



AUC Rule 019 – Specified Penalties for Contravention of ISO Rules

Review and Discussion with Stakeholders

May 28, 2008

Agenda

- Purpose of Meeting
- Brief Background
- Principles
- Proposed Enforcement Model
- Elements of the Enforcement Model
- Issues Raised by Stakeholders
- Next Steps



Purpose of Meeting

- To review and discuss Draft AUC Rule 019 – *Specified Penalties for Contravention of ISO Rules*
- To answer any questions regarding Rule 019 and the Stakeholder Comment Matrix / AUC response that was issued last week
- Not the forum to discuss:
 - Complaints about proposed or existing ISO rules;
 - Specified Penalties that have been issued by the MSA;
 - Matters that are currently under review by the ISO, MSA or otherwise being addressed by the AUC.
- Outline next steps in the consultation process



Brief Background

- Section 52 of the Alberta Utilities Commission Act (AUC Act) enables the AUC to make rules:
 - prescribing the form and contents of notices of specified penalty;
 - prescribing contraventions of ISO rules in respect of which a specified penalty may be imposed, and prescribing the amounts (up to \$100K per day) or the manner of determining the amounts;
 - prescribing limitation periods.
- Based on initial feedback from stakeholders in late 2007, EUB staff met with stakeholders as a group in December 2007. AUC staff conducted one on one stakeholder consultations in January 2008, and issued a discussion paper seeking specific feedback in February 2008.
- The interim Specified Penalties Matrix (adopted from ISO Rule 12) was set to expire April 30, 2008, and has been extended to June 30, 2008 in order to complete the consultation process

Principles

- AUC consulted with industry stakeholders regarding key principles to be used in developing Rule 019
- Key principles are being used to develop Rule 019, but will not be repeated in the rule itself
- AUC made changes to the key principles based on feedback from stakeholders – principles 6 and 7 are new to the list (see next slide)



Seven Key Principles

1. The specified penalties framework is intended to encourage and promote compliance with ISO rules.
2. Specified penalty provisions are to be written in a manner that provides clearly defined parameters so as to minimize interpretation issues for market participants and eliminate as much discretionary action as possible on the part of the Market Surveillance Administrator (MSA).
3. Enforcement will be timely, effective and appropriate; and will be relatively simple to understand.
4. Specified penalties will be directed to the non-compliant act of the market participant, and not to the outcome or consequence of the act.
5. Great importance will be placed on self-reporting of non-compliance, with prompt and full disclosure and demonstration of corrective actions resulting in a 50% reduction of the amount of the applicable specified penalty.
6. For greater clarity, if the MSA is of the view that a specified penalty does not match the severity of the ISO rule contravention, the MSA has authority under section 51 of the AUC Act to give written notice to the Commission requesting a hearing and having the matter dealt with under the administrative penalty provisions of the AUC Act.
7. A hearing or other proceeding held regarding matters set out in section 52 of the AUC Act will be conducted in accordance with the Commission's Rules of Practice (AUC Rule 001).

Proposed Enforcement Model

Nature of Non-Compliance	Graduated Enforcement Model				
<p>Category 1 Failure to comply in whole or in part with identified ISO rules:</p> <p>1.8, 3.2, 3.3, 3.4, 4.2, 4.3, 4.4, 4.5, 4.6, 6.2.3, 6.3.8, OPP 003.1, OPP 003.3</p>	<p>First Failure to Comply*</p> <ul style="list-style-type: none"> \$500 penalty Notice to Senior Executive of Business Unit Name is NOT made public (yr1) 	<p>Second Failure to Comply*</p> <ul style="list-style-type: none"> \$1,500 penalty Notice to CEO of Organization or Parent Company Name is NOT made public (yr1) 	<p>Third Failure to Comply*</p> <ul style="list-style-type: none"> \$5,000 penalty Notice to CEO of Organization or Parent Company Name is made public 	<p>Fourth and Subsequent Failures to Comply*</p> <ul style="list-style-type: none"> \$10,000 penalty Notice to Chairman of Organization or Parent Company Name is made public 	
<p>Category 2 3.5.2, 3.5.3, 3.5.5, 6.2.2, 6.3.3, 6.3.5</p>	<ul style="list-style-type: none"> \$500 penalty Notice / posting as above 	<ul style="list-style-type: none"> \$1,000 penalty Notice / posting as above 	<ul style="list-style-type: none"> \$1,500 penalty Notice / posting as above 	<ul style="list-style-type: none"> \$2,000 penalty Notice / posting as above 	
<p>Category 3</p> <p>Failure to comply in whole or in part with identified ISO rule:</p> <p>6.6</p>	<p>All Failures to Comply**</p>				
	<p>Minutes Max. D.V. MW</p>	<p>0 to < 15</p>	<p>15 to < 30</p>	<p>30 to < 45</p>	<p>45 and greater</p>
	<p>>5 to < 15</p>	<p>\$500</p>	<p>\$1,000</p>	<p>\$1,500</p>	<p>\$2,500</p>
	<p>15 to < 25</p>	<p>\$1,000</p>	<p>\$1,500</p>	<p>\$2,500</p>	<p>\$5,000</p>
	<p>25 to < 50</p>	<p>\$1,500</p>	<p>\$2,500</p>	<p>\$5,000</p>	<p>\$7,500</p>
	<p>>= 50</p>	<p>\$2,500</p>	<p>\$5,000</p>	<p>\$7,500</p>	<p>\$10,000</p>

* Tracked on a Rolling 12 month basis

** All Notices to Senior Executive of Business Unit

Proposed Enforcement Model – cont'd

- AUC View

- Link specific ISO rules to the most appropriate category
- Financial penalties range from \$500 to \$10,000, which are generally consistent with other jurisdictions
- Notice to a market participant to start at the senior executive of the business unit, and escalate up within the organization to the Board Chair (or parent company if a wholly owned subsidiary)
- Tracking by ISO rule, and will be asset specific. Once five notices of specified penalties have been issued to a market participant for the same rule and the same asset within a rolling 12-month period, the next specified penalty will be a third failure to comply regardless of asset. Tracking will be by market participant (not by asset) until the enforcement actions fall below five within a rolling 12-month period.



