

**Revisions to AUC Rule 017 – Procedures and Process for Development of ISO Rules and Filing of ISO Rules with the Alberta Utilities Commission**

**Stakeholder Comments and AUC Response Matrix**

**Comment Period – December 18, 2009 to January 18, 2010**

Issue/Topic	AUC Response
<b><i>Issue 1: Requirement to File the Documented Consultation Record</i></b>	
<p><b>AESO</b></p> <p>1. The proposed amendments generally reflect an intention, in the event of an objection to a proposed ISO rule, to ensure that the Commission’s hearing process triggered by such an objection “is quicker, more efficient and less costly.” This intent was expressed by the Commission in the attachment to Bulletin 2009-30 dated November 26, 2009. In particular, the Commission there expressed agreement with the AESO and other parties that an ISO rule consultation process should be robust and fully documented, and that it intended to rely on a comprehensive record of such consultation as part of the evidence it would consider when hearing an ISO rule objection proceeding.</p> <p>2. You will recall that in its comments of August 28, 2009, the AESO also made clear that its goal – which it understood to be congruent with the Commission’s goal – included “having the record of the consultation [process] placed before the Commission <u>in the event of an objection</u> under section 20.4 of the <i>Electric Utilities Act</i>” (emphasis added). Support for this view was also expressed by other parties, such as ENMAX and TransCanada. The AESO also advised the Commission at that time that the Commission’s process coincided with a complementary AESO initiative to enhance its consultation process for ISO rules. That process has continued and is further</p>	<p>In the attachment to Bulletin 2009-30, the Commission agreed with the AESO and other parties that an ISO rule consultation should be robust, fully documented and encompass full participation from market participants and interested parties. The Commission identified two advantages to holding and participating in a comprehensive consultation process at the time an ISO rule is developed, amended or removed:</p> <p>(1) it provides the potential to create the best rule possible; and</p> <p>(2) in some cases it may avoid the need for a hearing or the hearing of certain issues. To the extent that a hearing is required, the Commission noted that it may lead to a hearing process that is quicker, more efficient and less costly.</p> <p>Further, in the attachment to Bulletin 2009-30, the Commission stated that “The Commission considers that an ISO rule that is filed with the Commission by the AESO should include the following:</p> <ul style="list-style-type: none"> <li>• a copy of the proposed ISO rule;</li> <li>• a description of what the proposed ISO rule is intended to address and the mischief intended to be remedied by the</li> </ul>

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<p>addressed below.</p> <p>3. Finally, in indicating in Bulletin 2009-31 that its proposed changes to Rule 17 are intended to develop a “more efficient and less costly” hearing process, the Commission was clear that this goal concerned “...the extent [to which] an objection is filed with respect to an ISO rule”. It is in this context that the principal comments of the AESO are made.</p>	<p>proposed ISO rule;</p> <ul style="list-style-type: none"> <li>• a history of discussions and consultations, including: <ul style="list-style-type: none"> <li>○ a copy of any discussion papers prepared regarding the proposed ISO rule and any comments received in response to the discussion papers;</li> <li>○ any related written comments, submissions, questions and exchanges between market participants or other persons regarding the proposed ISO rule;</li> <li>○ the name of the market participant or other person who submitted each comment, submission, question or exchange and the date on which each was submitted;</li> <li>○ the reply to each comment, submission, question or exchange prepared by the ISO, market participant or other person regarding the proposed ISO rule and the date each was submitted; and</li> <li>○ the date or dates the letter of notice respecting the proposed ISO rule was sent to the market participants and posted on the ISO website.</li> </ul> </li> <li>• the rationale or basis for the position of the ISO that clearly explains why certain positions were rejected and other positions accepted in determining the proposed ISO rule change;</li> <li>• the proposed date for the coming into force of the proposed ISO rule; and</li> <li>• in a case where the ISO is requesting that the publication of the proposed ISO rule change would not be in the public interest, an explanation for the request and the summary of the proposed ISO rule that would be made available.”</li> </ul>

