

AUC Rule 019 - Specified Penalties for Contravention of ISO Rules
Stakeholder Comments and AUC Response Matrix
Comment Period – February 29, 2008 to March 18, 2008

Issue/Topic	AUC Response
<i>Issue 1: Principles</i>	
<p>AESO</p> <p>Generally speaking, the AESO is of the view that too simple and generic an approach to enforcement of rules and issuance of penalties will not render appropriate results given the diversity in ISO rules, and given our view the intent of all aspects of the compliance model is to promote compliance, as echoed in one of the AUC's noted principles.</p> <p>The AESO disagrees that penalties should simply be directed at a non-compliant act, but rather that they should correspond to the consequence of the act. Moreover, we do not believe it is appropriate to simply look at the transgression without also assessing the circumstances leading to it.</p> <p>AltaGas</p> <p>Issue 1: Principles</p> <p><u>Purpose</u></p> <p>In order to avoid a strain on resources, higher costs and continued opposition from industry, the specified penalties list should be reduced in size. Rather than casting too wide of a net, the list of penalties should focus on key contraventions related to undesirable practices, accurate and timely energy and reserve offers, restatements and compliance, effective communication and system security</p>	<p><u>Revised Principles</u></p> <p>In response to comments from stakeholders, the AUC has revised a number of the principles outlined in its February 28, 2008 letter. These principles will be used in developing the provisions of Rule 019, but will not be repeated within Rule 019 itself:</p> <ul style="list-style-type: none"> • the principle addressing the purpose of Rule 019 is revised to read as follows: <i>The specified penalties framework is intended to encourage and promote compliance with the ISO rules.</i> • the second principle is revised to read as follows: <i>Specified penalty provisions are to be written in a manner that provides clearly defined parameters so as to minimize interpretation issues for market participants and eliminate as much discretionary action as possible on the part of the Market Surveillance Administrator.</i> • the principle addressing self-reporting is revised to read as follows: <i>Great importance will be placed on self-reporting of non-compliance, with prompt and full disclosure and demonstration of corrective actions resulting in a 50% reduction of the amount of the applicable specified penalty.</i>

Issue/Topic	AUC Response
<p>measures. We recommend that the AUC work with industry, the AESO and the MSA to identify the ISO rules of consequence that merit inclusion on the specified penalties list.</p> <p>In order for enforcement to be effective and appropriate, the following principles should apply:</p> <p>i. Penalties should only be issued for contravention of ISO rules that are of consequence</p> <ul style="list-style-type: none"> • The current ISO Rule 012 is effective and appropriate, since the AESO has the resources and expertise to understand the technical operation of the grid and the reason for minor inconsequential contraventions. The AESO is in a position to effectively decide whether or not a compliance file should be opened. We recommend that the AESO maintain such discretion. Maintaining the AESO's authority in this regard would ensure that the resources of the MSA, AUC, AESO and industry would only be spent on relevant ISO rule contraventions. <p>ii. Only the party responsible for contravention of the AESO rule should be penalized.</p> <ul style="list-style-type: none"> • PPA buyers who sell operating reserves based on information provided by a PPA owner should not be exposed to penalties resulting from erroneous declarations arising from the untimely provision of availability information by the PPA owner • Generation owners who use an agent should not be exposed to penalties and investigative scrutiny arising from independent contravention of an ISO rule by the Agent <p>iii. Unintentional contravention of an ISO rule should not result in a penalty being levied</p>	<ul style="list-style-type: none"> • the principle regarding enforcement was modified slightly as follows: <i>Enforcement will be timely, effective and appropriate; and will be relatively simple to understand.</i> <p><u>New Principles</u></p> <p>In addition to the above revisions, the AUC has addressed circumstances where a specified penalty does not match the severity of the ISO rule contravention with an additional principle as follows:</p> <p><i>For greater clarity, to the extent that the MSA is of the view that a specified penalty does not match the severity of the ISO rule contravention, the MSA has authority under section 51 of the Alberta Utilities Commission Act (AUC Act) to give written notice to the Commission.</i></p> <p>The AUC has addressed the issue of adequate due process with an additional principle as follows:</p> <p><i>A hearing or other proceeding held regarding matters set out in section 52 of the AUC Act will be conducted in accordance with the Commission's Rules of Practice (AUC Rule 001).</i></p> <p><u>Other Suggested Principles</u></p> <p>In response to AltaGas' suggestion, the AUC is of the view that it would be inappropriate to adopt a principle where penalties would only be issued for contravention of ISO rules "that are of consequence". Further, the AUC does not have the authority to modify the provisions of section 21.1 of the <i>Electric Utilities Act</i> (EUA), which states that except as otherwise provided by the</p>

Issue/Topic	AUC Response
<ul style="list-style-type: none"> • Market Participants may unknowingly contravene ISO rules. In these instances, it is important that dialogue occur, in order to prevent future occurrences if possible. Effective communication will also prevent unfair penalties from being levied. • From time to time, generating units experience equipment failure when coming online and when ramping up. For example, 2 out of 8 units of a gas-fired peaking plant may be unable to respond to a dispatch instruction. As was explained in section i above, the current ISO Rule 012 is effective and appropriate in such circumstances, since the AESO understands the reasons for the equipment failure, is open to dialogue and is in a position to effectively decide whether or not a compliance file should be opened. <p><u>Self-reporting</u></p> <p>We support the focus on self-reporting of non-compliance and the opportunity to demonstrate corrective actions in order to reduce or eliminate the amount of the specified penalty that would otherwise be payable. We ask that the wording include the possibility that a penalty would not be required if the behavior is curbed.</p> <p>ATCO Power</p> <p>1: <u>Principles</u></p> <p>ATCO Power is in agreement with all the principles outlined by the AUC, but would like to suggest a few enhancements to the current principles.</p> <p>ATCO Power would like to emphasize our support of the AUC’s proposed principal of reducing the specified penalty when a participant has promptly self-reported and demonstrated corrective action has been taken. ATCO Power would request that the AUC</p>	<p>regulations, if the ISO suspects that a market participant has contravened an ISO rule, the ISO must refer the matter to the MSA.</p> <p>AltaGas, EPCOR and TransCanada raised the issue of Power Purchase Arrangements (PPA) in their comments. The AUC notes that recognition of issues related to the <i>Power Purchase Arrangements Determination Regulation</i> (AR 175/2000) are currently contained within ISO rule 12. The AUC is of the view that matters that relate to the <i>Power Purchase Arrangements Determination Regulation</i> will be best dealt with outside of the context of the Specified Penalties consultation.</p> <p>AltaGas raised the issue of agents in its comments. ISO rule 1.8(d) addresses the responsibilities of pool participants relative to the actions or omissions of an approved agent.</p> <p>AltaGas and ENMAX Energy raised the issue of intent and equipment failure as mitigating factors relative to contravention of an ISO rule. The AUC notes that ISO rule 12.6.5 currently addresses mitigating factors, and in its current consultations with stakeholders, the AESO has proposed to continue to consider mitigating factors relative to ISO rule contraventions that would be referred to the MSA.</p> <p>ATCO Power raised the issue of warning letters or a reduction of the amount of a specified penalty in circumstances associated with self reporting. The AUC has addressed the issue of a reduction in the amount of a specified penalty in the revised principle regarding</p>

