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MSA REPORT

Compliance Review 2009

29 January, 2010

MARKET SURVEILLANCE
ADMINISTRATOR

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1 INTRODUCTION

Since January 1, 2008 the MSA has been actively involved in the enforcement of ISO rules. This review provides a summary of our activities during 2009, complementing the updates provided in our Quarterly Reports. Some market participants have raised questions around the time taken for matters to reach resolution. With this in mind we provide a variety of statistics and commentary. The MSA appreciates that early identification of a problem allows market participants to take corrective action as soon as possible. The review includes a number of suggested efficiency enhancements and the MSA is interested in hearing the suggestions of market participants.

Looking forward, 2010 promises to be a year of change. With the passing of the *Electric Statutes Amendment Act* the MSA's enforcement responsibilities are expanded to include Alberta reliability standards. This review doesn't directly address how the MSA will undertake activities related to reliability standards although that does serve as driver to find new efficiencies within our activities around ISO rules. The MSA expects to release a separate communication around reliability standards in the next few weeks.

The remainder of this document is structured such that:

- Section 2 provides a review of compliance related activities in 2009, including a variety of statistics on the disposition, timeliness and details on emerged trends.
- Section 3 looks forward to 2010. This section provides a brief outline of the expected focus of ISO rules compliance in 2010. The MSA is also considering a number of efficiency enhancements to its process. The most significant of these would be a different approach to self reports, such that self reports meeting certain criteria would lead to forbearance.
- Section 4 considers two questions raised by a number of participants during the year. Firstly, providing some advice on participants seeking to develop or enhance a formal compliance program. Secondly, we provide some comment around the relationship between ISO rules and IT systems.
- Section 5 provides a summary of the comment sought from market participants on the preceding sections.

2 ISO RULES COMPLIANCE IN 2009

At the beginning of 2009 the MSA had 8 files under review that had carried over from 2008. During 2009 an additional 100 files were opened and 7 remain under review at the end of the year. Of the 101 files addressed during 2009, 57 resulted in notices of specified penalty and 35 files resulting in forbearance or a finding of no breach. For the remaining 9 files the MSA's compliance team has completed its review with the recommendation that these matters be pursued for

administrative penalties pursuant to Section 51 of the *Alberta Utilities Commission Act* (AUCA) (see Section 2.3 for further details)¹.

For comparison purposes, of the 63 files addressed in 2008, 21 files resulted in a sanction pursuant to AUC Rule 019 (7 of which were a Notice of Specified Penalty involving a financial penalty, 5 were a Non-Compliance Letter and 9 were a Warning Letter), with the remaining 42 resulting in forbearance or a finding of no breach. As noted in the MSA's 2008 Year in Review, some forbearance in 2008 related to new rules implemented as part of the 'Quick Hits' rules package.²

Figure 1 provides a summary of the MSA's ISO rules compliance activities during 2008 and 2009. For 2008 we show the breakdown of sanctions between Notices of Specified Penalty involving a financial penalty, a Non-Compliance Letters and Warning Letters.

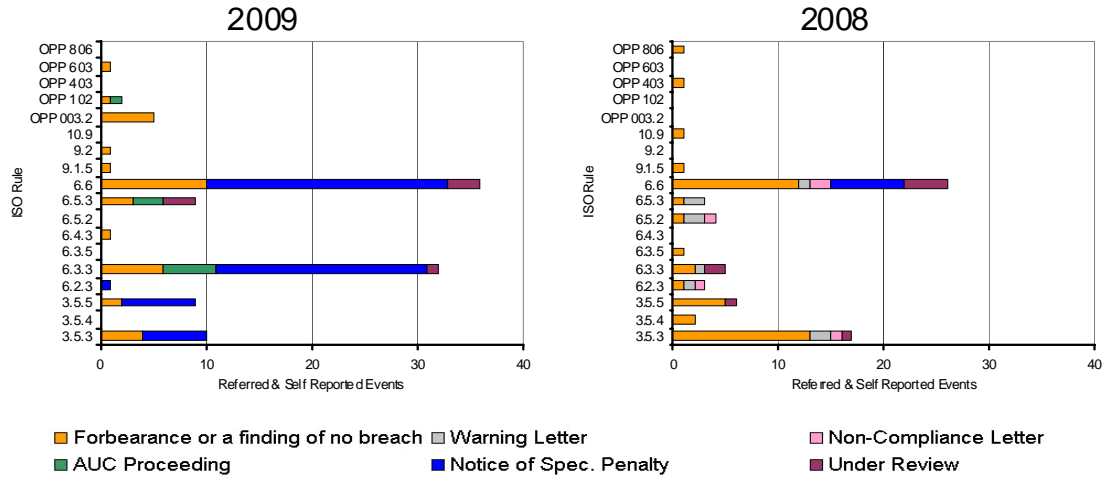
The monitoring of ISO rules continues to be a collaborative process between the AESO and the MSA. Though the MSA does receive potential ISO rule breaches through self reporting, the majority of potential ISO rule breaches are referred to the MSA from the AESO. The MSA may also identify and pursue rule contraventions from its own internal market monitoring activities but this is not a path the MSA pursues frequently.

