

December 5, 2016

Greg Andrews
Markey Analyst, Markets Division
Alberta Utilities Commission (AUC)
4th Floor, 425 – 1 Street SW
Calgary, Alberta T2P 3L8

Dear Mr. Andrews,

RE: Bulletin 2016-20: AUC Enforcement Policy and Practices

Thank you for your correspondence on November 1, 2016 seeking comments on the AUC's enforcement policy and practices. The Utilities Consumer Advocate (UCA) appreciates the opportunity to provide input on this matter for your consideration.

Background

On March 29, 2016, the AUC issued Bulletin 2016-10 outlining the Commission's enforcement policy. Compliance is defined in this policy to mean conducting activities in accordance with regulatory requirements, including provisions of applicable legislative and regulatory requirements, including Commission decisions, orders and rules. The enforcement policy states the Commission's responsibility to assess compliance with applicable regulatory requirements, and includes information on investigations, enforcement stages, enforcement proceedings and proposed amendments to AUC Rule 001 to better address enforcement proceedings brought by either the Market Surveillance Administrator (MSA) or the Commission.

On November 1, 2016, the AUC issued Bulletin 2016-20 inviting written comments from interested parties regarding the enforcement policy and practices raised in Bulletin 2016-10. In response to the proposed enforcement policy and practices, the UCA submits the following comments for your consideration.

Compliance and Enforcement Process

The UCA submits that the compliance and enforcement process should be clearly defined in AUC Rule 001, or a new Rule (hereafter referred to as "Compliance and Enforcement Rule" or "the Rule"), to provide clarity and certainty for entities under the jurisdiction of the AUC for how compliance and enforcement will be achieved. The Rule should state the definition of compliance and describe the how all potential non-compliance matters brought forth by application or complaint will be resolved. A flow chart should be included in the Rule to define the stages and decision points in the compliance and enforcement process and provide clarity, consistency, and transparency for all interested parties.

Complaint Provisions

The UCA submits that although the enforcement policy includes information for how compliance will be promoted to deter future contraventions, further details are needed to clarify the process for how compliance is monitored and how issues of non-compliance are identified. The provisions included in the “AUC policy for third-party complaints”¹ should be stated in the Compliance and Enforcement Rule to provide consistency and clarity for how the Commission will receive, review, investigate, and publically report complaints.

The Rule should also include a provision to allow the UCA to bring potential non-compliance matters forth to the AUC based on complaints it receives from electricity and natural consumers.

Investigations

The UCA submits the Rule should define the specific criteria used by the AUC to determine the seriousness of the identified conduct and to decide if an investigation will be conducted when a matter is brought forth by application or complaint. The Rule should also include a provision to allow the UCA to bring information forth to the AUC in the investigation process.

The enforcement policy states that AUC’s enforcement staff may close the investigation if it appears that no contravention can be proven, the information is insufficient to warrant further investigation, or the regulated entity voluntarily returned to compliance. The UCA submits that when the investigation is completed and a contravention is proven, information about the investigation should be publically reported to deter non-compliance and to enhance transparency. The investigation report should be posted on the AUC website and include information about the company under investigation, a brief summary of the non-compliance event, and details of the investigation. The UCA submits that all warnings that are issued and corrective actions that are implemented as part of the investigation should be included in the investigation report. The report should confirm if the regulated entity has returned to compliance or if an enforcement proceeding will commence.

Enforcement Proceeding

The UCA submits the Rule should define the specific criteria used by the AUC to determine if an enforcement proceeding will be commenced when an investigation is completed.

Penalties and Remedies

The UCA submits that the penalties and remedies for contraventions of decisions, rules, or order of the Commission should be clearly defined in the Compliance and Enforcement Rule. The Rule should specify penalties and remedies for specific contraventions, including non-compliance with service quality standards listed in AUC Rule 002 and AUC Rule 003. The Rule should include a penalty table with different categories dependant on the severity level of the contravention.

¹ See AUC policy for third-party complaints: http://www.auc.ab.ca/about-the-auc/auc-information/Documents/AUC_Information/ThirdPartyComplaintsPolicy.pdf

The UCA believes that these changes will help to hold entities under the jurisdiction of the AUC accountable for compliance with their regulatory requirements and deter future instances of non-compliance.

For further information or if you have questions, please contact me at (403) 476-4998 or megan.gill@gov.ab.ca.

Sincerely,



Megan Gill
Manager, Market Policy and Analysis
The Office of the Utilities Consumer Advocate

(delivered by e-mail)