Issue/Topic	AUC Response
<p>provide specific language in Rule 019 in order to provide the MSA and market participants clarity on the application of this principal so that it may be applied in a fair and consistent manner.</p> <p>ATCO Power proposes this principal be amended as follows:</p> <p style="padding-left: 40px;">Great importance will be placed on self-reporting of non-compliance, with prompt and full disclosure and demonstration of corrective actions resulting in a <i>warning letter</i> or a reduction of the amount of specified penalty that would otherwise be payable.</p> <p>ATCO Power would also suggest the following change to the second principal in the AUC’s letter in order to complement the principal mentioned above:</p> <p style="padding-left: 40px;">Specified penalty provisions to be written in a manner that provides clearly defined parameters so as to minimize interpretation issues for market participants and minimize the level of discretionary action on the part of the MSA <i>after giving consideration to mitigating circumstances.</i></p> <p>ENMAX Energy Corporation</p> <p><i>Issue 1: Principles</i></p> <p>ENMAX supports all of the principles set out in the AUC’s February 28 letter. In addition:</p> <ul style="list-style-type: none"> • While the purpose of Rule 019 is to encourage and promote appropriate behaviour under the ISO rules, caution must be exercised to ensure that it also promotes a fair, efficient, and openly competitive market. Onerous rules that stifle competition are not in the long-term interest of either suppliers or consumers. ENMAX therefore suggests adding the principle that Rule 019 must support a fair, efficient, and openly competitive (“FEOC”) 	<p>self-reporting. The AUC is of view that the term “specified penalty” as used in the AUC Act does not enable the AUC to identify a warning letter as an appropriate specified penalty.</p> <p>ENMAX Energy raised issues related to a fair, efficient and openly competitive market and the work of the Section 6 Committee. To the extent that a market participant is of the view that an ISO rule does not support a fair, efficient and openly competitive market, that market participant may object to an ISO rule pursuant to section 20.4 of the EUA. Further, to the extent that it is appropriate to make reference to the principles of the Section 6 Committee report, the AUC is of the view that Rule 019 is not the appropriate document for such principles to be presented.</p> <p>ENMAX Energy suggested that a principle be introduced stating that the compliance and/or enforcement burdens imposed by the rules must be less than the benefits achieved. TransAlta made a similar comment by suggesting that administrative burden and cost be decreased for participants, the AUC, the AESO and the MSA. The AUC is of the view that this issue is adequately addressed in the principle noted above, namely that the purpose of Rule 019 is to encourage and promote compliance with the ISO rules, and that these issues are best dealt with beyond the scope of the Specified Penalties matrix. This is not to suggest, however, that the AUC will not be mindful of the administrative burden and costs on all parties.</p> <p>The AUC agrees with the comments of EPCOR that the specified</p>

Issue/Topic	AUC Response
<p>market.</p> <ul style="list-style-type: none"> The Section 6 Committee expended significant effort on developing principles of participant conduct. Those principles are set out in that committee’s final report. ENMAX suggests that those principles be incorporated into Rule 019. Among the important principles that ENMAX has not yet seen incorporated into the overall rules framework is the one stating that participants are free to act in their commercial interests provided they abide by the rules. ENMAX agrees that the specified penalty provisions should provide clearly defined parameters to help interpretation issues for participants and the level of discretionary action on the part of the MSA. However, the desire for clarity must be balanced against allowing a reasonable level of discretion. Clearly, the circumstances under which rule violations occur can vary widely, from breaches that result from unforeseen equipment failure to, in the extreme, those involving deliberate contravention of the rules in a manner that jeopardizes the safety and reliability of the power system. A one-size-fits-all approach to enforcement does not recognize these variations. There ought to be discretion in setting penalties based on the seriousness of the offence, the employment of good electric operating practice, the intent of the party, the frequency with which the rule has been broken by the participant in the past, etc., and such mitigating factors should be set out in the rules. Additional comments on this point are provided below. <p>On the subject of intent, ENMAX would like to reiterate comments made by the Minister of Energy, Mel Knight, at an IPPSA-sponsored meeting on January 22, 2008. The Minister made it clear that <i>his</i> intent with Bill 46 and the associated rules was to punish parties who are <i>intentionally</i> breaking the rules, not to punish those who are doing their best to operate in a manner that supports a</p>	<p>penalties should be directed at the non-compliance action or inaction of a market participant, and has made minor revisions to the wording of this principle for further clarity.</p> <p>While most parties agreed with the principle that specified penalty provisions should be written in a manner that provides clearly defined parameters, the AUC received comments that the desire for clarity must be balanced against allowing a reasonable level of discretion [ENMAX Energy, IPCAA and TransCanada] and that rules that raise interpretation issues should be dealt with through a hearing [EPCOR]. The AUC is of the view that the principles as revised above strike a reasonable balance between the differing views, and that further revisions to the principles to address this matter are not required at the present time.</p> <p>EPCOR, IPPSA, Powerex, TransAlta and TransCanada raised matters related to the manner in which serious issues or those with more severe impacts should be addressed. The AUC is of the view that this is adequately addressed through the introduction of the new principle making it clear that if the MSA believes that a specified penalty does not match the severity of the ISO rule contravention, the MSA has authority to give notice to the AUC and have the matter addressed through a hearing or other proceeding.</p>

Issue/Topic	AUC Response
<p>FEOC market. Consequently, things like equipment failure (unless the equipment has been poorly maintained or operated) and human error that is not the result of inadequate training should also be listed as mitigating factors.</p> <ul style="list-style-type: none"> • Consideration should be given to a principle stating that the compliance and/or enforcement burdens imposed by the rules must be less than the benefits achieved. Doing so would help ensure that significant regulatory costs are not incurred to police “offences” that have no material market or operational consequences. Such a principle would also recognize that there is no benefit to penalizing parties for the human errors that inevitably arise when dealing with systems and processes that require substantial manual intervention (unless the errors are clearly the result of poor training). <p>EPCOR</p> <p>1. Principles</p> <p>EPCOR generally supports the principles outlined in the February 28 letter. We are particularly supportive of the stated purpose of the Rule, which is to encourage and promote appropriate behaviour. While we support the principle that specified penalties should be directed at the non-compliant <u>act</u> of the market participant, we do believe that different non-compliant acts may have different impacts on the AIES and should accordingly attract different levels of penalty, as discussed further in our discussion on the second issue raised by the Commission. Alternatively, only breaches of similar impact to the AIES should be subject to specified penalties and those breaches with more serious impacts (and therefore likely to attract more significant penalties) should be addressed through a prosecution at the Commission.</p> <p>We suggest the following additions/revisions to the Principles:</p>	

Issue/Topic	AUC Response
<p>o Specified penalties will not be applied against participants who are unable to control the conduct that results in the non-compliance with the ISO rule, with particular reference to the Power Purchase Arrangements (PPAs). We are particularly concerned about failure to comply with the ISO’s dispatch tolerance as a result of operational issues (Rule 6.6) where the pool participant is not the physical operator or owner of the facility at which operations have resulted in non-compliance.</p> <p>o ISO Rules which raise interpretation issues will be dealt with through a hearing by the Commission, not through specified penalties. Although this is partially addressed in the second bullet of the proposed Principles, it should be more directly addressed. Later in these comments, EPCOR reviews the various rules which it believes require interpretation and are unsuitable to be enforced through specified penalties.</p> <p>Industrial Power Consumers Association of Alberta</p> <p>To the questions posed directly by the AUC consultation of Rule 19, IPCAA provides the following comments.</p> <ul style="list-style-type: none"> • IPCAA supports the principles outlined by the AUC while recommending caution in implementing the principle of "minimizing the level of discretionary action on the part of the MSA." The industry has taken steps to ensure that there are defined rules and guidelines, but we remain in an industry wherein case law will be as important in defining appropriate behaviours. That is to say, some rules may be easily defined by bright line tests, but unfortunately, most may be subject to further interpretation due to issues with other variables not contemplated by the full clarity of the rule (i.e., operational considerations, environmental risk, and many other factors). IPCAA will be looking for the MSA to exercise its judgement to assess the 	

