

**Revisions to AUC Rule 027 – Specified Penalties for Contravention of Reliability Standards**  
**Stakeholder Comments and AUC Response Matrix**  
**Comment Period – July 15, 2010 to August 16, 2010**

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<i>Issue 1: Contents of Notice of Specified Penalty</i>	
<p><b>Alberta Electric System Operator</b></p> <p>Section 3(2)(b) states “the date or dates of the contravention” for a specified penalty. “Date or dates” could be interpreted as a point in time with respect to a specific contravention such as the date a market participant did not comply with a directive. When a market participant does not comply with the directive over a period of time, the ongoing “contravention” is a real issue. The AESO recommends section 3(2)(b) read “the date or dates and the duration, of the contravention”.</p>	<p>Subsection 3(2)(b) of the proposed AUC Rule 027 requires that the notice of specified penalty state the date or dates of the contravention. Subsection 3(2)(d) enables the MSA to include any other particulars relating to the contravention. To the extent that a market participant does not comply with a reliability standard over a period of time, the MSA can provide any particulars regarding duration in accordance with subsection 3(2)(d).</p>

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<p><b>ATCO Power</b></p> <p>Section 3(d) of the revised rule states:</p> <p style="padding-left: 40px;">a description of the conduct of the market participant or the ISO named, its officers, personnel, or agents, the activity or omission which resulted in the contravention or any other particulars relating to the contravention;</p> <p>ATCO would appreciate clarity regarding the intent of this section as it relates to identification of "officers, personnel, or agents" in the Notice of Specified Penalty. Is it the intent of this requirement that position names are provided? Or, is it the AUC's intention that individuals are named? ATCO is comfortable with identifying the market participant as a company name and with identification of a position title (e.g., "Real Time Analyst" or "Vice-President") if necessary. However, ATCO does not support the naming of individuals (e.g., "John Smith, Real Time Analyst") on a Notice of Specified Penalty.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>TransCanada recommends that this section be redrafted to read: “a description of the conduct, activity, or omission of the market participant named or the ISO, or the agents of the market participant named or the ISO, or any other particulars relating to the contravention”.</p> <p>TransCanada submits this revised wording would enhance the clarity of this section. More importantly, TransCanada agrees with the comments previously submitted by AltaLink Management Ltd. (“AltaLink”) that the actions of the officers or personnel of a market participant or ISO are made by and on behalf of the market participant or ISO. TransCanada shares the concern that this section could potentially lead to the identification of individuals in a NSP. As</p>	<p>The Commission has revised subsection 3(2)(d) in order to clarify that the name(s) of individual agents, officers or personnel acting on behalf of the market participant or the ISO need not be named in the notice of specified penalty.</p>

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discussed below, section 5 requires the public posting of a NSP, which creates a concern respecting the privacy of these individuals.	
<b><i>Issue 2: Self-Disclosure</i></b>	
<p><b>TransCanada Energy Ltd.</b></p> <p>TransCanada recommends that the requirement of describing “the contravention” as a part of a self-disclosure statement should be revised to require description of the “all relevant facts and identification of the reliability standard believed to be relevant to the facts...”. TransCanada believes that market participants should only be required to identify all relevant facts and circumstances in a self-report, while the MSA bears the legislative mandate to investigate market participant behaviour and determine whether a contravention has actually occurred. Requiring a market participant to acknowledge a contravention as a part of a self-report causes a market participant to assume the legislative duties of the MSA, and additionally prejudices its position in advance of a determination by the MSA of whether a breach occurred and how the MSA will handle the matter. Further, there may be circumstances where a market participant does not know whether its conduct constitutes a contravention of a particular Alberta Reliability Standard. Indeed, TransCanada understands that across NERC regions approximately 26% of self-reports have been dismissed because it was determined that no violation occurred. For all of these reasons, TransCanada believes that requiring market participants to acknowledge a contravention may serve as a disincentive against self-reporting in the first instance.</p> <p>TransCanada notes that in response to concerns from market participants, the MSA has revised its self-report form (which appears as Appendix A to the Compliance Process) to provide the market participant with a choice: market participants may acknowledge that a</p>	<p>The Commission has revised subsections 4(5) and 4(8)(c) in order to allow market participants and the ISO to provide all relevant facts and a detailed description of the circumstances regarding the possible contravention of a reliability standard.</p>

