

**Revisions to AUC Rule 027 – Specified Penalties for Contravention of Reliability Standards**

**Stakeholder Comments and AUC Response Matrix**

**Comment Period – January 27, 2010 to February 23, 2010**

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<i>Issue 1: Application of AUC Rule 027</i>	
<p><b>Alberta Electric System Operator</b></p> <p>6. The Base Penalty Table includes specified penalties for contravention of standards applicable to AESO. AESO is seeking confirmation that the Commission intends that penalties be assessed against AESO, in light of the fact that any such financial penalties will ultimately be paid and borne by market participants.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Section 2</u></p> <p>We note that while AUC Rule 027 applies to the contravention of reliability standards, the language focuses on “market participants” and thus does not capture the reality that the AESO itself is subject to,</p>	<p>The Commission has reviewed subsection 22(2) of the <i>Transmission Regulation</i> which addresses the payment in respect of a fine, administrative penalty or other monetary sanction imposed on the ISO for non-compliance by it with a reliability standard. Subsection 22(2) contemplates that penalties may be imposed on the ISO for non-compliance with a reliability standard, and the only restriction is that payment may not be made that would result in the transfer of money outside of Alberta.</p> <p>Proposed AUC Rule 027 has been revised to make it clear that it applies to the ISO.</p>

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<p>and may therefore contravene, a reliability standard. In fact, certain reliability standards in the Base Penalty Table apply to the AESO (in some cases, <i>only</i> to the AESO).</p> <p>Section 52 of the <i>Alberta Utilities Commission Act</i> (AUCA) speaks to “persons”, and thus allows AUC Rule 027 to speak more broadly also. The MSA would submit that the use of “person” or “persons”, as applicable, would be appropriate even if AUC Rule 027 is not yet made applicable to all reliability standards (please also see comments below re: Penalty Tables). An alternative which is unique to reliability standards is the term “registered entity” or “registered entities”, although it may have to be specifically defined in AUC Rule 027.</p>	
<b>Issue 2: Limitation Period</b>	
<p><b>Alberta Electric System Operator</b></p> <p>2. Section 3(4)(b) states that the Market Surveillance Administrator must issue a notice of specified penalty within 4 years after the date on which the contravention occurred. Current monitoring audits are completed on a 5 year cycle, and may therefore identify contraventions older than the 4 year limit stated in this section. Such contraventions would therefore not be eligible for specified penalties, and presumably would need to be addressed through administrative processes. AESO established the 5 year cycle to align with the NERC compliance model and requests that the Commission give further consideration to the 4 year time limitation in this section.</p> <p><b>Capital Power</b></p> <p><u>Statute of Limitations</u></p> <p>The limitation periods outlined in subsection 3(4) are too long. The Market Surveillance Administrator (MSA) should be required to issue</p>	<p>The AESO and the MSA suggest that the limitation period of two years after the MSA first knew or ought to have known of a contravention or four years after the date on which the contravention occurred may be too short. Capital Power, IPPSA, and TransCanada suggest that the limitation period is too long.</p> <p>The Commission addressed the issue of limitation period in Bulletin 2010-017 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.</p>

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<p>a notice of specified penalty not later than one year after the date on which it first knew or ought to have known, of the alleged contravention and, in any event, not later than two years after the contravention is alleged to have occurred.</p> <p><b>Independent Power Producers Society of Alberta (IPPSA)</b></p> <p>The following are some specific comments on the rule:</p> <ul style="list-style-type: none"> <li>At Notice of Specified Penalty S.3(4), we recommend that the AUC reconsider the 2 year and 4 year timeframe that the Market Surveillance Administrator (MSA) has to penalize an infraction. The ability of parties to fairly respond to a penalty, or to even recall the circumstances around a penalty, diminishes over time. We believe the window of time proposed in the rule detrimentally impacts a participant’s procedural protections. We recommend that the AUC narrow the window to one year and two years respectfully, for this Rule and for Rule 19 as well.</li> </ul> <p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 3(4)(b)</u></p> <p>The limitation period may be too short given that compliance monitoring for reliability standards will often be done through audits, and those audits may be scheduled to occur on multi-year cycles. At the moment, the <i>Compliance Monitoring Plan (CMP)</i> of the AESO sets out a 5 year audit cycle. However, by virtue of the existing wording in Sub-section (b), even a 3 year audit cycle could effectively preclude use of AUC Rule 027 to contraventions discovered through the audit process.</p> <p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 3(4)</u></p> <p>As noted in TransCanada’s comments on revised Rule 019 regarding</p>	

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<p>specified penalties for the contravention of Independent System Operator (“ISO”) Rules (“Rule 019”), TransCanada submits that the timeframe within which the Market Surveillance Administrator (“MSA”) must issue a NSP is excessive and places an unreasonable burden on market participants to maintain detailed records and personal recollection of events that may eventually become the subject of a specified penalty. Until the MSA issues a notice, a market participant may not even be aware that it has contravened a reliability standard. To expect that personnel will retain knowledge of events up to four years in the past without any indication that a potential contravention occurred is not realistic. Further, personnel changes are also possible during this period, in which case market participants could lose the ability to respond appropriately.</p> <p>TransCanada submits that the appropriate time period for the issuance of a NSP is within one year of the date the MSA becomes aware of the contravention or 2 years from the date on which the contravention occurred, whichever expires first.</p>	
<b><i>Issue 3: Reference to and Approval of a Mitigation Plan</i></b>	
<p><b>Alberta Electric System Operator</b></p> <p>9. Section 4(10) states that the Market Surveillance Administrator may request the views of the ISO when approving a mitigation plan. AESO requests further clarification on the role, responsibility, and obligations of AESO in this regard and clarification on the intended scope of the ‘view’ to be provided by AESO. To that end, AESO proposes adding a sub-section to Section 10, stating that AESO is required to provide a technical opinion and a recommendation on the adequacy of mitigation plans submitted for review.</p> <p>10. Further to Section 4(10), AESO also seeks clarification as to whether the Commission believes that monitoring of mitigation plans</p>	<p><u>Reference to Mitigation Plans</u></p> <p>The reference to a mitigation plan in subsection 3(2)(h) of proposed AUC Rule 027 is to a mitigation plan filed by a market participant which was accepted by the Market Surveillance Administrator in accordance with subsection 4(9) of proposed AUC Rule 027.</p> <p>The Commission is of the view that in the context of subsection 52(1) of the <i>Alberta Utilities Commission Act</i>, where the MSA is satisfied that a person has contravened a reliability standard for which a specified penalty has been identified by the Commission, the MSA may accept a mitigation plan if it meets the criteria</p>

