

February 23, 2010

Alberta Utilities Commission
400, 425 1st Street SW
Calgary, AB T2P 3L8

Attention: Mr. Darin Lowther

Dear Mr. Lowther:

**Re: Bulletin 2010-06
Introduction of Proposed Rule 027 – Specified Penalties for Contravention of
Reliability Standards**

AltaLink Management Ltd. (“AltaLink”) is pleased to respond to the Alberta Utilities Commission’s (“AUC” or “Commission”) January 27, 2010 invitation for comments on proposed Rule 027. AltaLink’s recommendations include amendments which permit resolving contraventions without assessing penalties, greater consultation between the Market Surveillance Administrator (“MSA”) and the Alberta Electric System Operator (“AESO”), and limiting public disclosure of sensitive information.

AltaLink recommends that Rule 027 be amended to grant the MSA greater discretion to forgo penalty assessment when appropriate. In particular, Rule 027 should be sufficiently broad enough to not only allow for the consideration of compliance plans in the determination of penalty amounts, but also for non-compliance with Alberta Reliability Standards to be addressed through mitigative actions or warnings rather than sanctions. In respect of penalty assessment, AltaLink supports a greater weighting on efforts made by companies to remedy non-compliance in a timely manner.

AltaLink does not support the Adjustment Penalty Table. AltaLink submits that the preceding paragraph describes the general approach that should be adopted. If the AUC retains the Adjustment Penalty Table the adjustment amounts should be proportionate to the base penalties.

AltaLink is also concerned that the penalties set out in the Base Penalty Table are disproportionate to a TFO’s non-compliance with relatively minor requirements. Therefore, while AltaLink recognizes the need for compliance and supports the approach at section 4(2) of Rule 027 which establishes the MSA’s ability to assess penalties on the basis of severity levels, it submits that there should also be a level at which no penalty is required.

AltaLink further submits that Rule 027 should confirm AESO involvement in determining the level of penalty, if any, to be assessed. The AESO has technical expertise with the interconnected electricity system and responsibility for implementation of mandatory reliability standards in Alberta. AltaLink therefore proposes the following amendment to Rule 027, indicated by underlining:

Penalty Assessment

4(1) The Market Surveillance Administrator, in consultation with the AESO, shall determine whether a penalty should be assessed, and if so, the amount of the specified penalty in accordance with this section, the Base Penalty Table and the Adjustment Penalty Table.

In addition, AltaLink has the following concerns about Section 4 as currently drafted:

- The references to “requirements” and “elements of requirements” at section 4(2) are unclear. AltaLink therefore recommends that “Requirement” be added as a defined term to mean "requirements set out under each reliability standard listed in the Base Penalty Table."
- Respecting the reliability standard measures referenced at section 4(3)(a)-(d), there may be measures which are binary and do not easily lend themselves to the severity levels listed. Accordingly, AltaLink recommends a new provision as 4(3)(e) which states that to the extent that a measure by its nature requires 100% compliance, it shall be within the MSA's discretion to apply a low, moderate or high severity level or no sanction at all as appropriate.
- Section 4(9)(b) refers to the MSA receiving a mitigation plan no later than 45 days from the date of the referral from the ISO to the MSA of a reliability standard listed in the Base Penalty Table. In order to prepare a mitigation plan, a TFO requires information that the MSA is investigating a potential act of non-compliance. Section 4(9)(b) should therefore be amended to state that the ISO must inform the TFO of potential non-compliance at the same time as it informs the MSA.
- Section 4(9)(f) and Section 3(4) also raise concerns regarding the point at which the TFO is informed of an alleged contravention. Under section 3(4) it could be 2 years or more after a contravention before a TFO is advised of that contravention. This could result in an inability of the TFO to create a mitigation plan no later than 90 days after the contravention as per section 4(9)(f). AltaLink submits that these provisions should be amended such that the AESO informs the TFO of an alleged contravention at the same time as it informs the MSA.
- At sections 4(9)(f) and (g), it would be of assistance to define what is meant by “implementation date” and “completion date”.

Turning to notices of specified penalties, the automatic posting of a specified penalty on the MSA’s website pursuant to section 5(1) of proposed Rule 027 also raises concern. Public disclosure of specified penalties, even for relatively minor non-compliance, is

likely to be commercially sensitive. Sensitivities include a potential impact on commercial reputation and to the extent that details respecting facilities are disclosed (e.g., CIP001), possible risk to security and reliability of facilities.

In order to strike a balance between the benefits of non-disclosure and posting specified penalties, AltaLink proposes that section 5(1) be amended such that the first three specified penalties for each TFO within a calendar year are not publicly disclosed. To the extent that disclosure is required, a specified period to challenge disclosure prior to posting should be included in AUC Rule 027.

In respect of public notice of specified penalties, AltaLink is concerned with references to a market participant’s “officers, personnel or agents”. The actions of a market participant are made by and on behalf of the company. The MSA’s mandate is to investigate and pursue remedies for market participants’ non-compliance. This can be achieved through reference to a market participant’s corporate name without compromising the MSA’s mandate or the prosecution of non-compliant activities.

Accusations of non-compliance are serious and quasi-criminal in nature. Naming individuals could harm their personal and professional reputation. AltaLink therefore requests that the reference to “officers, personnel or agents” be removed from section 3(2)(d).

Finally, as potential minor amendments, AltaLink notes that section 4(9)(d) is missing and that Categories 2 and 4 of the Base Penalty Table refer to the same types of contravention and can therefore be combined.

If you have any question or concerns, please do not hesitate to contact the undersigned at 267-3450.

Sincerely,

(original signed by)

Zora Lazic
Senior Vice President Regulatory & Client Services