant in its energy trading system.

Despite this, and based on the circumstances as a whole, the Commission does not consider that the MSA acted unreasonably in determining that the market participant does hold offer control for these units. Rather, the MSA's determination reflects the market participant's own characterization of its offer control up until very recently. The Commission observes that the *Fair, Efficient and Open Competition Regulation* entitles the MSA to update its offer control report from time to time if, "in its opinion, new records result in any material change to the offer control of an electricity market participant." This supports a conclusion that the MSA is not limited to relying exclusively on energy trading system data.

58. The Commission understands that the MSA's practice is to monitor offer control data throughout the year to determine whether updates are required. The Commission encourages the MSA to remain alive to both the Alberta Electric System Operator Energy Trading System data and any new information that materializes that may affect its calculation of offer control.

59. On balance, the Commission finds that the MSA's calculation of offer control is justifiable and intelligible, and consistent with the *Fair, Efficient and Open Competition Regulation*, and that the MSA's determination that the factors in Section 6(4)(a) favour naming the market participant in the MSOC report was reasonable.

7 Order

60. It is hereby ordered that:

(1) Pursuant to subsection 6(10)(a) of the *Market Surveillance Regulation*, the Market Surveillance Administrator may make public the record identifying the market participant by name.

Dated on May 28, 2024.

Alberta Utilities Commission

(*original signed by*)

Renée Marx
Commission Member