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<p>is required, and if so, who would be responsible for that function.</p> <p><b>AltaLink</b></p> <p>AltaLink recommends that Rule 027 be amended to grant the MSA greater discretion to forgo penalty assessment when appropriate. In particular, Rule 027 should be sufficiently broad enough to not only allow for the consideration of compliance plans in the determination of penalty amounts, but also for non-compliance with Alberta Reliability Standards to be addressed through mitigative actions or warnings rather than sanctions. In respect of penalty assessment, AltaLink supports a greater weighting on efforts made by companies to remedy non-compliance in a timely manner.</p> <p>In addition, AltaLink has the following concerns about Section 4 as currently drafted:</p> <ul style="list-style-type: none"> <li>▪ Section 4(9)(b) refers to the MSA receiving a mitigation plan no later than 45 days from the date of the referral from the ISO to the MSA of a reliability standard listed in the Base Penalty Table. In order to prepare a mitigation plan, a TFO requires information that the MSA is investigating a potential act of noncompliance. Section 4(9)(b) should therefore be amended to state that the ISO must inform the TFO of potential non-compliance at the same time as it informs the MSA.</li> <li>▪ Section 4(9)(f) and Section 3(4) also raise concerns regarding the point at which the TFO is informed of an alleged contravention. Under section 3(4) it could be 2 years or more after a contravention before a TFO is advised of that contravention. This could result in an inability of the TFO to create a mitigation plan no later than 90 days after the contravention as per section 4(9)(f). AltaLink submits that these provisions should be amended such that the AESO</li> </ul>	<p>outlined in subsection 4(9) of proposed AUC Rule 027. Further, the acceptance of the mitigation plan will impact the amount of the specified penalty as outlined in section 4 of proposed AUC Rule 027.</p> <p>The reference to mitigation plans in proposed AUC Rule 027 is not intended to address when or if the MSA forebears from the exercise of its powers in respect of reliability standards.</p> <p><u>Acceptance of Mitigation Plans</u></p> <p>The Commission notes the comments of the MSA that it not be placed in a position to “approve” mitigation plans, and has revised the language in proposed AUC Rule 027 whereby the MSA may “accept” a mitigation plan.</p> <p>The Commission notes the comments of TransCanada that market participants should have recourse to the Commission should a market participant wish to challenge a refusal by the MSA to approve a proposed mitigation plan. The manner in which to bring this forward to the Commission is under subsection 52(2) of the <i>Alberta Utilities Commission Act</i> by disputing the notice of specified penalty.</p> <p><u>Subsection 4(9)</u></p> <p>The Commission intends for proposed AUC Rule 027 to address circumstances where a person self-discloses the contravention of a reliability standard and provides a mitigation plan that is accepted by the MSA (see subsection 4(7) of proposed AUC Rule 027).</p> <p>The Commission proposes to provide the flexibility necessary for the development of a reasonable mitigation plan, and accordingly, has removed the timelines outlined in subsection 4(9). Instead, the Commission will rely on the MSA to determine whether the timelines proposed in a mitigation plan are reasonable as part of its</p>

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<p>informs the TFO of an alleged contravention at the same time as it informs the MSA.</p> <ul style="list-style-type: none"> <li>▪ At sections 4(9)(f) and (g), it would be of assistance to define what is meant by “implementation date” and “completion date”.</li> </ul> <p><b>Capital Power</b></p> <p><u>Mitigation Plans</u></p> <p>We support the explicit inclusion of mitigation plans as a compliance tool in Rule 027. Mitigation plans are widely and successfully used in the United States. We suggest that the Commission consider the following amendments to rule to bring it further in line with the North American Electric Reliability Corporation (NERC).</p> <ol style="list-style-type: none"> <li>1) In the United States, the majority of compliance cases are handled through mitigation plans. To date, Federal Energy Regulatory Commission has approved nearly 80% of the negotiated settlements brought before it with no fines. This model of enforcement creates a significant incentive for a market participant to proactively manage their compliance with reliability standards. We suggest that the Commission adopt a similar system and permit the specified penalty to be avoided altogether if the participant submits a mitigation plan that satisfies the requirements of the AESO/MSA.</li> <li>2) Market participants should be able to submit mitigation plans prior to becoming noncompliant with a reliability standard. The new reliability standards are being proposed with effective dates that range anywhere from 10 days to one year after approval by the Commission. There will be instances when the market participant will know ahead of time that they will not be able to comply with a reliability standard. The</li> </ol>	<p>determination as to whether to accept a mitigation plan.</p> <p>The Commission does not intend to introduce a ‘safe harbour’ concept in proposed AUC Rule 027, or to reduce specified penalties to zero. The Commission is of the view that the use of reasonable effective dates in the implementation of reliability standards by the ISO and the use of forbearance, if deemed appropriate, by the MSA should provide reasonable checks and balances to the ongoing requirement to protect the safe, reliable and economic operation of the interconnected electric system.</p> <p><u>Subsection 4(10)</u></p> <p>The Commission recognizes that it may be necessary for the MSA to obtain the views and input of subject matter experts that included but are not limited to the ISO when reviewing a mitigation plan. Accordingly, the Commission has revised the language in subsection 4(10) to state “... the views of other persons, including the ISO”.</p>

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<p>Rule should encourage market participants to actively work towards compliance by allowing them to file mitigation plans irrespective of their current compliance status.</p> <p>3) We also request the Commission reconsider prescribing implementation and completion dates for mitigation plans. In many cases, implementation of a mitigation plan could require significant action on behalf of a market participant that could take considerably more time than the rule currently contemplates. We suggest that the Commission remove the implementation and completion dates or otherwise provide flexibility to determine the implementation and completion date on a case-by-case basis.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 3(2)(h)</u></p> <p>It is not clear whether the reference to a “mitigation plan” means only a plan as described in Sub-section 4(9). For example, a mitigation plan may be offered in relation to a contravention for which AUC Rule 027 is not applicable (please see other comments re: Sub-section 4(2) and 4(9) below).</p> <p>Further, we would submit that the MSA should not be placed to “approve” mitigation plans. Rather, the MSA would receive, accept or take account of a mitigation plan. Ultimately, in the event that there is a dispute about the sufficiency of a mitigation plan it should be the Commission that is placed to approve it.</p> <p><u>Sub-section 4(9)</u></p> <p>If the Commission intends that mitigation plans will be relevant to proceedings brought outside of AUC Rule 027 also, it may be more efficient to generically address the content of mitigation plans through new provisions in AUC Rule 013 instead. Then, as</p>	<p>Mitigation plans only apply to contraventions under the proposed AUC Rule 027.</p>

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<p>applicable, AUC Rule 013 could be incorporated by reference here.</p> <p>Sub-section (b) sets a timeline which commences upon “referral from the ISO” to the MSA. This would appear then to exclude any self-disclosure by market participants or by the AESO, and to also exclude referrals relating to compliance by the AESO itself (those referrals would arise pursuant to monitoring of the AESO). It also appears that the wording of (b) is meant to include “...<u>suspected contravention of a reliability standard...</u>”.</p> <p>Sub-sections (f) and (g) set timelines which commence at the “date of the contravention”. This may effectively make it impossible to implement or complete a mitigation plan within the timelines. It may be better to start the timelines in a manner similar to Sub-section (b), not at the date of contravention but at the date the person became aware of the suspected contravention.</p> <p>We would also submit that it would be useful and appropriate to create a ‘safe harbour’ concept in order to provide strong incentives for creating, implementing and completing effective mitigation plans. In essence, the person (registered entity) would be rewarded for completion of a mitigation plan by a waiver of sanctions for any contravention of a related reliability standard occurring during the implementation period. The concept could be limited to self-disclosed contraventions during the period, or applied more broadly to all related contraventions during the period.</p> <p>Finally, we would also reiterate our view that the MSA should not be placed to “approve” a mitigation plan.</p> <p><u>Sub-section 4(10)</u></p> <p>While the MSA will often request the views of the AESO, it may in some circumstances be appropriate to request the views of other persons who have subject matter expertise. Thus we would submit</p>	

