

NOTICE TO MARKET PARTICIPANTS AND STAKEHOLDERS

September 9, 2020

Re: **MSA Compliance Process consultation**

On August 7, 2020, the MSA issued a [Notice](#) indicating that a broad and collaborative consultation regarding potential revisions to its [Compliance Process](#), held in accordance with its [Stakeholder Consultation Process](#), would be beneficial. The MSA is proceeding with this consultation process.

The Compliance Process was last revised in October 2016. Since then, new Alberta Reliability Standards (including Critical Infrastructure Protection reliability standards) and sections of the ISO Rules have been adopted. Furthermore, the MSA recognizes that there may be opportunities to clarify its Compliance Process in order to reduce the regulatory burden for market participants and to meet the MSA's red tape reduction targets.

Proposed topics for consideration within this consultation process

The Notice requested that preliminary feedback regarding areas of discussion be provided to the MSA by August 28. Six submissions were made. Based on this feedback, the MSA is proposing the following topics for discussion within the scope of this consultation.

1. Self-reporting process

The MSA views self-identification and self-reporting to be critical components of an effective compliance program. The MSA would like to solicit stakeholder comments on the existing self-reporting process, including, but not limited to:

- timing of self-report submissions;
- description of the contravention, including impact and severity;
- certification that a contravention occurred; and
- mitigating circumstances.

2. Compliance monitoring and the referral process

The MSA considers the ISO Compliance Monitor to be an integral partner in the compliance framework. The MSA would like to solicit stakeholder comments regarding the handling of referrals from the ISO Compliance Monitor, including opportunities for market participants under

review to provide supplemental information to the MSA. This information could include additional information that came to light following the referral or assessments of the severity and impact of the suspected contraventions.

3. Forbearance criteria and specified penalties

The MSA considers forbearance to be an appropriate outcome in certain instances, whereas in some cases, enforcement action, including specified penalties, is required. To the extent that the MSA considers a specified penalty appropriate for a particular matter, the issuance of specified penalties is governed by AUC Rules 019 and 027. The criteria considered by the MSA are informed by the *Transmission Regulation* (AR 86/2007) and articulated in the Compliance Process in the context of self-reports. The MSA invites comment on these criteria and their application.

Prior to determining outcomes on compliance matters, the MSA requests and considers all information that it deems necessary. However, some stakeholders have expressed an interest in receiving preliminary determinations for Critical Infrastructure Protection matters. The MSA invites comment on the usefulness of such a process.

4. Conditional forbearance and contravention mitigation

Resolving non-compliance and preventing re-occurrence are primary objectives of the MSA's compliance enforcement approach. Accordingly, in instances where a contravention is ongoing but forbearance is appropriate, the MSA often grants forbearance on the condition that the non-compliance be mitigated. The MSA strongly encourages the use of mitigation plans for reliability standards matters, which provide a structured approach. Comments are invited on the existing mitigation plan process and timelines. The MSA intends to streamline the forms and process to reduce red tape and increase efficiency.

5. Transparency and reporting

The MSA considers appropriate reporting and transparency (subject to confidentiality requirements) to be important components of an effective compliance framework. The MSA invites comments on its existing reporting practices regarding compliance activities.

6. Additional comments

The MSA also invites additional comments that do not fit into the aforementioned categories.

Request for comments and next steps

The MSA requests that comments on issues associated with the topics for discussion within the scope of this consultation be provided to the MSA at stakeholderconsultation@albertamsa.ca by September 23. For greater clarity, the MSA is in the "Initial Assessment" phase of its Stakeholder Consultation Process. As set out in section 3.3 of the Stakeholder Consultation Process, these comments will be posted on the MSA's website.

Following a review of these comments, the MSA will propose a revised version of the Compliance Process for comment.

Issues beyond the scope of this consultation process

In the preliminary feedback regarding areas of discussion, several comments related to matters that are beyond the proposed scope of this consultation process.

In particular, the MSA received feedback that discussed the AESO's role in the compliance monitoring framework and processes. Stakeholders proposed the concept of a risk-based approach to compliance monitoring, the adoption of NERC guidance, and the self-logging of non-compliance events. The MSA is not in a position to consult on the AESO's approach to compliance monitoring and rule development, and encourages stakeholders to engage with the AESO on these subjects. The MSA would be willing to participate in these discussions.

Similarly, while the MSA acknowledges the preliminary feedback supporting its proposals for amendments to AUC Rules 019 and 027, it considers that AUC consultations would be a more appropriate forum for discussing these proposals. The MSA intends to actively participate in AUC consultations regarding these rules.

The MSA appreciates stakeholder efforts and engagement with this consultation process.

Sincerely,

Derek Olmstead
Market Surveillance Administrator