

AUC Rule 019 - Specified Penalties for Contravention of ISO Rules
Stakeholder Comments and AUC Response Matrix
Re: Meeting Held at AUC Offices on May 28, 2008

Issue/Topic	AUC Response
<i>Item 1: 12 Month Rolling Period</i>	
<p>Stakeholders noted that section 3(1) of draft AUC Rule 019 introduced a limitation period for a notice of specified penalty that is "... within two years from the date on which the contravention occurred or the date on which evidence of the contravention first came to the notice of the Market Surveillance Administrator [MSA], whichever date is later". (Proposed changes to the wording of this section of the draft rule are further discussed in item 6 below).</p> <p>Stakeholders also noted that various sections of draft AUC Rule 019 make reference to a 12 month rolling period.</p> <p>In view of the above, stakeholders asked how the two year time frame relates to the 12 month rolling period. Parties asked for clarification as to whether their position in the matrix would change should a past event come to light within the 12 month rolling period. Parties also asked for clarification as to whether their position in the matrix would change should a past event come to light outside of the 12 month rolling period but within the limitation period outlined above.</p>	<p>The AUC is of the view that the Market Surveillance Administrator (MSA) may issue a notice of specified penalty if the issuance of the notice is within the time period specified in section 3 of draft AUC Rule 019. Revisions to the wording of section 3 will be further discussed in item 6 below.</p> <p>Consideration of the 12-month rolling period, as noted in section 4 of the draft rule, is based on a review of the 12 months immediately preceding the date the contravention took place. This consideration is also based on information known to the MSA at the time the notice of specified penalty is issued.</p> <p>The 12-month rolling period is independent of the limitation period, and the MSA will identify the appropriate column of the penalty table based on the number of contraventions that have been issued by the MSA in the 12-month rolling period immediately preceding the date of the event.</p> <p>The AUC has revised section 4 of AUC Rule 019 to clarify the manner in which the MSA will use the Penalty Table.</p>
<i>Item 2: Public Posting to the MSA and / or AUC websites</i>	
<p>Stakeholders raised a number of questions regarding where and how notices of specified penalty will be publicly posted, and whether such notices will be posted to the MSA's website and / or</p>	<p>The AUC is of the view that the MSA should make public any notice of specified penalty issued for a contravention of ISO rules, subject to the one year transition period identified in</p>

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<p>the AUC's website.</p> <p>Related questions included the following:</p> <ul style="list-style-type: none"> ▪ When should the posting of a notice of specified penalty take place? ▪ If a notice of specified penalty is unpaid or disputed, should this information accompany the notice of specified penalty? ▪ Should postings, if any, be duplicated on the MSA and AUC websites? ▪ Should postings be limited solely to violations that are subject to a specified penalty? ▪ Does the posting of notices of specified penalties undermine consumer confidence in the market? ▪ Is it reasonable to post a notice of specified penalty without mentioning the name of the company that contravened the ISO rule (on a masked basis)? 	<p>section 5(2) of the draft rule.</p> <p>The AUC considered the use of masked identifiers as suggested by stakeholders, but is of the view that the payments of specified penalties without any public awareness may not be sufficient, at least in some circumstances, to adequately encourage and promote compliance with ISO rules. The AUC is aware that penalties for contravention of rules are made public in other electricity markets (Ontario, for example), and is of the view that an awareness of specified penalties does not undermine consumer confidence in the market.</p> <p>The above postings will be made 30 days after the notice of specified penalty is issued.</p> <p>The AUC is of the view that if a specified penalty is not paid by a market participant by the due date identified in the notice of specified penalty, or is disputed by the market participant, the MSA will indicate on its website that the specified penalty has not been paid or that the notice of specified penalty is being disputed. In addition, the MSA will include on its website an appropriate link to the AUC's website where the matter is addressed by the AUC rather than post the AUC's decision on the MSA's website.</p> <p>The AUC has made changes to section 5 of AUC Rule 019 to address the changes discussed above.</p>
<i>Item 3: Proposed Changes to Category 3 Penalty Table</i>	
<p>TransCanada Energy Ltd. (TCE) representatives provided the AUC and stakeholders in attendance at the May 28, 2008 meeting with a proposal to revise the penalty table for category 3 (ISO rule 6.6). TCE's proposed table is attached.</p>	<p>The AUC is of the view that the proposed changes as outlined by TCE go beyond the authority of the AUC as outlined in section 52(7) of the <i>Alberta Utilities Commission Act</i> (AUC Act). In the AUC's view, the provisions as outlined in category 3 of the draft</p>