Issue/Topic	AUC Response
<p>impacts and intentions behind any noncompliance events to ensure that behaviour can be managed. To aid in these discussions, IPCAA would recommend that a compromise position may be to define a bandwidth of circumstances and impacts that can be used to guide in investigative cases and subsequently in adjudication. To the extent the issues related to the enforcement process and the categorization of rules can be addressed, the need for discretionary analysis could be reduced on some fronts. Regardless, discretion should not imply inaction, only care in interpretation.</p> <p>Independent Power Producers Society of Alberta</p> <p>1) Principles</p> <p>IPPSA recommends the following principles be added to the ones proposed in the AUC’s letter:</p> <ul style="list-style-type: none"> • The penalty should fit the importance of the rule • The penalty should fit the severity (materiality) of the infraction. <p>We hold these principles to be self-evident. They are consistent with how penalties are levied in the Canadian judicial system. We encourage the AUC to adopt these ideas in their list of principles and use them as guidance in their determination of penalties.</p> <p>Powerex Corp.</p> <p>Powerex Corp (Powerex) strongly supports the development of principles and enforcement mechanisms of AUC Rule 19 that are transparent, consistent, objective and equitable. These elements are crucial in order to contribute to an efficient and effective energy market in Alberta.</p> <p>Issue 1; Bullet 1</p> <ul style="list-style-type: none"> • The AUC must clarify and expand upon what is meant by not 	

Issue/Topic	AUC Response
<p>directing the specific penalty at the consequence or outcome of the non-compliant act. There are at least certain events when the penalty should be linked to the outcome, i.e. disgorgement of unjust profit.</p> <p>Issue 1; Bullet 5</p> <ul style="list-style-type: none"> • Does this effectively place a positive obligation on market participants to self-report? • Will there always be a reduction in the penalty if the act is self-reported? How would the reduction be determined? Would it be a percentage reduction based on the severity (matrix level) of the non-compliant behaviour? Would the AUC determine the reduction case-by-case? Would repeat non-compliant behaviour still attract a reduction as long as it was self-reported? <p>TransAlta Corporation</p> <p>Issue 1: Principles</p> <p>TransAlta suggests that two additional principles be included and considered by the AUC. The first suggested principle should be one of the main reasons for the setting of specified penalties.</p> <ol style="list-style-type: none"> 1. Decrease administrative burden and cost on the participants, AUC, AESO and MSA. The approach adopted must accommodate the requirement for simplicity, stability and transparency. 2. Only low impact, relatively low monetary amount penalties will be dealt with through specified penalties. <p>For clarity, contravention of an ISO rule that involves a large monetary penalty will in all likelihood be adjudicated by the AUC as allowed for in Section 52(2)(b) of the AUC Act. If a contravention of an ISO rule results in grave consequences or involves reprehensible conduct such that a large monetary penalty may be warranted, then</p>	

Issue/Topic	AUC Response
<p>such contraventions should be adjudicated by the AUC and not dealt with by way of a specified penalty.</p> <p>TransCanada Energy Ltd.</p> <p><i>Issue 1: Principles</i></p> <p>TransCanada supports the intent of Rule 019 to encourage and promote appropriate behavior, provide clearly defined parameters to minimize interpretation issues and minimize the level of discretionary action on the part of the MSA. However, in the interim, discretion needs to be provided for and TransCanada suggests that this reside with the AESO. TransCanada also agrees that enforcement be timely, effective and appropriate and be simple to understand with great importance placed on self-reporting and demonstration of corrective actions reducing the amount of specified penalty that would otherwise be payable. While TransCanada generally supports the principle that specified penalties should be directed at the non-compliant <u>act</u> of the market participant, different non-compliant acts may have different impacts on the system and market (materiality threshold test) and should accordingly be subjected to different levels of penalties as discussed further in this response.</p> <p>TransCanada suggests inserting a principle that ensures the penalty fits the “crime” considering the importance of the rule and severity (materiality) of the infraction. (Life sentence for j-walking!)</p>	
<i>Issue 2: Enforcement</i>	
<p>AESO</p> <p>A simple, generic approach does not allow for consideration of, for example, operational characteristics or other factors that may have legitimately contributed to the incident. This is not to say inadvertent transgressions should necessarily be forgiven; however some level of</p>	<p><u>Enforcement Model and Approach</u></p> <p>In response to comments from stakeholders, the AUC has revised the structure of the Specified Penalties Matrix. The revised enforcement model identifies three categories – two categories where a graduated enforcement model is seen as appropriate, and a</p>

Issue/Topic	AUC Response
<p>discretion is appropriate to ensure the compliance model and penalties are meaningful and have the intended effect. Consistent with this philosophy, the AESO believes in a 'graduated enforcement model', wherein the penalties increase in severity with the frequency of non-compliance event.</p> <p>AltaGas</p> <p>Issue 2: Enforcement Process</p> <p>For the reasons explained below, AltaGas feels that the "hot stove rule" is inappropriate and would not be meaningful and effective for market participants. We feel that elements of the suggested alternative approach should be adopted.</p> <p>Based on Alberta power market history, it is evident that Market Participants follow the ISO rules. More importantly, the Alberta electricity system has been operating safely and reliably with the current level of compliance. Given the positive historical compliance record and the effective operation of the grid, the motivation for a change to the new enforcement mechanism is unclear. If the intention of AUC Rule 019 is to curb behavior that may exceed market performance, then AltaGas recommends the approach described below. Following these principles will help make the enforcement process effective and meaningful for market participants.</p> <ul style="list-style-type: none"> • Market participants will gain comfort with the specified penalties if they feel that the specified rules are clear, that open dialogue between themselves and a qualified party (the AESO) has occurred, and that the specified penalty would match the impact of the violation. • Market participants are in agreement that specified penalties should only be applied to a clearly defined set of "consequential" ISO rules. The reason is that Alberta market participants want to 	<p>third category that is specific to ISO rule 6.6. The category that is specific to ISO rule 6.6 is not a function of frequency, but rather the maximum magnitude and duration of the dispatch variance.</p> <p>Within the graduated enforcement model, stakeholders have suggested that a graduated enforcement model would provide an opportunity for market participants to learn from their mistakes, and that market participants who continually breach a rule after being provided with opportunities to modify their conduct should be subject to increased penalties. At the same time, IPPCA made the point that ongoing warning letters are not sufficient to address market impact events and to change behaviour, nor do they recognize the effect on other market participants.</p> <p>In response to stakeholder comments, the AUC proposes to introduce, for those rules in the graduated enforcement model, two different categories and four different levels of enforcement that are to be tracked by asset over a rolling 12-month period. The first and second failure to comply with a particular ISO rule by a particular asset in each of the graduated enforcement categories will not be made public by the MSA for the first year that the Specified Penalty Matrix is in force. The third, fourth and subsequent failures to comply will be made public by the MSA. Once this revised Specified Penalty Matrix is in effect for one year (i.e. effective July 1, 2009), all Specified Penalties will be made public by the MSA. The AUC is of the view that this allows parties to learn from their mistakes, and at the same time encourages market participants to change behaviour as necessary in order to comply with ISO rules.</p> <p>Those ISO rules whose contravention is not included in the Specified Penalties Matrix may be subject to administrative penalties in accordance with Section 63(1) of the AUC Act.</p>

