

MARKET
SURVEILLANCE
ADMINISTRATOR

Investigation and Enforcement Process

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Draft for comment

Taking action to promote effective competition and a culture of compliance and accountability in Alberta's electricity and retail natural gas markets

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TABLE OF CONTENTS

1	INTERPRETATION.....	3
2	INTRODUCTION	5
	2.1 Scope and application of IEP.....	5
	2.2 Communications with the MSA.....	5
3	OVERVIEW OF THE IEP.....	7
4	Matter Sourcing.....	8
	4.1 Self-reports.....	8
	4.2 Compliance monitor referrals.....	11
	4.3 Complaints	13
	4.4 Surveillance by the MSA.....	14
5	ISSUE ASSESSMENT.....	15
6	INVESTIGATION PROCESS.....	16
	6.1 Common aspects of investigations	16
	6.2 Summary investigation process	21
	6.3 Extended investigation process	23
7	ENFORCEMENT ACTIONS.....	25
	7.1 Specified penalties.....	25
	7.2 Administrative enforcement process	27
8	FORBEARANCE.....	29
9	PUBLIC REPORTING.....	30

1 INTERPRETATION

In the Investigation and Enforcement Process:

“AUC” or “Commission” means the Alberta Utilities Commission, established under section 2 of the AUCA;

“AUCA” means the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2;

“compliance monitor” means either the ISO, WECC, or the MSA, as applicable, as the organization mandated or retained to conduct ISO rules and reliability standards compliance monitoring activities;

“enforcement action” means issuance of a notice of specified penalty pursuant to section 52 of the AUCA or commencement of an administrative proceeding before the Commission in which the MSA seeks imposition of a penalty pursuant to section 63 of the AUCA;

“EUA” means the *Electric Utilities Act*, SA 2003, c. E-5.1;

“forbearance” means the statutory authority of the MSA pursuant to either section 23.1 of the T-Reg or section 57 of the AUCA, to not pursue enforcement action with respect to a contravention, including that the matter will not be made public;

“IEP” means the MSA’s Investigation and Enforcement Process;

“ISO” means the Independent System Operator, which operates as the Alberta Electric System Operator or “AESO”;

“ISO rules” means the rules established by the ISO and approved by the AUC in accordance with the EUA;

“market participant” means an electricity market participant as defined in the EUA;

“mitigation plan” means a document which describes remedial actions to be taken following the recognition of a contravention to correct the source of non-compliance, prevent recurrence, and minimize risks;

“MSA” means the Market Surveillance Administrator, a corporation continued under the AUCA;

“MSR” means the *Market Surveillance Regulation*, AR 266/2007;

“records” has the same meaning as defined in the AUCA and EUA;

“reliability standards” means the reliability standards that have been approved by the AUC in accordance with section 19 of the T-Reg for effect in Alberta;

“self-report” means a submission to the MSA describing a contravention of the ISO rules or reliability standards that was self-identified;

“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 section 52 of the AUCA;

“T-Reg” means the *Transmission Regulation*, AB Reg 86/2007; and

“WECC” means the Western Electricity Coordinating Council.

2 INTRODUCTION

In accordance with section 7 of the MSR, the IEP sets out a generalized set of investigation procedures that the MSA will use in carrying out investigations. As detailed below, these procedures address interactions between the MSA and the party whose conduct is under investigation while the MSA's investigation is ongoing.

The MSA is required to carry out its mandate in a fair and responsible manner [AUCA s. 40]. This is, in part, achieved through the IEP, which provides market participants and the ISO with an overview of how the MSA will typically conduct its investigations and reach dispositions, including the opportunities that parties under investigation will have to provide information, records, or submissions to the MSA.

2.1 Scope and application of IEP

Pursuant to its statutory mandate, the MSA has the authority and responsibility to review and inquire into a wide range of matters affecting or potentially affecting participants in the Alberta wholesale electricity markets and retail electricity and natural gas markets. The MSA may, for example, inquire into the ISO's conduct, examine the behaviour of electricity market participants in the wholesale electricity market, or evaluate retailer consumer behaviour. The MSA has broad powers to gather information and records from market participants and the ISO, which it exercises to carry out all aspects of its statutory mandate.

The MSA will follow the IEP when it suspects a market participant or the ISO has engaged in a course of conduct which may contravene a statutory provision within the MSA's mandate and in respect of which, following investigation, the MSA may take enforcement action against the party under investigation. The circumstances of each investigation are unique, and the MSA retains the discretion to exercise its statutory powers appropriate to the circumstances of each investigation, including without prior notice to the party under investigation. This may include taking steps in addition to or other than those described the IEP.

2.2 Communications with the MSA

During an investigation, the MSA will communicate with the party under investigation at regular intervals, which may include telephone calls, email, or meetings. Regardless of form, parties under investigation should consider all communications with the MSA following issuance of a notice of investigation as information which the MSA may rely on to seek relief from the Commission or the Courts, to reach its findings, or as evidence in in enforcement proceedings.

As required by the MSR, the MSA will keep all records obtained in the course of an investigation confidential.¹ As permitted by the MSR, the MSA may use records gathered through an investigation to carry out any aspect of its statutory mandate.² Where the MSA intends to make a