Market participants should be aware that some statistical differences will result from the different ways the AESO and MSA track compliance matters and construct compliance metrics that are not solely due to the existence of self reports. When the MSA receives a referral or a self report the MSA assigns a file number. A single referral or self report may include a number of suspected contraventions. Should a referral / self report result in more than one contravention being assessed the MSA will assign a separate file number for each (for use on the applicable notice of specified penalty). Usually, however, a referral / self report that refers to a number of suspected contraventions and results in forbearance or a finding of no breach for all contraventions is categorized as a single file.

¹ The MSA can only pursue a matter for specified penalty if the Commission has prescribed a penalty that rule contravention in accordance with Section 52(7) of the AUCA. The MSA may choose to pursue any matter, including those eligible for specified penalty, under Section 51 of the AUCA including seeking an administrative penalty or other order in accordance with Section 63 of AUCA.

² p.37 [http://www.albertamsa.ca/files/2008_Year_in_Review_amended_140509\(1\).pdf](http://www.albertamsa.ca/files/2008_Year_in_Review_amended_140509(1).pdf)

Figure 1: Compliance Files by ISO rule as of the end 2009 and 2008



2.1 Specified Penalties in 2009

Table 1 provides additional details for each notice of specified penalty issued. As of the end of December 2009, all 57 notices had been paid (totaling \$149,000) and no notices had been disputed. As per 5(1) of AUC Rule 019, notices of specified penalty issued prior to July 1, 2009 were not made public; therefore some details of these contraventions have been omitted.

Table 1: Notices of Specified Penalty Issued in 2009

Pre July 1, 2009

Market Participant	Rule	Number of Breaches	Total Specified Penalties
All Participants	6.6	11	\$ 57,000
	3.5.3	2	\$ 1,000
	6.2.3	1	\$ 500
	6.3.3	2	\$ 500
Total		16	\$ 59,000

Post July 1, 2009

Market Participant	Rule	Number of Breaches	Total Specified Penalties
Alberta Pacific Forest Ind. Inc.	3.5.3	1	\$ 500
ASTC Power Partnership	3.5.3	2	\$ 1,500
Canadian Gas & Electric Inc.	6.6	1	\$ 2,500
Cargill Energy Trading Canada	6.3.3	1	\$ 500
City of Medicine Hat	6.6	1	\$ 1,500
EnCana Corporation	6.6	2	\$ 12,500
ENMAX PPA Management Inc.	6.6	1	\$ 5,000
Grand Prairie Generation Inc.	6.6	1	\$ 500
Manitoba Hydro	6.3.3	9	\$ 15,000
Nexen Inc. / EnCana Corporation	3.5.5	7	\$ 10,000
Powerex Corp.	6.3.3	5	\$ 5,000
Suncor Energy Inc.	6.6	3	\$ 5,000
Syncrude Canada Ltd.	6.6	2	\$ 15,000
TransAlta Energy Marketing Corp.	6.3.3	3	\$ 3,000
TransCanada Energy Ltd.	6.6	2	\$ 12,500
Total		41	\$ 90,000

2.1.1 Timeliness of 2009 Compliance Activities

Potential breaches of ISO rules follow the MSA's expedited process as long as the ISO rule has a specified penalty in AUC's Rule 019.³ Rules without specified penalties or matters the MSA believes should be dealt with as administrative penalties, follow a difference process as described in Section 2.3.

Within 2009, for those matters following the expedited process for specified penalties, the processing of a suspected breach concluded on average within 133 days (date of the event to the date of letter issuance of either a specified penalty or a forbearance letter). That total is broken down into an average of approximately 83 days from the date of the event to the date of referral (or date of self report) and 50 days from the time the MSA received a referral (or self report) to the date of issuance.

