



## **MSA Investigation Procedures**

August 11, 2010

The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

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**Mandate:** To assess whether conduct of market participants supports the fair, efficient and openly competitive operation of the electricity and retail natural gas markets.

## 1 Issue Identification

*Issue brought to attention of MSA through complaint, referral, or surveillance.*

- Moves to issue assessment phase.

- Confirmation of receipt of complaint/referral.

## 2 Issue Assessment

*Issue assessed by MSA through information available.*

- If MSA chooses to investigate, moves to investigation phase.

- Communication with complainant or other parties to gather information.
- Notification to person initiating complaint or referral if MSA chooses not to investigate.

## 3 Investigation

*Investigation initiated.*

- MSA determines appropriate next steps toward outcome.

- Notification to party under investigation re: scope and procedural matters.
- Information gathering through written requests, interviews, and searches.
- Status updates may be provided to person who initiated complaint/referral.
- Opportunity for party under investigation to provide other information.
- Notification to relevant parties at conclusion of investigation.

## 4 Outcomes

*MSA takes next steps at conclusion of investigation (as applicable).*

- Notification to Commission and party under investigation re: enforcement proceeding.
- Discussions regarding negotiated settlement.
- Notification re: stakeholder process for guideline making.
- Notice to market and MSA public reporting.
- Communications re: closing of file.

### Investigation Process/Interactions

Please note that this graphic is for illustration purposes only – reader should also refer to the body of this report.

# 1 Interpretation

References to “AESO” mean the Alberta Electric System Operator, also referred to as the Independent System Operator, established pursuant to the EUA.

References to “AUCA” mean the *Alberta Utilities Commission Act* SA 2007 cA – 37.2, including as amended from time to time.

References to “Commission” mean the Alberta Utilities Commission, established pursuant to the AUCA.

References to “Court” mean any court of competent and relevant jurisdiction.

References to “information” mean information in any form, and should be understood in the same fashion as the term “record”, defined at AUCA s. 31(2)(i).

References to “ISO rules” mean the rules established by the AESO.

References to “MSA” mean the Market Surveillance Administrator.

References to “MSR” mean the *Market Surveillance Regulation* AR 266/2007, enacted pursuant to the AUCA, including as amended from time to time.

# 2 Introduction

In accordance with applicable enactments, the MSA has established a generalized set of Investigation Procedures which it utilizes in carrying out investigations, particularly with regard to its interactions with market participants and other relevant stakeholders. Such interactions may, for example, include written or verbal communications designed to elicit information (written interrogations, interview, meetings) or to inform particular parties and the market at large about the status of an investigation (notices, reports).

The intention of this document is to describe the Investigation Procedures in sufficient detail that complainants, persons referring matters to the MSA, parties under investigation, other market participants and the general public will generally know what to expect before or during an investigation, as applicable, once a matter has come to the attention of the MSA.

## 2.1 MANDATE OF THE MSA

The mandate of the MSA is established under Part 5 of the AUCA, and includes surveillance, investigation and enforcement regarding the conduct of market participants in the Alberta electricity and natural gas markets. [Reference AUCA s. 39(1)]

In carrying out its mandate the MSA must, among other things, assess whether the conduct of market participants supports the *fair, efficient, and openly competitive* operation of the market, and whether the

conduct is compliant with the market framework established by the relevant enactments and rules. For the purposes of these Investigation Procedures, the relevant enactments and rules include the AUCA, the EUA and related regulations, the ISO rules and reliability standards, Part 2.1 of the *Alberta Gas Utilities Act* and related regulation, and the decision, orders or rules of the Commission. [Reference AUCA s. 39(3)]

The MSA is required by law to carry out its mandate in a fair and responsible manner. [Reference AUCA s. 40]

Toward meeting this duty, among other things, the MSA attempts in its Investigations Procedures to ensure that any market participant or other person(s) under investigation understands the opportunities for interaction with the MSA during the investigation process. Further, the MSA strives to ensure that a person bringing a complaint or referral to the MSA is also accorded a fair process.

## **2.2 CHANGES TO INVESTIGATION PROCEDURES**

In accordance with the relevant enactments, the MSA reserves the right and discretion to vary these procedures where circumstances warrant, and will in such case take steps to help ensure that the changes are understood by the parties directly impacted. In the case of a proposed material change which will have general impact, the MSA will consult with market participants on the proposed change. In the case of a change which will only be applicable to a specific investigation, the MSA will discuss the change with the party under investigation.

## **2.3 SCOPE AND APPLICATION OF INVESTIGATION PROCEDURES**

The mandate of the MSA gives it the authority and responsibility to review and inquire into a wide range of matters affecting or potentially affecting the Alberta electricity and retail natural gas markets. The MSA may, for example, look into the conduct of market participants. It may also look into structural or other issues affecting the market.

Generally speaking, subject to 2.4, the Investigation Procedures will only apply where the MSA is looking into a matter pertaining to specific conduct which may amount to a contravention of relevant enactments and rules, and as such where the party which engaged in the conduct may face enforcement action by the MSA or by another body. [Reference AUCA s. 39(1)(b)]

## **2.4 ISO RULES AND RELIABILITY STANDARDS**

The mandate of the MSA includes compliance enforcement in regards to ISO rules and reliability standards. Procedures dealing with these matters are described separately in the [MSA Compliance Process](#).

## 3 Issue Identification

### 3.1 MATTERS TO BE INVESTIGATED

By virtue of its ongoing surveillance activities, the MSA will become aware of issues or potential issues which may merit greater scrutiny. The MSA may also have matters brought to its attention by market participants or other parties, and will then similarly make an assessment regarding whether an investigation is warranted. An investigation may lead to enforcement action or other steps taken to address a matter at issue (or, indeed, the MSA may conclude that no further action is warranted).

In all cases, the identification of an issue or potential issue is the starting point for the Investigation Procedures.

### 3.2 EXTERNAL COMPLAINTS/REFERRALS

Any person may submit a complaint or refer a matter to the MSA. [Reference AUCA s. 41]

The legislation specifies that a complaint must be in writing and include the following information: (a) the name and address of the person making it; (b) the particulars of the complaint; (c) any information or facts supporting the complaint; and (d) the signature of the individual or authorized representative of the person making the complaint. [Reference AUCA s. 41(3)]

The AUCA contemplates that the MSA may have matters referred to it by the AESO or the Commission, as well as other persons. The legislative scheme involving the three agencies contemplates that the MSA will carry out investigation and enforcement activities on behalf of all three agencies. In the case of the AESO, for example, suspected breaches of the ISO rules will be referred to the MSA. [Reference AUCA s. 51, s. 52]

### 3.3 SELF-REPORTING OF ISSUE

An issue self-reported by a market participant (ie. reporting as to their own conduct) will be treated by the MSA as a referral. A party seeking to self-report a (potential) contravention of an ISO rule or reliability standards is directed to the MSA Compliance Process for full process details.

### 3.4 DIFFERENCE BETWEEN A COMPLAINT AND REFERRAL

Both a complaint and a referral will bring matters to the attention of the MSA. The AUCA requires that a complaint must include the prescribed content, and is therefore a more formal means to trigger an MSA inquiry. Similarly, matters referred by the AESO and Commission will typically be documented in writing, including relevant and material information.

From the perspective of the MSA, it is a reasonable expectation that a person wishing to have the MSA look into a particular issue will provide relevant supporting information where reasonably available to that person.

### **3.5 WHAT HAPPENS IF 'FORMAL' COMPLAINT OR REFERRAL IS NOT MADE?**

The MSA may decline to investigate any complaint or referral or discontinue an investigation if the MSA is satisfied that the complaint or referral is frivolous, vexatious or trivial or otherwise does not warrant investigation.

The existence or lack of a formal complaint will be a consideration. Similarly, the existence or lack of information supporting the complaint or referral will be a consideration. [Reference AUCA s. 43(1)]

### **3.6 MSA CONTACT**

Generally speaking, a person wishing to make a complaint or refer a matter to the MSA should, at first instance, direct their communications (including any supporting information) to the Manager, Investigations. For the purpose of documenting the matter, written communication is preferred (electronic and/or paper format).

### **3.7 COMMUNICATIONS REGARDING COMPLAINT OR REFERRAL**

Upon receipt of a complaint or referral, the MSA will respond to the initiating party with a confirmation that it is considering the matter. The MSA may, at its discretion, also request further information in support of the complaint/referral.

### **3.8 CONFIDENTIALITY OF COMMUNICATIONS**

As a matter of practice, the MSA will generally not make public communications or other information received from a complainant or person making a referral, unless in the view of the MSA such disclosure is necessary as part of the evidence put forward by the MSA in respect of an enforcement proceeding. An overriding consideration is a desire by the MSA to help ensure that anyone will feel free to raise concerns with the MSA. The legislative scheme provides protection regarding such information, consistent with the practice of the MSA. [Reference MSR s. 6(12)(b)]

## **4 Issue Assessment**

### **4.1 MSA ASSESSMENT OF ISSUE**

In considering how to address (potential) issues brought to its attention, the MSA will assess:

- Whether the MSA has jurisdiction over the issue;
- Whether the issue is frivolous, vexatious or trivial or otherwise does not warrant investigation; and
- Whether the issue should proceed to an investigation or be handled through some other means.

## **4.2 RELEVANT INFORMATION REGARDING ISSUE**

Apart from information provided by the complainant or person making referral, and information readily available to the MSA through active data links with the AESO or other sources, the MSA may request information from other relevant persons, including any market participant.

## **4.3 NOTICE TO PERSON(S) WHOSE CONDUCT MAY BE AT ISSUE**

In all cases, when the MSA requests relevant information (through written information request, interview or other means) from a party whose conduct is at issue, the MSA will advise that party of the issue under review. This includes requests for information during the assessment phase prior to the commencement of an investigation.