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<p>rule or reliability standard was contravened, or it may certify the truthfulness of all relevant facts, without acknowledging that a contravention occurred. In either case, the MSA must determine whether a rule or reliability standard was contravened, in accordance with its legislative mandate.</p>	
<b><i>Issue 3: Forbearance, Warnings and Zero Dollar Specified Penalties</i></b>	
<p><b>AltaLink Management Ltd.</b></p> <p>AltaLink submits the following comments on proposed AUC Rule 027 as at July 15, 2010. AltaLink’s concerns with AUC Rule 027 are limited to the Market Surveillance Administrator’s (“MSA”) apparent lack of discretion to forgo penalty assessment along with some general comments on the penalty matrix. The MSA derives its authority from a number of statutes, regulations and rules that create a single regulatory regime with each instrument read in the context of the others, with a view to the overall regime. Accordingly, AUC Rule 027 must be read in the context of a larger regulatory framework that includes the <i>Alberta Utilities Commission Act</i> (“AUCA”).<sup>1</sup> It is AltaLink’s understanding that the Commission acknowledges the MSA’s authoritative mandate as contemplated by the AUCA with respect to carrying out and exercising its duties and responsibilities including its discretion regarding forbearance.</p> <p>AltaLink recommends that AUC Rule 027 be amended to explicitly confirm MSA discretion to forgo penalty assessment. Section 57 of the AUCA grants forbearance powers to the MSA in respect of specified penalties. The June 1, 2010 Draft MSA Report on Compliance Process (“MSA Report”), which addresses specified</p>	<p>Subsection 52(1) of the <i>Alberta Utilities Commission Act</i> states the following:</p> <p style="padding-left: 40px;"><b>52(1)</b> Notwithstanding section 51, where the Market Surveillance Administrator is satisfied that a person has contravened an ISO rule or a reliability standard for which a penalty has been specified by the Commission under subsection (7), the Market Surveillance Administrator <u>may</u> issue a notice of specified penalty to the person in accordance with the rules made under subsection (7).</p> <p style="padding-left: 40px;">[Emphasis added]</p> <p>Subsection 52(1) does not require the Market Surveillance Administrator (MSA) to issue a notice of specified penalty in a particular circumstance.</p> <p>Proposed AUC Rule 027 is made in accordance with subsection 52(7) of the <i>Alberta Utilities Commission Act</i>.</p> <p>Subsection 3(1) of proposed AUC Rule 027 provides that the Market Surveillance Administrator (MSA) <u>may</u> issue a notice of specified penalty under section 52 of the <i>Alberta Utilities Commission Act</i>. As such, proposed AUC Rule 027 codifies the</p>

<sup>1</sup> S.A. 2007, Chapter A-37.2

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<p>penalties and Alberta Reliability Standards, confirms the MSA’s power to forbear from applying sanctions.<sup>2</sup> The MSA Report defines “forbear” to mean “that the MSA will not pursue or take any action with respect to the suspected contravention including not making anything public with respect to the event.”<sup>3</sup></p> <p>AUC Rule 027 codifies the application of specified penalties to reliability standards. Amendments to AUC Rule 027 which confirms the MSA discretion to forgo a mandatory penalty are therefore necessary to ensure consistency of the AUC Rule 027 with the treatment of MSA forbearance under the MSA Report and AUCA Section 57. Confirming MSA forbearance powers under AUC Rule 027 also comports with the MSA position that enforcement action should be a “last resort”<sup>4</sup> and the purposes section of the <i>Alberta Electric Utilities Act</i><sup>5</sup> which requires an efficient and cost effective regulatory framework.<sup>6</sup></p> <p>With respect, AltaLink does not fully understand the basis upon which the AUC has rejected the suggestion, made by several stakeholders, that contraventions could be addressed by warnings or zero dollar penalties. The AUC states that “the use of forbearance, if deemed appropriate by the MSA should provide reasonable checks and balances”.<sup>7</sup> However, section 4(1) of AUC Rule 027 requires the MSA to determine a specified penalty in accordance with section 4 and the Penalty Table. The mandatory nature of section 4(1) suggests that the MSA could never forbear from applying a penalty, a scenario</p>	<p>application of specified penalties to reliability standards only if the MSA opts to issue a specified penalty. It does not require the MSA to issue a specified penalty, nor does it rule out the use of forbearance by the MSA.</p> <p>The Commission does not intend to modify proposed AUC rule 027 to include warnings or zero dollar penalties, as this approach is not consistent with the wording of section 52 of the <i>Alberta Utilities Commission Act</i> which makes reference to the payment of a specified penalty. The Commission reads section 52(6) to mean that a penalty be paid for every specified penalty that is issued, not that every contravention of reliability standards must result in a penalty being paid.</p>

<sup>2</sup> MSA Report, sections 1, 4.3, 4.6, 5.3, 5.7 and 6.4.

<sup>3</sup> MSA Report, section 2.

<sup>4</sup> MSA Report, section 3.

<sup>5</sup> R.S.A. 2003, c.E-5.1.

<sup>6</sup> 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.

<sup>7</sup> Stakeholder Comments and AUC Response Matrix, page 6.