³ Appendix A of the MSA's *Investigation Procedures* contains a detailed description of this expedited process. http://www.albertamsa.ca/files/MSA_Investigation_Procedures_07-09-08.pdf

The difference between the average (mean) and median time for addressing a file is relatively small (133 days vs. 139 days). About 24% of all files are addressed by the MSA within 30 days of receipt.

On average, potential breaches resulting in the issuance of specified penalty letter (140 days) took nearly four weeks longer than those which received a forbearance letter (114). Some of the difference is attributable to the time taken to confirm who a notice of specified penalty should be sent to (whereas forbearance letters are sent simply to a market participant’s main compliance contact).

Table 2 provides a more detailed breakdown of 2009 processing metrics categorized by ISO rule (note only ISO rules eligible for a specified penalty are included). Given the small number instances of potential breaches for some rules during 2009, differences should be interpreted with caution. The MSA does believe there are significant learning economies for complex rules (i.e. the typical processing time for the MSA diminishes the more breaches we see of a given type) but this is not obvious even in the disaggregated statistics presented below.⁴

Table 2: Timeliness of Compliance Events in Average Days

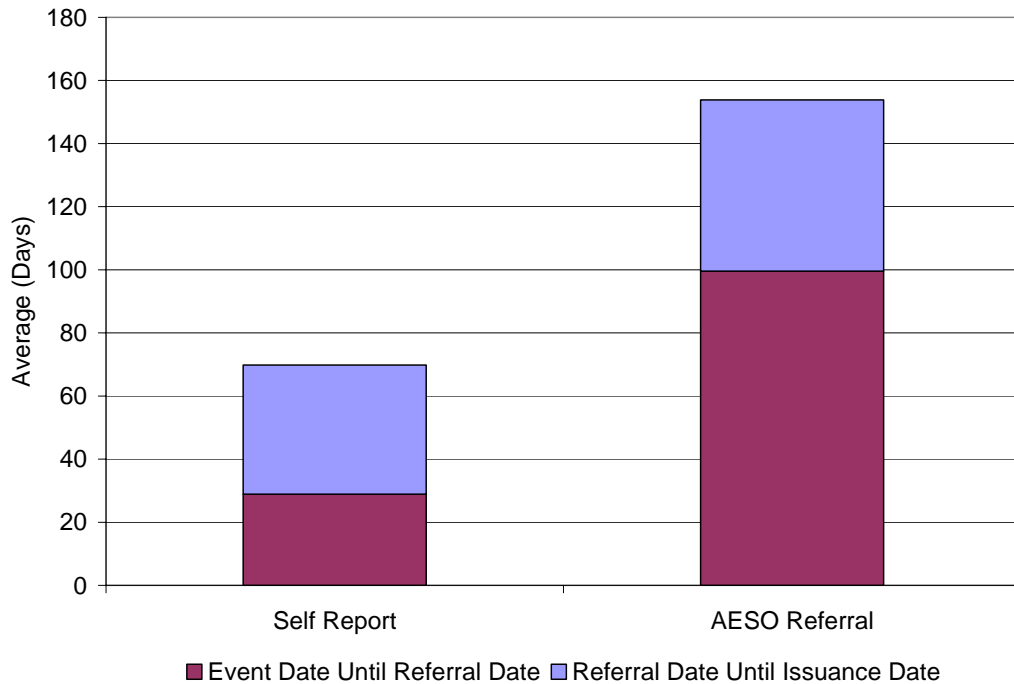
	Event Date to Referral Date [A]			Referral Date to Issuance Date [B]			Event Date to Issuance Date [C] = [A] + [B]		
	NSP	Forbearance	All files	NSP	Forbearance	All files	NSP	Forbearance	All files
3.5.3	93.6	115.3	103.2	60.6	35.0	49.2	154.2	150.3	152.4
3.5.5	97.6	25.0	81.4	70.0	31.0	61.3	167.6	56.0	142.8
6.2.3	51.0	N/A	51.0	22.0	N/A	22.0	73.0	N/A	73.0
6.3.3	75.6	56.8	71.3	72.5	28.2	62.3	148.1	85.0	133.5
6.6	83.5	95.6	87.1	40.6	32.7	38.3	124.1	128.3	125.4
Average	82.8	82.2	82.6	56.8	45.6	49.8	139.6	113.9	132.5

The figures above include both referrals made to the MSA by the AESO and self reports received directly from market participants. Of the 20 self reports processed in 2009, 18 followed the expedited process for rules eligible for specified penalty (7 resulting in a forbearance letter and 11 resulting in a notice of specified penalty). Self reports were much more timely. The average length of time for the file to be received by the MSA after the date of contravention was 29 days for a self report as opposed to 100 days for a referral from the AESO (all files averaged approximately 83 days as per Table 2).⁵ This difference is mainly due to the information request and response process that is a standard practice of the AESO prior to referring any matter to the MSA. Self reports also took, on average, less time for the MSA to process. A comparison is shown in Figure 2.

