

Bulletin 2010-06

January 27, 2010

Introduction of Proposed Rule 027 – Specified Penalties for Contravention of Reliability Standards

The Alberta Utilities Commission (AUC or Commission) is inviting comments from market participants and interested parties respecting the proposed new AUC Rule 027 – *Specified Penalties for Contravention of Reliability Standards* (AUC Rule 027).

On July 29, 2009, the Commission issued [Bulletin 2009-20](#), which among other things noted that Bill 50 – *Electric Statutes Amendment Act, 2009* contemplated amendments to the *Alberta Utilities Commission Act* that would permit the Commission to make a rule regarding specified penalties for Reliability Standards. The Commission received [comments](#) from ten parties and posted these comments to its website.

On November 26, 2009, the Commission issued [Bulletin 2009-30](#) in which the Commission noted the comments provided by parties:

- (a) proposed changes regarding the procedures and process for the development of Reliability Standards and the filing of Reliability Standards with the Commission; and
- (b) the introduction of a specified penalty matrix for Reliability Standards.

The *Alberta Utilities Commission Act* and the *Electric Utilities Act* now authorize the Commission to make rules regarding a specified penalty for the contravention of a Reliability Standard.

A proposed new AUC Rule 027 is attached to this bulletin. This new rule is intended to:

- reflect the comments of stakeholders that enforcement of Reliability Standards should, at least in part, be dealt with through the use of a specified penalty matrix;
- reflect the authority granted the Commission through Bill 50 regarding a specified penalty rule for the contravention of a Reliability Standard; and
- reflect elements of the North American Electric Reliability Corporation (NERC) approach to Reliability Standard enforcement.

The draft rule attached includes provisions to provide the Market Surveillance Administrator with discretion regarding the application of an Adjustment Penalty Table (see section 4(11) of

AUC Rule 027) in order to adjust the Base Penalty Table up or down to account for specific circumstances such as repetitive contraventions, failure to comply with approved mitigation plans, cooperation of a market participant in an investigation and related items. The Commission has not yet determined whether to include an Adjustment Penalty Table in AUC Rule 027, and seeks market participant comments with respect to this particular provision of the draft rule.

In drafting this new rule, the Commission has sought to strike a balance between NERC's approach to Reliability Standards and our own approach to ensuring compliance in Alberta.

The Commission has not addressed as part of the scope of this Bulletin the need to establish an AUC rule for the filing of Reliability Standards by the AESO with the Commission. In the interim, the Commission expects that the AESO will continue to file Reliability Standards with the Commission in accordance with the requirements of section 19 of the *Transmission Regulation*.

Market participants and interested parties who wish to comment on the proposed new AUC Rule 027 are requested to submit written comments on or before **February 23, 2010**. Written comments should be addressed to darin.lowther@auc.ab.ca.

If you have any questions regarding this consultation, please contact John Esaiw at (403) 592-4479 or john.esaiw@auc.ab.ca or Darin Lowther at (403) 592-4507 or darin.lowther@auc.ab.ca.

Bob Heggie
Chief Executive
Alberta Utilities Commission

Rule 027

Specified Penalties for Contravention of Reliability Standards

The Alberta Utilities Commission (Commission) has approved this rule on Month-Day -2010.

Definitions

1 In these rules:

- (a) “Act” means the *Alberta Utilities Commission Act*;
- (b) “Commission” means the Alberta Utilities Commission;
- (c) “ISO” means the Independent System Operator established under the *Electric Utilities Act*;
- (d) “reliability standards” means reliability standards as defined in the *Electric Utilities Act*.

Application

2 These rules apply to the contravention of reliability standards.

Notice of Specified Penalty

3(1) The Market Surveillance Administrator may issue a notice of specified penalty under section 52 of the Act for the contravention of the reliability standards listed in the Base Penalty Table.

(2) A notice of specified penalty must state

- (a) the name of the market participant who is required to pay the specified penalty;
- (b) the date or dates of the contravention;
- (c) the reliability standard that was contravened;
- (d) a description of the conduct of the market participant named, its officers, personnel, or agents, the activity or omission which resulted in the contravention or any other particulars relating to the contravention;
- (e) a description of the facts on which the Market Surveillance Administrator relied on to conclude that a contravention had taken place;
- (f) the amount of the specified penalty for each day of the contravention, if the contravention continues for more than one day;

- (g) whether any adjustment to the specified penalty was made due to the self disclosure of the contravention by the market participant;
- (h) whether any adjustment to the specified penalty was made due to the filing of a mitigation plan by the market participant which was approved by the Market Surveillance Administrator;
- (i) whether any adjustment to the specified penalty was made due to application of any amounts in the Adjustment Penalty Table pursuant to subsection 4(11);
- (j) the date, at least 30 days from the date of issuance, on which the payment of the specified penalty is due;
- (k) that failure to pay the specified penalty will result in a hearing or other proceeding before the Commission; and
- (l) that if the market participant named disputes the issuance of the notice, to inform the Market Surveillance Administrator of the dispute and that a hearing or other proceeding before the Commission will result.

