

12. ISO COMPLIANCE MONITORING

12.1 Introduction

12.1.1 Purpose

The purpose of **rule 12** is to prescribe the processes and guiding principles by which the **ISO** will monitor and investigate the compliance of **market participants** with **applicable rules and standards**.

The **ISO** will use this **rule 12** as a basis for determining whether there is a **suspected violation** by a **market participant**, and the appropriate course of action to take in such circumstances.

12.1.2 Scope

Rule 12 applies to all **applicable rules and standards**.

12.1.3 Authority

ISO compliance monitoring will be conducted within the authority set forth in the **ISO rules** and the **Act**.

12.1.4 Application of Other Remedies

The action and remedies authorized under **rule 12** are in addition to any other action or remedies that may be available to the **ISO** elsewhere in **ISO rules** or under law, regulation or order. Nothing in **rule 12** should be construed to limit the right of the **ISO** to take action or seek remedies otherwise available to it, and such action or remedies may be pursued in lieu of or in addition to the action or remedies specified in **rule 12**.

12.2 Compliance Monitoring

12.2.1 Extent of Compliance Monitoring

The **ISO** will undertake such monitoring of **market participants** as it considers necessary to determine whether or not **market participants** are in compliance with **applicable rules and standards**.

12.2.2 Primary Information Sources

In conducting compliance monitoring, the **ISO** will rely primarily upon data and information that is gathered in the normal course of the business of the **ISO**, along with publicly available data and information.

12.2.3 Data or Information Request

The **ISO** itself, or based upon input from the **Market Surveillance Administrator**, may determine that additional data or information is required from **market participants** in order to monitor or review compliance with **applicable rules and standards**. To the

extent that such a determination is made the **ISO** may request a **market participant** possessing such data or information to provide it to the **ISO** within a reasonable time, in response to a written request. The **ISO** will work with the **market participant** to set a reasonable time within which to provide such data or information and to address any concerns regarding the need for the data or information.

A written data or information request will be accompanied by an explanation of the need for such data or information. To the extent that a data or information request relates to **load settlement rules**, the **ISO** will provide the **Commission** with a copy of such request at the same time the data or information request is made. To the extent that a data or information request relates to **ISO rules**, the **ISO** will provide a copy of such request to the **Market Surveillance Administrator** upon the request of the **Market Surveillance Administrator**, or in accordance with **rule 12.5.2**.

The **ISO** will limit the use of data or information obtained in accordance with **rule 12.2.3** to purposes related to compliance with **applicable rules and standards**.

12.2.4 Return of Data or Information Request Material to a Market Participant

The **ISO** retains the right to maintain in its possession data or information obtained pursuant to **rule 12.2.3** for as long as the **ISO**, in its sole discretion, deems necessary. Subject to this provision, the data or information obtained pursuant to **rule 12.2.3** along with any copies in the possession of the **ISO** will be returned to the **market participant** that submitted the data or information upon the written request of that **market participant**.

12.2.5 Failure or Refusal to Comply with a Data or Information Request

A **market participant** that receives a request pursuant to **rule 12.2.3** will provide the **ISO** with all data or information that is required in order for the **ISO** to carry out its duties under **rule 12**.

If a **market participant** does not provide such data or information within a reasonable time, the **market participant** will be considered to have contravened **rule 12.2.3**.

12.2.6 Confidentiality

The **ISO** will observe the confidentiality provisions of the **ISO rules** with respect to such data or information that a **market participant** has identified to the **ISO** as **confidential information**.

12.3 Issue Assessment

12.3.1 Monitoring, Referrals and Complaints

The **ISO** may become aware of possible non-compliance with **applicable rules and standards** as a result of one or more of the following:

- a) its monitoring of **market participants** or through an **internal referral**;
- b) the submission of information to the **ISO** by the **Market Surveillance Administrator**, the **Commission**, or the **Crown**;

- c) an **external referral**;
- d) a **complaint**; or
- e) any other means.

12.3.2 Communications to the ISO and Confidentiality

The communication of information for the **ISO** regarding a **complaint, internal referral, external referral**, referral made by the **Market Surveillance Administrator**, the **Commission** or the **Crown**, or any other matter related to **rule 12** is detailed in Appendix 4.

Compliance monitoring audits and internal monitoring conducted by the **ISO** will be done on a confidential basis, and any **internal referral** will be made on a confidential basis. Any **complaint**, communication or referral to the **ISO** regarding compliance with any **applicable rules and standards** will be treated by the **ISO** on a confidential basis if requested by the **complainant** or referrer.

Confidential information obtained pursuant to **rule 12.3.2** will be made available to either or both of the **Commission** or the **Market Surveillance Administrator** as identified in **rule 12.5** and may be used by either or both of those bodies.