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<p>4. The AESO believes that the changes proposed by the Commission, while ultimately serving to meet the goals described above, go beyond what is necessary to do so. Specifically, this arises by reason of the requirement in section 14 which would obligate the AESO to include the extensive documentation set out in paragraphs (a)-(g) as an attachment to a notice of filing, when a draft ISO rule is first filed with the Commission. That is, the requirement to file that extensive record of consultation is imposed <u>whether or not</u> an objection to such rule is subsequently made, thus triggering the Commission's hearing process. The requirement is therefore a default or minimum filing obligation, <u>whether or not</u> there is a subsequent hearing in which such a record could be relied upon by the Commission as part of the evidence in determining such an objection.</p> <p>5. It goes without saying that the Commission's decision-making responsibilities in respect of an objection to an ISO rule first require such an objection, and in the AESO's submission, that is the appropriate time for the filing of a record of consultation. Specifically, the AESO believes that such a record need only be filed at the same time as the Commission receives Statements of Intention to Participate, once it has issued a Notice of Proceeding concerning an objection. If so, all parties will have the record available to them during the course of the objection proceeding, and the goal of an efficient and less costly objection hearing process will still be met. As such, the AESO submits that Rule 17 should be revised to reflect this</p>	<p>The Commission did not limit the filing of a history of discussions and consultations to circumstances where an objection to an ISO rule is also filed with the Commission. However, the Commission did advise that it intended to rely on this comprehensive record filed by the AESO as part of the evidence it considers when hearing an Objection proceeding.</p> <p>The Commission has revised AUC Rule 017 in order to address, in part, the AESO's concerns regarding the requirement to file its consultation record whether or not an objection to an ISO rule is made. More specifically, the Commission has introduced a requirement that a consultation record and letter of notice be posted on the ISO website, and that the letter of notice must set out instructions regarding where the consultation record can be viewed on the ISO website.</p> <p>The Commission will require the AESO to file the consultation record in the event a market participant objects to a draft ISO rule.</p>

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<p>alternative. Attached to this letter is a draft version of Rule 17, blacklined to that attached to Bulletin 2009-31, in which the necessary changes to give effect to the foregoing are found in sections 1(b) and 17.</p> <p>6. As proposed by the Commission, part of the record of an ISO rule consultation to be filed by the AESO included “any related written comments, submissions questions and exchanges” and replies thereto. In the AESO’s view, the language used raises many questions of interpretation and meaning, which can be improved by incorporating one element of the parallel improvements that the AESO is undertaking with respect to its ISO rule consultation process.</p> <p>7. During the course of its complementary initiative noted in paragraph 2, above, the AESO has developed process documents and templates for use in its improved rule consultation process, and consulted with external stakeholders regarding these process improvements late in 2009. The intention is that each rule consultation process will be governed by a terms of reference to be agreed by the AESO and its stakeholders. While the large majority of consultation documents will form part of the Consultation Record (as defined) to be filed with the Commission in the event of an objection, the terms of reference will permit the parties to provide for “off the record” discussions, documents and communications that will <u>not</u> form part of the Consultation Record in any subsequent objection proceeding. Stakeholders have indicated to the AESO that they are strongly in favour of the ability to conduct informal discussions and maintain “off the record” documents and meetings. Within a consultation process, informal discussions can lead to the development of more creative solutions.</p> <p>8. As such, the AESO believes that it is appropriate to incorporate this concept into Rule 17, which would as well eliminate concerns regarding the scope and meaning of the proposed rule; the governing</p>	<p>The Commission has removed the language “any related written comments, submissions questions and exchanges”, and has incorporated new language into subsection 5(2) and section 17 of AUC Rule 17 to reflect the parallel improvements that the AESO is undertaking with respect to its ISO rule consultation process.</p> <p>The Commission has made provision for comments during the consultation with the AESO that are “off the record”. See subsection 5(2) and section 17 of AUC Rule 017.</p>

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<p>principle would be that documents regarding an ISO rule would be part of the Consultation Record to be filed by the AESO with the Commission unless they were specifically defined as “off the record” under the relevant terms of reference for consultation. Please see section 17(d) in the attached blacklined version. In the AESO’s view, this change would maintain the comprehensive nature of the Consultation Record, while at the same time ensuring a full and frank exchange of views by the parties during consultation on a draft ISO rule.</p> <p><b>Capital Power Corporation</b></p> <p>While Capital Power agrees with the Commission that the requirement to file the documented consultation record with ISO Rule submission could benefit rule approval process, the Commission needs to provide market participants assurances that filing of such record would not be used in manner that would limit the discussion of issues at the consultation stage. Our concern is that by filing the consultation record, market participants may be discouraged from changing their views during the process. This may result in a polarization on issues early in the process with the unintended consequences of limiting the exploration of the issues. Such a restriction, intentional or unintentional, would be inconsistent with the goals of a robust consultation process.</p>	<p>The Commission has made provision for comments during the consultation with the AESO that are “off the record”. The changes to AUC Rule 017 as noted above in response to the AESO may also address Capital Power’s concerns.</p>
<b><i>Issue 2: ISO Explanation as to Why Positions were Accepted or Rejected in Determining the Draft ISO Rule</i></b>	
<p><b>Capital Power</b></p> <p>Capital Power supports changes to the rule that require the Alberta Electric System Operator (“AESO”) to provide the Commission and stakeholders with explanations of why positions raised in the consultation process were rejected and rationale for supporting the position that ultimately form the basis of an ISO rule. Such</p>	<p>The Commission has included, in section 9(2) of AUC Rule 17, the requirement that if comments were received by the ISO concerning the draft ISO rule, the ISO must provide its rationale for accepting or rejecting the position(s) of each party in its reply to stakeholder comments. Further, if comments were received, the</p>