(3) The Market Surveillance Administrator shall send the notice of specified penalty to the person in the position identified in the Base Penalty Table.

(4) The Market Surveillance Administrator must issue a notice of specified penalty under this section within,

(a) 2 years after the date on which the Market Surveillance Administrator first knew, or in the circumstances ought to have known of the contravention, or

(b) 4 years after the date on which the contravention occurred
whichever period expires first.

Penalty Assessment

4(1) The Market Surveillance Administrator shall determine the amount of the specified penalty in accordance with this section, the Base Penalty Table and the Adjustment Penalty Table.

(2) For contraventions of the reliability standards listed in Category 1, 2 or 3 of the Base Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty for each day of the contravention at the level of the Violation Severity Level in the Base Penalty Table, in accordance with the following:

- (a) Lower Violation Severity Level means that there is one (1) instance of a failure to meet a requirement or an element of a requirement in the reliability standard;
- (b) Moderate Violation Severity Level means that there are two (2) instances of a failure to meet a requirement or an element of a requirement in the reliability standard;
- (c) High Violation Severity Level means that there are three (3) instances of a failure to meet a requirement or an element of a requirement in the reliability standard; and
- (d) Severe Violation Severity Level means that there are four (4) or more instances of a failure to meet a requirement or an element of a reliability standard.

(3) For contraventions of the reliability standards listed in Category 4 of the Base Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty at the level of the Violation Severity Level in the Base Penalty Table, in accordance with the following:

- (a) Lower Violation Severity Level means that the measure is within +/- 10% of the measure identified in the requirements section of the reliability standard;
- (b) Moderate Violation Severity Level means that the measure is within +/- 15%, but outside of +/- 10%, of the measure identified in the requirements section of the reliability standard;
- (c) High Violation Severity Level means that the measure is within +/- 20%, but outside of +/- 15%, of the measure identified in the requirements section of the reliability standard; and
- (d) Severe Violation Severity Level means that the measure is outside of +/- 20% of the measure identified in the requirements section of the reliability standard.

(4) For contraventions of the reliability standards listed in Category 5, 6, 7, 8 or 9 of the Base Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty at the level in the Base Penalty Table.

(5) In the case where a market participant self-discloses a contravention of a reliability standard listed in the Base Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty in accordance with this section and the Base Penalty Table and reduce the amount of the specified penalty by 25%.

(6) In the case where a market participant provides a mitigation plan with respect to a reliability standard listed in the Base Penalty Table to the Market Surveillance Administrator, the Market Surveillance Administrator, if it approves the mitigation plan, shall determine the amount of the specified penalty in accordance with this section and the Base Penalty Table and reduce the amount of the specified penalty by 25%.

(7) For clarity, in the case where a market participant self-discloses a contravention of a reliability standard listed in the Base Penalty Table to the Market Surveillance Administrator and provides a mitigation plan that is approved by the Market Surveillance Administrator with respect to the same reliability standard listed in the Base Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty in accordance with this section and the Base Penalty Table and reduce the amount of the specified penalty by 50%.

(8) A self-disclosure statement referred to in subsections (5) must

- (a) be made in writing to the Market Surveillance Administrator prior to the ISO or the Market Surveillance Administrator contacting the market participant about the contravention;
- (b) include the name, address, telephone number and email address of the market participant;
- (c) describe in detail the contravention, including the reliability standard that was breached, the date, time and duration of the contravention of the reliability standard; and

- (d) any other information the market participant considers to be relevant to the events that took place.

(9) The Market Surveillance Administrator may approve a mitigation plan referred to in this section if the plan

- (a) is made in writing to the Market Surveillance Administrator;
- (b) is received by the Market Surveillance Administrator no later than 45 days from the date of the referral from the ISO to the Market Surveillance Administrator of a reliability standard listed in the Base Penalty Table;
- (c) includes the name, address, telephone number and email address of the market participant;
- (e) includes a detailed action plan to correct a violation of a reliability standard and prevent re-occurrence of the violation of a reliability standard;
- (f) includes an implementation date no later than 90 days from the date of the contravention of a reliability standard listed in the Base Penalty Table; and
- (g) includes a completion date no later than 180 days from the date of the contravention of a reliability standard listed in the Base Penalty Table.

(10) When approving a mitigation plan, the Market Surveillance Administrator may request the views of the ISO.

(11) For contraventions of the reliability standards listed in the Base Penalty Table, the Market Surveillance Administrator may add or subtract an amount in the Adjustment Penalty Table to reflect the specific facts and circumstances material to the contravention of a reliability standard in accordance with the following:

- (a) the occurrence of repetitive contraventions of the same reliability standard on four or more occasions within a 12-month rolling period;
- (b) failure to comply with an approved mitigation plan;
- (c) the degree and quality of cooperation by a market participant in the investigation of the contravention of a reliability standard;
- (d) the presence and quality of a market participant's compliance program with respect to reliability standards in general and more specifically the reliability standard that has been contravened; or
- (e) any concealment or an attempt to conceal the contravention of a reliability standard.