⁴ In many cases it is possible to breach a single rule in a number of different ways. Learning economies are only experienced if the referrals / self reports received all confirm to a similar type of breach. For an example see Section 2.2.1 on ISO rule 6.3.3.

⁵ The AESO referral process includes a number of steps that arise from the AESO’s compliance process (defined in ISO Rule 12) that are not part of a self report. This typically includes an initial screening process, preliminary assessment and time for information request and response. For further information on timelines see ISO rule 12.6.1.

Figure 2: Timeliness of Self Reports Compared with ASEO Referrals



The MSA is interested in market participants’ feedback on timeliness. Faster processing of matters, without a reduction in diligence, seems desirable for market participants such that problems can be identified early and corrective action taken before multiple breaches occur. The speed with which the MSA can address matters is dependent on the resources employed, the complexity of the potential breaches and the process followed. The MSA believes some improvements can be made to reduce processing times and the resource employed – some suggestions are given in Section 3.1.

2.2 Emerged Trends

Over three quarters of the notices of specified penalty issued in 2009 concerned two ISO rules: rule 6.6, and rule 6.3.3. Given this we think it appropriate to provide some further insights on the types of contravention seen in these two areas.

2.2.1 ISO rule 6.3.3

ISO rule 6.3.3 *Interconnection Dispatching* describes the rules importers and exporters must follow when scheduling and offering an import / export. Within 2009 the MSA received a total of 30 referrals and self reports involving ISO rule 6.3.3. Contraventions typically followed one of three fact patterns:

- The e-tag quantities do not correspond to the AC declared at T-2 for the import or export asset.
- The AC is restated up in volume within T-2 without direction from the system controller.

- The AC is restated down within T-2 without an acceptable operation reason.

2.2.2 ISO rule 6.6

ISO rule 6.6 *Pool Participant Non-Compliance with Energy Market Dispatches* was revised during 2009. The new rule, effective September 1, 2009, added some complexity to compliance monitoring, adding at least initially, to the time taken to consider potential breaches. To help expedite the compliance process involving rule 6.6, the AESO, within its initial information request, asks market participants to identify any mitigating factors that may apply to potential breaches of this rule and also to bring forth any exceptions as listed within Section 6.6.5 of ISO rule 6.6.

As of the end of 2009, four potential breaches occurring post September 1, 2009 of ISO rule 6.6, had been brought to the MSA's attention. One event received a forbearance letter while the other three events were among the open files carried over into 2010. Based on the four files reviewed to date the MSA has seen examples where suspected breaches have occurred in not moving towards the new dispatch level within 10 minutes (rule 6.6.3), not generating within the allowable dispatch variance (ADV) in steady state (6.6.2) and not ramping with the required parameters (rule 6.6.3).

2.3 Administrative Penalties in 2009

In the MSA's 2009 Q2 Report we noted that some matters related to ISO rules compliance may be resolved not through a specified penalty (Section 52 of the AUCA) but rather through an administrative penalty (Section 51). At the time we noted this would be the case should the MSA pursue a rule breach for which there was no specified penalty in AUC Rule 019 and in cases where other circumstances indicated an administrative penalty may be appropriate.⁶

During 2009 the MSA has pursued five matters (representing 9 files) related to ISO rules compliance under Section 51 of the AUCA. In each case the MSA has followed a more rigorous expanded process as described in our Q2 Report. Note that the pursuit of an administrative penalty does not necessarily mean the MSA is pursuing a financial penalty larger than the range set out in AUC Rule 019. Relative to matters pursued under specified penalties, all Section 51 related files have proceeded slowly. This is due both to the time taken in the expanded process and in filing settlements or applications for an administrative penalty:

- **Expanded Process** – The expedited process set out in Appendix A of the MSA Investigation Procedures only applies to ISO rule breaches that lead to a specified penalty. The process used for all administrative matters follows our general *MSA Investigation Procedures* and provides opportunities to discuss the process, meet with the MSA and review our facts and findings prior to a final determination as to whether the MSA is

⁶ These other circumstances include: instances where a large number of breaches have occurred, instances where the market participant derived economic gain, and/ or instances where material harm was caused to other market participants.

satisfied a contravention has occurred. With the limited number of files considered to date following that process has taken approximately 4 months from the time of referral to the time a decision is reached to pursue a penalty. In one case, where it became clear forbearance was appropriate the process was concluded more rapidly.