## **4.4 COMMUNICATION WITH PERSON MAKING COMPLAINT OR REFERRAL**

The MSA will notify the person initiating the complaint or referral of a decision by the MSA not to investigate a matter. [Reference AUCA s. 43(2)]

## **4.5 COMMENCEMENT OF INVESTIGATION**

Based upon its assessment of the relevant information and circumstances, the MSA may commence an investigation.

# **5 Investigation**

## **5.1 NOTICE OF INVESTIGATION**

At the outset of an investigation into the conduct of a party, the MSA will provide to them written notification of the investigation (“Notice of Investigation”).

The Notice of Investigation will describe in general terms the scope of the investigation, and will include contact information for the MSA staff person(s) designated for the purposes of communications to the MSA. Other procedural matters may also be addressed, including a request regarding the contact person(s) to be designated on behalf of the party under investigation, including legal counsel as applicable.

## **5.2 COMMUNICATIONS REGARDING NOTICE OF INVESTIGATION**

The MSA will provide a reasonable opportunity for the party under investigation to communicate with the MSA at the commencement of the investigation, for the purposes of the MSA providing to that party clarification about the scope of the investigation and the investigation process, and for the party under investigation to provide to the MSA whatever information they may consider relevant.

At the discretion of the MSA, the communications with the party under investigation may take place in person, verbally, in writing or electronically, or through a combination thereof.

### **5.3 RIGHT TO PROVIDE ADDITIONAL INFORMATION**

At any time during the information gathering phase of an investigation, a party under investigation can of their own accord provide to the MSA information considered by the party to be relevant to the investigation. Generally speaking, such information is expected to be documented and delivered in written or electronic form. Further, all such information will be considered by the MSA to be on the record, unless otherwise agreed.

### **5.4 COMMUNICATION WITH PERSON WHO MADE COMPLAINT OR REFERRAL**

At its discretion and in accordance with the relevant enactments, the MSA may provide information regarding the status or progress of an investigation to the party who made the related complaint or referral.

The MSA will notify the person initiating the complaint or referral of a decision by the MSA to discontinue an investigation. Similarly, where the MSA has completed an investigation, the MSA will provide written notification of the results of the investigation to the person who made the initial complaint or referral. [Reference AUCA s. 42(2), s. 43(2)]

### **5.5 NOTICE TO MARKET REGARDING INVESTIGATION**

In accordance with the AUCA and MSR, the MSA may at its discretion publish a notice to inform the market and public at large as to the commencement, progress or completion of an investigation. [Reference MSR s. 6(2)]

As a matter of practice, during the course of an investigation the MSA will generally not identify by name any party whose conduct is under investigation. Exceptions to this general practice include disclosure which occurs pursuant to a proceeding before a Court or the Commission, or as required under the Commission rules, or where the MSA considers that, on balance, the naming of the party is warranted. Unless disclosure of the name of the party is permitted or required under the rules of the Commission or the Court, before naming the party the MSA will advise them of the planned disclosure and will provide an opportunity for that party to bring forward any concerns. [Reference MSR s. 6]

### **5.6 ACCESS TO INFORMATION**

The MSA considers that reasonable and timely access to information is a fundamental requirement for the MSA to be able to fulfill its mandate. Accordingly, as a general practice, the MSA will be diligent in seeking to ensure that its legitimate information needs are not thwarted. [Reference AUCA s. 46, MSR s. 3]

The MSA will, where appropriate, discuss with the party under investigation mutually agreeable arrangements for access to and transfer of information for the purposes of the investigation. Subject to

relevant enactments, including the obligation placed on the MSA to act in a fair and responsible manner, the MSA reserves the right to act unilaterally and without notice to the other party where circumstances warrant. [Reference AUCA s. 40, s. 46, s. 47]

## **5.7 NO FEE PAYABLE BY MSA FOR INFORMATION**

No fee is payable by the MSA for access to or transfer to it of any information necessary for the purposes of the MSA mandate, including for the preparation of a record containing the information. [Reference MSR s. 4]

The MSA is not required to obtain the consent of a market participant before using information obtained from that person for the purposes of the mandate of the MSA. [Reference MSR s. 5(2)]

## **5.8 INFORMATION REQUESTS**

For the purpose of obtaining information which is or may be relevant to the investigation, the MSA may issue written requests for information. The information requests will attempt to be sufficiently clear and targeted so as to foster an efficient and effective investigation. [Reference AUCA s. 46]

The information request will, taking into account the scope and nature of the information requested and other considerations, as well as, set an expected response time. The MSA will, where it considers it reasonable and productive to do so, engage in a discussion with the party receiving the information request in order to address concerns about clarity or response time.

As a matter of practice, the MSA will generally request that responses to information requests be provided in electronic form if reasonably possible.

## **5.9 REQUEST FOR EXTENSION**

Any request for additional response time must be received by the MSA in writing, including reasons why the additional time is needed, at least two business days prior to the existing response deadline.

Any amendments to the content or response deadline of an information request for which the information response is outstanding must, from the perspective of the MSA, be confirmed and documented in written or electronic form by the MSA in order to have effect.

## **5.10 INTERVIEWS**

The MSA may for the purposes of an investigation carry out interviews of existing or previous employees and contractors of a party under investigation. As a matter of practice such interviews will be carried out under oath, using a court reporter, and a transcript of the interview will be made available to the party under investigation and the person being interviewed. [Reference AUCA s. 46(1)(b)]

The MSA may, at its discretion, use legal counsel to carry out the interviews. The MSA will, as applicable and in accordance with the relevant enactments, make reasonable efforts to accommodate the scheduling and other requests of the parties being interviewed and their legal counsel.

### **5.11 COMPUTER SEARCHES**

The MSA may carry out searches of computer systems within the possession or control of the party under investigation, for the purpose of gathering information which is or may be relevant to the investigation. [Reference AUCA s. 46(1)(f)]

### **5.12 OTHER SEARCHES**

The MSA may, at a reasonable time taking into account relevant circumstances, enter and inspect the business premises of the party under investigation and request and remove information stored (electronically or otherwise) or accessible on the premises. [Reference AUCA s. 46]

### **5.13 COURT ORDERS**

In furtherance of its access to information and other matters relevant to its mandate, the MSA will where necessary and at its discretion seek the assistance of the Court. This includes circumstances where it appears to the MSA that a party under investigation is obstructing or will obstruct access to information, including any failure to respond to requests for information, interviews or access to systems or premises. [Reference AUCA s. 47]

In accordance with relevant enactments and applicable rules, the MSA may for the purposes of a Court proceeding disclose information obtained during an investigation and may also disclose the name(s) of the party or parties involved. [Reference MSR s. 6]

### **5.14 USE OF EXTERNAL RESOURCES**

For the purposes of its mandate, including information gathering during investigations, the MSA may enlist outside resources such as forensic auditors or legal counsel. Such person(s) will be identified by the MSA to the party being investigated where interactions with that party occur. [Reference AUCA s. 46(1), s. 46(6)]

### **5.15 PRIVILEGE OR PRIVACY CLAIMS**

The MSA will seek to resolve issues associated with privilege and privacy claims in an efficient and practical manner. In appropriate circumstances, the MSA may establish and implement with the party raising such claim(s) a protocol designed to address the issues. The MSA reserves the right to invoke a Court or other process to resolve the issues. [Reference AUCA s. 50]

## **5.16 USE OF INFORMATION OBTAINED DURING INVESTIGATION**

Consistent with relevant enactments and these Investigation Procedures, information obtained by the MSA during an investigation will be available for use by the MSA in furtherance of its mandate. This includes the possibility that the MSA may, at its discretion, use the information for that investigation, any related enforcement proceeding, or another matter arising pursuant to the mandate of the MSA.

[Reference MSR s. 5(1)]

Information provided to or obtained by the MSA during an investigation will be kept confidential, except to the extent that disclosure is permitted or required by the AUCA, MSR or another enactment, or by the Court or the Commission, or where the information has otherwise been made public. [Reference MSR s. 6(1)]

## **5.17 RESPONSE TO INVESTIGATION FINDINGS**

In circumstances where the MSA is considering taking enforcement action in relation to the conduct at issue, the MSA will before taking such action provide to the relevant party under investigation a summary of the MSA findings and a reasonable opportunity to provide feedback in respect of those findings.

## **5.18 RETURN OF INFORMATION**

Where during an investigation the MSA has obtained original records containing information, the MSA will in accordance with relevant enactments make copies of the records/information and return the original records within a reasonable time. In the case of original records/information seized under a Court order, the MSA will return the originals (after copying) upon request of the party from whom they were seized; where no such request is made the original records will be returned within 60 days after the conclusion of the investigation that gave rise to the seizure (including any related hearing or appeal).

[Reference AUCA s. 46(3), s. 49]

## **5.19 INTERNAL MSA RECORDS NOT DISCLOSED**

As a matter of practice, and consistent with the applicable legislative scheme, the MSA will hold confidential all records created by the MSA for its internal use in carrying out its mandate, including any communication, report or memorandum relating to the deliberations of the MSA. [Reference MSR s. 6(12)(a)]

## **5.20 DISCONTINUANCE OF INVESTIGATION**

The MSA may, at its discretion and in accordance with the relevant enactments, discontinue an investigation at any time. In such case the MSA will provide written notice to the party under investigation confirming that the file has been closed.

The MSA will generally not share specific investigation findings with the party under investigation unless the MSA is considering taking enforcement action in relation to the conduct at issue.

