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Delivered via email to: darin.lowther@auc.ab.ca

Alberta Utilities Commission
Fifth Avenue Place
#400, 425 – 1 Street S.W.
Calgary, Alberta
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Attention: Darin Lowther

Dear Sir:

Re: Bulletin 2010-06 – Specified Penalties for Contravention of Reliability Standards

Thank you for the opportunity to comment on the matters addressed in this Bulletin. Please find below the submissions of the Market Surveillance Administrator (MSA) in this regard.

Section 2
We note that while AUC Rule 027 applies to the contravention of reliability standards, the language focuses on "market participants" and thus does not capture the reality that the AESO itself is subject to, and may therefore contravene, a reliability standard. In fact, certain reliability standards in the Base Penalty Table apply to the AESO (in some cases, *only* to the AESO).

Section 52 of the *Alberta Utilities Commission Act* (AUCA) speaks to "persons", and thus allows AUC Rule 027 to speak more broadly also. The MSA would submit that the use of "person" or "persons", as applicable, would be appropriate even if AUC Rule 027 is not yet made applicable to all reliability standards (please also see comments below re: Penalty Tables). An alternative which is unique to reliability standards is the term "registered entity" or "registered entities", although it may have to be specifically defined in AUC Rule 027.

Sub-section 3(2)(h)
It is not clear whether the reference to a "mitigation plan" means only a plan as described in Sub-section 4(9). For example, a mitigation plan may be offered in relation to a contravention for which AUC Rule 027 is not applicable (please see other comments re: Sub-section 4(2) and 4(9) below).

Further, we would submit that the MSA should not be placed to "approve" mitigation plans. Rather, the MSA would receive, accept or take account of a mitigation plan. Ultimately, in the event that there is a dispute about the sufficiency of a mitigation plan it should be the Commission that is placed to approve it.

Sub-section 3(4)(b)

The limitation period may be too short given that compliance monitoring for reliability standards will often be done through audits, and those audits may be scheduled to occur on multi-year cycles. At the moment, the *Compliance Monitoring Plan* (CMP) of the AESO sets out a 5 year audit cycle. However, by virtue of the existing wording in Sub-section (b), even a 3 year audit cycle could effectively preclude use of AUC Rule 027 to contraventions discovered through the audit process.

Sub-section 4(2)

The penalty assessment as presently drafted takes account of "each day of the contravention". Given that contraventions may only be discovered through audit or other monitoring which does not usually occur in 'real time', the contravention may continue for many days, weeks, months or even years before it is discovered and addressed. It is not clear how the assessment of the specified penalty should be calculated in such cases.

Sub-sections 4(2)(a) through (d) refer to "instances" of a failure to meet the requirements of a reliability standard. It is not entirely clear whether an "instance" is the same as a "contravention". We would submit that, in general, each failure to meet the requirements of a reliability standard is a distinct contravention. This seems to be implied from the language of (a), as a single instance would amount to a "Lower Violation Severity Level" contravention.

The further implication then is, that insofar as contraventions (b), (c) and to some extent (d), each has a greater "Severity Level" than the last simply because it is an additional contravention. In effect, the Base Penalty Table for Category 1, 2 and 3 is counting the number of contraventions to arrive at the "Violation Severity Level". However, it is not clear that this is what the Commission is seeking to achieve in the penalty assessment.

We would also submit that use of the term "Violation Severity Level" in Sub-sections (a) through (d) creates confusion in two other respects. First, although used in relation to such matters in U.S. jurisdictions, the word "violation" should be replaced by the word "contravention" to be consistent with the legislative scheme in Alberta and other parts of AUC Rule 027.

Secondly, the notion and use of the term "Severity Level" appears confusing here. We note that an assessment of impact (actual or potential) to the Alberta interconnected electric system (AIES) is not expressly made part of AUC Rule 027 for any given contravention (violation). Thus, a contravention which did have a material impact to the AIES (actual or potential) would be brought to the Commission directly, outside of AUC Rule 027. This makes sense.

However, inside AUC Rule 027 the quantum of specified penalty in Category 1, 2 and 3 increases according to the number of contraventions (instances), and at the same time goes from "Lower Violation Severity Level" to "Severe Violation Severity Level" in description. It seems contradictory though for a contravention which does not have impact as an issue to nevertheless be described as being at "Severe Violation Severity Level".

Sub-section 4(6)

Is it intended that the mitigation plan must be submitted in accordance with Sub-section 4(9) in order to be taken into account? For example, a mitigation plan may have separately been offered in relation to a contravention for which AUC Rule 027 was not applicable (please see other comments re: Sub-section 4(9) below), but could potentially be relevant here.

We would also reiterate our view that the MSA should not be placed to "approve" a mitigation plan.