Elements of the Model

- Notice of Specified Penalty (section 3 of Rule 019)
 - Recognizes self-reporting
 - Graduated approach to recipients of specified penalties
- Penalty Assessment (section 4 of Rule 019)
 - 3 categories of rules
 - Graduated approach for categories 1 and 2 within a 12 month rolling period
 - Enforcement will be tracked by ISO rule and by asset up to the 5th event
 - A 5th contravention of the same ISO rule by the same asset will move the escalation basis from “by asset” to “by market participant”
 - Category 3 for Dispatch Variance (based on Maximum Dispatch Variance and Duration of Dispatch Variance)
 - Self Disclosure reduces Specified Penalty by 50% (for ≤ 5 self-disclosures in a rolling 12 month period)

Elements of the Model (cont'd)

- Posting of Notices of Specified Penalty (section 5 of Rule 019)
 - July 1/08 to Jun 30/09 – first and second contraventions are not made public by the MSA unless penalty is unpaid or disputed; all others are made public after 30 days
 - July 1/09 and onward – all contraventions are made public by the MSA after 30 days
 - Non-payments and disputed specified penalties are to be posted to MSA website
 - Commission decisions regarding specified penalties are to be posted to MSA website
- Other items (section 6 of Rule 019)
 - Current specified penalties matrix applies for events until July 1, 2008
 - Penalty assessment counter (section 4) and posting counter (section 5) are re-set to 0 on July 1, 2008

Issues Raised by Stakeholders

- Additional Principles

- Additional principles suggested: incorporating ‘fair, efficient and openly competitive market’ as discussed at the Section 6 Committee; addressing only ISO Rules ‘that are of consequence’; ensuring the costs of enforcement are less than the benefits achieved; decrease administrative burdens and costs; penalties fit the importance of the rule and the severity of the infraction.
- AUC view: these issues are beyond the scope of the Specified Penalties Matrix rule and are best dealt with in a different forum

- Discretionary Action on the part of the MSA

- Some market participants and the MSA itself suggested discretionary action on the part of the MSA should be minimized to the greatest extent possible with respect to the enforcement of specified penalties.
- Others suggested allowing a reasonable level of MSA discretion.
- AUC view: propose a relatively simple model without various levels of severity. Additional complexity can be added at a later date if required.

Issues - continued

- Additional Discretion for the AESO Prior to Referral to the MSA
 - Parties suggested the AESO be given additional discretion regarding ISO rule non-compliance prior to referring matters to the MSA
 - The AUC does not have authority to modify the provisions of the *Electric Utilities Act*, or address the issue through a regulation
 - Participants would need to raise this issue with the Department of Energy
- Issues that are Addressed in ISO Rules
 - *Power Purchase Arrangements Determination Regulation*; the responsibilities of agents as opposed to pool participants; and mitigating factors are issues that are currently addressed in ISO rules.
 - AUC view: these issues need not be addressed separately through the Specified Penalties Matrix

Issues - continued

- Use of Warning Letters as a Specified Penalty
 - Suggestion that warning letters be used as a specified penalty, prior to imposing financial penalties or in circumstances associated with self reporting
 - AUC view: legal advice is that the term “specified penalty” as used in the AUC Act does not enable the AUC to identify a warning letter as an appropriate specified penalty
- Reduced Specified Penalty if Self-Reported
 - Incorporated into Proposed Specified Penalties Matrix
 - Subject to limitation after the fifth instance of self-reporting within a 12 month rolling period



Issues - continued

- Vetting of ISO Rules

- Parties suggested ISO rules need to be re-considered prior to the application of specified penalties
- Specific focus was noted regarding ISO rule 6.6 (dispatch variance rule)
- AUC view: EUA enabled market participants to object to a new or amended ISO rule, or to file a complaint regarding an existing ISO rule

- Posting of Company Names for Specified Penalties

- Incorporated into Proposed Specified Penalties Matrix
- AUC view: Transition year of full public posting after two events, in an effort to allow an opportunity for participants to address issues and change behaviour prior to an issue becoming public. After year 1, all specified penalties are public.



Issues - continued

- ISO Operating Policies and Procedures (OPPs)
 - Some parties suggested ISO OPPs not be addressed through the Specified Penalties Matrix, as they primarily relate to AESO responsibilities
 - AUC view: OPPs identify the responsibilities of various parties (ISO, System Controller, TFOs, market participants, distribution owners, retailers and generators), and are considered ISO rules



Next Steps

- Stakeholder Meeting on May 28, 2008
- Feedback solicited at this meeting
- Final version of AUC Rule 019 will be developed and announced in mid-June 2008
- Effective Date of revised AUC Rule 019 – July 1, 2008