¹ MSR s. 6

² MSR s. 7

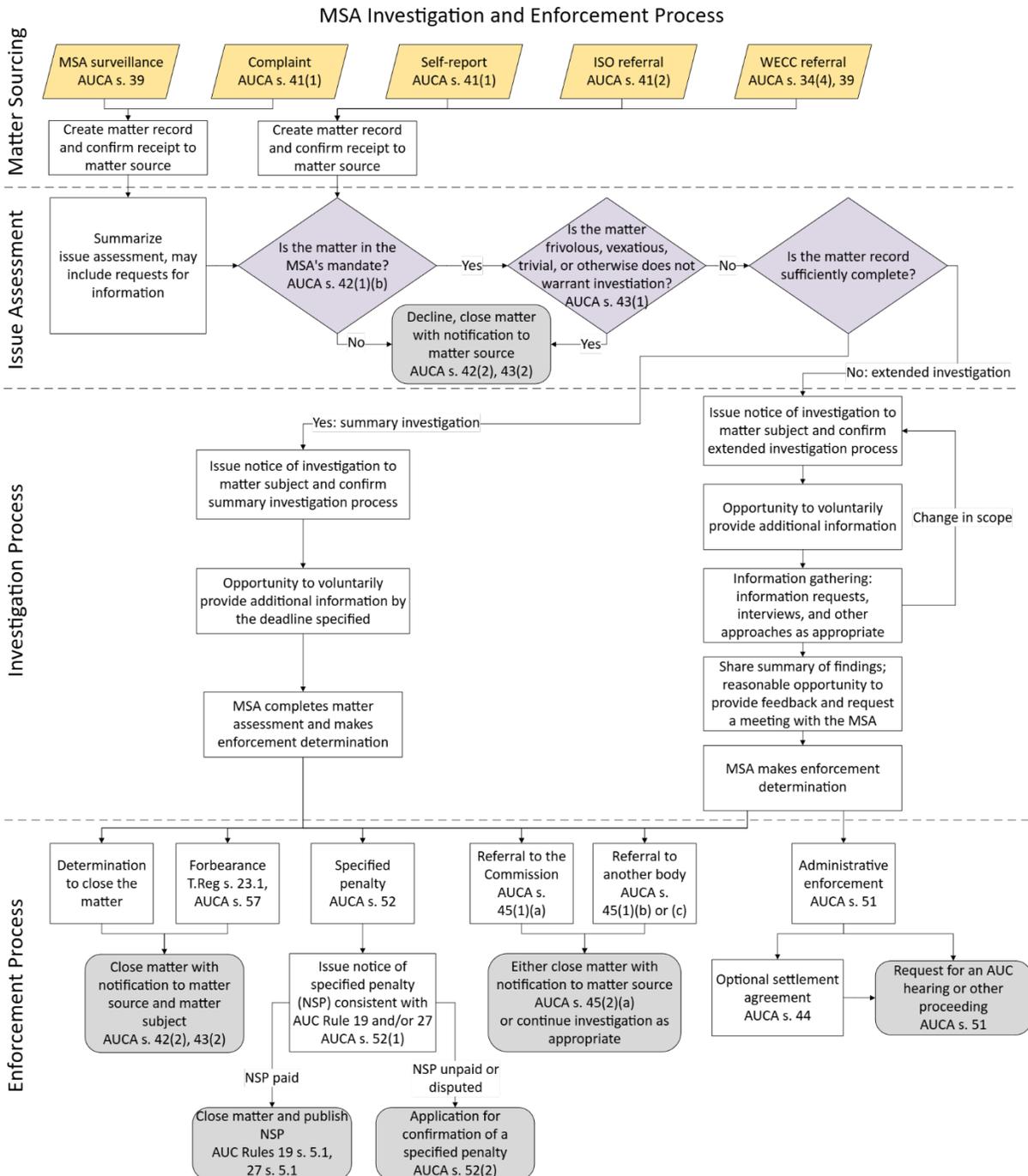
record public which will identify a market participant by name, the MSA will follow the process set out in MSR s. 6.

Certain statutes and regulations, including the *Access to Information Act* SA 2024 c A-1.4 (ATIA), may require disclosure of records provided to the MSA. Where the MSA receives a request for information under ATIA which seeks disclosure of records provided to the MSA during an investigation, the MSA will follow any processes required by ATIA or successor legislation in respect of third-party information or Records.

The MSA recognizes that information may be of a sensitive nature (e.g., regarding certain critical infrastructure protection contraventions) and e-mail may not be the most appropriate method to send that information to the MSA. In such instances, the market participant or the ISO should contact the MSA at compliance@albertamsa.ca to request a secure file transfer site be established.

3 OVERVIEW OF THE IEP

The following flowchart is an overview of the typical steps in matters processed under the IEP. The steps occurring in the four phases below are described in the following sections of the IEP: matter sourcing, issue assessment, investigation process, and enforcement process. The flowchart is a representation and the steps taken in each phase may differ somewhat between matters; to fully understand all steps the MSA may take, consult the descriptions in the appropriate sections below.



4 MATTER SOURCING

4.1 Self-reports

The MSA encourages the self-reporting of contraventions of any provisions of enactments within its jurisdiction. Self-reports to the MSA must be made in the form and manner specified in section 4.1.1 (self-report form). The MSA will acknowledge receipt of all self-reports and provide a MSA file number for each matter for future reference.

Through the self-report form, market participants provide information the MSA requires to determine whether an ISO rule or reliability standard has been contravened. In general, the level of detail provided should be commensurate with the circumstances of the self-reported conduct and should address all elements of the applicable rules or standards. Incomplete self-reports may require the MSA to request additional information or records to reach its determination, leading to delays in processing.

As self-reported matters will generally be processed through the summary investigation process (section 6.2) and may lead to a summary disposition (section 6.2.3), market participants and the ISO should include any information or representations they wish the MSA to consider with their self-reports.

This may include:

- a) root causes of the self-reported conduct;
- b) corrective actions taken to prevent recurrence of the conduct;
- c) the impact of the self-reported conduct on the reliability of the Alberta interconnected electric system;
- d) the impact of the self-reported conduct on the Alberta electricity market; or
- e) any mitigating circumstances.

Market participants and the ISO may also provide relevant records they wish the MSA to consider as appendices to the self-report Form.

4.1.1 MSA forms and submission procedures

The MSA maintains compliance forms in the [Process & forms section](#) of its website, including self-report forms for both ISO rules and reliability standards matters as well as a mitigation plan form for reliability standards matters and, optionally, ISO rules contraventions where the conduct at issue is on-going. The MSA strongly encourages the use of these forms and may reject a submission if all information requested has not been appropriately provided.

