Overview of MSA Enforcement Processes

November 2025

MARKET SURVEILLANCE ADMINISTRATOR

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MSA mandate

- ***Alberta Utilities Commission Act* (AUCA), section 39**:
  - (1)(a) to ***carry out surveillance*** in respect of

    (i) the storage, discharge, supply, generation, transmission, distribution, trade, exchange, purchase or sale of electricity, electric energy, electricity services or ancillary services or any aspect of those activities,

    …
  - (1)(b) to ***investigate matters, on its own initiative or on receiving a complaint or referral*** under section 41, and to undertake activities to address

    (i) contraventions of the Electric Utilities Act, the regulations under that Act, ***the ISO rules, reliability standards,*** Part 2.1 of the Gas Utilities Act or the regulations under that Act or of decisions, orders or rules of the Commission,

    …
  - (3) In carrying out its mandate, the Market Surveillance Administrator ***shall assess*** the following:

    (a) ***whether or not the conduct*** of an electricity market participant supports the fair, efficient and openly competitive operation of the electricity market and whether or not the electricity market participant ***has complied with or is complying with***

    (i) the Electric Utilities Act, the regulations under that Act, ***the ISO rules*****,** ***reliability standards***, market rules and any arrangements entered into under the Electric Utilities Act or the regulations under that Act,

    …

Context

- There have been no recent changes to the legislation, regulations, or to the MSA Compliance Process in relation to ARS enforcement and recent changes to AUC Rule 027 were administrative in nature; the MSA continues to operate within the existing framework as described on the following slides.
- There are recent or pending changes external to the MSA that could impact Enforcement processes, such as the AESO’s implementation of the Alberta Risk-Based Compliance Monitoring Program (ARCMP), the NERC Synchronization project, the Restructured Energy Market, Optimal Transmission Planning, and the initiatives referenced in the 2023 and 2025 Reliability Requirements Roadmap.
- Any substantive changes to the MSA’s Compliance Process or Investigation Procedures would require stakeholder consultation. AUC Rule 019 and 027 are the responsibility of the AUC.

Sources of matters

- MSA surveillance – AUCA, section 39
- Self report – AUCA, section 41(1)
- ISO referral – AUCA, section 41(2)
- WECC referral – AUCA, sections 34(4) and 39
- Complaint – AUCA, section 41(1)

Enforcement outcomes

- **Discontinuance** – AUCA, section 43(1) – No determination is made in the matter, but the MSA decides the matter is frivolous, vexatious, trivial, or otherwise does not warrant investigation.

- **No contravention** – The MSA is satisfied that the conduct is not a contravention.

- **Forbearance** – *Transmission Regulation*, section 23.1 – The MSA is satisfied that the conduct was a contravention, but that forbearance from penalties is warranted. The forbearance criteria considered can be found in section 4.1 of the MSA Compliance Process.

- **Specified penalty** – AUCA, section 52 – The MSA is satisfied that the conduct was a contravention and that a specified penalty under the terms of AUC Rules 019 or 027 is warranted.

- **Administrative enforcement** – AUCA, section 51 – The MSA is satisfied that the conduct was a contravention and that a hearing or other proceeding before the Commission is warranted.

Forbearance criteria

- MSA Compliance Process, section 4.1:
  - The conduct is **deemed by the MSA to be 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**. [AUC Rule 027 does not prescribe a relevant time period for the consideration of prior contraventions.]
  - The Market Participant **has a[n effective] Compliance Program** in effect.
  - The Market Participant has considered and **implemented actions to correct and prevent recurrence**, as appropriate. This may include a formal Mitigation Plan for Reliability Standards matters.
  - The conduct is described in a Self-Report submitted to the MSA and
    - The Self-Report contains all Information required by the MSA's form.
    - The Self-Report is received within 30 days of the date the contravention began (or if a Self-Report is received following 30 days, the Market Participant has provided acceptable reasons for the delay).
    - The Self-Report occurred prior to the Market Participant being alerted by the Compliance Monitor or the MSA.
    - The Self-Report was submitted in accordance with section 3 of the MSA Compliance Process.

Mitigation plans

- AUC Rule 027, section 4.9, allows the MSA to accept a mitigation plan that meets certain defined criteria, especially part (c) specifying that the mitigation correct the contravention and prevent re-occurrence.
- AUC Rule 027, section 4.10 allows the MSA to request the views of other persons, including the ISO, on a plan submitted by a market participant.
- MSA Compliance Process, section 6.4.4: in the case of disputes or failure to complete a mitigation plan, the MSA may reassess a matter or make an application to the Commission to require actions.
- MSA Compliance Process, section 6.5: Prior matters for which forbearance was applied will inform the MSA whether a subsequent matter constitutes a recurring problem and whether subsequent forbearance is appropriate, i.e., if mitigation plans fail to prevent repeated contraventions.

Specified penalties – ISO rules

- AUC Rule 019:
  - Section 1: Application to “**the contravention** of ISO rules.”
  - Penalties escalate based on the number of contraventions by section of the ISO rules and by asset (if applicable) in **a rolling 12-month period**.
  - Penalties range from $500 to $10,000 per contravention; AUCA, section 52(1) limits the total penalty to $100,000 per day.
  - MSA staff determine the how to count the number of contraventions **based on the facts of each matter**, applying their professional judgment and expertise. MSA staff rely on information in any self-report or referral from the AESO, as applicable, and may or may not request additional information from market participants.
  - 50% reduction available for self-reported matters **made in the form specified by the MSA**.
  - Penalties are made public on the MSA’s website (data portal).

Specified penalties – ARS

- AUC Rule 027:
  - Section 1: Application to "**the contravention** of a reliability standard or a requirement within a reliability standard."
  - Categories 1, 2, or 3 require the MSA to make a determination on the severity of **the impact, the risk, or the scope of the contravention** on the safe, reliable, and economic operation of the interconnected electric system.
  - Categories 4 through 9 are more prescriptive on the penalty that applies.
  - Penalties range from $500 to $25,000 per contravention; AUCA, section 52(1) limits the total penalty to $100,000 per day.
  - MSA staff determine the severity level of a contravention **based on the facts of each matter**, applying their professional judgment and expertise. MSA staff rely on information in any self-report or referral from the AESO, as applicable, and may or may not request additional information from market participants.
  - 25% reduction available for self-reported matters **with sufficient detail** and 25% reduction available for **accepted mitigation plans**.
  - Penalties are made public on the MSA's website except for CIP-related contraventions (data portal).

Achieving a Culture of Compliance

The current system is designed as a relatively light-touch feedback loop where:

- A safe and reliable electric system depends on effective compliance programs within each participant and the ISO.
- AESO Compliance Monitoring undertakes monitoring (including audit) and refers suspected contraventions to the MSA.
- The MSA can issue penalties and may accept mitigation plans that prevent recurrence of contraventions without requiring lengthy enforcement proceedings.
- In the case of disputes or for more significant matters, Commission processes are available to both market participants and the MSA.

The effectiveness of the system rests on the timeliness of detection and evaluation as well as on the successful mitigation of issues. A different system (such as risk-based or outcome-based instead of contravention-based) may require legislative or regulatory change, revision to AUC Rules 019 and 027, and / or the MSA Compliance Process.

Closing thoughts

- Market participant compliance programs, AESO Compliance Monitoring, and MSA Enforcement work together to create and reinforce a culture of compliance within the industry to deliver a safe and reliable electric system.

- Feedback and engagement is welcome; material change would require a formal stakeholder consultation process with appropriate notice.