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Alberta Utilities Commission
Utilities Division, Calgary Office
#400, 425 1st Street SW
Calgary, Alberta
T2P 3L8

Attention: Mr. Darin Lowther, Director, Market Rules

Dear Mr. Lowther:

**Re: TransCanada Energy Ltd. (“TransCanada”) Stakeholder Comments
Alberta Utilities Commission (“Commission”)
Bulletin 2010-06
Proposed Rule 027 - Specified Penalties for Contravention of Reliability Standards
 (“Rule 027”)**

TransCanada appreciates the opportunity to provide the following comments on proposed Rule 027, issued for comment on January 27, 2010.

1. Notice of Specified Penalty (“NSP”)

a. Section 3(4)

As noted in TransCanada’s comments on revised Rule 019 regarding specified penalties for the contravention of Independent System Operator (“ISO”) Rules (“Rule 019”), TransCanada submits that the timeframe within which the Market Surveillance Administrator (“MSA”) must issue a NSP is excessive and places an unreasonable burden on market participants to maintain detailed records and personal recollection of events that may eventually become the subject of a specified penalty. Until the MSA issues a notice, a market participant may not even be aware that it has contravened a reliability standard. To expect that personnel will retain knowledge of events up to four years in the past without any indication that a potential contravention occurred is not realistic. Further, personnel changes are also possible during this period, in which case market participants could lose the ability to respond appropriately.

TransCanada submits that the appropriate time period for the issuance of a NSP is within one year of the date the MSA becomes aware of the contravention or 2 years from the date on which the contravention occurred, whichever expires first.

2. Penalty Assessment

a. Sections 4(2), 4(5), (6) & (7)

Section 4(2) refers to a specified penalty being determined for “each day” of the contravention. This language suggests that market participants may be liable for a specified penalty for each day that a contravention occurs or exists, which could potentially amount to enormous exposure for market participants in situations where they were unaware of the contravention, or were unable to quickly correct it. TransCanada submits that the specified penalty regime should impose only one penalty for each act of contravention, irrespective of its duration. However, the MSA could cite the duration of a contravention as an aggravating factor and initiate an administrative penalty proceeding.

Section 4(2) and the Base Penalty Table require the MSA to evaluate potential contraventions as “Lower, Moderate, High, or Severe”. TransCanada submits that this classification obscures the fact that the table is intended to address the frequency of recurrence of a contravention. The severity of a contravention is best considered in the particular context of each case and recurrence is only one consideration. Accordingly, TransCanada submits that Section 4(2) and the Base Penalty Table should refer to the number of contraventions instead of describing the contraventions as “low” to “severe”.

Sections 4(5) – (7) propose a reduction of a specified penalty by 25% for self-disclosure, 25% for the filing of an approved mitigation plan, and a total proposed reduction of 50% for both self-disclosure and the filing of an approved mitigation plan. TransCanada submits that the reductions should be increased to 50% for self-disclosure, 50% for the filing of an approved mitigation plan, and a total reduction of 100% for both self-disclosure and the filing of an approved mitigation plan. TransCanada notes that the reduction for self-disclosure of a contravention of an ISO Rule is 50% pursuant to Rule 019. In addition, providing for a more substantial reduction for self-disclosure and the filing of an approved mitigation plan is filed is consistent with the treatment of contraventions of reliability standards by the Federal Energy Regulatory Commission (“FERC”). FERC has increasingly emphasized self-reporting and compliance programs with significant reductions in potential penalties.

Consistent with TransCanada’s comments on Rule 019, TransCanada submits that Rule 027 should also incorporate the forbearance powers granted to the MSA pursuant to Section 57 of the *Alberta Utilities Commission Act*, by requiring the MSA to determine, in the case of self reporting and/or the filing of an approved mitigation plan, whether forbearance is appropriate in the circumstances.¹

¹ The MSA has outlined its proposed approach to regulatory forbearance in the *MSA Report Compliance Review 2009*, dated January 29, 2010 at pp. 10-12.

Finally, TransCanada submits that the curative effect of self-disclosure and mitigation plan should also apply prospectively. For example, where a new reliability standard is developed and a market participant recognizes that compliance may not be attained in a timely manner due to complexity, cost or technical issues, that market participant should be permitted to avoid a penalty by reporting to the MSA the potential for non-compliance and submitting an approved mitigation plan indicating how the market participant will bring itself into compliance over time.

b. *Section 4(9)*

The language of Section 4(9)(b) appears to limit the submission of a mitigation plan to instances where a potential contravention has been referred to the MSA by the ISO. TransCanada believes Section 9(b) should be expanded to clearly include instances where the potential contravention is self-disclosed by a market participant to the MSA.

