

Via email and courier

March 30, 2007

Mr. Neil Campbell
Chair, Market Surveillance Panel
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario, M4P 1E4

**Re: Market Power Framework for the IESO-Administered Electricity Market
Proposed Framework for Identification of the Exercise of Market Power
Discussion Paper Prepared by the Market Surveillance Panel, November 2006**

Dear Mr. Campbell,

Coral Energy Canada Inc. (“Coral”) appreciates this opportunity to comment on the Market Surveillance Panel’s (“MSP”) discussion paper presenting a proposed framework for the identification of the exercise of market power. The consultative process utilized to date has helped participants gain a better understanding of the proposal, and enabled the MSP to gain a better appreciation of participant observations, recommendations, and objections to the detailed aspects of the framework. While not necessarily accepting the details of the proposal and the calculations of the screens, Coral provides these two over-arching general categories of observations and recommendations in response to section 4.3.1 of the paper.

Novel aspects of the framework are not necessary and are an inefficient use of resources

The MSP has been monitoring the IESO-administered markets for many years and has consistently reported findings similar to its December 2006 report; that is, it has “... *found no evidence of gaming, abuse of market power or other inappropriate conduct by market participants or the market and system operator ...*”. (page vii). This conclusion has been repeatedly reached while the MSP has operated under its mandate, and as mentioned in the proposal, the MSP “... *occasionally found instances of behaviour that we felt warranted discussion with market participants and we have pursued such discussions to gain a better sense of the considerations driving such behaviour.*” (page 12). The MSP goes on to discuss the desire to have a more rigorous and transparent framework that would benefit the MSP as well as participants.

The transparency objective and communication with stakeholders regarding the detailed aspects and methods that have been, and will be used for review are appropriate and appreciated. However, the novel aspects of the framework designed to incorporate reviews of such things as import transactions and energy limited resources creates a new area of analysis and burden for the MSP and market participants that is unnecessary and unwarranted given the results of past analyses and the effective interaction that has existed between the parties. This really gets to the often asked, but not yet sufficiently answered, question, “why is the MSP doing this?” Without a sufficient answer to this question, one can only conclude that any future efforts, by the MSP, the IESO staff of the Market Assessment Unit, and market participants in dealing with the new areas of analysis is not an efficient or effective use of skills and resources.

While the framework is directed at reviewing market outcomes and behaviours that result in anomalously high market prices, past findings of the MSP do not support such a direction. In fact, the MSP reported in December that, “*With respect to high priced hours, there were 6 hours during the period of May 2006 through October 2006 in which the HOEP was greater than \$200/MWh.*” (page 67). It also reported that, “*... there were 149 hours ... in which the HOEP was less than \$20/MWh.*” (page 67). In other parts of the paper, the MSP also concluded that Ontario had the lowest average energy price among its neighbours and that the net revenue to be earned from the market is not adequate to justify an investment in new generation. These conclusions exist while the IESO and the government have identified the lack of existing and future generation as threatening the reliability of our electricity supply. The MSP is proposing solutions to address a problem that simply does not exist.

The MSP has observed the extent of concern expressed by market participants regarding the new aspects of analysis and review proposed in the framework, and that this concern may lead to unnecessary burden and unknown changes in behaviour. The MSP and the MAU have some of the brightest minds and effective tools in our industry and Coral believes the MAU should not be used for this disruptive and unnecessary expansion of MSP review. They should be dedicated to assisting with the correction of existing market design concerns along with implementing the market evolution initiatives they have identified as necessary for Ontario.

Creating a new definition for abuse of market power is not necessary and not appropriate

In addition to the MSP breaking new ground in the framework for analyzing the exercise of market power, the angst this causes market participants is compounded by the proposal to create a novel definition for abuse of market power. As previously noted, the MSP has successfully pursued discussions with market participants relating to their behaviour, and there is no indication in the framework, or otherwise, that they have been somehow restricted in their analysis or review. The proposal describes the desire to have the analytical framework more rigorous and transparent so that it is known and accepted by market participants. As such, the invention of a new definition for abuse of market power is not necessary, and is an inappropriate expansion of the authority of the MSP.

The MSP acknowledges that permissions and restrictions on its efforts and authority are properly contained within the *Electricity Act, 1998* (the “Act”), and that, “*When the Market Surveillance Panel was set up, our mandate was defined in terms of monitoring for and investigating the abuse of market power, not the exercise of market power.*” (page 9). The paper goes on to describe how the market has changed, and how the proposed framework is not intended to change their mandate, but rather to help fulfill their obligation to monitor the market, and “... *investigate abusive or potentially abusive behaviour.*” (page 11). Yet, as the market has changed and the MSP has tried to adapt along with it, there has not been any change to the legislative support establishing its obligations and authorities. While the MSP interprets subsection 37(1) of the *Act* to be very permissive in the authority granted to it to investigate market participant behaviour, it seems to discount the areas where the *Act* places restrictions. The MSP attempts to overcome one of these restrictions by concocting a new definition of abuse in order to bridge the gap between the exercise of market power and the abuse of market power.

This is particularly troublesome and concerning since the MSP acknowledges the distinction between the two concepts and goes on to list the generally accepted situations understood to represent abuse of market power under competition law. (See page 12). Even after this acknowledgement of the accepted definitions or concepts, the MSP “*nonetheless*” feels it is appropriate to utilize arbitrary and elusive terms like “*persistent and sustained*” as the foundation for their unique definition of abuse. The MSP concedes the tenuous nature of what it is proposing by stating, “... *this might well be considered abusive and be the basis for an investigation under the Act.*” (page 12, emphasis added). This view also correctly contradicts the MSP statement that subsection 37(1) is so broadly permissive in its authority to investigate behaviour.

Creating a new definition for abuse of market power in order to expand the authority of the MSP is not appropriate. If the MSP believes that there is a need to review and change the statutory obligations and authorities it has, it must pursue a legislative fix. It cannot simply invent one. This new definition was specifically created to permit the MSP to act beyond its current mandate, and so Coral believes the entire notion should be removed from the proposed framework, regardless of the current or future structure of the framework.

Sincerely,

original signed

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