

Rule 013

Criteria Relating to the Imposition of Administrative Penalties

This rule as amended was approved by the Alberta Utilities Commission on January 15, 2013 and is effective on February 1, 2013.

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1 Application

These rules set out the factors that the Commission will consider in determining the administrative penalty to be imposed on a person, pursuant to Section 63(2)(a) of the *Alberta Utilities Commission Act*, to ensure even-handed enforcement and to protect energy markets and consumers.

2 Definitions

In these rules “Commission” means the Alberta Utilities Commission.

3 Factors to be considered

The Commission shall make an enforcement decision based on the relevant factors of each case including the seriousness of the contravention, the compliance system, and self-reporting or cooperation of the person named in the contravention.

4 Seriousness of the contravention

In determining the seriousness of the contravention, the Commission may consider the following:

- (1) What harm was caused by the contravention?
- (2) Was there a loss of life or injury or endangerment of persons?
- (3) Was there damage to property or the environment?
- (4) Was there impact or potential to impact the safe, reliable and economic operation of the bulk electric system as that term is defined in the Alberta Electric System Operator *Consolidated Authoritative Document Glossary*?
- (5) Was the harm widespread across markets or customers, or was it limited in scope and impact?
- (6) Did it involve significant sums of money?
- (7) Were others indirectly affected by the wrongdoing?
- (8) What benefit did the wrongdoer gain from the contravention?
- (9) Was the contravention the result of manipulation, deceit or artifice?
- (10) Did the wrongdoer misrepresent material facts?
- (11) Was the conduct fraudulent?
- (12) Were the actions of the wrongdoer reckless or deliberately indifferent to the results?
- (13) Was the action willful? Was the contravention part of a broader scheme? Did the wrongdoer act in concert with others?
- (14) Is this a repeat offence or does the person have a history of contraventions?
- (15) Is this an isolated instance or a recurring problem?

- (16) Was the wrongdoing systematic and persistent?
- (17) How long did the wrongdoing last?
- (18) Was the wrongdoing related to actions by senior management, the result of pressure placed on employees by senior management to achieve specific results, or done with the knowledge and acquiescence of senior management?
- (19) Did management engage in a cover-up?
- (20) How did the wrongdoing come to light?
- (21) Did senior management resist or ignore efforts to inquire into actions or otherwise impede an inquiry into the contravention?
- (22) What effect would potential penalties have on the financial viability of the corporation that committed the wrongdoing?
- (23) What are other pertinent elements related to the contravention?

5 Internal compliance, self-reporting or cooperation

The Commission may consider, in determining the amount of the administrative penalty, the steps taken by the person named in the contravention to prevent, monitor and immediately stop misconduct, to report contraventions to the Market Surveillance Administrator or the Commission and to cooperate with the Market Surveillance Administrator or the Commission in its investigation.

6 Factors

In determining if any mitigation is warranted in the amount of the administrative penalty to be imposed, the Commission may consider the following:

- (1) Does the corporation have an established, formal program for internal compliance?
- (2) Is it well documented and widely disseminated within the corporation?
- (3) Is the program supervised by an officer or other high ranking official?
- (4) Does the compliance official report to or have independent access to the chief executive officer or the board of directors?
- (5) Is the program operated and managed so as to be independent?
- (6) Are there sufficient resources dedicated to the compliance program?
- (7) Is compliance fully supported by senior management? For example, is senior management actively involved in compliance efforts and do corporate policies regarding compensation, promotion and disciplinary action take into account the relevant employees' compliance with the enactments over which the Commission has jurisdiction, Commission decisions, orders, rules, and the reporting of any contraventions?
- (8) How frequently does the corporation review and modify the compliance program?
- (9) How frequently is training provided to all relevant employees?

- (10) Is the training sufficiently detailed and thorough to instill an understanding of the relevant orders or rules and the importance of compliance?
- (11) In addition to training, does the corporation have an ongoing process for auditing its compliance?
- (12) How has the corporation responded to prior wrongdoing?
- (13) When misconduct occurs, is it a repeat of the same offence or misconduct of a different nature?
- (14) Does the corporation adopt and ensure enforcement of new and more effective internal controls and procedures to prevent a recurrence of misconduct?
- (15) How did the corporation uncover the misconduct? Was it through a self-evaluation, internal audit, or internal compliance program?
- (16) Did the corporation act immediately when it learned of the misconduct?
- (17) Did the corporation notify the Market Surveillance Administrator or the Commission promptly?
- (18) Did senior management actively participate and encourage employees to provide information to identify the misconduct?
- (19) Did the corporation take immediate steps to stop the misconduct?
- (20) Did it implement or create an adequate response to the misconduct?
- (21) Did the corporation arrange for individuals with full knowledge of the matter to meet with Market Surveillance Administrator or Commission enforcement staff?
- (22) Did the corporation present its findings to the Market Surveillance Administrator or the Commission and provide all relevant evidence regarding the misconduct, including full disclosure of the scope of the wrongdoing; the identity of all employees involved, including senior executives; the steps taken by the corporation upon learning of the misconduct; communications among involved employees; documents evidencing the misconduct; and measures taken to remedy the misconduct?
- (23) Did the corporation or individuals show exemplary cooperation? That is, cooperation which quickly ends wrongful conduct, determines the facts, and corrects a problem?
- (24) Did the corporation volunteer to provide internal investigation or audit reports relating to the misconduct?
- (25) Did the corporation hire an independent outside entity to assist the corporation's investigation?
- (26) Did senior management make clear to all employees that their cooperation has the full support and encouragement of management and the directors of the corporation?
- (27) Did the corporation facilitate Market Surveillance Administrator or Commission access to employees with knowledge and information bearing on the issue, and

actively encourage such employees to provide the Market Surveillance Administrator or the Commission with complete and accurate information?

- (28) Did the corporation identify culpable employees and assist the Market Surveillance Administrator or the Commission in understanding their conduct?
- (29) Did the corporation make records readily available, with assistance on searching and interpreting information in the records?
- (30) Did the corporation fairly and accurately determine the effects of the misconduct; including identifying the revenues and profits resulting from the misconduct and the customers, or market participants adversely affected by the misconduct?

7 Economic benefit

Where the Commission determines that a person has derived an economic benefit as a result of the contravention, the Commission shall order that person to disgorge the economic benefit in the amount determined or estimated by the Commission to nullify the value of gains acquired through misconduct.

8 Determination

Sections 5 and 6 do not apply to the determination of the amount of economic benefit derived from the contravention.