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<p>that the language should be broadened to state “.....the views of <u>other persons, including the ISO</u>”.</p> <p>We would also reiterate our view that the MSA should not be placed to “approve” a mitigation plan.</p> <p><b>TransAlta</b></p> <p>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ Mitigation Plans must be received by the MSA "no later than 45 days from the date of the referral from the ISO" to the MSA. However, section 4(9) does not speak to mitigation plans submitted where there has been a self-disclosure. Recommendation: Clarify the date for when mitigation plans are due in the case of self-disclosure.</li> <li>▪ Section 4(9) requires that mitigation plans include an implementation date of no later than 90 days from the date of the contravention, and a completion date of no later than 180 days from the date of contravention. First, TransAlta is unclear as to what is intended by implementation, and why there is a need for both an implementation and completion date. Second, TransAlta is concerned that these dates do not provide adequate time to the market participant. Carrying out and completing mitigation plans could take longer than the time frames provided given the time required to plan, engineer, procure, and construct any long lead time items. In addition, where works need to be installed and commissioned these must be coordinated with plant planned outage schedules. While some mitigation plans could take less than a month to complete, others could take two years. The deadlines of 90 and 180 days are arbitrary and in no way reflect the actual time required. Recommendation: A mitigation plan</li> </ul>	

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<p>should simply be required to include a completion date. The MSA/ISO can determine whether they believe that date is reasonable based on the plan itself and can consider that in approving the mitigation plan.</p> <p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 4(9)</u></p> <p>The language of Section 4(9)(b) appears to limit the submission of a mitigation plan to instances where a potential contravention has been referred to the MSA by the ISO. TransCanada believes Section 9(b) should be expanded to clearly include instances where the potential contravention is self-disclosed by a market participant to the MSA.</p> <p>TransCanada submits that the requirement in Section 4(9)(b) to submit a mitigation plan within a specified time frame may not be practical in all circumstances. Therefore, TransCanada submits that Section 4(9)(b) should retain flexibility for a mitigation plan to be filed after the specified deadline if circumstances warrant. Further, TransCanada notes that as currently drafted, the time period to submit a compliance plan would begin upon the referral of a potential contravention by the ISO to the MSA. As a market participant may not be made aware of the ISO’s referral until a later date, TransCanada submits any time period for the submission of a mitigation plan should begin from either the date the market participant self-reports to the MSA or from the date the market participant is notified that the ISO has referred a potential contravention to the MSA, unless the circumstances warrant a later filing date.</p> <p>Similarly, TransCanada notes that as currently drafted, Sections 4(9)(f) and (g) stipulate time limits for the implementation and completion of a mitigation plan that begin to run from the date of the contravention. TransCanada submits that an arbitrary deadline to</p>	

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<p>implement and complete a mitigation plan may not be practical in all instances, depending upon cost, complexity, maintenance, availability of materials or labour and other technical issues. Rather, TransCanada submits that Section 4 should require that the mitigation plan submitted by the market participant include proposed implementation and completion dates which the MSA can approve in light of the particular circumstances of the proposed mitigation plan. If the Commission is inclined to include time limits within Rule 027, TransCanada submits that the time period should begin starting from the submission of the mitigation plan, as opposed to the contravention date, given that a market participant may not be aware of a contravention until a later date, and may require time to compile and submit a mitigation plan. Again, if time limits are retained, Rule 27 should provide flexibility for implementation and completion dates to occur after the specified deadline if circumstances warrant.</p> <p>Finally, TransCanada notes that Section 4(9) provides that the MSA “may” approve a mitigation plan that is filed in accordance with the section. TransCanada submits that market participants should have recourse to the Commission should a market participant wish to challenge a refusal by the MSA to approve a proposed mitigation plan.</p>	
<b><i>Issue 4: Mitigation Plan and Penalty Assessment</i></b>	
<p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 4(6)</u></p> <p>Is it intended that the mitigation plan must be submitted in accordance with Sub-section 4(9) in order to be taken into account? For example, a mitigation plan may have separately been offered in relation to a contravention for which AUC Rule 027 was not applicable (please see other comments re: Sub-section 4(9) below),</p>	<p>The intent of the reference to a mitigation plan in subsection 4(9) relates to the determination of the amount of a specified penalty as outlined in section 4 of proposed AUC Rule 027. A mitigation plan applies only to a contravention under the proposed AUC Rule 027.</p>

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<p>but could potentially be relevant here.</p> <p>We would also reiterate our view that the MSA should not be placed to “approve” a mitigation plan.</p>	
<b>Issue 5: Penalty Assessment (Requirements and Measures)</b>	
<p><b>Alberta Electric System Operator</b></p> <p>5. The Base Penalty Table, column 1 Nature of Contravention, references and implies that penalties will apply to both requirements and measures for some standards (eg. R1 and MR1). It is unclear as to how the Base Penalty Table would be used should there be contraventions of both a requirement and a measure. Furthermore, AESO does not agree that measures should be subject to penalties and has not designed the measures for that intent. The measure is intended to provide guidance as to how the actions in the requirement will be assessed or measured. AESO suggests that the Base Penalty Table apply only to requirements of a standard.</p> <p><b>AltaLink</b></p> <p>In addition, AltaLink has the following concerns about Section 4 as currently drafted:</p> <ul style="list-style-type: none"> <li>▪ The references to “requirements” and “elements of requirements” at section 4(2) are unclear. AltaLink therefore recommends that “Requirement” be added as a defined term to mean "requirements set out under each reliability standard listed in the Base Penalty Table."</li> </ul> <p><b>Capital Power</b></p> <p><u>Specified Penalty Table</u></p> <p>Capital Power is concerned about the inclusion of measures related to the reliability standards in the penalty table. We were assured by the</p>	<p>The Commission did not intend that the Base Penalty Table apply to both reliability standard requirements and measures, and has removed references to measures in proposed AUC Rule 027.</p> <p>The intended reference to measures in the Base Penalty Table was simply to point out that the measures within a reliability standard correspond to the requirements within a reliability standard. Further, as noted by the AESO, the measures are intended to provide guidance as to how the actions in the requirements will be assessed and measured.</p>

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<p>AESO during consultation on these reliability standards that the measures would not create incremental compliance obligations on market participants. The AESO conveyed to stakeholders that the measures were only included to assist market participants with complying with the requirements of the standards. In almost all cases, the measures simply repeat the requirements of the reliability standard and, if included in the specified penalty table, will result in the assessment of multiple penalties on market participants for the same non-compliance event. We respectfully request that the Commission remove the measures from the specified penalty table.</p> <p><b>Independent Power Producers Society of Alberta</b></p> <p>The following are some specific comments on the rule:</p> <ul style="list-style-type: none"> <li>▪ At Penalty Assessment S. 4(2), we are concerned that the Rule enables penalties to be assessed to both “requirements or an element of a requirement” within a standard. To us this means that penalties can be levied for a breach of both a ‘requirement’ of a reliability standard and a ‘measurement’ of that requirement, for example. We recommend that only breaches of a reliability standard’s requirement should face a penalty.</li> </ul> <p><b>TransAlta</b></p> <p>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ Further, TransAlta does not consider it appropriate to base the Violation Severity Levels on measures identified in the requirements. Measures help determine how to identify compliance; they are essentially like tests for whether you are in compliance with the standard. Any penalties should be based on compliance with the requirements of a standard. Recommendation: Remove the violation severity levels based</li> </ul>	