- **Filing of a Settlement or Application for an Administrative Penalty** – Where the MSA is satisfied a contravention has occurred, it has been our practice to consider before filing with the Commission whether the participant is interested in a settlement rather than a contested hearing. The MSA may negotiate settlements under Section 44 of the AUCA and such settlements must be filed with and approved by the Commission. Resolution through settlement and preparation of materials in a form suitable for filing with the Commission has been particularly time consuming. In preparation of settlement agreements the MSA has been receptive to participants' general preference that they are made on a 'without-prejudice' basis, i.e. if the settlement is not approved by the Commission neither party is bound by the materials filed as part of the settlement agreement. In practice this might require that a portion of the materials filed with the Commission related to the settlement should remain confidential (with the expectation that they would be made public should the settlement be approved). Consequently, at the current time we do not have a reliable estimate of how long this stage would typically take. However, we also note that future settlements should proceed more quickly as related procedural matters are resolved by the earlier filings.

To improve efficiency the MSA would prefer that all rules are eligible for specified penalties. Our experience suggests that the process for specified penalties will almost always lead to a quicker resolution. For what we hope are the relatively few compliance matters that warrant resolution through administrative penalty, some improvements are possible. This would include consulting on the current expanded process we have used with a view to incorporating it in the MSA Investigation Procedures.

3 ISO RULES COMPLIANCE IN 2010

In 2010 the MSA will continue to address all matters referred by the AESO or self reported by market participants. Beyond this the MSA continues to support active monitoring across a wider range of ISO rules. *Section 3 - Offer, Bids, Ancillary Services & Asset Declarations* and *Section 6 - Dispatch & Directives* of the ISO rules currently generate a large number of referrals. During 2010 the MSA hopes to examine these sections in detail to ensure appropriate coverage for all subsections in these areas. In addition the MSA expects that, with increased transmission build occurring across the province, a greater focus will fall upon *Section 9 – Transmission*, particularly ISO rule 9.1.5 *Project Procurement*. Beyond these areas, and should resources allow, the MSA sees merit in examining (or re-examining) monitoring for all rules as they pass through the AESO's Transition of Authoritative Documents (TOAD) process.

Based on a review of 2009 the MSA believes that it can make and, where it is not under our control, advocate for a number of enhancements that would enable matters to be dealt with as swiftly and efficiently as possible. Achieving additional efficiencies in 2010 is necessary for the MSA to be able to absorb the additional responsibilities associated with enforcement of reliability standards without recruiting new staff.⁷ The MSA is considering:

- **Internal efficiency enhancements through MSA process changes:** Section 3.1 lists a number of enhancements that will be visible and impact market participants. We ask for feedback on these proposals.
- **More explicit incentives for self reporting:** Section 2.1.1 noted that where contraventions are self reported, matters are resolved more quickly and fewer resources expended on compliance. Consequently the MSA is considering a more explicit recognition of the importance of self reporting in the MSA's decision to forbear. Some suggestions for comment are given in Section 3.2.
- **Efficiency enhancements for Specified Penalties:** A number of enhancements may be possible with some amendment to AUC Rule 019 and we list a number of possibilities in Section 3.3. The MSA notes that on January 27, 2009 the AUC started a consultation on proposed changes to AUC Rule 019, some of which would, in the MSA's view, enhance process efficiency.⁸

Comments on the proposals are welcome. The MSA is not intending to conduct a formal stakeholder consultation at this time but feedback can be given informally to Matt Ayres (email: matt.ayres@albertamsa.ca, phone: 403-705-3182) or through our compliance mailbox (compliance@albertamsa.ca). The MSA will provide an update on how it intends to proceed on internal process changes in early March.