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	<p>penalty table do not preclude the MSA from considering reasonable operational factors, including but not limited to ramp rates, prior to issuing a notice of specified penalty.</p> <p>The AUC is of the view that the appropriate forum to consider changes of the nature proposed by TCE is outside of the specified penalties process.</p>
<i>Item 4: Addressing a Notice of Specified Penalty to a Market Participant's Board Chair</i>	
<p>Stakeholders questioned the appropriateness of sending a notice of specified penalty to the chair of the board of directors of a market participant in circumstances where there is a fourth or subsequent contravention of the same ISO rule in a rolling 12-month period (in category 1 or 2).</p> <p>Stakeholders suggested that a specified penalty of \$2,000 or \$10,000 is not sufficiently large to warrant the attention of a board chair.</p>	<p>The AUC is of that view that a notice of specified penalty should be communicated to the chair of the board of directors of a market participant in circumstances where there is a fourth or subsequent contravention of the same ISO rule in a rolling 12-month period (in category 1 or 2). Based on the input of stakeholders at the May 28, 2008, the AUC will modify the notice requirement in column 4 of the Penalty Table to read as follows:</p> <p>Notice of specified penalty to the most senior executive of the market participant (i.e. President, Chief Executive Officer) or its parent company if the market participant is a wholly-owned subsidiary or affiliate, with a <u>copy to the chair of the board of directors of the market participant or its parent company.</u></p> <p>The AUC is concerned with the frequency of rule contraventions that may take place four or more times within a rolling 12-month period, and is of the view that it would be appropriate in these circumstances to bring the situation to the attention of the governance level of a market participant.</p> <p>The AUC also notes that escalation to the chair of the board is consistent with sanctioning practices of the Western Electricity Coordinating Council (WECC).</p>

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	The AUC has made changes to the appropriate sections of AUC Rule 019 to address the changes discussed above.
<i>Item 5: Circumstances of Multiple Penalties from a Single Event</i>	
<p>Stakeholders questioned the appropriateness of issuing two or more specified penalties for different ISO rule contraventions that are a result of the same initial event. Stakeholders asked for clarity as to whether multiple penalties can be issued that arise from a single event that takes place.</p>	<p>The AUC is of the view that if a single event results in the contravention of more than one ISO rule, the ISO should not be prevented from referring each suspected ISO rule contravention to the MSA. Similarly, if the MSA is satisfied that a market participant has contravened more than one ISO rule as a result of a single event, the MSA may issue a notice of specified penalty for each ISO rule contravention.</p> <p>The AUC sees no support in the enabling legislation to limit the number of specified penalties that may be issued as a result of a single that takes place. The AUC does, however, note that the MSA has discretion to consider specific circumstances related to each individual case.</p>
<i>Item 6: Limitation Period</i>	
<p>Parties at the stakeholder session held on May 28, 2008 offices questioned whether the language in section 3 of draft AUC Rule 019 corresponds with the limitation period established in the AUC Act.</p> <p>Specifically, parties were concerned about the use of the language "... whichever is later" as not being consistent with general statute of limitation language which uses the phrase "whichever is sooner".</p>	<p>The authority to establish the limitation period for issuance of a specified penalty is set out in section 52(7)(c) of the AUC Act.</p> <p>Although the AUC Act establishes a limitation period to bring forward an application for an administrative penalty in section 65 of the AUC Act, there is no corresponding statutory limitation period set out in the AUC Act for the imposition of a specified penalty.</p> <p>The concern expressed by parties respecting the language in section 3 of the draft rule is that the two year limitation period is the <u>later of</u> either:</p>