If a mitigation plan and/or root cause analysis in relation to a market participant's self-report is being submitted to the MSA later, those communications need to be submitted according to the list below including copying the compliance monitor at the appropriate email address.

- Self-reports by market participants relating to ISO rules matters must be submitted to compliance@albertamsa.ca, copying the compliance monitor at isorulescompliance@aeso.ca.
- Self-reports by market participants relating to reliability standards matters must be submitted to compliance@albertamsa.ca, copying the compliance monitor at rscompliance@aeso.ca.
- Self-reports by market participants related to contraventions of legislation, regulations, and AUC rulings must be submitted to compliance@albertamsa.ca.
- Self-reports by the ISO regarding its compliance with reliability standards must be directed to the MSA and WECC via the platform designated to the ISO by the MSA.
- Self-reports by the ISO regarding its compliance with the ISO rules, legislation, regulations, and AUC rulings must be submitted to compliance@albertamsa.ca.

4.1.2 Additional guidance on self-report content

The MSA notes the following information which, if not provided in a self-report, may result in additional information requests to the market participant or the ISO.

- The start and end dates of each contravention included in the self-report information provided to the MSA as well as the number of contravention events within the contravention period.
- For reliability standards, both the standard and the requirement that the contravention relates to; if multiple standards and requirements may have been contravened as part of a single event, all such standards and requirements should be included in the self-report.
- For reliability standard operation and planning (O&P) related submissions, as appropriate to the requirement, provide a listing of the affected facilities, the total number of impacted devices, facilities, and/or personnel as well as the percentage of the total population of devices, facilities, and/or applicable personnel affected by the contravention.
- For reliability standard critical infrastructure protection (CIP) related submissions, a list of the facilities, bulk electric system (BES) cyber assets and BES cyber systems, associated physical access control systems, electronic access control or monitoring systems and/or protected cyber assets.
- The actual or potential impact the contravention posed to reliable operations with specific reference to any mitigating internal controls that reduced that impact.

- Identify the root cause and any contributing causes, if known. If the root cause is not known at the time of the self-report, the root cause should be included in information provided following the notice of investigation as described in section 6.2.1.

4.1.3 Self-reports during compliance processes

The MSA always encourages self-reporting of contraventions, including during ISO or WECC compliance processes such as audits or self-certifications. However, in the case of a self-report that is within the scope of a current or pending compliance process, the MSA will note the self-report, including creating a matter record and sharing the matter number with the market participant and the ISO, but will hold the remainder of the process until the compliance process has been completed including any related referrals of suspected contraventions, which can include conduct related to that described in the self-report.

Following confirmation from the applicable compliance monitor that the compliance process has been completed, the MSA will proceed with the process. If the MSA determines that specified penalties are warranted in relation to conduct within the scope of the compliance process, self-report discounts will be applied if the requirements of the applicable AUC rules have been met.

4.1.4 Mitigation plans

In instances where conduct has been mitigated prior to being self-reported or referred, market participants or the ISO are still encouraged to submit a completed mitigation plan.

Market participants and the ISO should ensure that any included mitigation plan action addresses all instances and causes of the noncompliance. The mitigation plan actions should include relevant, measurable, and realistic milestones with specific dates for completion. The mitigation plan should describe any additional actions that reduce or eliminate the risk while mitigation is in progress.

If the mitigation plan contemplates upgrades of assets currently in operation, the mitigation plan should include details regarding:

- The implementation of preventative, detective and mitigation controls prior to full implementation of the plan;
- the number of sites or assets that are impacted by the required mitigation; and
- whether any regulatory approval is required for a mitigation activity (including with respect to cost), whether the required approval has been obtained or the dates upon which regulatory approval will be sought and is expected to be obtained.

Additional guidance on how the MSA evaluates mitigation plans for acceptance is given in section 7.1.4.

(1) Submitting a mitigation plan

Mitigation plans must be submitted in the form provided on the MSA's website in the [process & forms section](#). The mitigation plans must be submitted in accordance with the submission requirements in section 4.1.1 for self-reports. Until the mitigation plan is complete, the disposition issued to the market participant or the ISO by the MSA will be considered conditional.

(2) Completion of a mitigation plan

The market participant or the ISO is responsible for completing the mitigation plan. Once a mitigation plan has been completed, the market participant or the ISO must submit an updated mitigation plan form noting completion within five business days in accordance with section 4.1.1. An updated mitigation plan form is not required following completion of each activity contemplated in the mitigation plan.

Following completion of a mitigation plan, the MSA may request a spot audit to be completed by the compliance monitor to verify successful mitigation of the underlying root cause(s).

(3) Mitigation plan revisions or extensions

In the event a market participant or the ISO needs to revise or extend a mitigation plan, a revised mitigation plan form should be completed and submitted in accordance with section 4.1.1. The market participant or the ISO shall submit any such requests at least five business days prior to the existing deadline for MSA approval of the extension.

4.2 Compliance monitor referrals

4.2.1 Collaboration between ISO and MSA

The ISO is required under section 17(l.1) of the EUA to monitor the compliance of market participants with the ISO rules and under section 23 of the T-Reg to carry out compliance monitoring of market participants with reliability standards. As the mandate of the MSA includes enforcement of contraventions of the ISO rules and reliability standards, the ISO and the MSA work together to address compliance.

The MSA will endeavour to coordinate its contact with the market participant in relation to a particular ISO rules or reliability standards issue identified by the ISO through its monitoring, such that the market participant will generally deal with only one agency at a time.

4.2.2 Collaboration between WECC and MSA

The WECC-AESO Membership and Operating Agreement, approved by AUC Order U2008-261, and the MSA-WECC Service Level Agreement define a role for WECC as the compliance monitor for reliability standards applicable to the AESO.