3.1 Internal efficiency enhancements through MSA process changes

The changes under consideration are:

- **Moving to email only Notices of Specified Penalty (NSP's)** – currently the MSA sends NSP's via courier or regular mail to the main addressees. A copy is also sent via email to the main addresses, AUC staff and other personnel at the market participant that are required to be copied on the notice or have requested that we do so. In contrast, where the MSA has closed the file without issuing an NSP (e.g. forbearance), letters are sent only by email. The MSA is considering moving to email only notices for all communications relating to specified penalties.
- **Modifying regular reporting metrics** – Throughout 2009 the MSA has been publishing in its Quarterly Reports some metrics related to files currently under review and files that have been concluded. Quarterly

⁷ See http://www.albertamsa.ca/files/MSA_Notice_2010_Budget.pdf

⁸ See <http://www.auc.ab.ca/news-room/bulletins/Bulletins/2010/Bulletin%202010-05.pdf>

Reports have also included a section on ‘emerging compliance trends’ to alert market participants to the type of behaviour that are being referred to us as suspected contraventions. In addition, since July 1 all NSP’s have been posted to the MSA’s website. The MSA has received some limited feedback that additional metrics would be useful and have provided a variety in Section 2. The MSA is interested in feedback on what information would be helpful in the future.

- **Modifying the format of Notices of Specified Penalty** – the MSA currently uses a letter format for communicating NSP’s. The letters feature a number of information sections that are common across all NSP’s (e.g. where to send payment). The letters also include a person(s) named as the addressee. Since NSP’s are required to be posted to the MSA’s website the names are also posted. The MSA is considering moving to a simpler format separating the information specific to a particular NSP from the general information. In addition we are considering removing the names of the addressee from the NSP (the required persons would receive the notice via email but the notice posted to the MSA’s website would contain no named persons).
- **Market Participant Compliance Contacts** – Currently under AUC Rule 019 the MSA is required to send NSP’s to a variety of persons dependent on the rule contravened and the number of contraventions. In order to confirm we are sending notices to the correct persons we usually have to check with market participants who are the correct contacts. Determining the correct contact is not always straightforward, for example the Senior Business Executive referred to in Category 1 or 2 Penalty Table(s) of AUC Rule 019 may depend on the ISO rule involved. In some cases this apparently simple step has added two weeks to the time taken for the MSA’s compliance team to process a file. Given the current form of AUC Rule 019 the MSA is not contemplating any formal process changes other than noting that some market participants do keep us regularly informed about staff changes and changes in contact details. There is no requirement for market participants to do this but it is helpful. If you wish to submit contact details to the MSA please do so to the MSA’s general compliance mailbox compliance@albertamsa.ca. Provide full name, address and email and job title. If more than one senior business executive is responsible for rules in Category 1, 2 or 3, indicate who is responsible for each.

3.2 More explicit incentives for Self Reporting

During 2009, relatively few matters processed were self reported (20 of 101) with 11 leading to specified penalties and 9 resulting in forbearance or a finding of no breach. The MSA considers a participant’s ability to self report as a positive indication that they have a developed, at least part of, an effective compliance regime. Those factors assist the MSA toward forming an opinion on whether forbearance is warranted in particular circumstances. Similarly, AUC Rule 013

which lists criteria for the imposition of Administrative Penalties indicates the Commission may consider self reporting as a mitigating factor.

As noted in Section 2.1.1, self reported files are typically resolved faster and consume fewer resources both at the AESO and the MSA. Currently, AUC Rule 019 gives a limited incentive to self reports whereby the specified penalty is reduced by 50% but subsequent sanctions are escalated in accordance with the penalty matrix. Some amendment to AUC Rule 019 may give further incentive for self reporting but the MSA believes in any event that a more explicit recognition of the value of self reporting in its decision to forbear may be beneficial and supportive of legislation.

The *Purposes* section of the *Alberta Electric Utilities Act* provides useful guidance:

“5(h) to provide a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.”

The MSA’s forbearance powers are contained in Section 57 of the AUCA and allow conditional or unconditional refrain where the MSA finds competition is sufficient to protect the public interest.

With both of these in mind the MSA proposes the following approach to self reports in relation to ISO rules contraventions.