12.3.3 Preliminary Assessment

- a) In response to an issue relating to non-compliance with **applicable rules and standards** that the **ISO** becomes aware through **rule 12.3.1** or any other means, the **ISO** will conduct a preliminary assessment in order to determine whether it suspects that a **market participant** may have contravened **applicable rules and standards**. This preliminary assessment may include, but not be limited to, consideration of the following:
 - i) the nature of the issue regarding **applicable rules and standards**;
 - ii) the problem or concern regarding **applicable rules and standards**;
 - iii) the alleged failure of a **market participant** to comply with **applicable rules and standards**;
 - iv) any representations made by a **market participant** that is the subject of an alleged failure to comply with **applicable rules and standards**;
 - v) whether there is a reasonable basis or reasonable evidence to suspect that **applicable rules and standards** was contravened; and
 - vi) any mitigating factors.
- b) For the purposes of assisting the **Commission** or the **Market Surveillance Administrator**, the **ISO** may gather information as part of its preliminary assessment that includes, but is not limited to, the following:

- i) the level of frequency, severity, duration and materiality associated with the issue;
 - ii) whether a **market participant** disclosed the matter to the **ISO** on its own or whether it was prompted to do so;
 - iii) any actions or inactions that a **market participant** took or did not take upon becoming aware of a failure to comply with **applicable rules and standards**;
 - iv) any failure or refusal of a **market participant** to co-operate with the **ISO** regarding an alleged failure to comply with **applicable rules and standards**;
 - v) whether the issue is related to the *Power Purchase Arrangements Determinations Regulation* (AR 175/2000);
 - vi) whether the actions and activities are consistent with the **Act**;
 - vii) any impact or potential to impact a **market participant**;
 - viii) any impact or potential to impact the operation of the market; and
 - ix) any impact or potential to impact the **system controller's** ability to direct the safe, reliable and economic operation of the **AIES**;
- c) Except as required by the **Act or regulation**, a regulatory authority with jurisdiction or **applicable rules and standards**, the **ISO** may decline to act with respect to any specific **complaint, internal referral, external referral**, or any other referral or request if the **ISO** considers:
- i) the **complaint, referral or request** is frivolous, vexatious, trivial or otherwise does not warrant action on the part of the **ISO**; or
 - ii) the subject-matter is under the jurisdiction of another authority.

The **ISO** will provide a written response regarding its preliminary assessment, as soon as reasonably practical, to the party making a referral pursuant to **rule 12.3.1(b)**, or to the party making a **complaint**. A written response to the party making a **complaint** will not contain **confidential information**.

12.4 Compliance Monitoring Audit

- a) The **ISO** may determine that a **compliance monitoring audit** of a **market participant** is required in order to monitor or review the **market participant's** compliance with specified **applicable rules and standards**. To the extent that such a determination is made the **ISO** may give a written notice or request to the **market participant** including without limitation the following:

- i) that the **ISO** has appointed one or more third parties to assist it in the conduct of all or any part of the **compliance monitoring audit**;
 - ii) that the **market participant** provide data and information to the **ISO** within a reasonable time frame;
 - iii) an explanation of the **ISO**'s rationale and need for the **compliance monitoring audit**; and
 - iv) that the **ISO** may appoint a third party to carry out or assist it with the **compliance monitoring audit**.
- b) With respect to the conduct of any **compliance monitoring audit**, the **ISO**, and its appointed third party, if any, shall without limitation, do the following:
- i) work with the **market participant** to set a reasonable time for the conduct and completion of the **compliance monitoring audit**; and
 - ii) limit the use of data or information obtained through the **compliance monitoring audit** in accordance with **rule 12** to purposes related to compliance with **applicable rules and standards**.

To the extent that a **market participant** disputes the holding of a **compliance monitoring audit** or any aspect of it, it may seek to resolve the dispute in accordance with the dispute resolution provisions of the **rules**. In any event, the **ISO** or the **market participant** may refer the dispute to the **Market Surveillance Administrator** or the **Commission**, as applicable.

- c) The **ISO** and its appointed third party, if any, shall develop a **compliance monitoring audit** report with respect to each **compliance monitoring audit** that shall include, without limitation, the following:
- i) a description of the objective, scope, and methodology of the **compliance monitoring audit**;
 - ii) any **suspected contraventions** with **applicable rules and standards**;
 - iii) any mitigation or remedial action measures, which have been completed or pending by the **market participant**;
 - iv) the nature of any confidential information provided.

A draft of the **compliance monitoring audit** report will be provided to the **market participant** for comment before the **ISO** completes the report. Where as a result of the report, the **ISO** has determined there is a **suspected contravention**, it will refer the matter to the **Market Surveillance Administrator** or the **Commission** in accordance with the **rules 12.5.2** and **12.5.3**, as applicable.