WECC, acting as the applicable compliance monitor for the ISO, will monitor for potential compliance issues in accordance with the MSA-WECC Service Level Agreement.

A notification by the compliance monitor via the designated system constitutes a referral of a suspected contravention to the MSA. Following a referral, the MSA will confirm receipt of the referral to WECC and thereafter has sole carriage of the matter and is the primary contact for the ISO. The MSA will acknowledge receipt of all referrals and provide a MSA file number for each matter for future reference.

As part of the referral, the compliance monitor will make available to the MSA information obtained during its compliance monitoring activities to assist the MSA regarding its assessment of the matter. The MSA, if necessary, may request additional information from the ISO. As described in section 4.2.4, the ISO may submit additional information to the MSA.

4.2.3 Initial point of contact where issue identified by the ISO

Unless a compliance matter has been self-reported to the MSA by a market participant (see section 4.1), the ISO will typically be the initial point of contact with market participants. The ISO will identify potential compliance issues and gather information. If the ISO then suspects a contravention of the ISO rules or reliability standards, it must send it by email to compliance@albertamsa.ca and copy the market participant.

A notification by the ISO constitutes a referral of a suspected contravention to the MSA as required under section 21.1 of the EUA. Following a referral, the MSA will confirm receipt of the referral to the ISO and thereafter has sole carriage of the matter and is the primary contact for the market participant. The MSA will acknowledge receipt of all referrals and provide a MSA file number for each matter for future reference.

As part of the referral, the ISO will make available to the MSA information obtained during its compliance monitoring activities to assist the MSA regarding its assessment of the matter. The MSA, if necessary, may request additional information from the market participant. As described in section 4.2.4, the market participant may submit additional information to the MSA.

4.2.4 Opportunity to provide information to the MSA

All relevant information must be provided during compliance monitoring activities. Market participants have obligations under the ISO rules to respond to ISO information requests and the ISO has obligations to respond to WECC information requests.

However, the MSA recognizes that market participants or the ISO may see a need to provide additional submissions to the MSA following a referral. For instance, these submissions may contain information not available prior to the referral or information regarding the impact or severity of the suspected contravention, including mitigating circumstances, or the mitigation plan (see section 4.1.4 for more detail on submitting mitigation plans). The market participant or the ISO may also wish to submit additional records for the MSA to consider. These submissions must

be made by the deadline specified in the notice of investigation provided by the MSA following the referral.

Extension requests for submitting information should be made in writing to the MSA contact specified in the notice of investigation at least two business days prior to the deadline specified.

4.2.5 Additional guidance on referral content

The MSA notes the following information which, if not provided in a referral, may result in additional information requests to the ISO.

- The start and end dates of each suspected contravention.
- For reliability standards, both the standard and the requirement for each suspected contravention (e.g., if multiple standards and requirements may have been contravened as part of a single event, all such standards and requirements should be included in the referral).
- For O&P reliability standard related suspected contraventions, a listing of the affected facilities, the total number of impacted devices, facilities, and/or personnel as well as the percentage of the total population of devices, facilities, and/or applicable personnel affected by the contravention, etc.
- For CIP reliability standards related suspected contraventions, a list of the facilities, BES cyber assets and BES cyber systems, associated physical access control systems, electronic access control or monitoring systems and/or protected cyber assets, etc.
- The sample size utilized to determine the suspected contravention.
- If the referral relates to an audit or self-certification process, a copy of the final audit report and any applicable reliability standard audit worksheets (RSAW) and evidence.

4.3 Complaints

Any person may submit a complaint to the MSA. A complaint submitted to the MSA must include:

- (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.

A person wishing to submit a complaint to the MSA should address their communications to the individual appointed as the Market Surveillance Administrator and submit the complaint to

enforcement@albertamsa.ca. The MSA will provide confirmation that a complaint has been received.

The complainant should ensure that all relevant information and any supporting records are submitted with the complaint. Following receipt, the MSA may assess the complaint as submitted without requesting further information or records or request further information or records.

4.4 Surveillance by the MSA

Through its ongoing surveillance and monitoring activities, the MSA may become aware of conduct by a market participant or the ISO which may contravene a relevant enactment. Where the MSA identifies such a matter, it may initiate an investigation on its own initiative.

5 ISSUE ASSESSMENT

Once a matter is identified, the MSA will assess whether:

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

At this stage, the MSA may request information from any market participant and other relevant persons. If the MSA requests information from a party whose conduct is being assessed, the MSA will advise that party of the issue being assessed.

Based upon its assessment of the issue, the MSA may commence an investigation. If the MSA declines to investigate, it will notify the person who made the complaint or referral and, in the case where the MSA has requested information from a party whose conduct is being assessed, will notify that party.

If the MSA decides to commence an investigation, the MSA will also determine whether the matter will be addressed through the summary investigation process (section 6.2) or the extended investigation process (section 6.3). The MSA will typically follow the summary investigation process in respect of ISO rules and reliability standards matters self-reported or referred to the MSA but, at the MSA's discretion, these matters may be processed under the extended investigation process.

Prior to reaching a disposition on a matter addressed through the summary investigation process, the MSA may exercise its discretion to address the matter under the extended investigation process. In such cases, the MSA will issue a revised notice of investigation communicating the change.

6 INVESTIGATION PROCESS

6.1 Common aspects of investigations

6.1.1 Notice of investigation

If the MSA commences an investigation, it will provide the party under investigation with written notification of the investigation (“notice of investigation”). The notice of investigation will briefly describe the conduct under investigation, include appropriate contact information for the MSA, specify a deadline to voluntarily provide additional information to the MSA prior to the investigation being started, and confirm whether the matter will be subject to the summary investigation process or extended investigation process. Other procedural matters may also be addressed.