Issue/Topic	AUC Response
<p>know what the key rules are so that they can effectively follow them.</p> <ul style="list-style-type: none"> We acknowledge that penalties for proven acts of non-compliance should be high enough to act as a deterrent to undesired behavior. That being said, an important principal is that the penalty should match the severity of the ISO rule contravention. A non-discriminatory enforcement approach is not suitable, since an act of non-compliance may occur for reasons that are beyond the control of the market participant. Due to such uncontrollable factors, the 'two strikes' threshold for investigation is ill-suited. Instead, AltaGas recommends that each act of non-compliance be reviewed by the AESO. The current methodology, which begins with a warning letter, has been successful in curbing unwanted practices and rule contraventions. Due to the complex nature of electricity market operation and the operational challenges it presents, the system operator should play a key role in determining the penalty amount for the given act of non-compliance. <p>ATCO Power</p> <p>2: <u>Enforcement Process</u></p> <p>ATCO Power requires more information on what these two potential enforcement models will look like and looks forward to gaining more clarity in the consultation sessions.</p> <p>ATCO Power sees the merits of a hot stove rule as issues will be dealt with in a timely fashion and supports setting a maximum penalty for each infraction. If a hot stove rule system is imposed ATCO Power would request language that would allow the MSA the discretion to issue warning letters or to reduce the amount of specified penalty</p>	<p>As noted above, the AUC proposes that specified penalties will be tracked by ISO rule, and will be asset specific. However, once five (5) notices of specified penalty have been issued to a market participant for the same ISO rule contravention within a rolling 12-month period, the next issuance of a specified penalty regarding the ISO rule in question, regardless of the asset involved, will result in the market participant being placed in the third enforcement level. From that point forward, specified penalties for the contravention of the same ISO rule will be tracked on a market participant basis until the number of enforcement actions for the rule in question within a 12-month rolling period for that market participant falls below five (5) failures to comply.</p> <p><u>Additional Comments on Principles</u></p> <p>AltaGas raised a number of issues regarding principles in its comments regarding Issue 2 – Enforcement Process. The AUC has addressed these comments in its response to Issue 1 above.</p> <p><u>Comments on Responsible Party</u></p> <p>ENMAX Energy raised the issue that the process must target the responsible parties, and that some market participants are not plant operators, and should not be held accountable for actions clearly beyond their reasonable control. EPCOR and TransCanada made similar comments regarding the ability of a market participant who is facing a penalty to control the conduct that results in a breach of the rules. Powerex also made comments seeking to distinguish by category of market participant. To the extent that these comments relate to agents or PPAs, please see the AUC’s comments in the</p>

Issue/Topic	AUC Response
<p>payable.</p> <p>ATCO Power remains concerned that a graduated enforcement model disadvantages a participant with multiple power assets. Due to the disproportionate number of dispatches and restatements this type of participant faces it leaves them at a distinct disadvantage with respect to smaller players. For example consider a situation where there are 10 assets in the market. One company operates 5 plants and each of the remaining 5 plants are independently operated. Now consider that all 10 of these plants has one compliance issue. In a graduated enforcement model the large participant would be escalated up in the penalty matrix very quickly and would be paying considerably more than the 5 smaller players for essentially the same operational performance as each plant had only one compliance issue. A solution to this problem would be to administer the graduated penalties on an asset by asset basis; this would ensure a fair playing field for all market participants.</p> <p>ENMAX Energy Corporation</p> <p><i>Issue 2: Enforcement Process</i></p> <p>ENMAX strongly supports the graduated enforcement model. As noted above, the circumstances under which a given ISO rule is violated can vary widely, and the application of the same sanction in every case could result in extremely unfair outcomes. In addition, a graduated enforcement model provides an opportunity for market participants to learn from their mistakes and to understand and adapt to what can, at times, be very complex rules. That learning would be further enhanced if each rule (or set of rules) is accompanied by a statement of the operational and/or market consequences of its violation.</p> <p>The enforcement processes employed by the agencies (the AUC, the</p>	<p>section above.</p> <p><u>Vetting of ISO Rules</u></p> <p>In its comments, TransAlta stated that it believes a number of the AESO rules have not been fully vetted with stakeholders, and therefore cannot fairly be subject to a specified penalty as the rule itself is still under dispute. TransAlta suggested that such rules be reviewed in advance of penalties being levied under them. IPPSA and TransCanada made similar comments that they believe there is a problem with simply applying specified penalties to the AESO's rules as in their view a number of them need to be reconsidered. IPPSA made specific reference to ISO rule 6.6, and both IPPSA and TransCanada noted that the AESO may be undertaking a Review Of its Authoritative Documents (ROAD).</p> <p>The AUC notes that section 20.8 of the EUA requires that market participants comply with an ISO rule that is in effect.</p> <p>The AUC notes that provisions of the AUC Act amended the EUA in order to require the AESO to file ISO rules with the AUC. Further, under these new provisions to the EUA, market participants are afforded the opportunity to object to an ISO rule that is filed with the AUC. As such, an avenue exists for market participants to object to ISO rules.</p> <p>The AUC also recognizes that the filing requirement and avenue for objection do not apply to ISO rules that were made before the effective date of the amendments to the EUA noted above. In this case, as far as the AUC is aware, the AESO utilized its consultation process prior to the approval of any ISO rules. Further, market participants are able to file a complaint with the AUC regarding an ISO rule in accordance with section 25 of the</p>

Issue/Topic	AUC Response
<p>MSA, and the AESO) must be fair, clear, and consistent, and must adhere to fundamental and long-standing legal and regulatory principles. Given the huge increase in the level of fines and penalties brought about by the <i>Alberta Utilities Commission Act</i>, those processes are more important than ever.</p> <p>One final point on enforcement processes should be made, and that is, these processes must target the responsible parties. For example, some market participants are not plant operators, and they should not be held accountable for actions clearly beyond their reasonable control.</p> <p>EPCOR</p> <p>2. Enforcement Process.</p> <p>EPCOR supports the graduated enforcement model as most likely to achieve the stated goal of encouraging and promoting appropriate behaviour. EPCOR believes that most market participants who breach ISO rules do so unintentionally. Providing market participants with an opportunity to modify their processes to avoid mistakes is a superior approach to achieving compliance thereby enhancing system and market reliability. Certainly, market participants who continually breach a rule after being provided with opportunities to modify their conduct should be subject to increased penalties; likewise, those who intentionally breach the rules should be subject to sanction. As set out above, an important element of these rules is the ability of the market participant who is facing a penalty to control the conduct that results in a breach of the rules. To the extent that an ISO rule cannot be complied with, either for physical reasons or because it is directed at a party who may not be capable of physical compliance, that rule should not be the subject of a specified penalty.</p>	<p>EUA. The AUC discusses ISO rule 6.6 in the section below.</p> <p>In light of the above, the AUC is of the view it can proceed to establish specified penalties in accordance with section 52(7) of the AUC Act.</p>

Issue/Topic	AUC Response
<p>Industrial Power Consumers Association of Alberta</p> <ul style="list-style-type: none"> Regarding the Enforcement Process, IPCAA is unclear why the options outlined are mutually exclusive. Enforcement should be immediate, consistent and nondiscriminatory to ensure that participants follow the rules of the market and accordingly act competitively. If rules are developed, they are to be followed without the need for ongoing discretion and interpretation. However, this process does not preclude the need to consider a graduated enforcement model wherein ongoing non-compliance is met with increasing fines. This is similar to "repeat offender" clauses. IPCAA supports the need for analysis and interpretation, but this should not be at the cost of an ineffective compliance scheme. Most rules in question for compliance have been monitored and evaluated by the ISO for over a year without any occurrence of fines though there have been violations of rules. If the AUC is suggesting discretion in the exercise of the fines, IPCAA is less agreeable to the idea. While self reporting and cooperation when in non-compliance may warrant an agreed to reduction in fines, ongoing warning letters are not sufficient to address market impact events and to change behaviour, nor do they recognize the effect on other market participants. <p>Independent Power Producers Society of Alberta</p> <p>One significant issue is the status of the AESO's 400 rules, and its plans to review these rules. We believe there is a problem with simply applying specified penalties to the AESO's rules as a number of them need to be reconsidered. We take this opportunity to reiterate our request for a review of the AESO's dispatch tolerance rule (Rule 6.6), as an example of one rule which may not be rationale, but where penalties are already being assessed. A further complication, or perhaps opportunity, is the AESO's forthcoming Review of Authoritative Documents (ROAD), which is to be a comprehensive</p>	