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<p>on measures.</p> <ul style="list-style-type: none"> <li>▪ There are references in the Base Penalty Table to contraventions of both requirements (R) and measures (MR) in a reliability standard (e.g. Category 1 - PRC- 004-AR-1 (R2 and MR2). However, it does not make sense to be fined for contravening both a measure and a requirement, as it only the requirements that a market participant can contravene. As indicated above, measures are simply a tool to determine whether you are in compliance with a requirement. For example, in PRC-001-AB-1, Requirement 1 is "The operating personnel of the ISO, TFO's and operators of generating units must each be familiar with the purpose and limitations of protection system schemes applied in its area". Measure 1 is "Training records are available that indicate training of staff who operate the system in protection system schemes and any RASs applicable within their system". In this example, the measure (training records available) acts as a way of testing or auditing that the requirement (operating personnel familiar with the protection system schemes) is met.</li> </ul> <p>Recommendation: Clarify that market participants will not be subject to duplicate penalties by being fined for contravention of both a requirement and the corresponding measure. Remove all references to measures as a basis for imposing a specified penalty.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>4. <u>Base Penalty Table</u></p> <p>TransCanada notes that the column entitled "Nature of Contravention" in the proposed Base Penalty Table lists both the requirements of a reliability standard (R) and the measure identified in a reliability standard (MR). TransCanada submits that a market</p>	

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<p>participant should only be liable for contravention of a reliability standard, and not the measure included in that reliability standard. To provide otherwise could lead to multiple penalties being assessed for the same contravention event.</p>	
<p><b>Issue 6: Penalty Assessment</b></p>	
<p><b>Alberta Electric System Operator</b></p> <p>1. Section 3(2)(f) states that the amount of the specified penalty apply on a per day basis, if the contravention continues for more than one day. For events of operational contraventions, this approach seems reasonable, but for contraventions that may have existed over long periods of time or contraventions that cannot be corrected or addressed immediately, this approach may not be reasonable.</p> <p>3. Section 4(2) describes the use of ‘Violation Severity Levels’ in the determination of the appropriate specified penalty amount from the Base Penalty Table. The violation severity levels do not directly reflect the impact, risk, scope, or other components normally associated with assessing the severity of an event. Instead this ‘severity’ correlates more to the number or ‘instances of failure’. AESO suggests that the penalty model should reflect the actual severity of the contravention, and that higher penalties be applied to contraventions that directly impact operations or reliability, and lower penalties be applied to contraventions that indirectly impact operations or reliability, with the lowest penalties for those contraventions that relate to documentation or administration deficiencies.</p> <p>4. Section 4(2) refers to an ‘instance of a failure to meet a requirement or an element of a requirement in the reliability standard’. Some requirements in certain reliability standards define several actions to be taken. AESO suggests that further clarity is</p>	<p><u>Subsections 4(1) and 4(2)</u></p> <p>Parties expressed concern that the penalty assessment provisions of proposed AUC Rule 027 addressed the determination of the amount of a specified penalty on a “per day” basis. The Commission has removed the “per day” language, and will rely on the MSA to determine whether the contravention of a reliability standard that occurs over an extended period of time should be subject to a specified penalty or an administrative penalty.</p> <p>The Commission has also removed the term “violation severity level” and replaced it with the term “severity level” in order to ensure better consistency throughout the document. Since the severity level is intended to reflect the degree to which the safe, reliable and economic operation of the interconnected electric system is put at risk, subsection 4(2) has been revised to reflect the impact, the risk and the scope of the contravention on the safe, reliable and economic operation of the interconnected electric system.</p> <p>The Commission does not propose to revise proposed AUC Rule 027 to include warnings, inconsequential first offences or zero dollar penalties, as these approaches are not consistent with subsection 52(6) of the <i>Alberta Utilities Commission Act</i> which requires that a specified penalty be paid.</p> <p>The Commission does not propose to revise subsection 4(1) of suggested by AltaLink. The AESO has a role in referring matters</p>

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<p>needed as to whether an ‘instance’ refers to not meeting one of the required actions of the requirement or refers to the number of times the ‘requirement’ has been contravened.</p> <p><b>AltaLink</b></p> <p>AltaLink is also concerned that the penalties set out in the Base Penalty Table are disproportionate to a TFO’s non-compliance with relatively minor requirements. Therefore, while AltaLink recognizes the need for compliance and supports the approach at section 4(2) of Rule 027 which establishes the MSA’s ability to assess penalties on the basis of severity levels, it submits that there should also be a level at which no penalty is required.</p> <p>AltaLink further submits that Rule 027 should confirm AESO involvement in determining the level of penalty, if any, to be assessed. The AESO has technical expertise with the interconnected electricity system and responsibility for implementation of mandatory reliability standards in Alberta. AltaLink therefore proposes the following amendment to Rule 027, indicated by underlining:</p> <p style="padding-left: 40px;"><b>Penalty Assessment</b></p> <p style="padding-left: 40px;"><b>4(1)</b> <u>The Market Surveillance Administrator, in consultation with the AESO, shall determine whether a penalty should be assessed, and if so,</u> the amount of the specified penalty in accordance with this section, the Base Penalty Table and the Adjustment Penalty Table.</p> <p>In addition, AltaLink has the following concerns about Section 4 as currently drafted:</p> <ul style="list-style-type: none"> <li>▪ Respecting the reliability standard measures referenced at section 4(3)(a)-(d), there may measures which are binary and do not easily lend themselves to the severity levels listed.</li> </ul>	<p>to the MSA as specified in section 21.1 of the <i>Electric Utilities Act</i> and has a role as a subject matter expert at the request of the MSA as outlined in subsection 4(9) of proposed AUC Rule 027.</p> <p>The Commission is not convinced by the comments of parties that a reduction of 25 per cent where the MSA has accepted a mitigation plan is too low. While the Commission recognizes that the amount of work to prepare and submit a mitigation plan may be significant, the Commission is of the view that the size of the penalty reduction should not be a determining factor as to whether or not a mitigation plan is filed.</p> <p><u>Subsection 4(3)</u></p> <p>Additional language has been added to subsection 4(3) in an effort to clarify how the measures identified relate to the requirements in a reliability standard. Other reliability standards may be added to Category 4 depending on the nature of the reliability standard and whether the reliability standard lends itself to the structure of subsection 4(3).</p>

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<p>Accordingly, AltaLink recommends a new provision as 4(3)(e) which states that to the extent that a measure by its nature requires 100% compliance, it shall be within the MSA's discretion to apply a low, moderate or high severity level or no sanction at all as appropriate.</p> <p><b>ATCO Power</b></p> <p>From reviewing these documents and the draft of Rule 027 we have the following concerns and comments:</p> <ul style="list-style-type: none"> <li>▪ The application of the penalty assessment in 4(3) for the contravention listed in Category 4 of the base penalty table provides specific criteria that clearly show the violation severity level that will be applied. No other categories provide this type of clarity though established criteria. We are uncomfortable with the level of discretion that would be applied to the assignment of the violation severity level due to a lack of specific criteria.</li> <li>▪ As the Reliability Standards are new and companies are still engaged in a learning process of what is required, we would recommend the AUC consider a phase in approach similar to that of the NERC Sanction Guidelines where a first violation of a reliability standard is judged to be inconsequential and that the penalty be excused if certain criteria are met such as minimal or no impact on the reliability of the system.</li> <li>▪ The use of other remedies such as mitigation plans or remedial action guidelines have not been clearly established and their potential application is not fully understood.</li> </ul> <p><b>Independent Power Producers Society of Alberta</b></p> <p>The following are some specific comments on the rule:</p> <ul style="list-style-type: none"> <li>▪ At Penalty Assessment S. 4(6) and 4(7) we recommend that no</li> </ul>	