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<p>inconsistent with the MSA Report and AUCA Section 57.</p> <p>AltaLink is also unclear regarding the AUC’s position that it “does not propose to revise proposed AUC Rule 027 to include warnings, inconsequential first offenses or zero dollar penalties, as these approaches are not consistent with section 52(6) of the <i>Alberta Utilities Commission Act</i> which requires that a specified penalty be paid.”<sup>8</sup> Section 52(6) states “A specified penalty paid to the Commission under this section shall be paid into the General Fund.” AltaLink interprets section 52(6) to describe the Fund into which a penalty should be paid should a penalty be paid, and not to mean that every contravention of reliability standards must result in a penalty being paid. If section 52(6) required a penalty to be paid in every instance of non-compliance, its effect would be to render meaningless the forbearance powers of the MSA established at section 57 of the AUCA.</p> <p><b>Suncor Energy Inc.</b></p> <p>In Suncor’s view, the authority of the MSA to forbear should be specifically addressed in Rule 027 in section 4. The Rule should make it clear that the MSA has the authority to refrain from exercising any of its power or authority under Rule 027 in accordance with section 57 of the <i>Alberta Utilities Commission Act</i> (the “AUCA”). Including such a specific statement would be consistent with subsection 3(1) of the proposed rule, which expressly refers to the MSA’s statutory authority to issue a notice of specified penalty under section 52 of the AUCA.</p> <p><b>TransAlta Corporation</b></p> <p>TransAlta recommends that AUC Rule 027 be amended to specifically permit the Market Surveillance Administrator (MSA) the</p>	

<sup>8</sup> Stakeholder Comments and AUC Response Matrix, page 15.

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<p>discretion to forgo a penalty assessment for contraventions of a reliability standard. While this may be the AUC’s intent, this is not specifically set out in Rule 27 and TransAlta would like clarity that the MSA does in fact have this discretion. Section 57 of the <i>Alberta Utilities Commission Act</i> ("AUCA") grants forbearance powers to the MSA in respect of specified penalties. Section 3.6 of the Market Surveillance Administrator’s Compliance Process, dated August 11, 2010, which addresses specified penalties and Alberta Reliability Standards, details the MSA’s ability to forbear from applying sanctions. It is important that both the MSA’s Compliance Process and AUC Rule 27 are aligned and therefore TransAlta feels that it is beneficial to add additional language to Rule 27 to clarify this.</p> <p>Section 4.4 of Rule 27 provides a specific example:</p> <p style="padding-left: 40px;"><i>For contraventions of the reliability standards listed in Category 5, 6, 7, 8 or 9 of the Penalty Table, the Market Surveillance Administrator shall determine the amount of the specified penalty at the level in the Penalty Table.</i></p> <p>TransAlta’s concern is that this section does not also allow for forbearance when there is a contravention to a reliability standard listed in Category 5,6,7,8 or 9 and that the section as worded would require a penalty to be levied.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>As outlined in the Compliance Process, after its investigation and assessment, the MSA will either forbear or will choose to issue a notice of specified penalty (“NSP”) for contraventions of Alberta Reliability Standards listed in the Penalty Table of Rule 027.</p> <p>TransCanada appreciates the Commission’s clarification in response to stakeholder comments that Rule 027 is “not intended to address when or if the Market Surveillance Administrator forbears from the exercise of its powers in respect of reliability standards”. To ensure</p>	

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<p>that the application of Rule 027 is not interpreted in a manner that would prevent the MSA from forbearing on a contravention of a specified Alberta Reliability Standard, TransCanada recommends that the application of Rule 027 be amended to read: “This rule applies where the Market Surveillance Administrator determines that a notice of specified penalty under section 52 of the <i>Alberta Utilities Commission Act</i> for the contravention of a reliability standard or a requirement within a reliability standard listed in the Penalty Table may be issued”.</p> <p>TransCanada notes that section 3 of Rule 027 provides that the MSA “may” issue a NSP for contraventions of a Reliability Standard listed in the Penalty Table. TransCanada supports the use on non-mandatory language, which preserves the ability of the MSA to forbear on contraventions of Alberta Reliability Standards listed in the Penalty Table.</p>	
<b>Issue 4: Penalty Table and Amounts of Specified Penalties</b>	
<p><b>AltaLink Management Ltd.</b></p> <p>Furthermore, AltaLink is concerned that the penalties set out in the Penalty Table may be disproportionate to a TFO’s contravention of relatively minor requirements such as administrative compliance. AltaLink has some concerns regarding the categorization of standards in the penalty matrix, and makes the following comments:</p> <ul style="list-style-type: none"> <li>▪ CIP-001-AB-1 is a reporting and awareness standard, only. For reporting instances, there is little clarification of what events make up sabotage (other than suspicious activity), which implies that interpretation of the standard is subjective. For a standard that is subjective in nature with no direct reliability consequence, a \$10,000 penalty seems disproportionately high.</li> </ul>	<p>The purpose of CIP-001-AB-1 – <i>Sabotage Reporting</i> is to ensure that sabotage events are appropriately reported. The Commission notes that the Western Electricity Coordinating Council (WECC) has assessed its equivalent standard as having a “medium” set of violation risk factors and violation severity levels that are in most cases rated as either “high” or “severe”. The range of penalties that might apply for a high severity level is \$6,000 to \$200,000, and</p>