12.5 Referrals, Notifications and Reports regarding Compliance Matters

12.5.1 Notification to Market Participant

Where the **ISO** determines, as a result of a preliminary assessment as outlined in **rule 12.3.3**, a **suspected contravention**, the **ISO** will provide notice as soon as reasonably practical to the **market participant** that any **applicable rules and standards** may have been contravened.

12.5.2 Referral to the Market Surveillance Administrator

Subject to provisions in the **Act** or related regulations and **rule 12.5.3**, in circumstances where the **ISO** determines a **suspected contravention**, the **ISO** must refer the matter to the **Market Surveillance Administrator**.

Referrals made in accordance with **rule 12.5.2** will be done on a confidential basis and will include **confidential information** obtained pursuant to **rules 12.2.3, 12.3.2 and 12.4**. The **ISO** will notify the **market participant** when a **suspected contravention** is referred to the **Market Surveillance Administrator** in accordance with this **rule**.

Except as otherwise determined by the **Market Surveillance Administrator**, information or recommendations provided by the **ISO** to the **Market Surveillance Administrator** will be held confidential and will not be disclosed to **market participants**.

12.5.3 Referral to the Commission

Subject to provisions in the **Act** and rules made by the **Commission** respecting **load settlement**, in circumstances where the **ISO** has determined a **suspected contravention**, of a **load settlement rule** the **ISO** must refer the matter to the **Commission**.

Subject to provisions in the **Act**, in circumstances where a **market participant** fails to pay an **ISO fee**, the **ISO** may refer the matter to the **Commission**.

Referrals made in accordance with **rule 12.5.3** will be done on a confidential basis and will include **confidential information** obtained pursuant to **rules 12.2.3, 12.3.2 and 12.4**. The **ISO** will notify the **market participant** when a matter is referred to the **Commission** in accordance with this **rule**.

12.5.4 Reports to the Commission

In accordance with rules made by the **Commission**, to the extent that the **ISO** conducts an investigation regarding compliance with **load settlement rules**, at the conclusion of the investigation, the **ISO** will submit a written report to the **Commission** detailing:

- a) the original complaint reference;
- b) a summary of the investigation carried out;
- c) a list of requests for information from **market participants**;

- d) the findings resulting from the investigation; and
- e) any recommendation arising from the investigation or findings.

Written reports prepared by the **ISO** in accordance with this **rule 12.5.4** will only be provided by the **ISO** to the **Commission**, the **market participant** that is the subject of the report, and the complainant regarding the issue (if any).

12.5.5 Mitigating Factors

To the extent a **market participant's** failure to comply with **applicable rules and standards** is caused by any one or more of the following, the **market participant** will be considered by the **ISO** not to be in contravention of an **ISO rule**:

- a) An event of **force majeure** affecting the **market participant**; provided however, that the **market participant** gives written notice to the **ISO** of the **force majeure** in reasonable detail no later than two **business days** after it knows of the event or condition and makes all reasonable efforts to cure, mitigate, or remedy the effects of the event or condition;
- b) a circumstance related to the operation of the **asset** or **transmission facility** which if it operated could reasonably be expected to affect the immediate safety of the **asset**, the environment, staff or the public;
- c) Actions or omissions that are consistent with **good electric operating practice** in a **system emergency**;
- d) Actions or omissions specifically required under the **Act**, applicable legislation, applicable regulations or by a regulatory authority with jurisdiction;
- e) Actions or inactions in response to a **directive** made by the **system controller**.

12.5.6 Recommendations of the ISO

Subject to Part 1 General – G5 of the **ISO rules**, to the extent that the **ISO** proposes to change **ISO rules** in response to **rule 12**, the **ISO** will advise **market participants** and interested parties of the reasons for the proposed **ISO rule** change and of any actions or behaviours of **market participants** that are of concern to the **ISO**.

Nothing in the **ISO rules** shall prevent the **ISO** from making a recommendation to the **Market Surveillance Administrator** or the **Commission** to take actions consistent with provisions of the **Act** or the *Alberta Utilities Commission Act*. This would include, but not be limited to circumstances where the **ISO** has recommended that a **market participant** undergo appropriate additional training or education.

12.6 Administration

12.6.1 Time Guidelines

The **ISO** will take all reasonable steps to commence a preliminary assessment of an issue within thirty (30) **days** of the discovery of the issue or the circumstances being first reported to the **ISO**, and will take all reasonable steps to complete a preliminary assessment of an issue within thirty (30) **days** of the commencement of a preliminary assessment.

The **ISO** may modify the above time schedules in order to accommodate any unique circumstances that may exist.