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<p>penalty be assessed if a participant has an MSA-approved mitigation plan, unless the participant fails to live up to the terms of that plan. Rather than having these plans filed in lieu of the first penalty, perhaps such plans can be filed to the MSA for its approval at some time after the standard is ratified by the AUC. The plans would explain how the participant will become compliant with the reliability standard, which may require a capital investment coinciding with the next appropriate scheduled maintenance at its facility. Penalties would only apply should the facility continue to be out of compliance beyond the dates committed to in the compliance plan.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 4(2)</u></p> <p>The penalty assessment as presently drafted takes account of “each day of the contravention”. Given that contraventions may only be discovered through audit or other monitoring which does not usually occur in ‘real time’, the contravention may continue for many days, weeks, months or even years before it is discovered and addressed. It is not clear how the assessment of the specified penalty should be calculated in such cases.</p> <p>Sub-sections 4(2)(a) through (d) refer to “instances” of a failure to meet the requirements of a reliability standard. It is not entirely clear whether an “instance” is the same as a “contravention”. We would submit that, in general, each failure to meet the requirements of a reliability standard is a distinct contravention. This seems to be implied from the language of (a), as a single instance would amount to a “Lower Violation Severity Level” contravention.</p> <p>The further implication then is, that insofar as contraventions (b), (c) and to some extent (d), each has a greater “Severity Level” than the last simply because it is an additional contravention. In effect, the</p>	

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<p>Base Penalty Table for Category 1, 2 and 3 is counting the number of contraventions to arrive at the “Violation Severity Level”. However, it is not clear that this is what the Commission is seeking to achieve in the penalty assessment.</p> <p>We would also submit that use of the term “Violation Severity Level” in Sub-sections (a) through (d) creates confusion in two other respects. First, although used in relation to such matters in U.S. jurisdictions, the word “violation” should be replaced by the word “contravention” to be consistent with the legislative scheme in Alberta and other parts of AUC Rule 027.</p> <p>Secondly, the notion and use of the term “Severity Level” appears confusing here. We note that an assessment of impact (actual or potential) to the Alberta interconnected electric system (AIES) is not expressly made part of AUC Rule 027 for any given contravention (violation). Thus, a contravention which did have a material impact to the AIES (actual or potential) would be brought to the Commission directly, outside of AUC Rule 027. This makes sense.</p> <p>However, inside AUC Rule 027 the quantum of specified penalty in Category 1, 2 and 3 increases according to the number of contraventions (instances), and at the same time goes from “Lower Violation Severity Level” to “Severe Violation Severity Level” in description. It seems contradictory though for a contravention which does not have impact as an issue to nevertheless be described as being at “Severe Violation Severity Level”.</p> <p><b>TransAlta</b></p> <p>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ The proposed rule addresses specified penalties for each day of a contravention. TransAlta believes that specified penalties</li> </ul>	

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<p>for contraventions of reliability standards should only be imposed on a per incident basis. Our understanding is that in practice, most jurisdictions apply penalties on a per incident basis, reserving per day penalties for the most egregious situations. An example of a typical contravention of a reliability standard that one may see is where a market participant has not met a documentation requirement in a standard for a period of weeks or months. In that case, a multiple day penalty is likely not warranted. In particular, we view documentation issues as being less egregious, than those instances where specific aspects of a program are not implemented, for instance the testing of relays. If there is a multiple day contravention that is particularly egregious such that a single specified penalty is not considered sufficient by the MSA, the MSA has the ability to pursue an administrative penalty instead. Recommendation: Specified penalties be imposed only on a per incident basis.</p> <ul style="list-style-type: none"> <li>▪ A reduction of 25% is proposed where there is an approved mitigation plan. TransAlta is concerned that this reduction is too low. TransAlta’s understanding of the use of mitigation plans is to encourage compliance. Mitigation plans generally involve a significant amount of work on the part of the market participant. TransAlta believes that use of mitigation plans should encourage the market participant to fix the problem and help ensure reliability of the system. However, given the amount of work involved and the relatively small penalty reduction of 25%, TransAlta is concerned that this will not encourage the filing of mitigation plans. Recommendation: A completed mitigation plan combined with self-disclosure should reduce the specified penalty to zero.</li> <li>▪ Section 4(2) sets out Violation Severity Levels for Category</li> </ul>	

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<p>1, 2 and 3 contraventions, and speaks of the number of instances of a failure to meet a requirement or an element of a requirement. Clarification is required as to what constitutes an "instance". For example, if there are 4 requirements in one standard which are each failed once, does this result in a Severe Violation Severity Level, or four Lower Violation Severity Level events? Does a Severe Violation Severity Level only result from four violations of the same requirement?</p> <ul style="list-style-type: none"> <li>▪ Section 4(3) provides Violation Severity Levels for Category 4 offences which appear to be based on the percentage a measure has been contravened. It is not clear what these percentages are based on how and how they would be assessed. Is BAL- 001-AB-0a the only reliability standard that will fall under Category 4 or it is anticipated that other standards will fall under Category 4 in the future? If so, how will the determination be made to include a reliability standard as Category 4? Recommendation: Clarify the use of Category 4.</li> </ul> <p><b>TransCanada Energy Ltd.</b></p> <p><u>Sections 4(2), 4(5), (6) &amp; (7)</u></p> <p>Section 4(2) refers to a specified penalty being determined for “each day” of the contravention. This language suggests that market participants may be liable for a specified penalty for each day that a contravention occurs or exists, which could potentially amount to enormous exposure for market participants in situations where they were unaware of the contravention, or were unable to quickly correct it. TransCanada submits that the specified penalty regime should impose only one penalty for each act of contravention, irrespective of its duration. However, the MSA could cite the duration of a</p>	

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<p>contravention as an aggravating factor and initiate an administrative penalty proceeding.</p> <p>Section 4(2) and the Base Penalty Table require the MSA to evaluate potential contraventions as “Lower, Moderate, High, or Severe”. TransCanada submits that this classification obscures the fact that the table is intended to address the frequency of recurrence of a contravention. The severity of a contravention is best considered in the particular context of each case and recurrence is only one consideration. Accordingly, TransCanada submits that Section 4(2) and the Base Penalty Table should refer to the number of contraventions instead of describing the contraventions as “low” to “severe”.</p> <p>Sections 4(5) – (7) propose a reduction of a specified penalty by 25% for self-disclosure, 25% for the filing of an approved mitigation plan, and a total proposed reduction of 50% for both self-disclosure and the filing of an approved mitigation plan. TransCanada submits that the reductions should be increased to 50% for self-disclosure, 50% for the filing of an approved mitigation plan, and a total reduction of 100% for both self-disclosure and the filing of an approved mitigation plan. TransCanada notes that the reduction for self-disclosure of a contravention of an ISO Rule is 50% pursuant to Rule 019. In addition, providing for a more substantial reduction for self-disclosure and the filing of an approved mitigation plan is filed is consistent with the treatment of contraventions of reliability standards by the Federal Energy Regulatory Commission (“FERC”). FERC has increasingly emphasized self-reporting and compliance programs with significant reductions in potential penalties.</p> <p>Consistent with TransCanada’s comments on Rule 019, TransCanada submits that Rule 027 should also incorporate the forbearance powers granted to the MSA pursuant to Section 57 of the Alberta Utilities Commission Act, by requiring the MSA to determine, in the case of</p>	