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<ul style="list-style-type: none"> <li>▪ It is unclear what process was undertaken to determine how standards or requirements within the standards were placed in the penalty table. AltaLink encourages aligning commensurate risk/consequence to reliability with penalty levels and providing transparency on how the AUC determines which standards or requirements within standards are placed in the penalty table.</li> <li>▪ Categories 2 and 4 look identical and redundant. AltaLink therefore submits that Category 4 could be removed.</li> <li>▪ AltaLink proposes that the Commission could simplify the Penalty Table by incorporating Category 5 through 9 into Categories 1 to 3 as the penalty levels fall with the same severity levels. In addition, the MSA could determine the same penalty level just using Categories 1 to 3 and then determine a severity level of Lower, Moderate, High, Severe.</li> </ul>	<p>the range of penalties that might apply for a severe severity level is \$10,000 to \$335,000.</p> <p>The Commission is not bound to the assessments made by WECC, but does not see any reasonable basis to depart of the general assessments made by WECC. The specified penalty amount of \$10,000 is within the ranges noted above.</p> <p>In establishing the specified penalty amounts the Commission considered the violation severity levels and violation risk factors published by the North American Electric Reliability Corporation (NERC) as well as the NERC sanction guidelines. The Commission also considered the legislated limit for which specified penalties may be applied in Alberta. To date, the Commission has placed all approved standards in the penalty table.</p> <p>The penalty amounts within category 2 and category 4 of the penalty table are identical. However, the structure of category 2, as outlined in subsection 4(2) of proposed AUC Rule 027 is different from the structure of category 4, as outlined in subsection 4(3). Category 2 is assessed based on the impact, risk or scope of the contravention on the safe and reliable operation of the interconnected electric system as considered by the MSA, while category 4 is assessed based on quantitative measures. As such, the categories are not identical or redundant.</p> <p>The Commission does not consider that the Alberta reliability standards placed in categories 5 though 9 easily lend themselves to the use of severity levels in categories 1 through 3, even though the penalty amounts are similar.</p>

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<p><b>Suncor Energy Inc.</b></p> <p>The obligation of the MSA to determine specified penalties in subsections 4(1) to 4(7) should be made expressly subject to the authority to the MSA to forbear under section 57 of the AUCA. As currently proposed, these subsections of the Rule appear to impose an absolute obligation of the MSA to determine a (non \$0) specified penalty. These sections should also be made expressly subject to the MSA’s ability to request the AUC to issue a consent order under section 54 of the AUCA, which consent order may include a penalty less than the specified penalties prescribed under section 4 of the rule.</p> <p>In Suncor’s submission, it is important to ensure that the MSA has an appropriate degree of discretion. There may be instances where the MSA determines that forbearance is not appropriate, but also determines that in the relevant specified penalty is also not appropriate.</p> <p>The AUC has indicated that Rule 027 is intended to reflect elements of the North American Electric Reliability Corporation (“NERC”) approach to Reliability Standard enforcement.<sup>9</sup> However, the NERC Sanction Guidelines set out a significantly greater degree of discretion than does Rule 027.<sup>10</sup> The approach proposed by Suncor in this section would bring the approach set out in Rule 027 more in line with the approach set out in the NERC Sanction Guidelines.</p> <p>The “Severity Level” definitions set out in subsection 4(2) of Rule 027 are problematic inasmuch as they impose a subjective standard, the sole yardstick for which is the MSA’s view of the impact of the contravention. These standards should be framed objectively. For example, the definition of Low Severity Level could read: “the</p>	<p>Please see issue 3 for a discussion on forbearance and zero dollar penalties.</p> <p>The Commission considers the use of consent orders in the context of the MSA issuing specified penalties to unnecessarily complicate the process. In circumstances where the MSA opts not to forbear and not to issue a specified penalty in accordance with the penalty table, the MSA can seek an administrative penalty or enter into settlement discussions in order to resolve any matter that relates to its mandate.</p> <p>The Commission has considered and adopted many elements of the NERC sanction guidelines in the development of proposed AUC Rule 027. At the same time, however, the Commission has considered the unique legislative, regulatory and market structure in Alberta and the feedback of stakeholders regarding the Alberta market. To the extent a party does not agree with the assessment of the MSA regarding a specified penalty, that party has the option of disputing the notice of specified penalty and having the matter addressed by the Commission.</p>

<sup>9</sup> See AUC Bulletin 2010-06.