The MSA will provide an opportunity for the party under investigation to make inquiries of the MSA regarding the scope of the investigation and the investigation process. At the discretion of the MSA, communications with the party under investigation may take place in person, verbally, in writing or electronically, or through a combination thereof.

The MSA may issue a public notice regarding the commencement, progress or completion of any investigation.

6.1.2 Expansion to investigation scope

If the MSA expands the scope of an investigation beyond that set out in the initial notice of investigation, the MSA will issue an updated or supplemental notice of investigation.

Should the MSA expand the investigation to include conduct of parties other than those identified in the initial notice of investigation, the MSA will provide a notice of investigation to the additional party.

6.1.3 Referral of matters to another body

Should the MSA determine during an investigation that a matter is within the jurisdiction of another body, including the Commission, it will notify that body of the matter and may make available to that body records in its possession relevant to the matter [AUCA s. 45(1)]. This may include requesting a spot audit of the market participant as described in section 7.5.2 of the [Alberta Risk-Based Compliance Program](#).

After such notification, the MSA may continue or discontinue its investigation, or collaborate with the other body [AUCA s. 45(2)].

6.1.4 Termination of investigations

At all stages, the MSA considers whether each investigation continues to be in the public interest. Where the MSA comes to the view that pursuing an investigation is no longer in the public interest, it will terminate its investigation and provide notice to the party under investigation. In addition,

during an investigation the MSA may come to the view that a matter is frivolous, vexatious or trivial or otherwise does not warrant investigation. Where the MSA does so, it will discontinue its investigation and provide notice to the party under investigation.

6.1.5 *Communication with person who made complaint or referral*

At its discretion the MSA may provide information regarding the status or progress of an investigation to the person who made the complaint or referral.

When the MSA has completed an investigation, the MSA will notify the person who made the initial complaint or referral of the results of the investigation [AUCA s. 42(2)]. Similarly, if the MSA decides to discontinue an investigation it will provide written notice to the person who made the complaint or referral. Where the MSA issues a notice of specified penalty at the conclusion of an investigation resulting from a complaint or referral, the MSA will provide notice to the person making the complaint or referral by posting the notice of specified penalty on its website in accordance with any applicable enactments.

6.1.6 *Meetings during an investigation*

The MSA is open to meeting with market participants or the ISO while an investigation is ongoing to discuss issues relevant to the investigation, including at the request of the market participant or the ISO. The MSA will exercise its discretion as to whether and when such meetings will occur, may take any step in an investigation without prior meetings with the party under investigation, and may conclude any investigation without meeting with the party under investigation.

Following issuance of a notice of investigation, parties under investigation should consider all communications, including any discussion at meetings, as information which the MSA may rely on to reach its findings, as evidence in enforcement proceedings, or to seek relief from the Commission or the Courts.

Meetings during investigations may include discussions of the conduct at issue in an investigation, the scope and timing of responses to MSA information requests, or others matters necessary for the MSA to advance the investigation. While the MSA may discuss the conduct at issue in an investigation in meetings with the party under investigation, changes to the scope of the MSA's investigation will only be made by issuance of a supplemental notice of investigation. Similarly, while the MSA may discuss the content of or deadlines for information requests or other information gathering steps in meetings with the party under investigation, no changes to content or deadlines discussed will be effective unless confirmed in writing by the MSA.

6.1.7 *Information and record gathering*

The MSA's statutory authority to gather information and records is set out in AUCA s. 46, and the MSA may exercise any of the powers afforded to it in any investigation. While the MSA will generally provide notice to the person subject to these powers, the MSA has the ability to act without prior notice and will do so where circumstances warrant.

A party under investigation may provide the MSA with any information or records it considers to be relevant to the conduct under investigation and wishes the MSA to consider as a part of the investigation. The MSA may rely on any information or records provided to reach its findings, as evidence in enforcement proceedings, or to seek relief from the Commission or the Courts. The MSA may also use any information or records provided to carry out other aspects of its statutory mandate, including surveillance and monitoring.

In addition to gathering information and records from the party under investigation, the MSA may exercise its statutory authority to gather information or records from persons who are not under investigation. The MSA is not required to and will generally not provide notice to or otherwise involve the party under investigation when it gathers information or records from persons whose conduct is not under investigation.

No fee is payable by the MSA for access to or transfer of any information or record necessary for the purposes of the MSA's mandate, including for the preparation of any record.

During an investigation, the MSA may retain external resources to conduct information gathering activities, which may include auditors, consultants, or legal counsel. Where the MSA retains external resources, these persons will be clearly identified as representatives or contractors of the MSA in interactions with the party under investigation.

The MSA will generally not provide any information or records gathered during its investigation to the party under investigation while the investigation is ongoing. When the MSA provides its summary of findings (section 6.3.4), it will provide copies of any records referenced in the summary of findings to the party under investigation.

(1) Information requests

The MSA may issue written requests to obtain information or records which may be relevant to an investigation.

Information requests will set a deadline for response, which will consider the scope and nature of the information or records requested. Where a party under investigation believes additional time is required to respond to an information request, they may request an extension of time. Any request for an extension must be made at least 5 business days prior to the set deadline and must provide sufficient information for the MSA to evaluate the reasonableness of the request including:

- A) steps that have been taken to respond to the information request;
- B) the specific factors which preclude a response by the set deadline; and
- C) a proposed alternate date by which the information request will be answered.

The MSA will not generally accede to extension requests that merely assert difficulty in providing responses by the specified deadline.

Any amendments to the content or deadline of an information request must be confirmed by the MSA in writing to have effect.

Failing to provide full and complete responses by the set deadline may lead the MSA to seek an order compelling the party under investigation to provide information or records requested. In addition, the MSA views timely and complete responses to information requests as an aspect of market participants' obligation to reasonably co-operate with the MSA. For this reason, the MSA may seek enhanced penalties in enforcement proceedings where a party under investigation does not provide timely and complete responses to information requests.