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<p>self reporting and/or the filing of an approved mitigation plan, whether forbearance is appropriate in the circumstances.<sup>1</sup></p> <p>Finally, TransCanada submits that the curative effect of self-disclosure and mitigation plan should also apply prospectively. For example, where a new reliability standard is developed and a market participant recognizes that compliance may not be attained in a timely manner due to complexity, cost or technical issues, that market participant should be permitted to avoid a penalty by reporting to the MSA the potential for non-compliance and submitting an approved mitigation plan indicating how the market participant will bring itself into compliance over time.</p>	
<b>Issue 7: Adjustment Penalty Table</b>	
<p><b>Alberta Electric System Operator</b></p> <p>11. Section 4(11)(c) states that the degree and quality of cooperation by a market participant is a consideration in reducing a penalty. AESO supports this concept. However, AESO seeks clarification as to what the Commission means by ‘degree and quality of cooperation’. AESO’s view is that this should include consideration of such things as a market participants’ willingness to produce information in a timely manner, provision of organized data versus volumes of irrelevant data or volumes of data hiding the relevant data, etc.</p> <p><b>AltaLink</b></p> <p>AltaLink recommends that Rule 027 be amended to grant the MSA greater discretion to forgo penalty assessment when appropriate. In particular, Rule 027 should be sufficiently broad enough to not only allow for the consideration of compliance plans in the determination</p>	<p>In Bulletin 2010-06, the Commission noted that it had not yet determined whether to include an Adjustment Penalty Table in proposed AUC Rule 027 and sought market participant comments with respect to this particular provision of the draft rule. The Commission appreciates the comments that were submitted in response to its request.</p> <p>Parties questioned, did not support and suggested that it may be better to remove the concept of the Adjustment Penalty Table in proposed AUC Rule 027. After considering the comments submitted by parties and the concerns surrounding the Adjustment Penalty Table in proposed AUC Rule 027, the Commission has removed the table and subsection 4(11).</p>

<sup>1</sup> The MSA has outlined its proposed approach to regulatory forbearance in the MSA Report Compliance Review 2009, dated January 29, 2010 at pp. 10-12.

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<p>of penalty amounts, but also for non-compliance with Alberta Reliability Standards to be addressed through mitigative actions or warnings rather than sanctions. In respect of penalty assessment, AltaLink supports a greater weighting on efforts made by companies to remedy non-compliance in a timely manner.</p> <p>AltaLink does not support the Adjustment Penalty Table. AltaLink submits that the preceding paragraph describes the general approach that should be adopted. If the AUC retains the Adjustment Penalty Table the adjustment amounts should be proportionate to the base penalties.</p> <p><b>ATCO Power</b></p> <p>From reviewing these documents and the draft of Rule 027 we have the following concerns and comments:</p> <ul style="list-style-type: none"> <li>▪ In Alberta we have two basic penalty defaults, specified and administrative. Our understanding of the application of penalties has been that the Commission views specified penalties as a lesser breed of contravention. The application of the adjustment penalty table in the proposed rule does appear to be consistent with an interpretation of a lesser breed of contravention. We believe there needs to be a separation of potentially differing allegations. As an example, if a participant is alleged to have contravened a certain reliability standard it is a completely different allegation to then assess the participant for concealment.</li> <li>▪ The treatment of the adjustment penalty table is highly subjective and the factors within the table have not been defined.</li> </ul> <p><b>Capital Power</b></p> <p><u>Adjustment Penalty Table</u></p>	

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<p>Capital Power opposes the inclusion of sections 4(11)(c), (d), and (e) in the adjustment penalty table. We disagree that these types of adjustments should be made at the sole discretion of the MSA. Considerations such as the degree and quality of cooperation of the market participant during an investigation, the presence and quality of the market participant's compliance program, and the concealment of contraventions, are matters that should be determined by the Commission during the course of a hearing or proceeding.</p> <p><b>EPCOR</b></p> <p>Second, the Commission itself is seeking input regarding an adjustment table. EPCOR believes that the MSA needs flexibility in assessing penalties to recognize that the circumstances of each case will be different. EPCOR suggests that the MSA can establish its own framework for doing so, and it need not be prescribed in the Rule. Language in the Rule should reflect this latitude, providing the penalty amounts in the tables as upper limits to what can be assessed. It is EPCOR's submission that all mitigating circumstances cannot be foreseen, and therefore cannot be included in the proposed Rule. For example, a literal interpretation of the proposed Rule could see multi-million dollar penalties assessed for contraventions that may have occurred but were undiscovered for several months or even years because the penalties are assessed on a per day basis. The MSA should have latitude in assessing the penalty, including consideration of when knowledge of the contravention occurred. It is EPCOR's understanding that the practice in some of the U.S. jurisdictions that has evolved so far is that for first time violations, the penalty has been applied once per violation rather than on a daily basis. The MSA should be able to exercise a similar level of flexibility.</p> <p><b>Independent Power Producers Society of Alberta</b></p> <p>The following are some specific comments on the rule:</p>	

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<ul style="list-style-type: none"> <li>At Adjustment Penalty Table, a penalty of ‘concealment’ should warrant more than the MSA’s discretion. Fines for concealment should be removed from this rule and should be investigated as an administrative penalty issue.</li> </ul> <p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 4(11)</u></p> <p>Subsection (a) speaks to “repetitive contraventions of the same reliability standard”. We would reiterate here our comments regarding Sub-sections 4(2)(a) through (d) above; would each contravention of a requirement or element within a reliability standard count as a separate contravention?</p> <p>We would also submit that, for reasons stated above in our comments about audit cycles, in many cases there will not be any awareness of a contravention within a 12-month period. Thus the “12-month rolling period” may not be a useful criterion.</p> <p>Sub-section (b) suggests, by implication, that the MSA cannot assess the penalty quantum until a mitigation plan has been completed (in order to count the number of days of the contravention). This would delay issuance of the related notice of specified penalty, unless the mitigation plan was completed fairly quickly. It may be better for a notice of specified penalty to be issued sooner, for example upon the commencement of the mitigation plan, allowing for the possibility that a further notice of specified penalty could be issued to assess any additional penalty amount owing in the event that the mitigation plan is not completed.</p> <p>Sub-section (d) refers to a “compliance program”; however, it is not clear what is meant by that.</p> <p>As set out further below in Penalty Tables, we also submit that it may in fact be better to remove altogether the concept of adjustments to</p>	