<sup>10</sup> See, for example, section 4.2.2. of the NERC Sanction Guidelines (January 15, 2008): [http://www.nerc.com/files/Appendix4B\\_Sanctions\\_Guidelines\\_Effective\\_20080115.pdf](http://www.nerc.com/files/Appendix4B_Sanctions_Guidelines_Effective_20080115.pdf)

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<p>impact, the risk or the scope of the contravention of a reliability standard on the safe, reliable and economic operation of the interconnected electric system <i>is reasonably expected to be low.</i>”</p>	
<p><b><i>Issue 5: Posting of Notices of Specified Penalties</i></b></p>	
<p><b>Suncor Energy Inc.</b></p> <p>Suncor acknowledges the AUC’s view that public confidence in the electricity market is supported by regulatory processes that are open, fair and transparent to the public.<sup>11</sup> However, Suncor believes that the absolute obligation of the MSA to post all notices of specified penalty, established by subsection 5(1) of Rule 027 is not appropriate.</p> <p>In Suncor’s submission, the primary purpose of a notice of specified penalty is to provide particulars of an alleged contravention of an AESO rule or reliability standard to a market participant, as part of what is in substance a quasi-criminal prosecutorial process. The rules of procedural fairness require that such a notice provide sufficient particulars of the alleged contravention to permit the market participant to understand the allegations made against it and to adequately defend itself. In Suncor’s view, the requirements of subsection 3(2) of Rule 027 generally accomplish this primary purpose.</p> <p>However, the level of detail required to accomplish this primary purpose is not required to accomplish the secondary purpose of supporting public confidence in the electricity market. Specifically, this secondary purpose does not require publication of unproven allegations or commercially sensitive or proprietary information regarding transmission facilities or operating practices. Furthermore, except where a market participant is an individual, a published notice</p>	<p>The Commission has addressed the issue of publication of a notice of specified penalty in prior consultations regarding AUC Rule 019 – <i>Specified Penalties for Contravention of ISO Rules</i> and proposed AUC Rule 027. In each instance, the Commission has taken the position that public confidence in the electricity market is supported by regulatory processes that are open, fair and transparent to the public.</p> <p>Proposed AUC Rule 027 requires the MSA to publicly post the name of the market participant or the ISO who is required to pay a specified penalty. It does not require that the name of the individual addressee be made public unless the market participant is an individual. A similar approach is taken with respect to AUC Rule 019 regarding the contravention of ISO rules.</p> <p>Section 3(3) of proposed AUC Rule 027 requires the MSA to send the notice of specified penalty to the person identified in the penalty table. It does not require the MSA to publicly post the name of that individual. As such, the identity of the addressee of the notice is relevant only to service of the notice and need not be part of the content of the notice itself.</p> <p>The Commission has revised subsection 3(2)(d) in order to clarify that the name(s) of individual agents, officers or personnel acting on behalf of the market participant or the ISO need not be named in the notice of specified penalty.</p>

<sup>11</sup> Rule 027 Stakeholder Comments and AUC Response Matrix, page 30.

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<p>of specified penalty should never reveal personal information, including individuals' names. In Suncor's submission, the information that should be made public in order to support public confidence in the electricity market is as follows:</p> <ul style="list-style-type: none"> <li>• The AUC decision with respect to a specified penalty. If there is a decision, no further information need be published. However, the AUC decision should not set out any of the information set out in the previous paragraph.</li> <li>• Where there is no AUC decision with respect to a specified penalty the following information may be made public: <ul style="list-style-type: none"> <li>○ the name of the market participant;</li> <li>○ reliability standard contravened by the market participant;</li> <li>○ the penalty imposed; and</li> <li>○ a high level description of the particulars of the contravention, but only to the extent that the MSA reasonably believes that these facts and circumstances are necessary to support public confidence in the electricity market.</li> </ul> </li> </ul> <p>Finally, as currently drafted, subsection 5(1) requires the MSA to make public all notices of specified penalty. Suncor submits that the MSA should have the discretion to determine whether the information described immediately above should be made public, and the test should be whether publication is reasonably required to support public confidence in the electricity market, having regard to the implications to the market participant identified in the notice. This approach is consistent with section 6 of the <i>Market Surveillance Regulation</i>, which governs the treatment of records provided to or obtained by the MSA, and which requires the MSA to take into</p>	<p>The Commission has recently conducted a consultation regarding administrative penalty and specified penalty proceedings and the nature of these hearings. In <a href="#">Bulletin 2010-17</a>, the Commission advised that specified penalty proceeding are public proceedings. The applications and decisions are filed on the public record from the inception of any matter. In subsection 5(2)(a), the proposed AUC Rule 027 requires the MSA to identify that a notice of specified penalty has not been paid or is being disputed. Further, the Commission is cognizant that there are situations where certain information within a proceeding may be treated as confidential. These situations are explained in subsection 13(2)-(4) of AUC Rule 001 – <i>Rules of Practice</i> and section 4 and 5 of AUC Rule 014 – <i>Public Disclosure of Market Surveillance Administrator Records in a Hearing or Other Proceeding</i>.</p>