Issue/Topic	AUC Response
<p>process on its own. We believe these issues need to be considered holistically as we work towards creating a specified penalties regime.</p> <p>2) Enforcement Process</p> <p>IPPSA is inclined to support a graduated ladder of penalties. We believe this is consistent with how most adjudicators level penalties in other contexts – e.g. the courts, or EUB’s enforcement ladder. Properly constructed, this ladder would meet the needs for simplicity, stability and transparency, with the ultimate goal of changing participant behavior.</p> <p>Powerex Corp.</p> <p>Issue 2:</p> <ul style="list-style-type: none"> • Powerex supports Option 2, the graduated enforcement model. However, the enforcement needs to distinguish by category of market participant i.e. generators and marketers not necessarily treated the same for the same non-compliant act. Powerex advocates embodying the "similarly situated" principle in determining the enforcement model. <p>TransAlta Corporation</p> <p>Issue 2: Enforcement</p> <p>TransAlta believes the graduated enforcement model best satisfies the principles set out earlier in the document. Initial violations could be addressed through a warning moving up to an increasing monetary penalty for subsequent violations. The graduated enforcement model should cap at a modest amount. This form of enforcement process would be both effective and meaningful to participants.</p> <p>TransAlta also believes a number of the AESO rules have not been fully vetted with stakeholders and therefore cannot fairly be subject to</p>	

Issue/Topic	AUC Response
<p>a specified penalty as the rule itself is still under dispute. Such rules should be reviewed in advance of penalties being levied under them.</p> <p>TransCanada Energy Ltd.</p> <p>TransCanada is concerned with the direction and intent of the current specified penalty framework.</p> <p>Previously, the AESO was responsible for developing ISO rules then monitoring, investigating and issuing sanctions for non-compliance. Under the current legislated framework, the MSA has taken over the responsibility of compliance, investigation and enforcement for non-compliance. It is imperative to understand that the current ISO rules were developed under the previous legislated regime which allowed the AESO to exercise discretion when assessing potential non-compliance events. However, this changed on January 1, 2008 with the new <i>AUC Act</i> and <i>MSA Regulation</i>. One of the more significant changes was with the approach to compliance. Under the previous regime, the AESO would apply a certain amount of discretion in its monitoring activities guided by ISO rule 12. Their overall objective was to encourage and promote appropriate behavior. However, under the current regime, the MSA appears to be content with a more “black and white” approach to compliance. Unfortunately, the ISO rules, in many instances, are vague and require judgment / interpretation when assessing compliance, especially materiality. Additionally, it is inappropriate to have rules where the market participant is not in a position to comply. For example, PPA Buyers are issued dispatch instructions but do not operate the facility.</p> <p>In order to provide market participants, the AUC, MSA and AESO with more clarity around the ISO rules thereby reducing the amount of discretion and interpretation required, a significant review of the existing ISO rules will need to be undertaken. In order to accomplish this, industry and agencies must work together to clarify the intent</p>	

Issue/Topic	AUC Response
<p>and wording of many of the ISO rules in light of the current legislation. TransCanada understands that the AESO had previously identified this as a concern and established a Review of Authoritative Documents (ROAD) process and encourages the AESO to move forward with it.</p> <p>...</p> <p>Issue 2: Enforcement Process</p> <p>TransCanada supports the graduated ladder approach to penalties. This would be consistent with how most adjudicators level penalties in other contexts – e.g. the courts, or the previous EUB enforcement ladder. Properly constructed, this ladder would meet the needs for simplicity, stability and transparency, with the ultimate goal of changing participant behavior by increasing the level of penalty to signal the requirement for behavioral change.</p>	
Issue 3: Specified Penalty Matrix	
<p>AltaGas</p> <p>Issue 3: Specified Penalty Matrix</p> <p>AltaGas appreciates the focus on establishing a simple penalty matrix. It is important that market participants understand the specified penalties that will be applied to consequential ISO rule contraventions.</p> <p>A "one-size fits all" model is too simple and will likely result in inappropriate penalties. Some contraventions will be penalized too heavily, while others will get away with a penalty that is light. AltaGas recommends that a listing of key ISO rules be identified and that the AESO as system operator determine the impact of the rule contravention on the safe, reliable operation of the Alberta electrical system. Guidelines should be developed by the AESO, in order to</p>	<p><u>Specified Penalty Matrix</u></p> <p>As noted above, the AUC has revised the structure of the Specified Penalties Matrix. The revised Matrix identifies three categories – two categories where a graduated enforcement model is seen as appropriate, and a third category that is specific to ISO rule 6.6. The category that is specific to ISO rule 6.6 is not a function of frequency, but rather the maximum magnitude and duration of the dispatch variance.</p> <p>Also as noted above, within the graduated enforcement section of the Specified Penalties Matrix there are two different categories and four different levels of enforcement that are tracked by asset. The first and second failure to comply with a particular ISO rule by a particular asset will not be made public by the MSA during</p>

Issue/Topic	AUC Response
<p>provide market participants with a good idea of how penalties will be levied. Implementation of this recommendation would eliminate the level of discretionary action on the part of the MSA, which would be positive for the market.</p> <p>ATCO Power</p> <p><u>3: Specified Penalty Matrix</u></p> <p>ATCO Power favors establishing broad categories of ISO Rules as this creates accountability for the perceived risk that a non-compliant act would have on the Alberta Electric System. The penalty should fit the importance of the rule.</p> <p>As previously detailed, ATCO Power believes that in designing the specified penalty matrix the AUC should build in the option to issue warning letters without a fine recognizing mitigating circumstances. ATCO Power supports the continuation of the direction set by the AESO in dealing with compliance. The primary aim of the specified penalties should be to improve operations and system reliability.</p> <p>ATCO Power questions the value of posting offending companies' names to public websites for specified penalties, especially prior to any appeal. ATCO believes that only administrative penalties should result in a participant being named on public websites. The penalties or warning letters issued under the specified penalty matrix should be considered as "traffic ticket" offences and should be kept confidential.</p> <p>ENMAX Energy Corporation</p> <p><i>Issue 3: Specified Penalty Matrix</i></p> <p>As noted above, ENMAX does not support a “one size fits all” model for enforcement; neither does it support such a model for penalties. Just as the fines for speeding through a construction zone are double</p>	<p>the first year that the Specified Penalties Matrix is in effect. The third, fourth and subsequent failures to comply will be made public by the MSA. Once the revised Specified Penalties Matrix is in effect for one year (i.e. effective July 1, 2009) all Specified Penalties will be made public by the MSA.</p> <p><u>Rule Specific Matrix</u></p> <p>The AESO suggested that too simple and generic an approach to enforcement of rules and issuance of penalties will not render appropriate results given the diversity in ISO rules. AltaGas made similar comments that a “one size fits all” model is too simple, and recommended that a listing of key rules be adopted. ENMAX Energy made similar comments and provided an example of a formula-based approach. ATCO Power, EPCOR and Powerex suggested establishing broad categories of ISO Rules based on the perceived risk that a non-compliant act might have on the Alberta Interconnected Electric System (AIES). TransAlta also opposed the “one-size fits all” approach, and suggested penalty categories for non-reliability provisions and for reliability-based provisions when there is no impact. Where reliability is materially impacted, TransAlta suggested that these be dealt with under AUC rule 013. TransCanada made similar comments against the “one-size fits all” model, and suggested grouping the ISO rules. TransCanada also suggested a materiality factor that would characterize non-compliant acts as level 1, 2 or 3.</p> <p>The AUC appreciates the suggestions made by stakeholders, and has considered these suggestions in developing the Specified Penalties Matrix. The AUC is of the view that three categories of rules be established – two categories for rules where the graduated approach is appropriate, and one category specifically focused</p>