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<p>penalty quantum described in Sub-section 4(11).</p> <p><b>TransAlta</b></p> <p>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ The proposed rule includes an Adjustment Penalty Table. TransAlta is of the view that the Adjustment Penalty Table should not be included for these reasons: <ul style="list-style-type: none"> <li>○ Adjustment for concealment (s.4(1 l(e)) - TransAlta considers that if a party has engaged in concealment, that should automatically be considered for an administrative penalty because of the seriousness of that conduct as concealment implies intent to mislead.</li> <li>○ There should be no adjustments of a specified penalty upwards. The MSA always retains discretion to seek an administrative penalty rather than a specified penalty. If the MSA considers that a penalty greater than the specified penalty is warranted due to such things as a lack of cooperation by the market participant, a significant number of repeat contraventions with little or no reasonable effort to remedy the problems, concealment, or the reliability impact of the contravention, then the MSA should seek an administrative penalty.</li> <li>○ The MSA should be provided with discretion to reduce a specified penalty based on circumstances such as cooperation, quality of the compliance plan, whether the contravention was for a documentation breach which does not impact reliability (as opposed to a performance breach that does have a reliability</li> </ul> </li> </ul>	

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<p>impact), etc. TransAlta considers that it would be more appropriate for the MSA to retain discretion as to the appropriate reduction rather than set out maximum reductions in a penalty table.</p> <p>Recommendation: Do not include an Adjustment Penalty Table, but do provide the MSA with the discretion to reduce specified penalties in appropriate circumstances. The MSA already has the discretion under the legislation to seek a higher penalty in the form of an administrative penalty in appropriate circumstances.</p> <p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 4(11) and the Adjustment Penalty Table</u></p> <p>TransCanada submits that conferring discretion on the MSA to adjust penalty amounts, as stipulated by Section 4(11) and the Adjustment Penalty Table, undermines the certainty that a specified penalty regime otherwise provides and will inhibit its efficiency. The amount of a specified penalty should be clearly identified in the penalty table and should not be subject to change. However, where the circumstances outlined in Section 4(11) indicate that a greater penalty is appropriate, the MSA could initiate an administrative penalty proceeding.</p> <p>Further, TransCanada notes that many of the circumstances listed in Section 4(11) could involve serious allegations of misconduct, such as concealment or a lack of co-operation with an investigation, that would be more appropriately addressed by way of an administrative penalty. Indeed, these behaviours are already captured by the Alberta Utilities Commission Act, Market Surveillance Regulation and the Fair, Efficient and Openly Competitive Regulation.</p>	

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<b>Issue 8: Self-Disclosure</b>	
<p><b>EPCOR</b></p> <p>First, section 4(8) directs that a self-disclosure statement be made in writing directly to the MSA. In EPCOR’s view, it is not the responsibility of the MSA to investigate any potential contravention of Reliability Standards, whether or not it is self reported. It is the MSA’s responsibility to act on referrals made by the AESO, to enforce penalties for contravention. The process contained in section 6.3 of the AESO’s Compliance Monitoring Program directs the self reporting to be made to the AESO as the Compliance Monitoring Authority. This is consistent with the role of the AESO. The MSA should only act on referrals received from the AESO. EPCOR submits that sections 4(8) through 4(10) should be removed, as they are within the prerogative of the AESO to establish within its own responsibilities as set out in section 23(1) of the Transmission Regulation (Alberta Regulation 86/2007).</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Sub-section 4(8)</u></p> <p>There may be some confusion regarding self-disclosures under AUC Rule 027 <i>vis a vis</i> those reported pursuant to the AESO CMP, which entails various forms of self-reporting. It would be better if there was alignment between those processes. We would also submit that self-disclosures should simultaneously go to both the “Compliance Monitor” (as defined in the AESO CMP) and the MSA in all cases, in order to avoid unnecessary duplication of effort.</p>	<p>Section 39(1) of the <i>Alberta Utilities Commission Act</i> states the following:</p> <p><b>39(1)</b> Subject to regulations made under section 59(1)(1), the Market Surveillance Administrator has the mandate</p> <p>...</p> <p>(b) to investigate matters, on its own initiative or on receiving a complaint or referral under section 41, and to undertake activities to address</p> <p>(i) contraventions of the <i>Electric Utilities Act</i>, the regulations under that Act, the ISO rules, reliability standards, ...</p> <p>including negotiating and entering into settlement agreements and bringing matters before the Commission.</p> <p>As such, the MSA’s role is not limited to circumstances where the ISO suspects that a market participant has contravened a reliability standard and refers the matter to the MSA in accordance with section 21.1 of the <i>Electric Utilities Act</i>.</p> <p>The Commission recently consulted with stakeholders regarding the issue of self-reporting with respect to ISO rule contraventions and determined that self-disclosures must be made in writing to the MSA, with a copy made in writing to the ISO. The Commission is of the view that a similar approach should be taken with respect to reliability standards, in part to avoid any unnecessary duplication of effort.</p>

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<b>Issue 9: Public Disclosure</b>	
<p><b>AltaLink</b></p> <p>Turning to notices of specified penalties, the automatic posting of a specified penalty on the MSA’s website pursuant to section 5(1) of proposed Rule 027 also raises concern. Public disclosure of specified penalties, even for relatively minor non-compliance, is likely to be commercially sensitive. Sensitivities include a potential impact on commercial reputation and to the extent that details respecting facilities are disclosed (e.g., CIP001), possible risk to security and reliability of facilities.</p> <p>In order to strike a balance between the benefits of non-disclosure and posting specified penalties, AltaLink proposes that section 5(1) be amended such that the first three specified penalties for each TFO within a calendar year are not publicly disclosed. To the extent that disclosure is required, a specified period to challenge disclosure prior to posting should be included in AUC Rule 027.</p> <p>In respect of public notice of specified penalties, AltaLink is concerned with references to a market participant’s “officers, personnel or agents”. The actions of a market participant are made by and on behalf of the company. The MSA’s mandate is to investigate and pursue remedies for market participants’ non-compliance. This can be achieved through reference to a market participant’s corporate name without compromising the MSA’s mandate or the prosecution of non-compliant activities.</p> <p>Accusations of non-compliance are serious and quasi-criminal in nature. Naming individuals could harm their personal and professional reputation. AltaLink therefore requests that the reference to “officers, personnel or agents” be removed from section 3(2)(d).</p>	<p>The Commission is of the view that public confidence in the electricity market is supported by regulatory processes that are open, fair and transparent to the public.</p> <p>The Commission recognizes that special considerations may be required regarding critical infrastructure, and is interested in further stakeholder comments regarding how the details of critical infrastructure and cyber security can be avoided while maintaining as transparent a process as possible.</p> <p>The Commission will revise subsection 5(1) of proposed AUC Rule 027 to require the MSA to make public any notice of specified penalty no earlier than 30 days and no later than 45 days after the notice of specified penalty is issued.</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 address be made public unless the market participant is an individual. The Commission expects very few, if any, cases will involve market participants that are individuals.</p> <p>The Commission will make the suggested change, as made by TransCanada Energy Ltd., to subsection 5(2)(b).</p>

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<p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 5(1)</u></p> <p>The proposed wording of Section 5(1) would allow for the posting of a NSP at any time after the issuance of the NSP up to a maximum of 45 days. TransCanada submits that the posting of the NSP should not occur sooner than 45 days after the NSP has been issued to the market participant.</p> <p>In addition, TransCanada submits that 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 entity and the title of the addressee. This position is consistent with privacy law principles and the MSA’s Compliance Review 2009 report in which the MSA indicates:</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>2</sup></p> <p><u>Section 5(2)(b)</u></p> <p>Section 5(2)(b) could be clarified by adding the following at the beginning of the subsection:</p> <p>“Once the Commission has rendered a decision with respect to the specified penalty...”</p>	

<sup>2</sup> MSA Report Compliance Review 2009, dated January 29, 2010 at p. 10.