The MSA proposes that it will use its powers of conditional forbearance in all instances where it is satisfied that:

- The self report contains all information required by AUC Rule 019
- The self report is received within 30 days of the date of the contravention
- The self report occurred prior to being alerted by the AESO or MSA about a suspected contravention
- The self report was sent to compliance@albertamsa.ca
- The participant has a formal compliance program in respect of the relevant ISO rule(s) in place and the self report includes a statement to that effect
- The conduct did not result in material financial gain
- The conduct did not jeopardize the reliability of the Alberta Interconnected Electric System
- The conduct was not intentional
- The conduct is not part of a persistent or recurring problem
- The self report clearly acknowledges the contravention(s) reported

- The self report acknowledges that the MSA may rely upon the statements made therein for the purposes of its assessment of the circumstances and the appropriate action to be taken by the MSA

Should the MSA not be satisfied the above conditions are met it will inform the market participant with 30 days of the receipt of the self report. If 30 days elapse from the date the self report was received by the MSA, without any indication from the MSA about acceptance of the self report, the market participant can assume the self report has been accepted and the MSA has exercised its powers of conditional forbearance. The MSA will track self reports and use this history as a factor in the determination of whether a contravention is part of persistent or recurring problem. The MSA's forbearance is conditional in that, should a persistent or recurring problem result in the MSA making an application for an administrative penalty, the MSA may include prior self reports in that application. To provide transparency to market participants, the MSA will, at least annually, present summary statistics on the self reports received.

3.3 Efficiency enhancements for Specified Penalties

3.3.1 More rules eligible for Specified Penalties

As noted above in Section 2.3 the MSA sees benefit in all ISO rules being eligible for a specified penalty. The MSA's experience suggests that the process for specified penalties will almost always lead to a quicker and more efficient resolution. The existence of a specified penalty for a rule does not limit the MSA's ability to seek a higher financial or other order from the Commission to deal with persistent problems or more serious breaches. On January 27, the AUC proposed including two additional rules in AUC Rule 019.

3.3.2 Simplify counting of contraventions

The AUC Rule 019 requires the counting of contraventions by asset and by market participant, across a number of different dates:

- by issuance date, e.g. AUC Rule 019, 4(2)
- self report date, e.g. AUC Rule 019, 4(3)
- date the MSA first knew of the contravention, e.g. AUC Rule 019, 3(4)(a)
- contravention date, e.g. AUC Rule 019, 1(2), 4(b)

The MSA believes there would be a small gain in efficiency if the need for counting was simplified with a corresponding benefit to the comprehension of the AUC Rule 019. Based on a review of the proposed changes to AUC rule 019 the MSA would no longer be required to count the number of self reports.

3.3.3 Addressee for Notices of Specified Penalty

The current AUC Rule 019 requires notices to be sent to varying persons dependent on the count of contraventions re: Category 1 or 2 Penalty Table, as applicable. For example, a notice of a fourth contravention is sent to the CEO and c.c.'d to the Chairman of the Board. For ISO rules requiring a high frequency of

restatements by market participants it is entirely possible to have four or more contraventions within a single day. In the MSA's view such conduct would not necessarily warrant the attention of such senior officers. From an efficiency point of view the MSA would also gain from having a simplified notification. The MSA's experience is that if a market participant has a designated compliance officer, with appropriate access to senior management and the board, matters are usually effectively dealt with through that channel. The proposed changes to AUC Rule 019 simplify and change the persons who notices of specified penalty would be sent to. The proposals are that notices for the first through third contraventions are sent to the senior executive of the business unit involved and fourth through eighth contraventions to the most senior executive, eliminating the copy sent to the Chairman of the Board.

3.3.4 Posting date of NSP's

AUC Rule 019, Section 5(1) instructs the MSA to make a notice public 30 days after it was issued. Currently the MSA has taken the approach of posting notices on the 30th day with some exceptions (for example where the 30th day falls on a weekend or holiday). Note that the requirements of Rule 019 may mean the 30th day and the date on which the penalty is due (a date not less than 30 days after issuance) are not the same. From the MSA's perspective it would be simpler if notices of specified penalty were posted 'on or after date on which payment of the specified penalty was due'. Based on a review of the proposed changes to AUC Rule 019 the MSA would be required to post no later than 45 days after the notice of specified penalty.

3.3.5 Late payment of Specified Penalties

Section 52(2)(a) of the AUCA instructs the MSA to give written notice to the Commission requesting a hearing if a payment of specified penalty is not made by due date. In one instance, AUC Proceeding 115, the MSA made an application for a consent order with respect to a late payment to recover interest amounting to \$7.45, which was subsequently confirmed in Commission Consent Order M2009-001. Since this requirement is in the AUCA it is unclear whether any changes to AUC Rule 019 would be able to provide a more efficient alternative or incentive for prompt payment. Notwithstanding this it seems appropriate to consider any options, within AUC Rule 019 or otherwise, that might mitigate the need to make an application where the sum to be recovered is trivial and circumstances otherwise warrant that the late payment simply be accepted.