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<p>account implications to any market participant affected by making the record public and to the fair, efficient and openly competitive operation of the electricity market of making or not making the record public.<sup>12</sup></p> <p><b>TransAlta Corporation</b></p> <p>Section 5(1) and 5(2) of Rule 27 are of concern to TransAlta in that they indicate that the MSA shall make public any notice of specified penalty and post on their website, even if a penalty under dispute. While we note that section 5(2)(a) requires the MSA to indicate that the notice of specified penalty is being disputed, the penalty assessment potentially contain unproven allegations and incomplete disclosure of all relevant facts. These allegations are rebuttable and the notice itself, as well as the facts underpinning it, are subject to challenge. The disclosure of such accusations may cause undue financial harm and reputation risk.</p> <p>TransAlta suggests that AUC Rule 027 be revised to state that a contravention is not published until the contravention has been investigated and concluded that an actual contravention has occurred. We do not see any added value to posting the notice of specified penalty prior to the conclusion of the dispute. In the NERC region, NERC and/or the regional entity may engage in a series of negotiations with the implicated user, owner or operator, giving the implicated entity an opportunity to settle any disputes or acknowledge the allegation and accept any associated penalties. When an agreement, or a certain point in the due process of appeals has been reached and approved by NERC's Board of Trustees Compliance Committee, NERC is obligated to provide the details of the investigation to the Federal Energy Regulatory Commission in the United States or to applicable governmental authorities in Canada by</p>	

<sup>12</sup> See subsection 6(3) of the *Market Surveillance Regulation*.

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<p>issuing a Notice of Penalty or Settlement Agreement. At this point, the information becomes publicly available and will be posted to NERC's website.</p> <p>Finally, TransAlta would prefer that the notice of specified penalty refer simply to the company, not to its officers, personnel or agents as proposed in Section 3(2)(d). Actions are taken by individuals on behalf of their companies, and therefore it is more appropriate to simply provide the corporate name.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>As TransCanada previously submitted, section 5 should specify that the posting of a NSP not include the name of the addressee of the notice, but rather only the name of the market participant. This position is consistent with privacy law principles and the MSA's <i>Compliance Review 2009</i> report in which the MSA indicated:</p> <p style="padding-left: 40px;">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).<sup>13</sup></p> <p>TransCanada appreciates the comments provided by the Commission in response to this concern:</p> <p style="padding-left: 40px;">Proposed AUC Rule 027 requires the MSA to publicly post the name of the market participant or the ISO who is required to pay a specified penalty. It does not require that the name of the individual addressee be made public unless the market</p>	

<sup>13</sup> MSA Report Compliance Review 2009, dated January 29, 2010 at p. 10.

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<p>participant is an individual.</p> <p>TransCanada respectfully submits that, as drafted, Rule 027 goes beyond simply requiring the public identification of the market participant. Section 5 requires that the NSP be made public. As set out in section 3(3), the NSP must be addressed to the person in the position identified in the Penalty Table. In TransCanada’s view, the identity of the individual recipient / addressee of the notice is relevant only to service of the notice and is not part of the substance or content of the notice itself, as currently defined by Rule 019 and proposed Rule 027. Therefore, to ensure that the names of addressees are not inadvertently made public when the NSP is posted, TransCanada recommends that section 5 be amended to specify that the posted NSP not include the name of the addressee.</p> <p>Further, as noted above, TransCanada believes that any personal identification of officers or personnel of the market participant should not appear in the NSP or be publicly posted.</p>	
<p><b>Issue 6: Penalty Table</b></p>	
<p><b>TransCanada Energy Ltd.</b></p> <p>TransCanada supports the comments of the MSA provided in the previous consultation process that there be an option for all notices to be sent to the person who carries out the compliance function with sufficient authority and direct access/reporting to a senior executive.</p> <p>TransCanada notes that the Alberta Reliability Registration Form requires entities to identify their primary compliance contact. Given that entities are required to identify such a contact, TransCanada believes it would be most efficient to require that all notices be sent to the primary compliance contact of the market participant, who will then distribute or escalate any notices in accordance with that market participant’s compliance and governance processes. If the</p>	<p>In response to comments during the first round of consultation, the Commission revised proposed AUC Rule 027 to require the MSA to send notices of specified penalty to the most senior executive of the market participant in instances where the amount of the specified penalty is \$10,000 or greater. In response to suggestions from the MSA and TransAlta Corporation, the Commission also amended the rule to allow notices of specified penalty to be sent to the most senior executive of the market participant, or in cases where the market participant has established the position of chief compliance officer, to send the notices to the person in that position. These provisions do not prevent the MSA from sending a copy of the notice of specified penalty to other individuals at the</p>