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<p>documentation ensures that the consultation process is robust and that all stakeholder views are carefully considered.</p> <p><b>TransCanada</b></p> <p>Finally, in order to clarify the reply obligations of the AESO set out in section 8, TransCanada submits that section 9, which specifies the contents of the AESO’s reply, should also include the language of proposed section 13(f), namely “the rationale or basis for the position of the ISO that explains why certain positions were rejected and other positions accepted in determining” changes to the draft ISO rule. It would be helpful for market participants to understand the rationale of the AESO in response to stakeholder comments prior to the filing of a final rule with the Commission.</p>	<p>ISO must provide the rationale or basis for its final position as part of its Notice of Filing to the Commission (see subsection 13(e)).</p>
<p><b><i>Issue 3: Establishment of General Guidelines on Timeframes for Commission Proceedings on ISO Rules</i></b></p>	
<p><b>Capital Power</b></p> <p>Capital Power also supports the establishment of general guidelines on timeframes for the Commission proceedings on ISO rules. We agree with the Commission’s view that the timeframes need to be flexible and the schedules should be determined on a case by case basis.</p>	<p>As communicated in the attachment to Bulletin 2009-30, the schedule and process for each proceeding will be determined by the Commission panel on a case by case basis.</p>
<p><b><i>Issue 4: Section 2(2) of Rule 17</i></b></p>	
<p><b>TransCanada</b></p> <p>The Commission has proposed that section 2(2) of Rule 17 be deleted, noting in Bulletin 2009-31 that this section is “informational in nature and need not be part of a Commission rule”. TransCanada views this section as giving a market participant the right to request a change to, or removal of, an existing ISO Rule or the development of a new ISO rule (“Rule Request”). TransCanada recognizes that the</p>	<p>The Commission is not convinced that section 2(2) of AUC Rule 017 should be retained. The Commission considers section 2(2) to be information in nature, and not to give market participants any rights that do not otherwise exist through applicable legislation or regulation.</p>

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<p>AESO has considered such Rule Requests from market participants in the past and understands that the AESO intends to continue to do so, as noted in the AESO’s October 1, 2009 Draft Information Document on ISO Principles for Consultation on Rules Development (Attachment 3, Step 1). However, TransCanada submits that the right to make a Rule Request and have it considered by the AESO should be clearly stipulated in the Commission rule that governs the procedures and process for the development of ISO Rules, and therefore, section 2(2) should not be deleted.</p> <p>Further, TransCanada submits that section 2(2) should be expanded to require the AESO to provide, in writing, its rationale for denying a written Rule Request from a market participant. This would provide more transparency to market participants regarding the development of ISO Rules and would also create a more comprehensive record should a market participant wish to challenge the ISO’s decision to deny a Rule Request through a complaint proceeding. TransCanada recognizes that informal discussions currently occur between market participants and the AESO regarding possible rules, changes or removals and believes these discussions should not be restricted by the proposed revision to section 2(2).</p>	
<b><i>Issue 5: General Edits</i></b>	
<p><b>AESO</b></p> <p>9. Having reviewed the proposed Rule 17 carefully, the AESO believes that a number of further editorial changes should be considered by the Commission, with a view to improving its substance, content and readability. These are also included in the black-lined version attached. –One example concerns the use of the term “draft ISO rule”, which is not a term found in the <i>Electric Utilities Act</i> (EUA), and is not necessary, in the AESO’s view, to</p>	<p>The Commission has included several of the AESO’s proposed edits into AUC Rule 17. The Commission has not included the following two edits:</p> <ul style="list-style-type: none"> <li>- the term “draft ISO rule” is defined in section 1 of AUC Rule 17 and is used to help readers identify that an ISO rule that is filed with the Commission is not yet an enforceable ISO rule; rather, it is a proposed new ISO rule, a proposed change to an</li> </ul>

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<p>ensure that the goals of the proposed changes are achieved. Other examples are the use of the phrases “interested parties” and “other persons” in cases where the use of the phrase “market participant” would be more accurate based on the wording of the EUA. The AESO appreciates the opportunity to comment, and hopes that these comments and suggestions will be helpful to the Commission. The AESO looks forward to participating in any further consultation process regarding the Commission’s proposed changes to Rule 17, in light of <i>AUC Bulletin 2010-03, Process for the adoption of Alberta Utilities Commission rules.</i></p>	<p>existing ISO rule or a proposed removal of an existing ISO rule; and</p> <ul style="list-style-type: none"> <li>- the term “market participant” has the meaning given it in the <i>Electric Utilities Act</i> and may exclude parties such as trade associations. The Commission does not intend to restrict participation in the rule consultation process unless such restrictions are reflected in legislation or regulation.</li> </ul>