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Canada



February 23th, 2010

Darin Lowther
Alberta Utilities Commission
Fifth Avenue Place, #400, 425 – 1 Street SW
Calgary, AB T2P 3L8

Dear Mr. Lowther:

RE: Capital Power’s Comments on Bulletin 2010-06: Specified Penalties for Contravention of Reliability Standards

Capital Power Corporation (“Capital Power”) commends the Alberta Utilities Commission (the “Commission”) for proposing specified penalties as part of the enforcement regime for reliability standards. We are pleased that the Commission’s approach contemplates a framework for mitigation plans and provides incentives for market participants to self-report non-compliance. We generally agree with the Commission’s approach and view the development of Rule 027 as a necessary and important step forward. We provide the following comments to further improve the rule.

Statute of Limitations

The limitation periods outlined in subsection 3(4) are too long. The Market Surveillance Administrator (MSA) should be required to issue a notice of specified penalty not later than one year after the date on which it first knew or ought to have known, of the alleged contravention and, in any event, not later than two years after the contravention is alleged to have occurred.

Specified Penalty Table

We support the use of a specified penalty table for reliability standards. The matrix helps to ensure that enforcement action is commensurate with the contravention of the reliability standard and allows for minor contraventions to be dealt with in a more efficient and transparent fashion. The matrix also allows the Alberta Electric System Operator (AESO) and the MSA to categorize contravention according to their gravity and, by doing so, communicate to market participants issues that they are concerned about.

Capital Power is concerned about the inclusion of measures related to the reliability standards in the penalty table. We were assured by the AESO during consultation on these reliability standards that the measures would not create incremental compliance obligations on market participants. The AESO conveyed to stakeholders that the measures were only included to assist market participants with complying with the requirements of the standards. In almost all cases, the measures simply repeat the requirements of the reliability standard

and, if included in the specified penalty table, will result in the assessment of multiple penalties on market participants for the same non-compliance event. We respectfully request that the Commission remove the measures from the specified penalty table.

Mitigation Plans

We support the explicit inclusion of mitigation plans as a compliance tool in Rule 027. Mitigation plans are widely and successfully used in the United States. We suggest that the Commission consider the following amendments to rule to bring it further in line with the North American Electric Reliability Corporation (NERC).

- 1) In the United States, the majority of compliance cases are handled through mitigation plans. To date, Federal Energy Regulatory Commission has approved nearly 80% of the negotiated settlements brought before it with no fines. This model of enforcement creates a significant incentive for a market participant to proactively manage their compliance with reliability standards. We suggest that the Commission adopt a similar system and permit the specified penalty to be avoided altogether if the participant submits a mitigation plan that satisfies the requirements of the AESO/MSA.
- 2) Market participants should be able to submit mitigation plans prior to becoming non-compliant with a reliability standard. The new reliability standards are being proposed with effective dates that range anywhere from 10 days to one year after approval by the Commission. There will be instances when the market participant will know ahead of time that they will not be able to comply with a reliability standard. The Rule should encourage market participants to actively work towards compliance by allowing them to file mitigation plans irrespective of their current compliance status.
- 3) We also request the Commission reconsider prescribing implementation and completion dates for mitigation plans. In many cases, implementation of a mitigation plan could require significant action on behalf of a market participant that could take considerably more time than the rule currently contemplates. We suggest that the Commission remove the implementation and completion dates or otherwise provide flexibility to determine the implementation and completion date on a case-by-case basis.

Adjustment Penalty Table

Capital Power opposes the inclusion of sections 4(11)(c), (d), and (e) in the adjustment penalty table. We disagree that these types of adjustments should be made at the sole discretion of the MSA. Considerations such as the degree and quality of cooperation of the market participant during an investigation, the presence and quality of the market participant's compliance program, and the concealment of contraventions, are matters that should be determined by the Commission during the course of a hearing or proceeding.

As a final point, we encourage the Commission to engage market participants in a consultation prior to the development of future rules. We have participated in numerous meetings and consultations on reliability standards that could have served to improve Rule 027. In fact, three days after the comment submission date for this rule is an Electric Utilities Act Advisory Committee meeting that will cover points germane to this rule. As a stakeholder engaged in most of the meetings and discussions related to reliability standards, we would appreciate better coordination to improve the efficiency of the consultation and regulatory process.

If you wish to discuss Capital Power's comments further, please contact me directly at (403) 717-4639.

Sincerely,
<Unsigned>

Janene Taylor
Senior Advisor, Regulatory Affairs
Capital Power Corporation