## 5.21 REFERRAL OF MATTERS TO ANOTHER BODY

Should the MSA determine during an investigation that a matter is within the jurisdiction of another body, it will notify that body of the matter and may make available to that body information in the possession of the MSA which is seen by the MSA to be relevant to the matter. [Reference AUCA s. 45(1)]

Notwithstanding such a notification to another body, the MSA may, at its discretion, continue or discontinue its investigation, and may collaborate with the other body. [Reference AUCA s. 45(2)]

The MSA will not necessarily advise the party under investigation of the fact that the MSA has communicated with the other body regarding the matters at issue. Further, as a matter of practice and consistent with protection granted under applicable laws and enactments, the specific communications between the MSA and that other body will not be disclosed by the MSA. [Reference MSR s. 6(12)(b)]

## 5.22 CONCLUSION OF INVESTIGATION

The MSA will, in accordance with the relevant enactments, determine the appropriate steps to be taken at the conclusion of the investigation – see Outcomes section below.

# 6 Outcomes

## 6.1 OUTCOMES FOLLOWING INVESTIGATION

Where, based upon its investigation, the MSA has concluded that the conduct at issue amounts to a contravention of relevant enactments or rules, the MSA may at its discretion take enforcement action.

Under certain circumstances, the MSA can choose to refrain from taking direct enforcement action notwithstanding its finding that there has been a contravention. [Reference AUCA s. 57]

Where the circumstances do not warrant the exercise of forbearance, the specific form of enforcement action is at the discretion of the MSA, including that the MSA may negotiate a settlement agreement, seek a Commission hearing [Reference AUCA s. 44, s. 51, s. 52].

The MSA will necessarily be in communication with the person(s) against whom the MSA will take enforcement action. In the case of a request for a hearing or other proceeding before the Commission, the MSA will serve notice in accordance with applicable Commission rules. [Reference AUCA s. 51(3), s. 52(1)]

To the extent that enforcement action undertaken by the MSA is not otherwise already public, the MSA will at its discretion and in accordance with the relevant enactments and rules, including the rules of the Commission, communicate with the market and the general public about the matter. [Reference AUCA s. 38, MSR s. 6]





The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

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## Compliance Process

October 25, 2010

## PREFACE

This The Market Surveillance Administrator is committed to working with market participants and the AESO in a cooperative fashion to promote compliance with the ISO rules and the Alberta Reliability Standards. Our belief is that market participants and the ISO wish to comply with their obligations and we can best assist them by laying out in clear terms the process we will follow in investigating and addressing potential violations and include specific reporting forms for ease of reference. This document is meant to provide this assistance.

The existence of this document and the process described is very much in keeping with our objective to be open, transparent, objective, and principle-based as a means to create a collaborative environment and ultimately promote a culture of compliance and accountability. In this light, the manual offers complete discharge (forbearance), to those entities self reporting when the applications, in our judgment, satisfy certain criteria explicitly identified in the document, otherwise, entities self reporting still have the prospect of favourable treatment.

While the document has separate sections devoted to ISO rule compliance and the Alberta Reliability Standards, there is symmetry in our approach to potential issues in both areas. The process to address reliability standards is a little more involved because of jurisdictional issues and the existence of additional consideration, such as mitigation plans, so we thought it would be clearer and simpler to carve out a separate chapter. Fundamentally, the core elements and openness to collaboration remains the same.

We hope that stakeholders find this document helpful in achieving our joint objective of ensuring an effective and reliable wholesale electricity sector in Alberta.

The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

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# 1 Interpretation

“AESO” means the Alberta Electric System Operator, also referred to as the Independent System Operator, established pursuant to the EUA.

“AUC” means the Alberta Utilities Commission, established under s. 2 of the AUCA.

“AUCA” means the *Alberta Utilities Commission Act* SA 2007 cA – 37.2, including as amended from time to time.

“Commission” means the Alberta Utilities Commission, established pursuant to the AUCA.

“Compliance Program” means the corporate culture that includes senior level commitment to following a defined process for the tracking of performance relative to ISO rules and reliability standards.

“EUA” means the Alberta *Electric Utilities Act* SA 2003 cE – 5.1, including as amended from time to time.

“Favourable Treatment” means that the MSA will do its best to process contraventions with a view to a lesser penalty than would otherwise be the case. Penalty in this definition would include the financial award, the potential costs of litigation and any orders that the MSA may seek from the AUC.

“Forebear” means that the MSA will not pursue or take any action with respect to the suspected contravention including not making anything public with respect to the event.

“Information” means information in any form, and should be understood in the same fashion as the term “record”, defined at AUCA s. 31(2)(i).

“ISO rules” means the rules established by the AESO and approved by the AUC.

“Mitigation Plan” means a document which describes the steps to be taken, following the recognition of a contravention of a reliability standard. This document should speak, in part, to the steps to be taken to get back into compliance, the timing or benchmarks to be met in meeting this objective and any steps which will be taken to ensure future compliance.

“MSA” means the Market Surveillance Administrator.

“MSR” means the *Market Surveillance Regulation* AR 266/2007, enacted pursuant to the AUCA, including as amended from time to time.

“Specified Penalty” means a penalty that has been specified by the Commission in respect of a contravention of an ISO rule or a reliability standard, pursuant to AUCA s. 52.

## 2 Introduction

Market participants must comply with ISO rules and Alberta Reliability Standards [Reference EUA s. 20.8]. The MSA's mandate includes undertaking activities to address contraventions of ISO rules and Alberta Reliability Standards [Reference AUCA s. 39(1)(b)(i)].

The MSA has an expectation that market participants accept accountability for compliance and take appropriate actions to prevent and mitigate incidents of non-compliance. Enforcement action is desired by the MSA to be a last resort and a means to promote compliance and accountability. Accordingly, this document outlines incentives for self reporting, development of effective compliance programs, and addressing particular problems through mitigation plans.

This document is intended to provide a comprehensive description of the MSA process relating to compliance enforcement within the mandate of the MSA. Previously, the MSA's process concerning the application of specified penalties for contraventions of ISO rules appeared as Appendix A to the MSA Investigation Procedures (July 9, 2008) document.

## 3 ISO Rules Enforcement

### 3.1 COLLABORATION BETWEEN AESO AND MSA

The AESO is required under the EUA to monitor the compliance of market participants with the ISO rules. [Reference EUA s. 17(1.1)]

Given that the mandate of the MSA includes enforcement in relation to contraventions of the ISO rules, the AESO and the MSA will work together to address compliance with those rules. Such a working relationship can achieve efficiencies for not only the AESO and the MSA, but also for market participants whose compliance with the rules may be at issue. The MSA looks to avoid creating undue regulatory burden while at the same time providing a fair and reasonable process.

As set out below, the information gathered by the AESO as part of its monitoring will also assist the enforcement work of the MSA. Accordingly, the MSA will avoid duplication of that information gathering (the MSA may, however, seek additional information later where that is deemed necessary in respect of the matters at issue). The AESO and the MSA will also coordinate their contact with the market participant in relation to a particular ISO rules issue identified by the AESO through its monitoring, such that the market participant will generally deal with only one agency at a time.

The market participant will in this coordinated process be given a reasonable opportunity to know what is at issue regarding their conduct, and to provide relevant factual information as well as their views regarding the issue. The market participant will also be able to know where they are in the process.

### **3.2 AESO INITIAL POINT OF CONTACT WHERE ISSUE IDENTIFIED BY AESO MONITORING**

Unless an ISO rules compliance matter has been self-reported (see Section 3.3) to the MSA by a market participant, the AESO will typically be the initial point of contact with market participants (generally in the form of an AESO information request). The AESO will identify potential compliance issues and will gather information to validate its initial findings including a possible request(s) for information from the market participant. If the AESO then suspects a contravention of an ISO rule, it will notify the participant and will send a copy of this notice to the MSA. Details of the AESO's compliance monitoring process are described in ISO Rule 12.

Such notification by the AESO operates as a referral of the suspected contravention to the MSA as required under the EUA [Reference EUA s. 21(1)]. Following this notification, the MSA has sole carriage of the matter and is the primary contact for the participant. The MSA then assesses the relevant circumstances and information toward determining whether enforcement action is appropriate.

As part of the referral, and pursuant to ISO rule 12, the AESO will make available to the MSA information obtained in the course of its compliance monitoring activities, to assist the MSA regarding its assessment of the matter.

### **3.3 SELF-REPORTING**

The MSA supports and encourages self-reporting of contraventions of ISO rules. A self report provides evidence to the MSA that a market participant has implemented effective internal procedures (compliance program) to identify such issues. At the least, a self report is eligible for more favourable treatment than if it otherwise came to the attention of the MSA by referral.

At least this means that if the MSA be satisfied that a self report meets the following criteria, the MSA will forbear:

- The contravention is deemed by the MSA to be non-serious
- The self report contains all information requested in the provided reporting template <sup>1</sup>
- The self report is received within 30 days of the date the contravention began
- The self report occurred prior to the participant being alerted by the Compliance Monitor or the MSA
- The participant has a compliance program in effect and the self report includes a statement to this effect
- The conduct did not result in a material financial gain
- The conduct did not jeopardize the reliability of the Alberta Interconnected Electric System
- The conduct is not part of a recurring problem
- The self report clearly acknowledges the contravention(s) reported
- The self report was sent to [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca) and copied to the Compliance Monitor at [marketcompliance@aeso.ca](mailto:marketcompliance@aeso.ca)

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<sup>1</sup> The MSA will accept an e-mail address as the contact address for purposes of 4(4)(6) of AUC Rule 019.

For an event in which the MSA has extended forbearance, the event will not be recognized as a contravention insofar as escalating future penalties that may apply. The MSA will track all events and as such, prior events where forbearance was extended may have relevance to whether a subsequent event constitutes a recurring problem and hence whether subsequent forbearance is appropriate. Self reports not meeting all of the criteria set out above still have the prospect of favourable treatment relative to matters that are referred.

To facilitate such self reports the MSA has provided a form in **Appendix A**. Self reports not meeting all of the criteria set out above still have the prospect of favourable treatment relative to matters that are referred, including a reduction in the amount of Specified Penalty (see box).