To speed the processing of information requests, the MSA will include instruction on the formatting of additional documents or data provided in response to information requests. The general list of requirements is posted on the MSA website in the [process & forms section](#).

(2) Interviews

The MSA may carry out interviews of current or former employees and contractors of a party under investigation. The MSA may require information be provided under oath [AUCA s. 46(1)(b)]. Interviews may be recorded by the MSA using a recording device or by a court reporter. The party being interviewed will not be permitted to record the interview.

The MSA may use staff or legal counsel to carry out interviews. The MSA will make reasonable efforts to accommodate scheduling and other requests of the parties being interviewed.

(3) Searches

The MSA may enter and inspect the business premises of a party under investigation and request and remove information stored or accessible on the premises.

The MSA may request access to computer systems within the possession or control of the party under investigation and carry out searches to gather information which may be relevant to the investigation.

(4) Court orders

At its discretion, MSA may seek the assistance of the Court to obtain information. This includes circumstances where it appears that a party under investigation hinders, obstructs or impedes the MSA or refuses to respond to inquiries, produce records or provide access to computer systems in response to a request from the MSA or if the MSA has reason to believe that requesting access to the premises or computer systems or requesting the production of records may result in the destruction of evidence.

6.1.8 Privilege claims

Section 50 of the AUCA describes the process to determine claims of solicitor-client privilege over records the MSA seeks to examine or seize. At its discretion, the MSA may also agree with the

party from whom potentially privileged records are sought to an alternative protocol for determining privilege claims.

6.1.9 Use of information obtained during investigation

Information obtained by the MSA during an investigation will be available for use by the MSA in furtherance of its mandate. The MSA may use the information for that investigation, a related enforcement proceeding, or any other matter related to its mandate [MSR s. 5].

Information obtained by the MSA during an investigation will be kept confidential unless disclosure is permitted or required by legislation, the Court or the Commission, or where the information has otherwise been made public.

6.1.10 Return of records

Where the MSA has obtained original records, the MSA will make copies of the records and return the original records within a reasonable time [AUCA s. 46(3)]. In the case where original records were seized under a Court order, the MSA will, on written request of the party from whom they were seized, return the originals after copying [AUCA s. 49(2)]. Where no request is made, the original records will be returned within 60 days after the conclusion of the investigation (including any related hearing or appeal) [AUCA s. 49(1)].

6.1.11 Internal MSA records not disclosed

The MSA will hold confidential all records created by the MSA for its internal use in carrying out its mandate, including any communication, reports or memoranda relating to the MSA's deliberations [MSR s. 6(12)].

6.1.12 Settlement agreements

Section 44 of the AUCA provides that the MSA may negotiate a settlement with a market participant or the ISO to resolve any matter relating to the mandate of the MSA. The MSA encourages market participants to explore resolution by negotiated settlements at all stages of an investigation and generally welcomes engagement from the party under investigation. However, entering into settlement discussions and ultimately a settlement agreement is at the MSA's discretion and the MSA may conclude an investigation and proceed to a determination without first engaging in settlement discussions with the party under investigation.

The MSA generally considers that, to reach a settlement agreement, the party under investigation must:

- understand, accept, and admit their conduct contravened an enactment;
- be prepared to commit to specific remedial measures to prevent recurrence of the conduct at issue; and

- be willing and able to pay an agreed upon penalty and costs.

Pursuant to section 44 of the AUCA, any settlement agreement between the MSA and the party under investigation must be filed with the Commission for approval. Commission approval requires that the Commission be satisfied that a contravention has occurred and that the settlement agreement is in the public interest. For this reason, settlement agreements with the MSA will typically include an agreed upon statement of facts sufficient to demonstrate a contravention has occurred and demonstrate that the terms of the settlement agreement are in the public interest.

The MSA recognizes that frank and open discussions are often necessary to reach settlement agreements and, in appropriate circumstances, is prepared to meet with the party under investigation on a without prejudice basis. The MSA will provide written confirmation in advance of any without prejudice settlement meeting; without such confirmation from the MSA, parties under investigation should consider any meetings with the MSA to be 'on the record'.

6.2 Summary investigation process

In general, the MSA will follow the summary investigation process in respect of ISO rules and reliability standards matters that are self-reported or referred to the MSA. The intent of this process is to be a summary determination, where the MSA will rely largely on the information provided in the self-report or referral as well as any further information voluntarily provided following the notice of investigation to reach an enforcement determination. As such, market participants and the ISO can expect that process steps will be limited and, in many cases, the only communications with the MSA will be the notice of investigation and the notice of the determination.

The summary investigation process will usually include the following steps:

1. notice of investigation;
2. opportunity to voluntarily submit additional information and records; and
3. notice of determination.

While these steps are typical, the MSA may exercise its discretion to use any of the other investigation steps described in section 6.1. Where the MSA decides to take additional steps, the MSA will provide notice of the decision to the party under investigation.

Where the MSA issues an information request in the summary investigation process, it will do so concurrent or after issuance of a notice of investigation (section 6.2.1)

6.2.1 Notice of investigation

In the case of straight-forward self-reports and referrals, the notice of investigation will be a form letter that indicates the scope of the investigation, which will include actions, events and time-periods reasonably connected to or proximate to the events described in the self-report or referral.

The MSA may combine multiple related self-reports or referrals into a single investigation; in such a case the MSA will indicate the included MSA file numbers in the notice of investigation. Similarly, the MSA may separate a single self-report or referral into multiple investigations where appropriate and will issue multiple notices of investigation clarifying the scope of each investigation.

The notice of investigation will set a deadline at least 30 days after the date of the notice to voluntarily provide any additional information including the root cause analysis and mitigation plan if applicable.