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<p>Commission wishes to continue to have a senior executive receive such notices, TransCanada recommends that all notices be addressed to both the primary compliance contact and the senior executive of the business unit.</p>	<p>request of a market participant or the ISO.</p>
<p><b><i>Issue 7: Application of Specified Penalties</i></b></p>	
<p><b>Alberta Electric System Operator</b></p> <p>The AESO seeks clarification on how penalties are assessed where one event may contravene multiple standards or may contravene multiple requirements within a single standard, in particular where the Penalty Table identifies the standard but is not specific in the requirements.</p> <p><b>EPCOR Utilities Inc.</b></p> <p>The newly proposed version has addressed many issues presented by market participants. Consequently EPCOR has only one comment to make regarding the revised Rule 027. In particular, our concern relates to the application of a penalty.</p> <p>In circumstances where the penalty table notes contravention of a reliability standard as the driver for application of a penalty, but the reliability standard has more than one requirement, EPCOR seeks clarity as to what penalty would be applied for contravention of more than one requirement within the standard. For example, PRC-001-AB-1 has 9 requirements, and even more sub-requirements. The penalty table lists only the reliability standard PRC-001-AB-1. It is EPCOR's view that violation of more than one requirement would represent only one violation of the reliability standard, resulting in application of only one penalty. However, it is unclear and possible that violation of each requirement may be viewed as a violation of the</p>	<p>Due to the nature and structure of the Alberta reliability standards, the contravention of some requirements in a particular standard are reasonably placed in one category of the penalty table, and other requirements are reasonably placed in another category of the penalty table. In other cases, all of the requirements of a reliability standard are reasonably placed in one category of the penalty table.</p> <p>In circumstances where one event may contravene multiple standards or may contravene multiple requirements within a single standard, the MSA has the discretion to issue a single specified penalty regarding the event or a number of specified penalties. Whether or not the issuing of multiple specified penalties is appropriate will depend on the circumstances, and are best assessed on a case-by-case basis. If market participants are of the view that multiple specified penalties have been inappropriately assessed by the MSA, market participants have the option of disputing the notice(s) of specified penalty and having the issue heard by the Commission.</p>

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<p>standard, and a penalty applied for each requirement. EPCOR requests clarification in the table as to what the AUC's intent is in these circumstances. If the intent is that a penalty be applied for violation of individual requirements, then the table should reflect that. If the intent is that a penalty be applied only once regardless the number of requirements violated within a reliability standard, then that should be reflected as well.</p> <p><b>Suncor Energy Inc.</b></p> <p>The AUC proposes to make Rule 027 applicable to the contravention of a reliability standard or “a requirement within a reliability standard.” In Suncor’s view, the reference to a requirement within a reliability standard is not appropriate. By definition, a contravention of a requirement within a reliability standard is also a contravention of the reliability standard itself. The reference to both reliability standards and the requirements within reliability standards is redundant and raises a “double jeopardy” concern arising from the possibility that a fine could be imposed for contravention of a reliability standard and of a requirement within that reliability standard.</p>	
<p><b><i>Issue 8: Penalty Assessment</i></b></p>	
<p><b>Alberta Electric System Operator</b></p> <p>Section 4(2)(a)(b)(c) &amp; (d). The AESO seeks clarification for the inclusion of ‘economic operation’ in assessment of the penalties for contraventions of reliability standards, where the NERC intent for reliability standards is to ensure the bulk electric system operates reliably.</p>	<p>While the intent of the reliability standards may be focused on ensuring that the bulk electric system operates in a safe and reliable manner, the contravention of a reliability standard may impact the safe, reliable and economic operation of the interconnected electric system. If the contravention of a reliability standard does impact on the economic operation of the interconnected electric system, the Commission is of the view that the MSA should take this into consideration when determining the severity of the contravention.</p>

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<p>Section 4(3)(a)(b)(c)(d). The AESO understands that Category 4 of the Penalty Table currently applies only to reliability standard BAL-001-AB-0a. The measures for BAL-001-AB-0a requirements R1 and R1.1 state ‘CPS1, as defined and calculated per R1 and R1.1, is at least 100%’ ; and that for requirements R2 and R2.1 states ‘CPS2, as defined and calculated per R2 and R2.1, is at least 90%’. Section 4(3) implies that both the plus and minus deviations from the measures are contraventions, where in fact, a higher positive level is actually desirable. The AESO suggests that the reference to ‘plus’ percentages be removed.</p> <p>Section 4(3)(a)(b)(c)(d). The AESO notes that the percentage levels specified for each of the severity levels is not consistent with levels established by NERC in reliability standard BAL-001-0.1a. The AESO seeks clarification on the AUC’s reasons for establishing the proposed percentages within each severity level. Alternatively, the AESO suggests adoption of the NERC percentage levels within BAL-001-0.1a. For reference, for requirement 1 of NERC reliability standard BAL-001-0.1a, NERC establishes a low severity level 1 as 95-100%, moderate level 2 as 90-95%, high level 3 as 85-90%, and severe level 4 as below 85%.</p> <p>For requirement 2 of NERC reliability standard BAL-001-0.1a, NERC establishes a low severity level 1 as 85-90%, moderate level 2 as 80-85%, high level 3 as 75-80%, and severe level 4 as below 75%.</p>	<p>The Commission has revised subsections 4(3)(a), (b), (c) and (d) in order to align the control performance standard benchmarks in BAL-001-AB-0a with the NERC equivalents.</p>
<p><b><i>Issue 9: Mitigation Plans</i></b></p>	
<p><b>TransAlta Corporation</b></p> <p>TransAlta feels that Section 4 (9) should also state that Market Surveillance Administrator is required to confirm to the market participant their acceptance or rejection of a mitigation plan within some other reasonable time period, TransAlta suggests 30 days.</p>	<p>In the previous round of consultations, the Commission removed the timelines in subsection 4(9) for market participants to submit mitigation plans within a set period of time. This was done in order to provide the flexibility necessary for the development of a reasonable mitigation plan. The Commission intends to provide</p>