Self reports need to be registered properly with the MSA; that means sent by e-mail to [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca) with copy to the AESO at [marketcompliance@aeso.ca](mailto:marketcompliance@aeso.ca). The MSA will acknowledge receipt of all self reports.

The MSA will conduct an assessment of the reported contravention issue and will thereafter remain the point of contact for the market participant until the conclusion of its determination of the issue (including, as applicable, the issuance of any specified penalty relating to the contravention).

### **3.4 OPPORTUNITY TO PROVIDE INFORMATION TO THE MSA**

Market participants are afforded an opportunity to provide information they believe is relevant to the suspected contravention whether at the time of the self report or in response to an AESO information request. Once a matter is referred to the MSA, if a market participant has additional information it believes should be considered by the MSA it should indicate this at the earliest opportunity following referral.

Toward seeking efficiency in the assessment process leading to the issuance of a Notice of Specified Penalty or other enforcement action, the MSA may choose to rely upon information obtained by the AESO. However, the MSA reserves the right and discretion to seek additional information.

### **3.5 SPECIFIED PENALTIES**

MSA assessment of an ISO rules compliance matter is depicted in **Figure 1**.

Where the MSA is satisfied that a person has contravened an ISO rule for which a penalty has been specified by the Commission [AUC Rule 019], the MSA may issue a Notice of Specified Penalty (**Appendix B**) in accordance with the relevant Commission rules. [Reference AUCA s. 52(1)]

Notices of Specified Penalty will be sent via email only and in accordance with AUC Rule 019 must be sent to particular individuals. The MSA encourages market participants to keep the MSA updated on the names and contact details of those individuals. Such information should be sent to: [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca).

Where the MSA is satisfied that a person has contravened an ISO rule and the rule is not specified in AUC Rule 019, the MSA may pursue the matter under s.51 of the AUCA and recommend an administrative

penalty similar in quantum to a specified penalty in one of the categories of AUC Rule 019. Where MSA has identified that the potential sanction likely to be pursued is materially greater than those prescribed in AUC Rule 019, the MSA will extend additional process for dealing with the matter. This process and its applicability are discussed in Section 5.

For efficiency, the MSA will apply specified penalties where available and appropriate however, the MSA reserves its discretion to take any contravention it deems a specified penalty is not appropriate, to an Administrative proceeding.

### **3.6 FORBEARANCE**

If the MSA is not satisfied of a contravention, or it believes that forbearance is appropriate, the MSA will inform the market participant of its decision via email. In some cases the MSA may issue a conditional forbearance [Reference AUCA s. 57(1)]. In the event the MSA issues conditional forbearance, any conditions will be made clear in the forbearance notice. As an example, if a participant has provided preliminary information that is subject to confirmation, forbearance may be conditional on the confirmation.

### **3.7 DISPUTE OR FAILURE TO PAY SPECIFIED PENALTY**

Where the person fails to pay or disputes the Specified Penalty in accordance with the Notice of Specified Penalty issued by the MSA, the MSA will commence a related enforcement action before the Commission. [Reference AUCA s. 52(2)]

### **3.8 CLARIFICATIONS BY MSA**

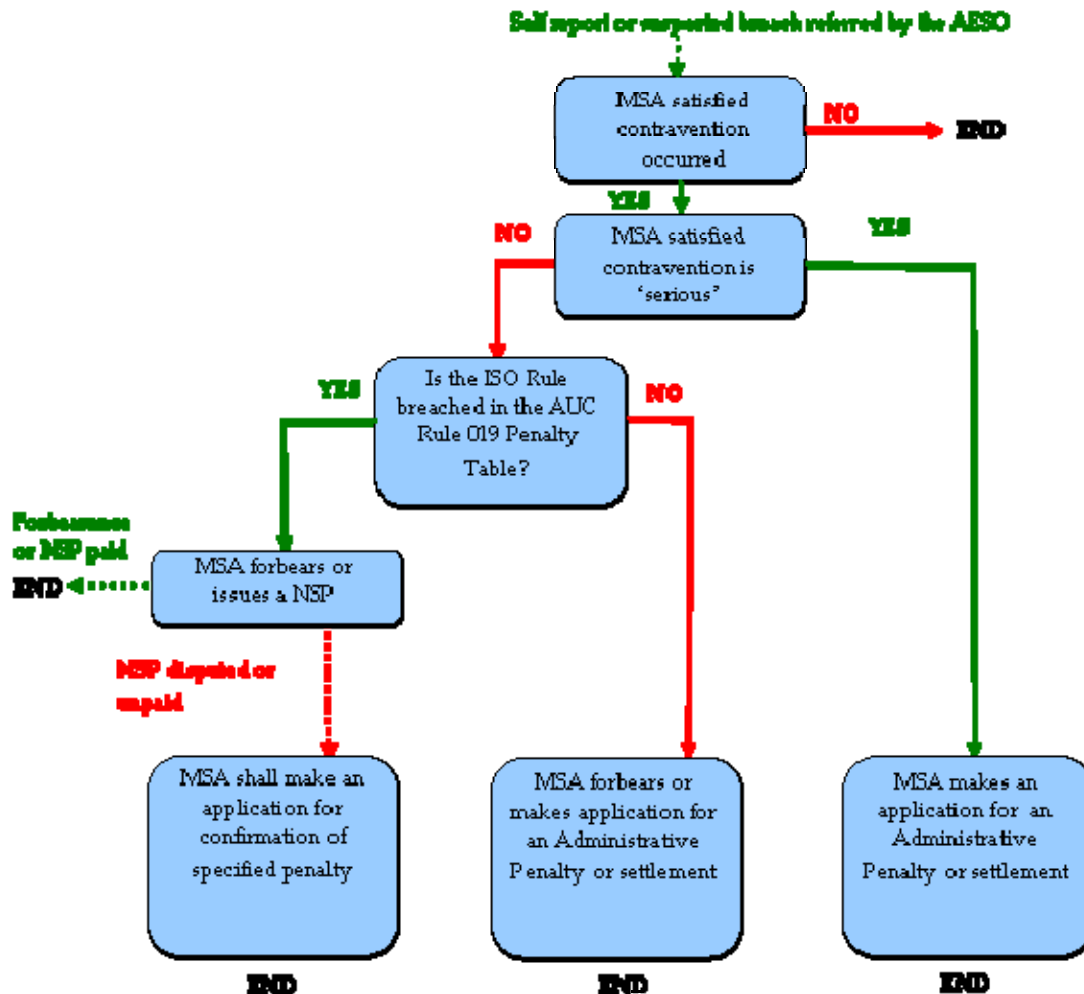
Where a person fails or refuses to pay a Specified Penalty in accordance with the related Notice the MSA may, prior to commencing a related hearing before the Commission, seek additional information to confirm intent to pay or to dispute the penalty. If the person has indicated the intent to dispute, the MSA may request further information to determine the basis of the dispute.

In all cases, where the MSA seeks further information from a person whose conduct is at issue, the MSA will notify that party as to the reason for the request.

### **3.9 NOTICE OF SPECIFIED PENALTY MADE PUBLIC**

In accordance with the relevant enactments and rules, the MSA will make public any notice of specified penalty issued by the MSA [Reference MSR s. 6, AUC Rule 019]

Figure 1 - ISO Rules Enforcement Process



## 4 Alberta Reliability Standards Enforcement

### 4.1 COLLABORATION BETWEEN COMPLIANCE MONITOR AND MSA

The AESO has a mandate under Section 23 of the Transmission Regulation (AR 86/2007), to carry out compliance monitoring of registered entities to applicable Alberta Reliability Standards (ARS). As such the AESO is the Compliance Monitor (CM) for Alberta Reliability Standards as applicable to registered entities other than the AESO itself. The AESO has published a Compliance Monitoring Plan (CMP) which discusses the AESO's overall approach and related processes with respect to the Alberta Reliability Standards compliance monitoring.

The WECC/AESO Membership and Operating agreement, approved by AUC order U2008-261 as well as an MSA/WECC Service Level Agreement (SLA) define a role for WECC as Compliance Monitor for applicable to the AESO.

The *Electric Statutes Amendment Act, 2009* and related changes to Sections 39, 51, and 52 of the *Alberta Utilities Commission Act (AUCA)* broadened the mandate of the MSA to include enforcement in relation to contraventions of reliability standards. The MSA will work together with both of the above noted compliance monitors to address compliance with the standards as applicable. Such working relationships are intended to achieve efficiencies for all Stakeholders. The MSA looks to avoid creating undue regulatory burden while at the same time providing a fair and reasonable process.

As set out below, the information gathered by the Compliance Monitor in the course of its monitoring activities, will also assist the enforcement work of the MSA. Accordingly, the MSA will avoid duplication of that information gathering (the MSA may, however, seek additional information later where that is deemed necessary in respect of the matters at issue). The MSA and the Compliance Monitor will also coordinate their contact with the registered entity in relation to a particular Reliability Standards issue identified through regular monitoring activities, such that the registered entity will generally deal with only one agency at a time.

The registered entity will in this coordinated process be given a reasonable opportunity to know what is at issue regarding their conduct, and to provide relevant factual information as well as their views regarding the issue. The registered entity will also be able to know where they are in the process.

#### **4.2 COMPLIANCE MONITOR INITIAL POINT OF CONTACT WHERE ISSUE IDENTIFIED BY MONITORING**

Unless a compliance matter has been self-reported (see s.4.3) to the MSA by a registered entity, the Compliance Monitor will typically be the initial point of contact with registered entities. With respect to registered entities other than the AESO, the AESO as the applicable Compliance Monitor will monitor for potential compliance issues in accordance with ISO Rule 12 using the tools specified in the AESO's Compliance Monitoring Program (CMP). These tools include audits, self-certifications, exception reporting and periodic data submissions and reporting.