Posting of Notice of Specified Penalty

5(1) The Market Surveillance Administrator shall make public any notice of specified penalty issued for a contravention of a reliability standard under section 52 of the Act, no later than 45 days after the notice of specified penalty is issued and post the notice on the Market Surveillance Administrator website.

(2) Where a market participant has failed to pay the specified penalty or disputes the notice of specified penalty and the notice of specified penalty is posted, the Market Surveillance Administrator shall

- (a) indicate on its website that the specified penalty has not been paid or that the notice of specified penalty is being disputed; and
- (b) post on its website the link to the decision of the Commission respecting the specified penalty.

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Base Penalty Table

Nature of Contravention	Violation Severity Level			
	Lower	Moderate	High	Severe
<p>Category 1</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>INT-001-AB-3 INT-003-AB-2 INT-006-AB-2 INT-009-AB-1 INT-010-AB-1 IRO-006-WECC-AB-1 PRC-004-AB-1 (R2 and MR2) PRC-004-AB-1 (R3 and MR3) PRC-021-AB-1 PRC-022-AB-1 TPL-001-AB-0 (R3 and MR3) TPL-002-AB-0 (R3 and MR3) TPL-003-AB-0 (R3 and MR3) TPL-004-AB-0 (R2 and MR2)</p>	<p>A specified penalty of \$500</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$1,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$1,500</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$2,500</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>
<p>Category 2</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>MOD-017-AB-0.1 MOD-018-AB-0 PRC-009-AB-0 PRC-010-AB-0 TPL-001-AB-0 (R2 and MR2) TPL-002-AB-0 (R2 and MR2) TPL-003-AB-0 (R2 and MR2) TPL-004-AB-0 (R1 and MR1)</p>	<p>A specified penalty of \$3,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$5,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$7,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$10,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>
<p>Category 3</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>PRC-001-AB-1 PRC-004-AB-1 (R1 and MR1) TPL-001-AB-0 (R1 and MR1) TPL-002-AB-0 (R1 and MR1) TPL-003-AB-0 (R1 and MR1)</p>	<p>A specified penalty of \$5,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>	<p>A specified penalty of \$10,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>	<p>A specified penalty of \$15,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>	<p>A specified penalty of \$25,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>

Nature of Contravention	Violation Severity Level			
	Lower	Moderate	High	Severe
Category 4 Failure to comply in whole or in part with the following reliability standards: BAL-001-AB-0a	A specified penalty of \$3,000 Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention	A specified penalty of \$5,000 Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention	A specified penalty of \$7,000 Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention	A specified penalty of \$10,000 Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate

R refers to a Requirement identified in a reliability standard

MR refers to a Measure identified in a reliability standard

As identified in each reliability standard, the Measures correspond to the Requirements identified in each reliability standard. For example, MR1 is the measure for R1.

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Base Penalty Table (continued)

Nature of Contravention	All Instances
<p>Category 5</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>EOP-002-AB-2 (R9 and MR9) EOP-004-AB-1 EOP-005-AB-1 FAC-003-AB-1 (R3 and MR3; R4 and MR4) MOD-016-AB-1.1 TOP-005-AB-1</p>	<p>A specified penalty of \$2,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>
<p>Category 6</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>FAC-001-AB-0 FAC-002-AB-0 FAC-501-WECC-AB-1 MOD-019-AB-0</p>	<p>A specified penalty of \$5,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>
<p>Category 7</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>BAL-006-AB-1</p>	<p>A specified penalty of \$7,000</p> <p>Notice of specified penalty to Senior Executive of Business Unit of the market participant involved in the contravention</p>
<p>Category 8</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>BAL-003-AB-0a CIP-001-AB-1</p>	<p>A specified penalty of \$10,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>
<p>Category 9</p> <p>Failure to comply in whole or in part with the following reliability standards:</p> <p>EOP-002-AB-2 (except R9 and MR9) EOP-003-AB-1 FAC-003-AB-1 (R1 and MR1; R2 and MR2) TOP-007-WECC-AB-1</p>	<p>A specified penalty of \$25,000</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate</p>

Adjustment Penalty Table

Adjustment Factor	Adjustment Amount
Repetitive contravention (as outlined in subsection 4(11)(a))	Add an amount up to \$10,000
Prior approved mitigation plan (as outlined in subsection 4(11)(b))	Add an amount up to \$10,000
Cooperation (as outlined in subsection 4(11)(c))	Add or subtract an amount up to \$5,000
Compliance Program (as outlined in subsection 4(11)(d))	Add or subtract an amount up to \$5,000
Concealment (as outlined in subsection 4(11)(e))	Add an amount up to \$25,000

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