

NOTICE TO MARKET PARTICIPANTS AND STAKEHOLDERS

May 13, 2022

Re: MSA issues forbearance regarding municipal ownership of small solar generators

The MSA undertook an assessment of whether municipalities (“Generating Municipalities”) that own generating units funded through the Alberta Municipal Solar Program (“AMSP”)¹ are exempt from the prohibition on municipal ownership of generating units under section 95 of the *Electric Utilities Act* SA 2003 c E-5.1 (“EUA”). The MSA concluded that several Generating Municipalities likely do not meet the requirements for an exemption to the prohibition on municipal ownership under either section 95 of the EUA or the *Municipal Own Use Generation Regulation* AR 80/2009 (“MOUGR”). Due to the unique circumstances surrounding this issue, the MSA has decided to conditionally forbear from taking enforcement steps with respect to municipally owned generating units constructed with funds from the AMSP (each an “AMSP Unit”).

Section 57 of the *Alberta Utilities Commission Act* SA 2007 c A-37.2 (“AUCA”) allows the MSA to forbear from the exercise of a part of its mandate if the MSA finds as a fact that a person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.²

For the following reasons, MSA finds as a fact that, in the circumstances, there is competition sufficient to protect the public interest with respect to the AMSP Units. The scheme established by EUA s. 95 and the MOUGR for municipal ownership of generating units is directed at ensuring that municipalities compete on a level playing field with privately owned generation and do not obtain a competitive advantage by virtue of their status as municipalities.³ The sole advantage the Generating Municipalities received from the AMSP was a one-time rebate, funded in part by the Government of Alberta, and all generating units funded by the AMSP were sized to produce no more than each Generating Municipality’s electricity consumption on an annual basis. In addition, all funding available under the AMSP has been allocated. The MSA finds that the purpose of the AMSP was to enable the Generating Municipalities to generate renewable energy for their own use, not to assist the Generating Municipalities in competing with other market participants through sales to the power pool.

¹ The AMSP participation requirements are outlined in section 2.2 of the [AMSP Guidebook](#).

² AUCA 57(1)

³ See *Maxim Power Corp. v Alberta (Utilities Commission)* 2010 ABCA 213.

In addition, the MSA finds that the ongoing competitive impact of the AMSP Units on the electricity market is limited. The Generating Municipalities do not currently exercise offer control over their respective facilities, and the AMSP Units represent a very small proportion of total Alberta generating capacity. In the circumstances, the MSA finds that there is sufficient competition to protect the public interest.

As such, provided the conditions below are met, the MSA will forbear from taking enforcement steps against Generating Municipalities for owning an interest in the AMSP Units with respect to the requirements of section 95 of the EUA and the MOUGR. To benefit from the MSA's forbearance, any Generating Municipality that directly or indirectly holds an interest in an AMSP Unit and does not otherwise meet the requirements for an exemption under EUA s. 95 or the MOUGR must meet the following conditions:

- the Generating Municipality must request forbearance from the MSA using the forbearance request template (described below);
- the AMSP Unit must be located within the boundaries of the Generating Municipality on property of which the Generating Municipality or a subsidiary of the Generating Municipality is the owner or tenant;
- the AMSP Unit must have a total nameplate capacity not exceeding 5 MW; and
- the Generating Municipality must not exercise offer control over its AMSP Units.

The MSA's forbearance is specific to the circumstances set out herein, and conditional upon Municipalities meeting the above conditions. Should circumstances change, or the conditions set out herein no longer be met, the MSA may take enforcement steps in respect of some or all of the AMSP Units. Please email enforcement@albertamsa.ca with the subject "Forbearance Request Template" to request a template that must be provided to the MSA for any forbearance request pursuant to this notice.