With respect to the AESO, WECC as the applicable Compliance Monitor will monitor for potential compliance issues in accordance with the MSA WECC Services Agreement.

If the Compliance Monitor, through its monitoring, suspects a contravention of a reliability standard, it will notify the entity and will send a copy of this notice to the MSA. Such a notification by the Compliance Monitor operates as a referral of the suspected contravention as required under the EUA [Reference EUA s. 21.1].

In the referral, the Compliance Monitor will include information gathered during its applicable monitoring process. In addition to this information, the Compliance Monitor will be asked to provide an opinion as to the seriousness of the contravention and whether a mitigation plan is required.

Following the referral, the MSA has sole carriage of the matter and is the primary contact for the participant. The MSA, if necessary, may engage the Compliance Monitor as a subject matter expert (SME) (see Section 4.6).

### 4.3 SELF-REPORTING

The MSA supports and encourages the self-reporting of contraventions of self reporting provides evidence to the MSA that an entity has implemented effective internal procedures (ie: compliance program) to identify and proactively address such issues. Accordingly, the MSA will generally view a self-reported matter more favorably in relation to its assessment of the matter as compared to a referral to the MSA by the Compliance Monitor.

Should the MSA be satisfied that a self report meets the following criteria, the MSA will forbear:

- The contravention is deemed by the MSA to be non-serious
- The self report contains all information requested in the provided reporting template<sup>2</sup>
- The self report is received within 30 days of the date the contravention began
- The self report occurred prior to being alerted by the Compliance Monitor or the MSA
- The entity has a compliance program in effect and the self report includes a statement to that effect
- The conduct did not result in a material financial gain
- The conduct did not jeopardize the reliability of the Alberta Interconnected Electric System
- The conduct is not part of a recurring problem
- The self report clearly acknowledges the contravention(s) reported
- The self report was sent to [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca) and copied to the Compliance Monitor at [rscompliance@aeso.ca](mailto:rscompliance@aeso.ca) (for registered entities other than the AESO)
- As appropriate, an acceptable mitigation plan submitted in accordance with Section 4.8.1 within 30 days of the self report or a brief explanation of why a mitigation plan is not applicable. The MSA may accept an incomplete plan submitted within 30 days on the basis that the entity can demonstrate extenuating circumstances and a clear timeline for submittal of a comprehensive plan.

To facilitate such self reporting the MSA has provided a form in **Appendix C**.

For an event in which the MSA has extended forbearance, the event will not be recognized as a contravention insofar as escalating future penalties that may apply. The MSA will track all events and as such, prior events where forbearance was extended may have relevance to whether a subsequent event constitutes a recurring problem and hence whether subsequent forbearance is appropriate. Self reports not meeting all of the criteria set out above still have the prospect of favourable treatment relative to matters that are referred.

Self reports by the AESO should be directed to the MSA via the WECC Compliance Portal at <https://alberta.wecc.biz>. A web form for self reports, similar to the one found in **Appendix C**, is available in the portal. As with referrals, the MSA may engage its applicable SME as may be required.

The MSA will respond via email to confirm receipt of the self-reported information.

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<sup>2</sup> The MSA will accept an e-mail address as the contact address for purposes of 4(9)(b) of AUC Rule 027.

#### **4.4 OPPORTUNITY TO PROVIDE INFORMATION TO THE MSA**

Registered entities are afforded an opportunity to provide information they believe is relevant to a suspected contravention whether at the time of the self report or in response to an information request from the applicable Compliance Monitor. Once a matter is referred to the MSA, if a registered entity has additional information it believes should be considered by the MSA, it should indicate this at the earliest opportunity following referral.

Toward seeking efficiency in the assessment process leading to the issuance of a Notice of Specified Penalty or other enforcement action, the MSA may choose to rely upon information obtained by the Compliance Monitor. However, the MSA reserves the right and discretion to seek additional information.

#### **4.5 SPECIFIED PENALTIES**

MSA assessment of a reliability standards compliance matter is depicted in **Figure 2**.

Where the MSA is satisfied that a person has contravened a reliability standard for which a penalty has been specified by the Commission [AUC Rule 027] the MSA may issue a Notice of Specified Penalty (Appendix D) in accordance with the relevant Commission rules [Reference AUCA s.52(1)].

AUC Rule 027 was approved on October 5, 2010 for effect on November 1, 2010.

Where the MSA is satisfied that a person has contravened a reliability standard and the reliability standard is not specified in AUC Rule 027, the MSA may pursue the matter under s.51 of the AUCA and recommend an administrative penalty similar in quantum to a specified penalty in one of the categories of AUC Rule 027. Where MSA has identified that the potential sanction likely to be pursued is materially greater than those prescribed in AUC Rule 027, the MSA will extend additional process for dealing with the matter. This process and its applicability are discussed in Section 5.

For efficiency, the MSA will apply specified penalties where available and appropriate however, the MSA reserves its discretion to take any contravention it deems a specified penalty is not appropriate, to an Administrative proceeding.

#### **4.6 SUBJECT MATTER EXPERTS**

The MSA's enforcement will, as required, utilize Subject Matter Experts at the AESO (for matters related to registered entities other than the AESO) and WECC (for all matters concerning the AESO). Subject Matter Experts will be asked to provide the MSA with opinions as to the seriousness of any contraventions and, where appropriate, what would constitute acceptable mitigation. The MSA would provide an opportunity for the entity under suspicion of contravention to provide similar expert opinions. These opinions will inform the MSA in making a decision on whether to forbear or to proceed with enforcement action, and ultimately could be presented as part of an application should the matter proceed to the AUC. The MSA encourages registered entities to utilize their own in-house Subject Matter Experts while drafting mitigation plans. While the MSA will typically look to the AESO and WECC as Subject Matter Experts, the MSA may utilize other Subject Matter Experts as required.

## 4.7 FORBEARANCE

If the MSA is not satisfied of a contravention, or it believes that forbearance is appropriate, the MSA will inform the registered entity of its decision via email. In some cases the MSA may issue a conditional forbearance [Reference AUCA s. 57(1)]. In such cases, any conditions will be made clear in the forbearance notice. For example, the MSA is likely to extend conditional forbearance to a registered entity regarding the requirements of a particular standard if the registered entity has applied to the AESO for exemption to that reliability standard. In this case, the forbearance is conditional on the exemption being granted. The requirement and completion of a mitigation plan (see below) may also form the basis of a conditional forbearance.

## 4.8 MITIGATION PLANS

Unlike a company wide compliance program, a mitigation plan has a defined scope. Mitigation plans play an important role in ensuring that reliability concerns are resolved in a timely manner. The MSA is supportive of the role of mitigation plans and believes they can be an effective complement and in some cases a substitute for financial sanctions. The MSA is likely to require a mitigation plan if the Compliance Monitor has recommended that one is necessary. In addition, the MSA would advise registered entities to attach a mitigation plan to their self reports if a matter is serious or if the non-compliance is ongoing and cannot be corrected promptly. While a mitigation plan is in effect, the MSA will exercise conditional forbearance in regards to the ongoing non-compliance condition at issue provided that the plan is acceptable, timely and completed successfully. In the future, AUC Rule 027, may also provide some added incentives for mitigation plans.

### 4.8.1 Submitting a Mitigation Plan

**Appendix E** contains a Mitigation Plan Submittal Form to help registered entities meet the minimum requirements listed below. This form will be available to market participants on the MSA's website. Registered entities should submit Mitigation Plans via email to both the MSA at [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca) and the AESO at [rscompliance@aeso.ca](mailto:rscompliance@aeso.ca). The AESO should submit Mitigation Plans to the MSA via the WECC Compliance Portal at <https://alberta.wecc.biz>.

The MSA will accept a mitigation plan only if it meets or exceeds the minimum requirements listed below and if it is supported by the MSA's SME. The MSA will seek the opinion of a SME as required (if the plan is of a technical nature). Should a situation arise that the MSA's SME and the registered entity's SME do not agree on significant aspects of a mitigation plan, the MSA will likely bring the matter forward to the AUC for a hearing. Registered entities are encouraged to submit a mitigation plan along with self reported compliance matters where the non-compliance cannot be rectified promptly.

An acceptable Mitigation plan must have the following minimum requirements:

- The registered entity's point of contact for the Mitigation Plan, who shall be a person i) responsible for filing the Mitigation Plan, ii) technically knowledgeable regarding the Mitigation Plan, and iii) authorized and competent to respond to questions regarding the status of the Mitigation Plan.

- The name, telephone number and e-mail address of the Participant or the ISO.<sup>3</sup>
- The number of the Reliability Standard and the requirement(s) that the mitigation plan will correct.
- A description of the contravention, including date/time, duration and cause.
- The registered entity's action plan to correct the violation(s), including any milestones and date of completion.
- Milestones (if applicable) should be no more than three months apart.
- The registered entity's action plan to prevent recurrence of the violation(s) in the future.
- The anticipated impact of the contravention on the bulk power system reliability and an action plan to mitigate associated risk to the reliability of the bulk power system while the Mitigation Plan is being implemented.
- Any other information deemed necessary or appropriate.
- The Mitigation Plan shall be signed by an authorized representative of the registered entity (ie: officer or legal counsel), which if applicable, shall be the person signing the Self-Certifications or Self Reporting submittals on behalf of the registered entity.

AUC Rule 027 is effective as of November 1, 2010. In the MSA's view, the foregoing requirements also satisfy s.4(9) of AUC Rule 027. As noted in Section 6 of this document, if the above noted requirements require amendment based on amendments to AUC Rule 027, such amendment will be considered a consequential amendment and as such, will not result in further consultation with Stakeholders.