6.2.2 Opportunity to voluntarily provide additional information and records

The MSA recognizes that a party under investigation may wish to provide additional submissions to the MSA following a self-report or referral to complete the record prior to the MSA making a determination. For instance, these submissions may contain information not available at the time or information regarding the impact or severity of the suspected contravention, including mitigating circumstances, the outcome of the root cause analysis, or the mitigation plan (see section 4.1.4 for more detail on submitting mitigation plans). This information must be provided in accordance with the instructions on the notice of investigation.

Extension requests for submitting information should be made in writing to the MSA contact specified in the notice of investigation at least two business days prior to the deadline specified and include the reason for the request.

In the summary investigation process, the MSA's intent is not to issue information requests to further clarify the information provided. To avoid lengthy delays caused by missing information, follow the requirements and additional guidance on self-report content included in section 4.1.2.

6.2.3 Notice of determination

See sections 7 and 8 for the communication requirements in reference to different determination outcomes.

In most cases, the MSA will issue one of the following dispositions at the conclusion of the summary investigation process:

- specified penalty;
- forbearance; or

- no contravention.

The MSA considers these dispositions final subject only to review before the AUC in accordance with the AUCA.

The MSA may exercise its discretion to pursue administrative enforcement at the conclusion of the summary investigation process. In such cases the MSA will provide a summary of findings in accordance with section 6.3.4.

6.3 Extended investigation process

The extended investigation process will apply to all investigations that do follow the summary investigation process. A typical investigation under the usually include the following steps:

1. notice of investigation;
2. opportunity to voluntarily submit additional information and records;
3. information requests;
4. sharing summary of findings; and
5. notice of determination.

While these steps are typical, the MSA may exercise its discretion to take additional steps during an investigation.

6.3.1 Notice of investigation

In the case of extended investigations, the notice of investigation will be a letter that includes the components specified in section 6.1.1.

The MSA may combine multiple related self-reports and/or referrals into a single investigation; in such a case the MSA will indicate the included MSA file numbers in the notice of investigation. Similarly, the MSA may separate a single self-report or referral into multiple investigations where appropriate and will issue multiple notices of investigation clarifying the scope of each investigation.

6.3.2 Opportunity to voluntarily provide additional information and records

The MSA recognizes that a party under investigation may want to voluntarily provide information or records to the MSA in response to a notice of investigation. Where a party under investigation voluntarily provides information or records early in an investigation, the MSA may be able to narrow the scope of its information requests. Records provided voluntarily should be provided in the form and manner described in the notice of investigation for records provided in response to information requests (section 6.1.7 (1)).

6.3.3 Information gathering

The MSA will employ some or all the information gathering approaches specified in section 6.1.7. As the circumstances of each investigation are unique, the MSA may take steps or adopt processes which, while permitted under the AUCA, are not specifically described above. In these cases, the MSA will exercise its discretion consistent with the powers enumerated in the AUCA and provide notice to the party under investigation.

6.3.4 Sharing summary of findings

At the conclusion of the information gathering phase, the MSA will provide a summary of its findings to the party under investigation. With its summary of findings, the MSA will provide the party under investigation with copies of records relied upon in reaching its findings. This may include extracts of any transcripts of interviews conducted by the MSA. In exceptional cases, the MSA may proceed to take enforcement action or seek other relief against the party under investigation prior to providing its summary of findings to the party under investigation.

The MSA will provide the party under investigation with an opportunity to provide a written response to the MSA's summary of findings prior to the MSA taking enforcement action against the party under investigation. The summary of findings will specify a deadline for the party under investigation to respond and provide any information or records they wish the MSA to consider in reaching its determination, including any information which may have been unavailable at an earlier stage.

6.3.5 Notice of determination

The MSA will consider any response to its summary of findings provided by the deadline specified in the summary of findings, and determine what, if any, enforcement action it will take. The MSA will provide notice of its determination to the party under investigation as set out in section 7.

7 ENFORCEMENT ACTIONS

The MSA will consider all information and records obtained in an investigation and determine whether enforcement action is warranted. Enforcement actions include issuance of a notice of specified penalty pursuant to AUCA s. 52 (section 7.1) or commencement of an administrative proceeding before the Commission in which the MSA seeks imposition of a penalty pursuant to AUCA s. 63 (section 7.2).

In some cases, upon review of all information and records obtained in an investigation, the MSA may conclude that the party under investigation did not contravene an enactment. In such cases, the MSA may provide notice of that finding to the party under investigation.

7.1 Specified penalties

Where the MSA is satisfied that a contravention of the ISO rules or reliability standards has occurred, the MSA may, issue a notice of specified penalty in accordance with AUC Rule 019 in respect of contraventions of ISO rules and AUC Rule 027 in the case of contraventions of reliability standards. The MSA will issue notices of specified penalty in accordance with AUC Rule 019 or AUC Rule 027, as applicable.

Where a notice of specified penalty is not paid within the time specified, prior to giving notice to the Commission, the MSA may seek additional information to confirm intent to pay or to dispute the specified penalty, as well as to establish the basis of a potential dispute.

7.1.1 *Contraventions subject to penalty*

Under section 52(1) of the AUCA, the MSA may issue a notice of specified penalty where the MSA “is satisfied that a person has contravened an ISO rule or a reliability standard for which a penalty has been specified by the Commission [...]”. The MSA considers that, pursuant to this section, it has both the obligation and the jurisdiction to reach conclusions of fact and law to be satisfied that an NSP should be issued. The specific factual issues to be determined in each matter are set out by the relevant ISO rule or reliability standard. Among other things, the MSA must reach conclusions of fact regarding the assets related to contraventions and the dates and times on which a contravention (or contraventions) occurred. In each matter, the MSA considers the language of the applicable rule(s) or reliability standard(s), the information obtained through its investigation and decides whether it is satisfied a contravention(s) has occurred.

Having determined whether, and how many, contraventions occurred, the MSA will calculate the applicable penalty in accordance with AUC Rule 019 or AUC Rule 027, as applicable, including determining the severity of any contraventions found (section 7.1.3), any prescribed discounts for an accepted mitigation plan (section 7.1.4) or self reporting (section 7.1.2). The MSA may, following its calculation of the applicable penalty, determine that the prescribed penalty is not sufficient in the circumstances. In such cases, the MSA may commence an administrative enforcement proceeding before the Commission.