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<b>Issue 10: Penalty Tables</b>	
<p><b>Alberta Electric System Operator</b></p> <p>7. The Base Penalty Table lists each standard/requirement within a specified Category. AESO suggests that a more administratively efficient structure would be to instead associate each standard with a particular Base Penalty Table Category at the time that the standard is approved. This would mitigate the need to revise the Base Penalty Table as each new standard is approved.</p> <p>8. An alternative to the suggested approach in point 7 above is that Rule 027 be modified to indicate specified penalties for any reliability standards not specifically mentioned in the Base Penalty Table. Without such a modification, the only route for sanctions in the case of reliability standards not specifically mentioned in the Base Penalty Table would be through the higher effort administrative penalty process.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Penalty Tables</u></p> <p>Please also see related comments above regarding Sub-section 4(2).</p> <p>The proposed approach in the Base Penalty Table regarding the person (individual) to whom the notice of specified penalty must be sent in particular cases is helpful, and should serve to simplify the administration of specified penalties without losing the desired effect of such notice. Further, the MSA believes that where the compliance function is carried out by a person with sufficient authority and direct access/reporting to a senior executive, it is reasonable to provide an option for all notices to go to that compliance person.</p> <p>The MSA understands that AUC Rule 027 will be made applicable to all reliability standards, and we would endorse that approach. This</p>	<p>The Commission notes the comments made by the AESO regarding administrative efficiency. The Commission is of the view that there is greater synergy in aligning the specified penalty process for reliability standards with the current process for ISO rules.</p> <p>The Commission intends to modify the Penalty Table to include new reliability standards and amendments to reliability standards in as timely a manner as possible.</p> <p>The Commission had revised proposed AUC Rule 027 to require the MSA to send Notices of Specified Penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or to the ISO in instances where the amount of the specified penalty is \$10,000 or greater. The Commission notes the comments of the MSA and TransAlta, and will further amend the rule to allow notices of specified penalties 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.</p> <p>The Commission has made modifications to proposed AUC Rule 027 to address EOP-005-AB-1 and PRC-004-WECC-AB-1 as suggested by the MSA.</p>

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<p>will allow the opportunity for broader use of the administrative efficiency enabled by AUCA Section 52.</p> <p>However, to the extent that there may be changes to existing reliability standards over time, it is not clear how those changes will be dealt with efficiently. It may be most efficient to simplify the Base Penalty Table by reducing the number of categories.</p> <p>We noted that “EOP-005-AB-1” is included in Category 5 of the Base Penalty Table although it is not yet approved in Alberta. In addition, PRC-004-WECC-AB-1 does not appear to be reflected in the Base Penalty Table, although it has been approved. We assume this is unintended.</p> <p>Finally, we would submit that the Adjustment Penalty Table may create more administrative burden and grant to the MSA more discretion in the assessment of specified penalties than is warranted. The better approach would be to remove the Adjustment Penalty Table from AUC Rule 027 altogether, and thereby contemplate that aggravating circumstances would be addressed through a proceeding pursuant to AUCA Section 51.</p> <p><b>TransAlta</b></p> <p>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ The Base Penalty Table provides for notices to be sent to the Senior Executive of the Business Unit of the market participant with escalation to the most senior executive where the specified penalty is \$10,000 or higher. TransAlta believes that notification to the Compliance Officer of the market participant would be appropriate in all circumstances as the Compliance Officer will ensure notification to the appropriate executives within the company. If there are a significant</li> </ul>	

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<p>number of penalties and the compliance problem is not being resolved, by default, the senior most executive should be aware of the problem. Recommendation: For all specified penalties notification should be provided to the designated Compliance Officer of the market participant.</p> <ul style="list-style-type: none"> <li>Implementation of Rule 027 and subsequent new reliability standards. What is the AUC’s intention regarding Rule 027 as new reliability standards are implemented? Will the AUC continually issue revisions to Rule 027 to include the new standards in the appropriate categories? Has the AUC considered having the category of penalty be included in the reliability standard itself rather than Rule 027?</li> </ul>	
<b>Issue 11: General</b>	
<p><b>AltaLink</b></p> <p>AltaLink’s recommendations include amendments which permit resolving contraventions without assessing penalties, greater consultation between the Market Surveillance Administrator (“MSA”) and the Alberta Electric System Operator (“AESO”), and limiting public disclosure of sensitive information.</p> <p>Finally, as potential minor amendments, AltaLink notes that section 4(9)(d) is missing and that Categories 2 and 4 of the Base Penalty Table refer to the same types of contravention and can therefore be combined.</p> <p><b>ATCO Power</b></p> <p>ATCO Power appreciates the efforts of the Commission to advance dialogue on the application of specified penalties to the Alberta Reliability Standards. Many aspects of the formalized introduction of Reliability Standards in Alberta are still being shaped. While we fully</p>	<p>The Commission has addressed AltaLink’s recommended amendments in the sections above.</p> <p>The Commission has made a number of administrative amendments in proposed AUC Rule 027.</p> <p>With respect to ATCO Power’s comments that further details beyond a specified penalty rule need to be considered and provided to participants, the Commission notes that the MSA has conducted stakeholder consultations regarding various aspects of the compliance process associated with reliability standards, and</p>



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<p>and transparent fashion. The matrix also allows the Alberta Electric System Operator (AESO) and the MSA to categorize contravention according to their gravity and, by doing so, communicate to market participants issues that they are concerned about.</p> <p>As a final point, we encourage the Commission to engage market participants in a consultation prior to the development of future rules. We have participated in numerous meetings and consultations on reliability standards that could have served to improve Rule 027. In fact, three days after the comment submission date for this rule is an Electric Utilities Act Advisory Committee meeting that will cover points germane to this rule. As a stakeholder engaged in most of the meetings and discussions related to reliability standards, we would appreciate better coordination to improve the efficiency of the consultation and regulatory process.</p> <p><b>EPCOR</b></p> <p>EPCOR generally agrees with the overall approach taken by the Commission on this matter. The consultation process has been well conducted, and the results so far reflect meaningful input from stakeholders and consideration by the Commission. In EPCOR's view, there are two areas however that are of some concern regarding the proposed Rule 027.</p> <p><b>Independent Power Producers Society of Alberta</b></p> <p>The Independent Power Producers Society of Alberta appreciates the specified penalty approach to the enforcement of reliability standards contained in the Alberta Utilities Commission (AUC)'s Rule 27.</p> <p><b>TransAlta</b></p> <p>TransAlta Corporation appreciates the efforts and approach of the Alberta Utilities Commission in developing a specified penalty regime for contraventions of reliability standards. TransAlta believes</p>	

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<p>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 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>TransAlta provides the following specific comments on proposed Rule 027:</p> <ul style="list-style-type: none"> <li>▪ Will penalties for contraventions of reliability standards be determined on a per unit basis or a company basis?</li> </ul> <p>TransAlta believes there is some urgency to the Commission adopting Rule 027 given the schedule for the introduction of the reliability standards; however it also important to ensure that the right rule is adopted and in that regard TransAlta appreciates the Commission’s efforts in developing Rule 027.</p>	<p>The Commission has removed the Adjustment Penalty Table and subsection 4(11) from proposed AUC Rule 027, and as such, there may be no difference between determining contraventions of reliability standards on a per unit or on a company basis.</p>

\* Copied verbatim from stakeholder written comments.