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	<p>(1) the date on which a contravention occurred; or</p> <p>(2) the date on which evidence of the contravention first came to the attention of the MSA.</p> <p>Parties were concerned that this language effectively created no limitation period as the MSA could issue a notice of specified penalty for a breach that occurred many years ago so long as the MSA was only aware of it within 2 years from when it sent out the notice of specified penalty.</p> <p>The Commission has reviewed the language and agrees that the circumstance identified at the stakeholder meeting could occur.</p> <p>The Commission has decided to amend section 3 of the draft rule to introduce a limitation period that is two years from the date the facts regarding the contravention first came to the notice of the MSA or four years from the date on which the contravention occurred, whichever is earlier. This limitation period is shorter than the statutory limitation period outlined in the AUC Act for administrative penalties, which is 3 years from when the facts become known to the AUC or 6 years from the date of the alleged offence, whichever occurs first.</p> <p>The AUC has made changes to section 3 of AUC Rule 019 to address the changes discussed above.</p>
<i>Item 7: Self-Reporting Issues</i>	
<p>Stakeholders at the May 28 meeting asked for guidance or clarification from the AUC as to what items should be self-reported, and suggested that such guidance from the AUC might help with consistency in self-reporting amongst market participants.</p>	<p>The AUC identified in section 4 of the draft rule the requirements of a self-disclosure statement. Beyond the information outlined in section 4, the Commission is not in a position to provide guidance as to which events a market participant might self-disclose.</p>

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<i>Item 8: Directing Self-Disclosures to the ISO</i>	
<p>Shortly after the May 28, 2008 meeting with stakeholders, the MSA requested the AUC revise section 4(4) of the draft rule to specify that self-disclosure statements be made to the AESO as opposed to the MSA.</p> <p>The AESO supported the proposal made by the MSA, and indicated that sending self-disclosures to the AESO is consistent with current practice.</p>	<p>The Commission has reviewed the request from the MSA, and has determined that it will leave section 4(4) as originally drafted.</p> <p>While the Commission recognizes that self-disclosure to the AESO is consistent with current practice, the Commission notes that significant changes to compliance monitoring and enforcement responsibilities have taken place through the enactment of the AUC Act. Under the new structure, the MSA is responsible for issuing notices of specified penalties and the determination as to whether a self-disclosure will reduce the amount of the specified penalty. As such, the Commission is of the view it is more appropriate that self-disclosures be made directly to the MSA.</p>
<i>Item 9: Proposed Additional ISO rules in the Penalty Table</i>	
<p>On June 2, 2008, the AESO requested that ISO rule 6.5.2 – <i>Ancillary Service Provider Discretion</i> and ISO rule 6.5.3 – <i>Ancillary Service Expectations</i> be included in the Penalty Table. Attached is a copy of the AESO’s letter to the AUC.</p>	<p>In making its request to add ISO rules 6.5.2 and 6.5.3 to the Penalty Table, the AESO noted that it “... has held the threat of a possible sanction as an incentive for participants to comply”. The AESO further indicated that it is concerned that if ISO rule 6.5.2 and 6.5.3 are not specifically mentioned in the Penalty Table, it will be significantly more difficult to pursue events of non-compliance with these rules.</p> <p>While the Commission notes the concerns expressed by the AESO, the Commission is of the view that the AESO must refer such matters to the MSA in accordance with section 21.1 of the <i>Electric Utilities Act</i>, and the MSA may then determine whether to give notice of the Commission in accordance with section 51 of the AUC Act. Accordingly, subject to a determination by the</p>