Sub-section 4(8)

There may be some confusion regarding self-disclosures under AUC Rule 027 *vis a vis* those reported pursuant to the AESO CMP, which entails various forms of self-reporting. It would be better if there was alignment between those processes. We would also submit that self-disclosures should simultaneously go to both the "Compliance Monitor" (as defined in the AESO CMP) and the MSA in all cases, in order to avoid unnecessary duplication of effort.

Sub-section 4(9)

If the Commission intends that mitigation plans will be relevant to proceedings brought outside of AUC Rule 027 also, it may be more efficient to generically address the content of mitigation plans through new provisions in AUC Rule 013 instead. Then, as applicable, AUC Rule 013 could be incorporated by reference here.

Sub-section (b) sets a timeline which commences upon "referral from the ISO" to the MSA. This would appear then to exclude any self-disclosure by market participants or by the AESO, and to also exclude referrals relating to compliance by the AESO itself (those referrals would arise pursuant to monitoring of the AESO). It also appears that the wording of (b) is meant to include "….suspected contravention of a reliability standard…".

Sub-sections (f) and (g) set timelines which commence at the "date of the contravention". This may effectively make it impossible to implement or complete a mitigation plan within the timelines. It may be better to start the timelines in a manner similar to Sub-section (b), not at the date of contravention but at the date the person became aware of the suspected contravention.

We would also submit that it would be useful and appropriate to create a 'safe harbour' concept in order to provide strong incentives for creating, implementing and completing effective mitigation plans. In essence, the person (registered entity) would be rewarded for completion of a mitigation plan by a waiver of sanctions for any contravention of a related reliability standard occurring during the implementation period. The concept could be limited to self-disclosed contraventions during the period, or applied more broadly to all related contraventions during the period.

Finally, we would also reiterate our view that the MSA should not be placed to "approve" a mitigation plan.

Sub-section 4(10)
While the MSA will often request the views of the AESO, it may in some circumstances be appropriate to request the views of other persons who have subject matter expertise. Thus we would submit that the language should be broadened to state "……the views of other persons, including the ISO".

We would also reiterate our view that the MSA should not be placed to "approve" a mitigation plan.

Sub-section 4(11)
Subsection (a) speaks to "repetitive contraventions of the same reliability standard". We would reiterate here our comments regarding Sub-sections 4(2)(a) through (d) above; would each contravention of a requirement or element within a reliability standard count as a separate contravention?

We would also submit that, for reasons stated above in our comments about audit cycles, in many cases there will not be any awareness of a contravention within a 12-month period. Thus the "12-month rolling period" may not be a useful criterion.

Sub-section (b) suggests, by implication, that the MSA cannot assess the penalty quantum until a mitigation plan has been completed (in order to count the number of days of the contravention). This would delay issuance of the related notice of specified penalty, unless the mitigation plan was completed fairly quickly. It may be better for a notice of specified penalty to be issued sooner, for example upon the commencement of the mitigation plan, allowing for the possibility that a further notice of specified penalty could be issued to assess any additional penalty amount owing in the event that the mitigation plan is not completed.

Sub-section (d) refers to a "compliance program"; however, it is not clear what is meant by that.

As set out further below in Penalty Tables, we also submit that it may in fact be better to remove altogether the concept of adjustments to penalty quantum described in Sub-section 4(11).

Penalty Tables
Please also see related comments above regarding Sub-section 4(2).

The proposed approach in the Base Penalty Table regarding the person (individual) to whom the notice of specified penalty must be sent in particular cases is helpful, and should serve to simplify the administration of specified penalties without losing the desired effect of such notice. Further, the MSA believes that where the compliance function is carried out by a person with sufficient authority and direct access/reporting to a senior executive, it is reasonable to provide an option for all notices to go to that compliance person.

The MSA understands that AUC Rule 027 will be made applicable to all reliability standards, and we would endorse that approach. This will allow the opportunity for broader use of the administrative efficiency enabled by AUCA Section 52.

However, to the extent that there may be changes to existing reliability standards over time, it is not clear how those changes will be dealt with efficiently. It may be most efficient to simplify the Base Penalty Table by reducing the number of categories.

We noted that "EOP-005-AB-1" is included in Category 5 of the Base Penalty Table although it is not yet approved in Alberta. In addition, PRC-004-WECC-AB-1 does not appear to be reflected in the Base Penalty Table, although it has been approved. We assume this is unintended.

Finally, we would submit that the Adjustment Penalty Table may create more administrative burden and grant to the MSA more discretion in the assessment of specified penalties than is warranted. The better approach would be to remove the Adjustment Penalty Table from AUC Rule 027 altogether, and thereby contemplate that aggravating circumstances would be addressed through a proceeding pursuant to AUCA Section 51.

We trust that this will be of assistance. In any event, please address any questions or other comments regarding this submission to the attention of Douglas Wilson, by email to douglas.wilson@albertamsa.ca.

Yours truly,

"Original Signed"

W.W. (Wayne) Silk,
Vice-President, Chief Operating Officer
Market Surveillance Administrator