Issue/Topic	AUC Response
<p>those for speeding on an open road, in recognition of the additional risk created for others in the former case, the penalties associated with individual rules should take account of the potential consequences.</p> <p><i>A Note on Specificity</i></p> <p>ENMAX notes that the level of <i>a priori</i> certainty that parties have over the fines and penalties that could result from a breach of the rules is of interest to the AUC in the context of both Issue 2 and Issue 3. Clearly, a “hot stove” rule with a “one size fits all” specified financial penalty rule would provide a high degree of certainty (but perhaps a significant level of unfairness), while the graduated enforcement model combined with broad categories of rules would result in less certainty. ENMAX notes that a formula-based approach might successfully bridge the two extremes. (Please note that ENMAX is not necessarily recommending this approach, but is simply putting it forth for discussion.) As an <i>example</i> of this approach, the penalty assessed in a given situation could be something like</p> $P = I \times \left(\frac{n^2}{9} \right) \times G \times P_{max},$ <p>where P is the penalty, I is the “intent” factor (say, $I = 1$ if the party intentionally breached the rule, or $I = 1/4$ otherwise), n is the number of offences within a given period (with more than 3 resulting in a hearing before the AUC), G is the “good electric operating practice” factor (say, $G = 1$ if good electric operating practice was not used, $G = 1/4$ otherwise), and P_{max} is the maximum possible penalty for breaching the rule. Other factors, such as self-reporting and duration, might also be considered. Again, ENMAX is not suggesting that this</p>	<p>towards ISO rule 6.6. The AUC notes that if and when the AESO proposes rule revisions, the AUC will have opportunities to consult with stakeholders and revise the Specified Penalties Matrix.</p> <p><u>Warning Letters</u></p> <p>ATCO Power suggested that the Specified Penalty Matrix include the option to issue warning letters without a fine recognizing mitigating circumstances. EPCOR also suggested that non-monetary penalties apply to first offences, such as warning letters, escalating to monetary penalties for repeat offences within a certain period of time or for intentional non-compliance.</p> <p>The AUC notes that as the ISO rules regarding compliance are currently written, to the extent that a market participant’s failure to comply with an ISO rule is caused by one or more the mitigating factors identified in ISO rule 12.6.5, the market participant will be determined to not be in contravention of an ISO rule.</p> <p>The AUC notes that the AESO has issued warning letters in the past. However, the AUC is of view that the term “specified penalty” as used in the AUC Act does not enable the AUC to identify a warning letter as an appropriate specified penalty.</p> <p><u>Posting of Company Names for Specified Penalties</u></p> <p>ATCO Power and EPCOR raised concerns over the posting offending companies’ names to public websites for specified penalties, especially prior to any appeal. ATCO suggested that only administrative penalties should result in a participant being named on a public website. EPCOR suggested that publication should be one of the tools that the statutory agencies have</p>

Issue/Topic	AUC Response
<p>is the right formula, but merely offers it as a possible mechanism to provide additional certainty while still allowing appropriate consideration of mitigating factors.</p> <p>EPCOR</p> <p>We appreciate the thoughtful approach the AUC is taking in developing this Rule, given the significant change that it represents to the compliance framework that existed before the promulgation of the Alberta Utilities Commission Act (“AUC Act”). One aspect which is implicit in the AUC letter but not explicitly stated is that not all ISO rules are suitable candidates to be enforced through specified penalties; in fact the bulk of ISO rules may be more suitably enforced through other mechanisms, particularly until the ISO is able to conclude its review of the ISO rules to have them better conform to the compliance regime that has been introduced with the AUC Act. Furthermore, as described below in more detail, many ISO Rules would be better reframed as ISO business or operating practices, as they are not appropriately enforced through monetary penalties.</p> <p>...</p> <p>3. Specified Penalty Matrix. Appropriate Approach</p> <p>EPCOR supports the adoption of penalties for broad categories of offence, based on the perceived risk to the AIES of non-compliance. This best reflects the purpose of encouraging appropriate behaviour under the ISO rules.</p> <p><i>(a) Amount for Specified Penalty – One Size Fits All</i></p> <p>While EPCOR does not support it, if the Commission does adopt this approach, a relatively low specified penalty in the \$1,000-\$2,000/day range would be appropriate. So long as the rules which are subject to specified penalties are not subject to interpretation and are capable of being complied with, most of the events of non-compliance with ISO</p>	<p>available to them, forming one of the non-monetary sanctions that can be imposed upon repeat noncompliant market participants.</p> <p>The AUC’s proposed enforcement matrix would have the first and second failure to comply with a particular ISO rule by a particular asset not be made public by the MSA for a period of one year (July 1, 2008 to June 30, 2009). The third, fourth and subsequent failures to comply will be made public by the MSA. Effective July 1, 2009, all Specified Penalties will be made public. The AUC is of the view that this allows parties to learn from their mistakes without public notice of the event.</p> <p>The AUC proposes that if a specified penalty is disputed, the MSA will also post a copy of the Notice of Dispute made by the market participant.</p> <p><u>List of Rules for Specified Penalties</u></p> <p>EPCOR, IPCAA and TransCanada made a number of suggestions regarding the broad categories of ISO rules, the specific ISO rules that might fit into each broad category, and in some cases suggested specified penalty ranges and those rules for which specified penalties should not apply. IPPSA supports a differentiated penalty regime for System and Market Rules that in its words is reflective of the importance of each rule. IPPSA suggested that this is preferable to a ‘cookie cutter’ approach that assigns penalties based on the broad grouping of ‘operational, administrative or reporting’. TransCanada suggested evaluating the intent and wording of each rule, and suggested maintaining the current version of AUC Rule 019. Both IPPSA and TransCanada also provided some examples of rules that could be included in the list of specified penalties. The AUC appreciates the suggestions</p>

Issue/Topic	AUC Response
<p>rules are likely to be the result of mistakes by pool participants, rather than intentional behaviour. Non-compliance events which are the result of mistakes will likely not be deterred by any rational range of penalties in organizations such as EPCOR, where there are already processes in place to avoid non-compliance.</p> <p><i>(b) Amount for Each Category – Broad Category Approach</i></p> <p>An alternative approach for the AUC to consider is the adoption of non-monetary penalties for first offences, such as warning letters, as is currently the case under Rule 019, escalating to monetary penalties for repeat offences within a certain period of time or for intentional non-compliance. Once a market participant has reached the point where monetary penalties become appropriate, we suggest the following approach, and have taken the liberty of identifying those ISO Rules which we believe are currently appropriate to be addressed through specified penalties, as well as those which we believe require revision and those which are not appropriate for enforcement through penalties.</p> <p>ISO Rules Potentially Suitable for Specified Penalties</p> <p>Breaches of Administrative Rules Penalties in the range of \$500 to \$2,000.</p> <p>Examples include: Rule 3.2, Rule 4.5.2</p> <p>Breaches of Operating Rules Penalties in the range of \$2,000 to \$10,000</p> <p>Examples include: Rule 3.3, Rule 3.4, Rule 3.5.2, Rule 3.5.3.3, Rule 3.5.4.3, Rule 3.5.4.4(a), Rule 3.6.2, Rule 3.8, Rule 6.2.3, Rule 6.3.3(d)</p> <p>Breaches of Settlement Rules Penalties in the range of \$2,000 to \$5,000</p>	<p>made by stakeholders.</p> <p>In its comments, EPCOR stated that it believes a number of the ISO rules are potentially suitable for Specified Penalties, but require revision. EPCOR further stated that the concepts of what constitutes a “reasonable time” and an “acceptable operational reason” are subject to interpretation, thereby rendering these rules inappropriate for enforcement through a specified penalty.</p> <p>The AUC has considered stakeholders’ comments, and is of the view that the ISO rules identified in the Specified Penalty Matrix are appropriate rules to be enforced in the manner proposed by the AUC as noted above.</p> <p><u>ISO Operating Policies and Procedures</u></p> <p>EPCOR, IPPSA and TransCanada raised the issue of ISO Operating Policies and Procedures (OPPs). The AUC notes that OPPs form Part 3 of the ISO rules, and that these OPPs identify responsibilities for various parties, including but not limited to the ISO, the System Controller, transmission facility owners, market participants, electric distribution system owners, retailers and generator operators. As such, the AUC is of the view that OPPs are not limited to internal ISO practices, and are appropriate to be included as part of the Specified Penalties Matrix.</p>