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<p>Completion of a mitigation plan may involve steps which require allocation of resources and/or financial costs. Before beginning work on a mitigation plan and obtaining resources or finances, the market participant will need confirmation that the plan is satisfactory to the MSA.</p>	<p>similar flexibility to the MSA regarding the assessment of mitigation plans, and does not propose to establish a set deadline for the acceptance or rejection of a mitigation plan.</p>
<b><i>Issue 10: Limitation Period</i></b>	
<p><b>Suncor Energy Inc.</b></p> <p>Subsection 3(4) of Rule 027 sets out a two year discoverability limitation period as well as a four year absolute limitation period. Suncor shares the concerns of other market participants that the four year absolute limitation period is too long, and imposes an unduly onerous record keeping obligation on market participants. Such a long limitation period also makes it very difficult for a market participant to conduct a meaningful investigation and mount a meaningful defence, having regard to staff (witness) turnover. Suncor submits that the limitation period prescribed under Rule 027 should be no longer than two years.</p>	<p>The Commission addressed the issue of limitation period in <a href="#">Bulletin 2010-017</a> after consulting with stakeholders in 2009. Section 65 of the <i>Alberta Utilities Commission Act</i> may limit the scope of the Commission’s discretion in setting the limitation period as it states that an administrative penalty or a prosecution may not be commenced after three years of the MSA knowing of the infraction or six years from when it happened. To date the Commission has determined that it will leave the limitation period at two and four years with respect to specified penalties for ISO rules and for Alberta reliability standards.</p>
<b><i>Issue 11: Process for Future Alberta Reliability Standards</i></b>	
<p><b>ATCO Power</b></p> <p>ATCO observes that only AUC approved Alberta Reliability Standards can be included in the Penalty Table, which means standards approved in the future are not included in the Penalty Table presently under consultation. Does the AUC envision a process whereby newly approved standards can be added to the table relatively quickly such that compliance actions can be accomplished in a timely and efficient manner?</p>	<p>The Commission intends to conduct a separate consultation with stakeholders regarding a process by which both proposed AUC Rule 027 and existing AUC Rule 019 might be updated on an ongoing basis.</p>

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<b><i>Issue 12: General</i></b>	
<p><b>AltaLink Management Ltd.</b></p> <p>AltaLink Management Ltd. (“AltaLink”) has reviewed Alberta Utilities Commission (“AUC” or “Commission”) Bulletin 2010-21, the Stakeholder Comments and AUC Response Matrix, and revisions to AUC Rule 027. AltaLink filed submissions in respect of AUC Rule 027 on February 23, 2010. The Commission has clearly taken into account many of the comments and concerns received from industry and AltaLink appreciates the Commission’s efforts to address AltaLink’s and other stakeholder concerns raised at that time through the release of a revised AUC Rule 027.</p> <p><b>ATCO Power</b></p> <p>ATCO notes that the AUC addressed a significant concern with the initial proposed rule by removing the Adjustment Penalty Table, which in ATCO's view introduced an unnecessary level of subjectivity to establishing a specified penalty, particularly as the Penalty Table and the criteria outlined in section 4 - Penalty Assessment provide a high level of guidance in this regard. ATCO also appreciates the increased clarity of the revised proposed rule, such as removal of references to measures.</p> <p><b>TransAlta Corporation</b></p> <p>TransAlta Corporation "TransAlta" appreciates the efforts and approach of the Alberta Utilities Commission (AUC or Commission) in developing a specified penalty regime for contraventions of reliability standards. TransAlta believes that the development of a specified penalty regime and the use of self-disclosures and mitigation plans will assist market participants in better managing the</p>	

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<p>reliability of the bulk power system. It is important to have a regime that rewards market participants for self reporting and closing any gaps with regards to reliability, and conversely sets suitable fines for those instances where a market participant is not responding appropriately.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>As the Commission is likely aware, stakeholders and the Market Surveillance Administrator (“MSA”) have been consulting on the MSA’s Compliance Process (final version issued August 11, 2010), which sets out the process the MSA will follow when investigating and assessing a suspected contravention of an ISO Rule or an Alberta Reliability Standard. TransCanada recognizes that the consultation on AUC Rule 019 – Specified Penalties for Contravention of ISO Rules (“Rule 019”) has completed, but TransCanada believes that the views of market participants have evolved with the consultation process on the Compliance Process and Rule 027. The revisions suggested below would also be applicable to similar sections found in Rule 019. Therefore, should the Commission make amendments to Rule 027, TransCanada recommends that the Commission consider similar revisions to Rule 019 to ensure consistency.</p>	<p>The Commission will consider TransCanada’s comment when it next reviews AUC Rule 019.</p>

\* Copied verbatim from stakeholder written comments.