

July 10, 2009

NOTICE TO MARKET PARTICIPANTS

MSA Publishing of Notices of Specified Penalty per AUC Rule 019

Within the mandate of the Market Surveillance Administrator (MSA) is the power to issue a notice of specified penalty pursuant to s. 52 of the *Alberta Utilities Commission Act* (AUCA) where the MSA is satisfied that a person has contravened an ISO rule made by the Alberta Electric System Operator (AESO).

Section 52(7) of the AUCA provides authority to the Alberta Utilities Commission (Commission) to make rules respecting specified penalties. To that end the Commission issued AUC Rule 019, which provides direction to the MSA regarding various matters including as to requirements relevant to the publishing of notices of specified penalty.

The current AUC Rule 019, which governs the handling of rule contraventions on or after July 1, 2008, states (in part) as follows:

Posting of Notice of Specified Penalty

5(1) Subject to subsection (2), the Market Surveillance Administrator shall make public any notice of specified penalty issued for a contravention of ISO rules under section 52 of the Act, 30 days after the notice of specified penalty is issued and post the notice on the Market Surveillance Administrator website.

(2) Until June 30, 2009, the Market Surveillance Administrator shall not make public any notice of specified penalty issued for a contravention of the same ISO rule for a first or second contravention within a rolling 12-month period in the Penalty Table, unless the market participant has failed to pay the specified penalty or disputes the notice of specified penalty.

Insofar as rule contraventions July 1, 2008 and onwards, the MSA believes that subsection 5(2) allows for two reasonable interpretations:

- (i) that irrespective of the date of a rule contravention, any notice of specified penalty issued after June 30, 2009 is to be made public, in accordance with subsection (1) and other provisions of AUC Rule 019; or
- (ii) that for all rule contraventions between July 1, 2008 and June 30, 2009, inclusive, notices of specified penalty will not be made public except in the circumstances noted in that subsection.

MSA Approach

Unless as otherwise directed by the Commission, the MSA is taking the approach consistent with the second interpretation described above – **for rule contraventions between July 1, 2008 and June 30, 2009, inclusive, the associated notices of specified penalty will not be made public except in the circumstances noted in subsection 5(2).**

This approach seems consistent with the overall scheme of AUC Rule 019, which is generally based upon the date of contravention of a rule. The approach also treats market participants fairly, in that they will not receive different publishing treatment as a result of the speed at which a rule contravention file is identified, assessed, referred and concluded in the AESO/MSA process(es).

We trust that this will be of assistance. In any event, we encourage you to contact us with any questions or comments.

Yours truly,

“Original signed”

W.W. (Wayne) Silk
Vice-President, Chief Operating Officer
Market Surveillance Administrator.