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	<p>Commission, there continues to be a possibility of sanction for contravention of these ISO rules.</p> <p>The AUC notes that the AESO did not make its request that ISO rules 6.5.2 and 6.5.3 be included in the Penalty Table in its written comments to the Commission dated March 24, 2008 regarding AUC Rule 019. Nor did the AESO raise the matter prior to or during the stakeholder session that was held on May 28, 2008. Given these circumstances, the Commission is of the view that there is insufficient time to adequately seek input from other stakeholders regarding the AESO's request and continue to meet the target implementation date for AUC Rule 019 of July 1, 2008. Accordingly, the Commission will not revise the Penalty Table in response to the AESO's June 2 request. The AESO is free to submit its request in the context of future changes to the Penalty Table.</p>

PROVIDED BY TCE AT
MAY 28/08 AUC
STAKEHOLDER MEETING.

For Discussion Purposes Only

Proposed AUC Specified Penalty Matrix

- Category 3 (ISO Rule 6.6)

Variance from quantity dispatched or directed ¹ (per ISO Rule 6.6)	Duration of variance from energy market dispatch ↓			
	Ramp Time ² Plus 15 to 25 minutes	Ramp Time ² Plus 26 to 35 minutes	Ramp Time ² Plus 36 to 45 minutes	Ramp Time ² Plus 46 minutes or greater
up to 15 MW	\$500	\$1,000	\$1,500	\$2,500
Between 16 and 25 MW	\$1,000	\$1,500	\$2,500	\$5,000
Between 26 and 50 MW	\$1,500	\$2,500	\$5,000	\$7,500
Greater than 50 MW	\$2,500	\$5,000	\$7,500	\$10,000

1) Variance from quantity dispatched or directed = highest variance calculated for each one-minute period during the dispatch event.

2) Ramp Time = Dispatch Amount (MW) / Submitted Ramp Rate. Ramp Time = 0 when asset in steady state operations.



June 2, 2008

Alberta Utilities Commission
Fifth Avenue Place,
4th Floor, 425 - 1 Street SW
Calgary, Alberta T2P 3L8

Attention: Mr. Darin Lowther

Dear Darin:

Re: Draft Revision Rule 019 - Specified Penalties for Contravention of ISO Rules

The AESO has reviewed the draft revision of AUC Rule 019 posted to the AUC website on May 21, 2008. The AESO appreciates the time and effort that the AUC has taken to consult with stakeholders and consider their input in the process of revising Rule 019.

The AESO is generally accepting of the current AUC proposal, particularly in light of the fact that the AESO understands that the process will allow for revision and refinement over time and as new ISO Rules are introduced or existing rules are amended. The AESO would, however, like to request that ISO Rule 6.5.2 – *Ancillary Service Provider Discretion* and ISO Rule 6.5.3 – *Ancillary Service Expectations* be included in the Penalty Table.

ISO Rules 6.5.2 and 6.5.3 detail participant obligations in response to Ancillary Service directives sent by the AESO System Controller. These directives are sent only under very specific system conditions and typically in these conditions, proper and timely response to the directive is critical for the safe and reliable operation of the AIES. Historically, the AESO has monitored for, and followed up on, all instances of apparent non-compliance with ancillary services directives and although there has not been a case where a participant was sanctioned for non-compliance with these rules, the AESO has held the threat of a possible sanction as an incentive for participants to comply. With the approach to monitoring and sanctioning of participant non-compliance with the ISO rules put into place through Bill 46, the AESO is concerned that if ISO Rules 6.5.2 and 6.5.3 are not specifically mentioned in the Penalty Table, it will be significantly more difficult to pursue events of non-compliance with these rules. The AESO has recently referred one instance of suspected non-compliance with Rules 6.5.2 and 6.5.3 to the MSA and is currently analyzing a second case.

The AESO would appreciate the AUC's consideration of this request. If you have any questions regarding this request, please contact me at 403-539-2831.

Yours truly,

Kevin Wipond
Compliance Operations

CC: Peter Wong