7.1.2 Self-report discount

AUC Rule 027 and AUC Rule 019 provide for discounts to the applicable penalty where conduct leading to a notice of specified penalty is self-reported to the MSA. The MSA will apply the self-report discount where:

- a) the conduct at issue is self-reported to the MSA;
- b) the market participant or the ISO provides a complete self-report form to the MSA;
- c) the market participant provides sufficient information and records with its self-report for the MSA to make all required determinations under the applicable rule; and
- d) the conduct at issue is self-reported to the MSA prior to any referral to the MSA from the applicable compliance monitor or the MSA independently learning of the conduct at issue.

7.1.3 Reliability standard contravention severity

Where required by AUC Rule 027, the MSA will determine the severity of each contraventions found. In determining the severity of contraventions, the MSA will consider all relevant factors including, without limitation:

- information provided in any self-report or referral from the ISO or WECC;
- available facts about the non-compliant performance;
- the relative continuum of conduct which would result in finding low, moderate, high, or severity, as applicable;
- whether the percentage, rather than the count, of non-compliant performance is a better indication of contravention severity;
- the duration of the conduct at issue relative to the timeframe, if any, defined in the requirement; and
- the Alberta risk rating of the standard and requirement.

7.1.4 Acceptance of mitigation plans

AUC Rule 027 provides for a penalty discount where the MSA accepts a mitigation plan provided by the market participant or the ISO. Any mitigation plan must be submitted with the self-report or within the deadline specified in the notice of investigation provided (sections 6.2.1 or 6.3.1).

AUC Rule 027 section 4.9 specifies criteria for the MSA to accept a mitigation plan. In determining whether these criteria are met, the MSA will consider the following factors:

- Whether the mitigation plan provides all required information set out in section 4.1.4;

- Whether the mitigation plan is designed to correct the contravention;
- Whether the mitigation plan correctly identifies and addresses the root cause(s) such that a repeat of the same circumstance would be unlikely to result in a contravention.
- Whether the mitigation plan will be implemented in a timely fashion considering the risk to the reliable operation of the grid and the scope of implementation. Timelines longer than 90 days for mitigation plans with limited scope (degree of process changes, number of assets affected, etc.) and 1 year for mitigation plans with larger scope require justification on whether the mitigation can be considered as timely.
- Extended mitigation plan timelines, beyond the timelines referenced above, should have interim measures to protect the reliability and security of the grid during implementation.

Failure to complete a mitigation plan by the deadline specified, or any extended deadline agreed to by the MSA (section 4.1.4(3)), may result in the MSA commencing a proceeding before the Commission. In such cases, the MSA will provide notice of any proceeding in accordance with the applicable Commission rules of practice in force at the time.

As a mitigation plan may take time to complete, the MSA may conditionally forbear from enforcement of contraventions of the ISO rule or reliability standard subject to the mitigation plan while the mitigation plan is being completed. Any such conditional forbearance will be described in the MSA's notice of specified penalty in respect of the contravention.

7.2 Administrative enforcement process

Where, based on its investigation, the MSA has concluded that the conduct at issue amounts to a contravention of relevant enactments or rules, the MSA may take administrative enforcement action [AUCA s. 51(1)]. This may include matters addressed through the summary investigation process.

7.2.1 Request for an AUC hearing or other proceeding

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 Commission in accordance with its rules (section 53 of the AUCA). Sections 56 and 63 describe the form of order the Commission may impose, which may include administrative penalties and/or terms and conditions considered appropriate.

In appropriate circumstances, the MSA may request a hearing from the Commission prior to the conclusion of an investigation and, subject to the applicable rules of practice, may do so without notice to the party under investigation.

7.2.2 Communication regarding enforcement

The MSA will necessarily be in communication with the persons against whom the MSA will take enforcement action. In the case of a request for a hearing or other proceeding before the

Draft for comment

Commission, the MSA will serve notice to any persons named in the notice in accordance with Commission rules [AUCA s. 51(3)].

8 FORBEARANCE

Forbearance is contemplated under certain conditions, as outlined in section 23.1 of the T-Reg and section 57 of the AUCA.

While the MSA considers the following factors when deciding whether forbearance is appropriate, the MSA will determine whether forbearance is appropriate in each matter, based on the circumstances of a matter.

- The conduct is described in a self-report submitted to the MSA in accordance with section 4.1.
- The length of time between the conduct at issue and the self-report to the MSA.
- The conduct is non-serious. This may include an assessment of the impact, duration and extent of conduct.
- The conduct did not result in a material financial gain.
- The conduct did not jeopardize the reliability of the interconnected electric system.
- The conduct is not part of a recurring problem.
- The market participant or the ISO has an internal compliance program in effect.
- The market participant or the ISO has considered and implemented actions to correct and prevent recurrence, as appropriate, which may include a mitigation plan submitted to the MSA.

If the MSA determines that forbearance is appropriate, the MSA will inform the market participant or the ISO of its decision, including any conditions on the forbearance.

The MSA logs all matters it considers, and as such, prior contraventions for which forbearance was granted will inform the MSA whether forbearance is appropriate in respect of any subsequent contravention of the same reliability standard or ISO rule.

However, matters where forbearance was applied are not counted when escalating the amount of a specified penalty pursuant to AUC Rule 019.

In the case of a matter where multiple contraventions have been recognized that result in multiple NSPs or a mix NSPs, forbearances, and/or decisions not to apply penalties, the MSA categorizes the matter in its public reporting as a single outcome reflecting the most punitive outcome.

9 PUBLIC REPORTING

At its discretion, consistent with the MSR section 6(2), the MSA may publish information about the matter that was investigated.