TransCanada submits that the requirement in Section 4(9)(b) to submit a mitigation plan within a specified time frame may not be practical in all circumstances. Therefore, TransCanada submits that Section 4(9)(b) should retain flexibility for a mitigation plan to be filed after the specified deadline if circumstances warrant. Further, TransCanada notes that as currently drafted, the time period to submit a compliance plan would begin upon the referral of a potential contravention by the ISO to the MSA. As a market participant may not be made aware of the ISO's referral until a later date, TransCanada submits any time period for the submission of a mitigation plan should begin from either the date the market participant self-reports to the MSA or from the date the market participant is notified that the ISO has referred a potential contravention to the MSA, unless the circumstances warrant a later filing date.

Similarly, TransCanada notes that as currently drafted, Sections 4(9)(f) and (g) stipulate time limits for the implementation and completion of a mitigation plan that begin to run from the date of the contravention. TransCanada submits that an arbitrary deadline to implement and complete a mitigation plan may not be practical in all instances, depending upon cost, complexity, maintenance, availability of materials or labour and other technical issues. Rather, TransCanada submits that Section 4 should require that the mitigation plan submitted by the market participant include proposed implementation and completion dates which the MSA can approve in light of the particular circumstances of the proposed mitigation plan. If the Commission is inclined to include time limits within Rule 027, TransCanada submits that the time period should begin starting from the submission of the mitigation plan, as opposed to the contravention date, given that a market participant may not be aware of a contravention until a later date, and may require time to compile and submit a mitigation plan. Again, if time limits are retained, Rule 27 should provide flexibility for implementation and completion dates to occur after the specified deadline if circumstances warrant.

Finally, TransCanada notes that Section 4(9) provides that the MSA “may” approve a mitigation plan that is filed in accordance with the section. TransCanada submits that market participants should have recourse to the Commission should a market participant wish to challenge a refusal by the MSA to approve a proposed mitigation plan.

c. Section 4(11) and the Adjustment Penalty Table

TransCanada submits that conferring discretion on the MSA to adjust penalty amounts, as stipulated by Section 4(11) and the Adjustment Penalty Table, undermines the certainty that a specified penalty regime otherwise provides and will inhibit its efficiency. The amount of a specified penalty should be clearly identified in the penalty table and should not be subject to change. However, where the circumstances outlined in Section 4(11) indicate that a greater penalty is appropriate, the MSA could initiate an administrative penalty proceeding.

Further, TransCanada notes that many of the circumstances listed in Section 4(11) could involve serious allegations of misconduct, such as concealment or a lack of co-operation with an investigation, that would be more appropriately addressed by way of an administrative penalty. Indeed, these behaviours are already captured by the *Alberta Utilities Commission Act, Market Surveillance Regulation* and the *Fair, Efficient and Openly Competitive Regulation*.

3. Posting of NSP

a. Section 5(1)

The proposed wording of Section 5(1) would allow for the posting of a NSP at any time after the issuance of the NSP up to a maximum of 45 days. TransCanada submits that the posting of the NSP should not occur sooner than 45 days after the NSP has been issued to the market participant.

In addition, TransCanada submits that Section 5 should specify that the posting of a NSP not include the name of the addressee of the notice, but rather only the name of the entity and the title of the addressee. This position is consistent with privacy law principles and the MSA’s *Compliance Review 2009* report in which the MSA indicates:

The MSA is considering moving to a simpler format separating the information specific to a particular NSP from the general information. In addition we are considering removing the names of the addressee from the NSP (the required persons would receive the notice via email but the notice posted to the MSA’s website would contain no named persons).²

² MSA Report *Compliance Review 2009*, dated January 29, 2010 at p. 10.

b. Section 5(2)(b)

Section 5(2)(b) could be clarified by adding the following at the beginning of the subsection:

“Once the Commission has rendered a decision with respect to the specified penalty...”

4. Base Penalty Table

TransCanada notes that the column entitled “Nature of Contravention” in the proposed Base Penalty Table lists both the requirements of a reliability standard (R) and the measure identified in a reliability standard (MR). TransCanada submits that a market participant should only be liable for contravention of a reliability standard, and not the measure included in that reliability standard. To provide otherwise could lead to multiple penalties being assessed for the same contravention event.

Should the Commission have any questions regarding TransCanada’s comments, please contact the undersigned, or Chris Best at (403) 920-2081 or chris_best@transcanada.com.

Yours truly,

Original Signed By

Rosemary Stevens
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