Issue/Topic	AUC Response
<p>Example includes: Rule 4.6</p> <p>ISO Rules Potentially Suitable for Specified Penalties, but Requiring Revision</p> <p>The system requirements represented by the following Rules should be enforced to ensure system and market stability; however, the rules are not suitable for enforcement through specified penalties in their present form, as they do not meet the principles stated above.</p> <ol style="list-style-type: none"> 1. Rule 3.5.3.1. In a “must offer, must comply” regime, it is important that the ISO understand the generating capability of the system. However, the existing rule is not appropriate for enforcement through a specified penalty, as it requires interpretation for the concept of “acceptable operational reason”. 2. Rule 3.5.3.2: Proper restatement is paramount to the ISO’s ability to maintain stability. However, the existing rule is not appropriate for enforcement through a specified penalty, as it requires interpretation for the concept of “acceptable operational reason”. 3. Rule 3.5.4.2: Penalties are appropriate for failing to advise the ISO of changes to available capacity in order that the ISO has a full understanding of the capability of the system it is operating. However, the concepts of what constitutes a “reasonable time” and an “acceptable operational reason” are subject to interpretation, rendering this rule inappropriate for enforcement through a specified penalty. 4. Rule 3.5.4.4(b): Penalties are appropriate for failing to restate the ability of an asset that is capable of providing ancillary services. This rule requires a determination of what constitutes a “reasonable time” which requires interpretation rendering this rule inappropriate for enforcement through a specified penalty. 5. Rule 3.6.3: Penalties are appropriate for failing to advise the ISO 	

Issue/Topic	AUC Response
<p>of operating constraints for units capable of providing ancillary services. However, the rule requires a determination of what constitutes a timely manner” and “material change in capability” which requires interpretation rendering this rule inappropriate for enforcement through a specified penalty.</p> <p>6. Rule 6.3.3: Failure to submit tags should be penalized as this is consistent with other markets. However, several aspects of this rule are subject to interpretation, rendering them inappropriate for enforcement through a specified penalty, including the requirement for an “acceptable operational reason” for being out of compliance (a very complex issue when it involves use of interconnections into and out of the AIES), and the requirement of “reasonable efforts” to procure transmission.</p> <p>7. Rule 6.6: There a number of deficiencies with this Rule, which include:</p> <ul style="list-style-type: none"> o imposition of the obligation to comply on the Pool Participant, rather than the party in physical control of the asset. This is a particular problem in the case of the PPAs. This obligation should be imposed on the market participant who is responsible for the non-compliance. o the timeline provided in the rule of ”as soon as practical” should be replaced with a criterion that recognizes the capability of the asset and the plant operators, particularly with respect to ramp times. o the permitted variance of ± 5MW does not reflect physical realities, particularly for a large coal plant. The rule should reflect a balance between physical capabilities of the various generating units in the AIES and the needs of the ISO to manage system reliability. 	

Issue/Topic	AUC Response
<p>ISO Rules Not Suitable for Specified/Administrative Penalties</p> <p>There are a number of ISO Rules which are not suitable for enforcement through administrative penalties. These Rules should be recast as either ISO business or operating practices. These include all of Rule 1 (Pool Participants), all of Rule 2 (Prudential Requirements and ISO Fees), all of Rule 8 (Power Pool Financial Settlement), and Rule 11 (Mediation and Dispute Resolution). In addition, ISO Operating Policies and Procedures (OPPs) should not be basis for issuance of penalties. The reasoning for this position is set out below.</p> <p>Rule 1 (Pool Participants)</p> <ol style="list-style-type: none"> 1. The bulk of Rule 1 outlines the administrative requirements for participation by a market participant in the power pool. The ISO and the market are both better served by denying a non-compliant party pool participation as permitted by rule 1.4, rather than enforcing the administrative provisions of this rule through administrative penalties. We would suggest that the administrative requirements of pool participation be captured in a business practice, rather than through an ISO Rule enforceable by administrative penalties. 2. Rule 1.10 is different than the other components of Rule 1 in that it deals with market participant behaviour. While its subject matter may be appropriate for enforcement through administrative penalties, it is not suitable to be enforced through specified penalties because of the large amount of interpretation and discretion required for its enforcement. We question whether the subject matter is appropriate for an ISO rule or whether it is better dealt with through a combination of regulation and guidelines. The subject matter of this rule was addressed through the section 6 subcommittee work during 2007. This rule should be placed in abeyance until the related policy work is completed. 	

Issue/Topic	AUC Response
<p>Rule 2 (Prudential Requirements and ISO Fees)</p> <p>The bulk of Rule 2 outlines the AESO’s administrative requirements for prudential requirements with respect to the power pool as well as provisions relative to ISO fees. We would suggest that the prudential requirements of pool participation should be captured in a business practice, rather than through an ISO Rule enforceable by administrative penalties. S. 21(5) of the Electric Utilities Act (EUA) provides that fees charged by the ISO are a debt owing by the market participant recoverable by an action in debt. S. 22 of the EUA provides that failure of a market participant to pay an ISO fee may be referred to the AUC and can result in an order for payment of the fee as well as an administrative penalty. Consideration of the manner in which these 2 sections of the EUA interact may well be something for the AUC to consider. Until that is resolved, this issue should not be addressed through a specified penalty.</p> <p>Rule 8 (Power Pool Financial Settlement)</p> <p>The bulk of Rule 8 outlines the AESO’s administrative requirements for financial settlement with respect to the power pool. We would suggest that financial settlement should be captured in a business practice, rather than through an ISO Rule enforceable by administrative penalties.</p> <p>Rule 11 (Mediation and Dispute Resolution)</p> <p>It is difficult to imagine a scenario where any aspect of Rule 11, which deals with mediation and dispute resolution, would result in a contravention, by any party other than the ISO, which would merit imposition of a penalty.</p> <p>OPPs</p> <p>It should be a market participant’s breach of a requirement under an ISO Rule that triggers enforcement action. The OPPs are aimed at</p>	