During the time the mitigation plan is being implemented, the registered entity will receive conditional forbearance until the plan has been completed. The MSA will exercise its powers of forbearance provided that the plan is acceptable, timely, and completed successfully. The MSA may still pursue enforcement action regarding non-compliance prior to the date the mitigation plan was adopted. The MSA intends to notify the registered entity within 30 days of submission, if a mitigation plan has been accepted, however, in some cases, SME availability may result in a delayed response. In such cases, the MSA will notify the registered entity of the delay prior to the end of the 30 day period.

#### **4.8.2 Completion of Milestones and Mitigation Plans**

Once a mitigation plan has been accepted by the MSA, the registered entity is responsible for certifying that all of the milestones identified within the plan have been met on the stated dates and that the plan was completed successfully. A milestone update form and a mitigation plan completion form are available on the MSA's website (**Appendices F and G**). This form should be completed and submitted to the MSA and the Compliance Monitor. Mitigation plans will not automatically be monitored or audited however, if the contravention is serious in nature, the MSA may require the plan to include confirmation by the Compliance Monitor at the end of the plan that the issue was successfully addressed, otherwise, the MSA believes the possibility of spot checks as well as subsequent audits are sufficient incentives for registered entities to ensure successful completion of their compliance plans.

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<sup>3</sup> The MSA will accept an e-mail address as the contact address for the purposes of 4(9)(6) of AUC Rule 027.

### **4.8.3 Mitigation Plan Revisions, or Extensions**

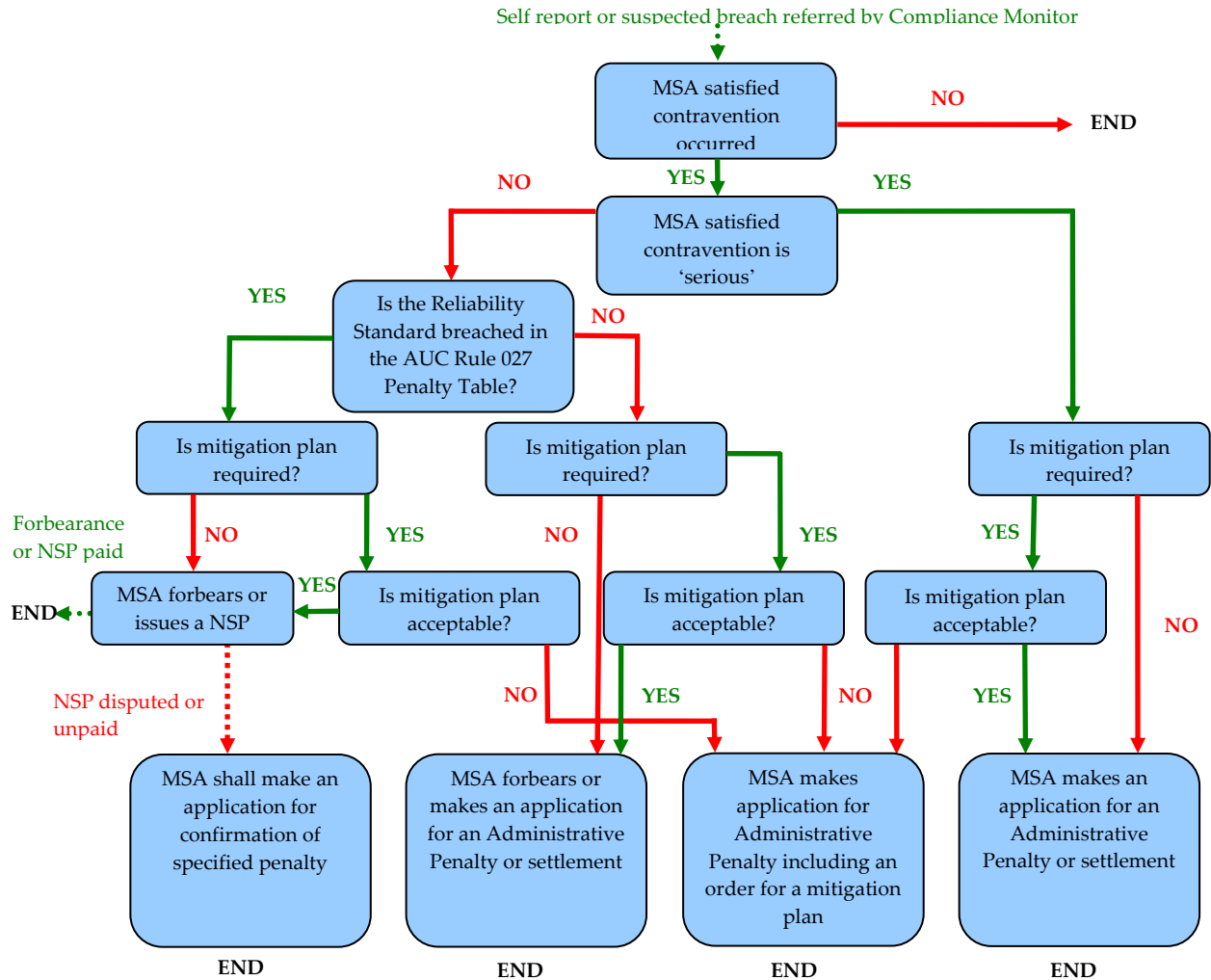
In the event a registered entity needs to revise or extend an accepted mitigation plan, a Mitigation Plan Extension Request Form (**Appendix H**) should be completed and submitted via email to the MSA at [compliance@albertamsa.ca](mailto:compliance@albertamsa.ca). The registered entity shall submit any such requests at least 5 business days prior to the existing deadline. The original mitigation plan should be attached to the request.

## **4.9 CLARIFICATIONS BY MSA**

Where a person fails or refuses to pay a Specified Penalty in accordance with the related Notice the MSA may, prior to commencing a related hearing before the Commission, seek additional information to confirm intent to pay or to dispute the penalty. If the party has indicated the intent to dispute, the MSA may request further information to determine the basis of the dispute.

In all cases, where the MSA seeks further information from a person whose conduct is at issue, the MSA will notify that party as to the reason for the request.

Figure 2 - Reliability Standards Enforcement Process



## 5 MSA Extended Enforcement Process

If the MSA deems a matter to be serious, whether or not a penalty has been specified by the AUC in respect of a particular ISO rule or, the MSA may choose to pursue the matter under s. 51 of the AUCA by making an application to the AUC for an Administrative Penalty. The MSA will determine whether a matter is serious based upon the following criteria: 1) frequency of the non-compliance; 2) material market impact; 3) financial gain by the Participant as a result of the non-compliance; or 4) jeopardy to reliability of the Interconnected Electric System.

## **5.1 PRELIMINARY MEETING (OPTIONAL)**

If requested, the MSA may provide a preliminary meeting to discuss the matter and allow the participant to respond to any questions resulting from our preliminary review. This would be an opportunity for the participant to provide any new information that may have been unavailable at an earlier stage and to bring forward any process questions or concerns. The market participant may decline the opportunity to have a meeting if it wishes to do so. In either case, the MSA requires that any information provided in response to our questions be in written form.

## **5.2 MSA INTERNAL REVIEW**

Based upon the information supplied by the Compliance Monitor and any additional information provided by the participant, the MSA staff will conduct a detailed review of the information gathered. Based on this review, MSA staff will consider whether to forbear or to continue to pursue a penalty. Should the MSA choose to forbear it will inform the market participant of its decision in writing. Should the MSA choose not to forbear the MSA will prepare a summary of facts and findings and provide the market participant reasonable opportunity to provide feedback in respect of those findings.

## **5.3 FINAL MEETING (OPTIONAL)**

If requested, the MSA may provide a meeting to review the summary of findings prepared by the MSA, and discuss views regarding settlement of the matter. At this point, the market participant has a final opportunity to provide information of relevance to MSA findings prior to a decision being made. The MSA requires that any information provided in response to the findings be in written form.

## **5.4 MSA DECISION**

Based on the MSA's summary of facts and findings and further information provided by the market participant the MSA will decide whether to forbear or to pursue a penalty. The MSA will communicate its decision to the participant in writing.

## **5.5 SETTLEMENT AGREEMENT (OPTIONAL)**

Section 44 of the AUCA provides that the MSA may negotiate a settlement with a market participant to resolve any matter relating to the mandate of the MSA. The MSA believes a settlement agreement is preferable to a contested proceeding, from the perspective of efficiency and costs. Any settlement agreement must be filed with the AUC for approval.

## **5.6 REQUEST FOR AN AUC HEARING OR OTHER PROCEEDING**

Should the parties be unwilling or unable to reach a settlement agreement, the MSA may file an application for hearing before the AUC. Section 51(2) of the AUCA sets out the form of the application. The form and manner of the hearing or other proceeding is determined by the AUC in accordance with its

rules (s.53). Section 56 and 63 describe the form of order the Commission may impose, which may include administrative penalties and/or terms and conditions considered appropriate.

## 6 Amendments

Consequential amendments or other non-material changes to this document may be required from time to time as a result of changes to related enactments. The MSA does not intend to conduct stakeholder consultations in respect of such amendments.