4 OTHER MATTERS RELATED TO ISO RULES COMPLIANCE

4.1 Market participants and the development of a formal compliance program for ISO rules and reliability standards

During the latter part of 2009 the MSA received a number of enquiries from market participants seeking to understand best practices with regard to developing a formal compliance framework relating to ISO rules and Alberta reliability standards. The MSA notes that AUC Rule 013 provides a list of mitigating

factors that may be considered in the event of an administrative penalty. Part of that list provides a useful check as to whether compliance framework and activities are accordant with good practice.

The MSA also notes there is some guidance on the components of a good compliance program outside the Alberta electric industry. The MSA has recommended to a number of participants to consult an Information Bulletin entitled *Corporate Compliance Programs* produced by the Competition Bureau.⁹ Part IV of the Bulletin sets out five basic requirements of a credible and effective corporate compliance program, these are:

- 1) Senior Management Involvement and Support
- 2) Corporate Compliance Policies and Procedures
- 3) Training and Education
- 4) Monitoring, Auditing and Reporting Mechanisms
- 5) Consistent Disciplinary Procedures and Incentives

The Bulletin also includes suggestions on how each of these basic requirements can be met at a practical level.

The MSA is interested in hearing from market participants on other sources they have found useful and how we might support the sharing of best practices across the industry.

4.2 Assisting market participant compliance through AESO IT Systems

A number of self reports and referrals of suspected contraventions of ISO rules relate to co-ordination problems where a market participant is managing multiple offers across different markets. Some participants have suggested that the AESO's IT systems, in particular the Energy Trading System (ETS) and ADAMS (Automatic Dispatch and Messaging System), do not provide as much assistance with compliance efforts as they would like. In other cases some market participants report that *ex post* efforts to uncover the sequence of events around a suspected contravention would be enhanced with additional AESO reporting functionality. The MSA is aware of some instances where participation in some markets has been reduced as a result of these perceived shortcomings.

The AESO has indicated that a number of initiatives are already underway that will provide additional, or enhance existing, reporting functionality. In 2009 the AESO undertook a 'Market Systems Visioning Project' which, as a result of several industry stakeholder sessions, identified approximately 150 additional system capabilities. Some of these will be addressed in the Dispatch Tool Architecture Upgrade (DTAU), due to be deployed later in 2010. This includes a consolidated dispatch (a single dispatch containing instructions for energy and ancillary services) which may assist with compliance efforts.

The MSA is supportive of the role that IT upgrades can take in helping participants achieve better compliance. The MSA, however, is particularly

⁹ <http://competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/02732.html>

concerned when perceived IT shortcomings reduce participation in markets. In the event of severe problems the MSA may take the view that temporarily standing down from enforcement activities insofar as certain ISO rules would be in the best interests of the market. In less serious cases, the MSA would continue to enforce rules and may make recommendations to the AESO for system improvements. The MSA also encourages participants to make requests for improved reporting capabilities to the AESO.

We would appreciate market participants assisting us in identifying the problems they face in order that we can provide clarity as to our view. From the MSA's perspective it is far better to identify these issues before a matter is under review for a suspected contravention.

5 SUMMARY

The MSA hopes that the information provided in this report will be helpful to market participants. In a number of areas we have asked for specific feedback. These are:

- **Section 2:** feedback on the importance of timeliness, including but not limited to useful statistics for market participants
- **Section 3.1:** feedback on internal efficiency enhancements
- **Section 3.2:** feedback on more explicit incentives for self reporting
- **Section 3.3:** feedback on enhancements to specified penalties¹⁰
- **Section 4.1:** sharing of compliance best practices across the industry
- **Section 4.2:** identification of IT problems requiring clarification

The MSA is not intending to conduct a formal stakeholder consultation at this time but feedback can be given informally to Matt Ayres (email: matt.ayres@albertamsa.ca, phone: 403-705-3182) or through our compliance mailbox (compliance@albertamsa.ca). The MSA will provide an update on how it intends to proceed on internal process changes in early March. Given the informal nature of the consultation the MSA is not intending to make comments public, although we may refer to the general nature of comments received in subsequent communications.

¹⁰ Note that the MSA is interested in market participant suggestions but, obviously, it does not have the authority to enact changes to AUC Rule 019.