## Appendix A: ISO Rules Self Reporting Form

ISO RULES SELF-REPORTING FORM			
Submission Date:			
MARKET PARTICIPANT INFORMATION			
Market Participant Name:		Name of the Senior Executive of the Business Unit:	
Market Participant Contact Name:		Title of the Senior Executive of the Business Unit:	
Contact Phone Number:		Email of the Senior Executive of the Business Unit:	
Contact Email:		Market Participant Address:	
Do you have a compliance program in place?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
CONTRAVENTION INFORMATION			
Asset ID (If applicable):		Date of Contravention:	
ISO Rule Number:		Attachments included:	<input type="checkbox"/> YES <input type="checkbox"/> NO
Describe the contravention, including time and duration:			
Provide any other information that you consider to be relevant, including any mitigating circumstances:			
SIGNATURES			
<i>I acknowledge that this contravention did occur.</i>			
Signature:			
Name:		Title:	
<i>I acknowledge that the above stated facts are true.</i>			
Signature:		Signature Date:	
Name:		Title:	

## Appendix B: Notice of Specified Penalty (ISO Rules)

NOTICE OF SPECIFIED PENALTY			
Date of Issue:		Payment Due Date:	
MSA File Number:		<b>Specified Penalty Amount:</b>	
Market Participant Name:			
Asset ID (if applicable):		Self Report	<input type="checkbox"/> YES <input type="checkbox"/> NO
ISO Rule:		Date of Contravention:	
Date of Referral/Self Report:		This is the XX contravention by this asset for this rule within a rolling 12 month period.	
EVENT DETAILS			
FINDINGS			
Based upon the information obtained by the MSA, the MSA is satisfied that the event was a contravention of ISO rule XX.			
MATERIAL FACTS			
The material facts relied upon by the MSA include the following:			
1.			
DELIVERY OF PAYMENT			
Payment by cheque or certified funds is to be made out to the "General Revenue Fund c/o Minister of Finance", and delivered to the Alberta Utilities Commission (AUC) at: 4th Floor, 425 - 1st Street S.W., Calgary, Alberta, T2P 3L8. Questions in respect of delivery of payment should be addressed to the Director of Finance, AUC. The payment should reference this notice and related MSA File #. Delivery of payment should also be confirmed by email to <a href="mailto:compliance@albertamsa.ca">compliance@albertamsa.ca</a> , with copy to the following AUC personnel: Sabi Ghavami (Director, Finance) <a href="mailto:sabi.ghavami@auc.ab.ca">sabi.ghavami@auc.ab.ca</a> , and Darin Lowther (Director, Market Rules) <a href="mailto:darin.lowther@auc.ab.ca">darin.lowther@auc.ab.ca</a> .			
NOTICE			
The Market Surveillance Administrator (MSA) is granted the power and authority under s. 52 of the <i>Alberta Utilities Commission Act</i> to issue a Notice of Specified Penalty where the MSA is satisfied that a person has contravened an ISO rule. Specified penalties are set out in AUC Rule 019.			
In accordance with the relevant enactments and rules, a dispute regarding the issuance of a Notice of Specified Penalty or failure to pay the specified penalty in accordance with this notice will result in a hearing or other proceeding before the AUC.			
In accordance with s. 5(1) of AUC Rule 019 this Notice of Specified Penalty will be made public no earlier 30 days and no later than 45 days after issuance. The MSA will, if applicable, also post on its website the link to any decision of the AUC respecting the specified penalty.			
If your organization disputes the issuance of this Notice of Specified Penalty, or if you have any other questions or comments regarding this matter, please contact the MSA compliance team at <a href="mailto:compliance@albertamsa.ca">compliance@albertamsa.ca</a> .			
SIGNATURE			
Signature:		Signature Date:	
Name:		Title:	

## Appendix C: Reliability Standards Self-Reporting Form

RELIABILITY STANDARDS SELF-REPORTING FORM			
Submission Date:			
MARKET PARTICIPANT INFORMATION			
Registered Entity Name:		Name of the Senior Executive of the Business Unit:	
Registered Entity Contact Name:		Title of the Senior Executive of the Business Unit:	
Contact Phone Number:		Email of the Senior Executive of the Business Unit:	
Contact Email:		Registered Entity Address:	
Do you have a compliance program in place?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
CONTRAVENTION INFORMATION			
Date of Contravention:		Is this Contravention Still Occurring?	<input type="checkbox"/> YES <input type="checkbox"/> NO
Standard Number:		Requirement:	
Is there a mitigation plan already in place for this standard?	<input type="checkbox"/> YES <input type="checkbox"/> NO	Attachments included:	<input type="checkbox"/> YES <input type="checkbox"/> NO
To the best of your knowledge, indicate the potential impact to the Bulk Power System:		<input type="checkbox"/> Minimal <input type="checkbox"/> Moderate <input type="checkbox"/> Severe	
Describe the contravention, including time and duration:			
To the best of your knowledge, describe the reliability impact of this contravention:			
Provide any other information that you consider to be relevant, including any mitigating circumstances:			
SIGNATURES			
<i>I acknowledge that this contravention did occur.</i>			
Signature:		Signature Date:	
Name:		Title:	
<i>I acknowledge that the above stated facts are true.</i>			
Signature:		Signature Date:	
Name:		Title:	

## Appendix D: Notice of Specified Penalty (Reliability Standards)

<b>NOTICE OF SPECIFIED PENALTY</b>			
Date of Issue:		Payment Due Date:	
MSA File Number:		<b>Specified Penalty Amount:</b>	
Registered Entity Name:			
Reliability Standard :		Self Report	<input type="checkbox"/> YES <input type="checkbox"/> NO
Requirement:		Date of Contravention:	
Date of Referral/Self Report:		This is the _____ contravention by this asset for this rule with a rolling 12 month period.	
<b>EVENT DETAILS</b>			
<b>FINDINGS</b>			
Based upon the information obtained by the MSA, the MSA is satisfied that the event was a contravention of Reliability Standard _____, requirement _____.			
<b>MATERIAL FACTS</b>			
The material facts relied upon by the MSA include the following:			
1.			
2.			
<b>DELIVERY OF PAYMENT</b>			
Payment by cheque or certified funds is to be made out to the "General Revenue Fund c/o Minister of Finance", and delivered to the Alberta Utilities Commission (AUC) at: 4th Floor, 425 - 1st Street S.W., Calgary, Alberta, T2P 3L8. Questions in respect of delivery of payment should be addressed to the Director of Finance, AUC. The payment should reference this notice and related MSA File #. Delivery of payment should also be confirmed by email to <a href="mailto:compliance@albertamsa.ca">compliance@albertamsa.ca</a> , with copy to the following AUC personnel: Cora Anderson <a href="mailto:cora.anderson@auc.ab.ca">cora.anderson@auc.ab.ca</a> , Sabi Ghavami (Director, Finance) <a href="mailto:sabi.ghavami@auc.ab.ca">sabi.ghavami@auc.ab.ca</a> , and Darin Lowther (Director, Market Rules) <a href="mailto:darin.lowther@auc.ab.ca">darin.lowther@auc.ab.ca</a> .			
<b>NOTICE</b>			
The Market Surveillance Administrator (MSA) is granted the power and authority under s. 52 of the <i>Alberta Utilities Commission Act</i> to issue a Notice of Specified Penalty where the MSA is satisfied that a person has contravened a reliability standard. Specified penalties are set out in AUC Rule 027.			
In accordance with the relevant enactments and rules, a dispute regarding the issuance of a Notice of Specified Penalty or failure to pay the specified penalty in accordance with this notice will result in a hearing or other proceeding before the AUC.			
In accordance with s. 5(1) of AUC Rule 027 this Notice of Specified Penalty will be made public no earlier than 30 days and no later than 45 days after issuance. The MSA will, if applicable, also post on its website the link to any decision of the AUC respecting the specified penalty.			
If your organization disputes the issuance of this Notice of Specified Penalty, or if you have any other questions or comments regarding this matter, please contact the MSA compliance team at <a href="mailto:compliance@albertamsa.ca">compliance@albertamsa.ca</a> .			
<b>SIGNATURE</b>			
Signature:		Signature Date:	
Name:		Title:	

## Appendix E: Mitigation Plan Submittal Form

MITIGATION PLAN SUBMITTAL FORM																					
Submission Date:		<input type="checkbox"/> New or <input type="checkbox"/> Revised																			
If this Mitigation Plan has already been completed check this box: <input type="checkbox"/>		Completion Date: (if applicable)																			
SECTION A: MARKET PARTICIPANT INFORMATION																					
Registered Entity Name:		Contact Phone Number:																			
Registered Entity Contact Person :		Contact Email:																			
Title of Contact:																					
SECTION B: RELIABILITY STANDARD VIOLATION INFORMATION																					
This Mitigation Plan is associated with the alleged or confirmed violation(s) of the reliability standard/requirement(s) listed below:																					
Standard Number: (e.g. FAC-001_AB-0)]																					
Requirement:																					
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Requirement Violated</th> <th style="width: 33%;">Violation Date (*)</th> <th style="width: 34%;">Method of Detection (i.e. audit, self-report, investigation)</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>				Requirement Violated	Violation Date (*)	Method of Detection (i.e. audit, self-report, investigation)															
Requirement Violated	Violation Date (*)	Method of Detection (i.e. audit, self-report, investigation)																			
(*) Note: The Violation Date shall be: (i) the date of the contravention occurred or began.																					
Describe the contravention, including time, duration and cause:																					
Provide any other information that you consider to be relevant regarding the alleged or confirmed violations associated with this Mitigation Plan:																					
SECTION C: MITIGATION PLAN CONTENTS																					
Identify and describe the action plan, including specific tasks and actions that your organization is proposing to undertake, or which it undertook if this Mitigation plan has already been completed, to correct the violations identified in Part B of this form:																					
<b>***If this plan has already been completed please proceed to Part F of this form***</b>																					
SECTION D: MITIGATION PLAN TIMELINE AND MILESTONES																					
Provide the timetable for completion of the Mitigation Plan, including the completion date by which the Mitigation Plan will be fully implemented and the violations associated with this Mitigation Plan are corrected:																					

## MITIGATION PLAN SUBMITTAL FORM

Enter Milestone Activities, with the completion dates, that your organization is proposing for this Mitigation Plan:

Milestone Activity	Proposed Completion Date*

(\* ) Implementation milestones should be no more than three months apart for Mitigation Plans with expected completion dates more than three months from the date of submission.

Provide any other relevant additional information that you wish to include regarding the Mitigation Plan, milestones, milestone dates and the completion date proposed above:

### SECTION E: INTERIM AND FUTURE RELIABILITY RISKS

While your organization is implementing the proposed Mitigation Plan, the reliability of the Bulk Power System may remain at higher risk or be otherwise negatively impacted until the plan is successfully completed. To the extent they are known, reasonably suspected or anticipated: (i) identify any such risks or impacts; and (ii) discuss any actions that your organization is planning to take or is proposing as part of the Mitigation Plan to mitigate any increased risk to the reliability of the bulk power system while the Mitigation Pan is being implemented:

### SECTION F: FUTURE RELIABILITY RISKS

Describe how successful completion of this Mitigation Plan has or will prevent or minimize the probability that your organization will incur further violations of the same or similar reliability standards requirements in the future:

Your organization may be taking or planning other action, beyond that listed in the Mitigation Plan, to prevent or minimize the probability of incurring further violations of the same or similar standards requirements listed in Part B, or of other reliability standards. If so, identify and describe any such action, including milestones and completion dates:

### SECTION G: ADDITIONAL INFORMATION AND ATTACHEMENTS

Additional detailed information may be provided as an attachment for any of the above sections. Please check whether or not any attachments have been included:

YES     NO

Please provide any other additional comments or relevant information not previously addressed in this form:

### SECTION H: AUTHORIZATION

An authorized individual must sign and date this Mitigation Plan Submittal Form. By doing so, this individual, on behalf of your organization:

- a) Submits the Mitigation Plan, as laid out in this form, to the MSA for acceptance, and
- b) If applicable, certifies that the Mitigation Plan, as laid out in this form, was completed on or before the date provided as the 'Date of Completion of the Mitigation Plan; on this form, and
- c) Acknowledges
  - 1. I am [Title] of [Organization] .
  - 2. I am qualified to sign this Mitigation Plan on behalf of [Organization].
  - 3. I have read understand [Organization] obligations to comply with the Mitigation Plan's requirements as well as but not limited to, the Compliance Monitoring and Enforcement Program.
  - 4. I have read and am familiar with the contents of the foregoing Mitigation plan.
  - 5. [Organization] agrees to be bound by, and comply with the Mitigation Plan, including the timetable completion date, as approved by the MSA.

**MITIGATION PLAN SUBMITTAL FORM**

Authorized Signature: (Electronic Signatures are accepted)			
Name:			
Title:		Date:	

## Appendix F: Milestone Update Form

MILESTONE UPDATE FORM			
Submission Date:			
REGISTERED ENTITY INFORMATION			
Registered Entity Name:		Contact Phone Number:	
Registered Entity Contact Name:		Contact Email:	
MITIGATION PLAN / MILESTONE INFORMATION			
Standard Number:		Date Original Mitigation Plan was Accepted:	
Requirement Number(s)		Date Original Mitigation Plan was Scheduled to be Complete:	
Please Provide details of the milestone activity and the progress that has been made.			
Milestone Activity	Milestone Progress Notes	Milestones Completion Date	
(*)Note: Implementation milestones no more than three (3) months apart are permissible only for Mitigation Plans with expected completion dates more than three (3) months from the date of submission. Additional contraventions could be determined for not completing work associated with accepted milestones.			
Additional detailed information may be provided as an attachment as necessary. <input type="checkbox"/> YES <input type="checkbox"/> NO			
Additional Comments:			
SIGNATURES			
<i>I acknowledge that this contravention did occur and the above stated facts are true.</i>		Signature Date:	
Signature:		Title:	
Name:			

## Appendix G: Mitigation Plan Completion Form

MITIGATION PLAN COMPLETION FORM			
Upon completing implementation of the Mitigation Plan, the registered entity must provide attestation to the MSA that all required actions described in the Mitigation Plan have been completed.			
Submission Date:			
REGISTERED ENTITY INFORMATION			
Registered Entity Name:		Contact Phone Number:	
Registered Entity Contact Name:		Contact Email:	
MITIGATION PLAN DETAILS			
Standard Number:		Date Mitigation Plan was scheduled to be completed:	
Requirement Number(s)		Date Mitigation Plan was actually completed:	
Additional Comments:			
SIGNATURES			
<i>I affirm that the Mitigation Plan for the above named violation has been completed on the date shown above and that all submitted information is complete and correct to the best of my knowledge.</i>			
Signature:		Signature Date:	
Name:		Title:	

## Appendix H: Mitigation Plan Extension Request Form

MITIGATION PLAN EXTENSION REQUEST FORM			
Submission Date:			
REGISTERED ENTITY INFORMATION			
Registered Entity Name:		Contact Phone Number:	
Registered Entity Contact Name:		Contact Email:	
MITIGATION PLAN INFORMATION			
Standard Number:		Date Original Mitigation Plan was Accepted:	
Requirement Number(s)		Date Original Mitigation Plan was Scheduled to be Complete:	
EXTENSION REQUEST REQUIREMENTS			
Identify the reason an extension is being requested:			
Provide detailed information as to why the original completion date will not be met:			
Check box to confirm that the original mitigation plan is attached <input type="checkbox"/>			
SIGNATURES			
<i>I acknowledge that this contravention did occur and the above stated facts are true.</i>		Signature Date:	
Signature:		Title:	
Name:			

## Appendix I: Rules Relevant to MSA Enforcement Processes

The MSA's compliance enforcement processes interrelate with certain other current and pending statutes. These are as follows:

### **AUC rule 013 - Rules on Criteria Relating to the Imposition of Administrative Penalties**

AUC rule 013 outlines specific criteria considered by the AUC considers in its assessment of matters brought forward to it for consideration and subject to administrative penalty. Rule 013 includes both aggravating and mitigating factors that are considered in this process. The MSA looks to rule 013 for general guidance and principles in its enforcement activities.

### **AUC rule 015 - Rules on Costs of Investigations, Hearings, or Other Proceedings Related to Contraventions**

AUC rule 015 provides guidelines on recovery of costs in respect of a hearing or other proceeding. The MSA may in certain circumstances file an application with the AUC pursuant to recovery of its costs in an enforcement hearing or other proceeding.

### **AUC rule 019 - Specified Penalties for Contravention of ISO Rules**

AUC rule 019 provides direction to the MSA and to market participants in respect of the issuance of specified penalties for contravention of ISO rules. Rule 019 defines specific categories of ISO rules and the applicable specified penalties for their contravention. With respect to participants, rule 019 directs how a rule contravention can be self-reported and provides an incentive to do so.

### **AUC rule 027 – Specified Penalties for Contravention of Reliability Standards**

AUC rule 027 was approved on October 5, 2010 to be effective on November 1, 2010. Rule 027 is analogous to rule 019 and applies to the MSA's mandate of enforcement regarding compliance with the Alberta Reliability Standards. Rule 027 defines specific categories of Alberta Reliability Standards and the applicable specified penalties for their contravention.

### **ISO rule 12 – ISO Compliance Monitoring**

ISO rule 12 describes the processes and principles guiding the AESO in monitoring the compliance of participants with applicable rules and standards.

## References

### Statutes and Regulations

Alberta Electric Utilities Act, Chapter E-5.1 (2003)

[http://www.qp.alberta.ca/574.cfm?page=E05P1.cfm&leg\\_type=Acts&isbncln=9780779747542](http://www.qp.alberta.ca/574.cfm?page=E05P1.cfm&leg_type=Acts&isbncln=9780779747542)

Alberta Utilities Commission Act, Chapter A-37.2 (2007)

[http://www.qp.alberta.ca/574.cfm?page=A37P2.cfm&leg\\_type=Acts&isbncln=9780779747580](http://www.qp.alberta.ca/574.cfm?page=A37P2.cfm&leg_type=Acts&isbncln=9780779747580)

Electric Statutes Amendment Act (2009)

[http://www.qp.alberta.ca/546.cfm?page=CH44\\_09.CFM&leg\\_type=fall](http://www.qp.alberta.ca/546.cfm?page=CH44_09.CFM&leg_type=fall)

Transmission Regulation AR 86 (2007)

[http://www.qp.alberta.ca/574.cfm?page=2007\\_086.cfm&leg\\_type=Regs&isbncln=9780779749461](http://www.qp.alberta.ca/574.cfm?page=2007_086.cfm&leg_type=Regs&isbncln=9780779749461)

### Alberta Utilities Commission

AUC Rules

<http://www.auc.ab.ca/acts-regulations-and-auc-rules/rules/Pages/default.aspx>

### Alberta Electric System Operator

Market Participation Rules

[http://www.aeso.ca/downloads/Part Two - ISO Rules - September 16 2010.pdf](http://www.aeso.ca/downloads/Part%20Two%20-%20ISO%20Rules%20-%20September%2016%202010.pdf)

Alberta Reliability Standards

<http://www.aeso.ca/rulesprocedures/17006.html>

Alberta Reliability Standards Compliance Monitoring Program

[http://www.aeso.ca/downloads/ARS\\_CMP\\_Final\\_v1\\_0.pdf](http://www.aeso.ca/downloads/ARS_CMP_Final_v1_0.pdf)

WECC – AESO Membership and Operating Agreement

<http://www.auc.ab.ca/applications/orders/utility-orders/Utility%20Orders/2008/U2008-261.pdf>

<http://www.auc.ab.ca/applications/decisions/Decisions/2010/2010-152.pdf>

### Market Surveillance Administrator

MSA – WECC Service Level Agreement

[http://albertamsa.ca/uploads/pdf/Archive/Services\\_Agreement\\_MSA-WECC\\_041910.pdf](http://albertamsa.ca/uploads/pdf/Archive/Services_Agreement_MSA-WECC_041910.pdf)





The Market Surveillance Administrator is an independent enforcement agency that protects and promotes the fair, efficient and openly competitive operation of Alberta's wholesale electricity markets and its retail electricity and natural gas markets. The MSA also works to ensure that market participants comply with the Alberta Reliability Standards and the Independent System Operator's rules.

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