Issue/Topic	AUC Response
<p>internal ISO practices and should be externalized through the ISO Rules. Each of the OPPs which mandate market (or pool) participant compliance should be linked to a requirement in the ISO Rules. For example, the OPPs specify the instances in which the ISO may direct market participants to provide generation; the associated ISO rule provides the requirement to respond to the directive. The non-compliance occurs when the market participant fails to respond to the directive pursuant to the ISO rule. To the extent that this chain is not properly encapsulated in the rules and OPPs, the rules and OPPs should be modified.</p> <p>4. Other</p> <p><i>Publication.</i> While the AUC did not ask questions about other aspects of Rule 019, the issue of whether or not the identities of parties to whom specified penalties have been issued are automatically published should also be addressed. As currently drafted, Rule 019 requires automatic publication of notices of specified penalty on the MSA website. EPCOR believes that publication should be one of the tools that the statutory agencies have available to them, forming one of the non-monetary sanctions that can be imposed upon repeat non-compliant market participants. Mandating publication reduces the effectiveness of this particular sanction. In addition, the requirement that all notices of issuance of specified penalty be published predetermines that the party subject to notice is deserving of sanction, potentially prior to that party having an opportunity to explain its conduct before the Commission.</p> <p><i>Consequences of Multiple Occurrences of Non-Compliance.</i> The draft Specified Penalties Rule contemplated that the MSA would not be permitted to issue a specified penalty after a 3rd non-compliance in a 12 month period, thereby requiring the MSA to exercise its discretion to initiate a hearing at the AUC. This is not an aspect of the interim</p>	

Issue/Topic	AUC Response
<p>rule, which contemplates increased sanctions for repeat offenders rather than a requirement for a hearing. While EPCOR supports increased sanctions against participants who continually breach the same rule, the sanctions should be related to repeated instances of the non-compliance with the same rule rather than being triggered by contraventions of different rules by a single participant. This is consistent with the fundamental principle of encouraging compliance rather than punishing contraventions.</p> <p>EPCOR has been in discussions with representatives of the ISO about the necessity and urgency of revising the ISO Rules to enable them to be more consistent with the compliance framework established through the AUC Act, and will continue to pursue revisions to those rules to make them both fair and more capable of being enforced.</p> <p><i>Coordination among Statutory Agencies.</i> A further general comment is with respect to coordination of processes among the ISO, MSA and AUC. Each of these agencies is responsible for administration of a portion of an overall compliance framework. If any of the agencies have a piece of the process which is inconsistent or not coordinated with the process of the other agencies, the overall framework will suffer. EPCOR urges the AUC to work with the ISO and MSA in reviewing these rules as well as the ISO Rules and MSA processes and guidelines to ensure that the processes of all the agencies are coordinated. All of these rules and processes should be finalized simultaneously in order to ensure consistency in an overall compliance framework.</p> <p>Industrial Power Consumers Association of Alberta</p> <p>Striking the right balance on issues related to monitoring, investigation and adjudication is critical to ensuring and supporting a competitive environment in Alberta's wholesale market for</p>	

Issue/Topic	AUC Response
<p>electricity.</p> <p>First, IPCAA would encourage the AUC to work directly with the Market Surveillance Administrator (MSA) and the Alberta Electric System Operator (AESO) to ensure that all associated rules and processes related to the market integrity items are handled effectively and efficiently. It is critical that the changes to ISO rule 12 and 1.10 align with MSA investigative processes and additionally align with adjudication and penalties outlined by the AUC. As the AUC has the final approval in the process, we encourage the AUC to consider input across the spectrum to ensure that the final product can be successful. Specifically, it is not clear what discretion the MSA has in assigning fines and sanctions outlined by Rule 19 or whether this role is to be held by the AUC. Further, it is not clear whether the MSA investigation processes will apply only to investigations of substance and all other monitoring will be conducted and assessed by the AESO. Prior to finalizing these rules, further clarity of roles is required to ensure that no processes remain uncovered and further that due process occurs.</p> <ul style="list-style-type: none"> • IPCAA supports the need for the development of broad categories of ISO rules noting that not all rule violations have the same impact or harm. Also, not all rules require interpretation and analysis. As a first cut, the rules could be grouped into administrative, operational and behavioural. Administrative rules like credit limits and settlement do not have direct impact on the market unless a participant defaults. In comparison, both operational and behavioural rule violations may impact the market - one due to physical plant or dispatch issues, the other due to an intended choice by participants. Some operational rules have already been defined by current AESO compliance efforts including rules associated with dispatch compliance, liquidated damages on operating reserve obligations and the use of the 	

Issue/Topic	AUC Response
<p>locking restatement. The latter category would include behaviour rules like previously defined by ISO rule 1.10 outlining intent and abuse of market power. IPCAA encourages the agencies to work together to finalize these categories and then overlay the investigative process, monitoring efforts and penalty terms with each category of rule. This will provide the needed clarity to the market on these efforts.</p> <ul style="list-style-type: none"> • IPCAA also notes that these items should be considered as a package. To the extent we want to reduce or eliminate discretion in analysis and move to a bright line test, a graduated model may make the most sense in that it builds in some opportunity for participants to respond to fines through change in behaviour. If we allow for an assessment or more discretion, there may not be as much need for a range of fines. IPCAA welcomes ongoing dialogue to complete this process and provide clarity to the market. A discussion at the planned stakeholder session would also be useful to resolve outstanding issues. <p>Finally, IPCAA notes that due process would provide for the avenue for appeal to enforcement fines and even categorization of rules. Accordingly, there is some room for the establishment of case law on these items.</p> <p>Independent Power Producers Society of Alberta</p> <p>3) Specified Penalties Matrix</p> <p>IPPSA is inclined to support a differentiated penalty regime for System and Market Rules that is reflective of the importance of each rule. This is far preferable to a ‘cookie cutter’ approach that assigns penalties based on the broad grouping of ‘operational, administrative or reporting’. Again, a differentiated penalty regime is consistent with the principle we’ve alluded to in 2.1 above; the penalty must fit the</p>	

Issue/Topic	AUC Response
<p>importance of the rule and the severity of the infraction.</p> <p>We recognize that this recommendation will require each rule to be evaluated first to determine the appropriate category, then to determine the most appropriate penalty. Fortunately, the AUC has provided three options or levels in its December 24, 2007 letter to stakeholders. Market participants should work to determine how to assign the rule to the level of penalty, once that rule has been vetted by the AESO's process.</p> <p>...</p> <p>The following response raises our recommendations for how industry and the agencies can proceed. We then respond to the individual points contained in the AUC's February 28 letter to stakeholders.</p> <p>1.0 Recommendations Pertaining to AESO Rules</p> <p>To move us forward, we recommend that the AESO identify three categories of rules, which the AESO and AUC can act on accordingly:</p> <p>The first category of rules should be those that pertain to the safe, reliable and economic operation of the system and market (System and Market Rules). The following are examples of ones that could be included in the list of specified penalties. We trust the AUC will consult with industry in determining which level in the penalty table is most appropriate:</p> <p>3.2 a) (Requirement to submit offers and bids)</p> <p>3.5.2 a) (Timing of offer/bid submissions)</p> <p>3.5.3.2 c) (Submission of reason for energy restatement - AOR)</p> <p>3.5.4.2 c) (Submission of reason for energy restatement for export)</p> <p>3.5.5.2 c) (Submission for basis of declaring an AOR)</p>	

Issue/Topic	AUC Response
<p>4.2 b) (Submission of net settlement instruction data)</p> <p>The remaining AESO rules should first be vetted through their ROAD process. Once each rule has passed through that process, the AUC should ask for stakeholder comment as to whether that rule is appropriate to be included in the specified penalty regime, and at what level of penalty. If the rule is not appropriate for the specified penalty regime, its penalty would be determined during an AUC adjudication of an investigation.</p> <p>As this process will take time, we recognize that some kind of stop-gap mechanism is required. One option is to have the AUC adjudicate the validity of the remaining AESO rules as breaches occur. Such a mechanism would pull the rule out of the ROAD process and have it adjudicated on a case-by-case basis. Also during such adjudication, the AUC could determine if the rule fits in the specified penalty list or not. However, this may be an overwhelming administrative burden for the agencies and industry.</p> <p>...</p> <p>The second category of rules is those that the AESO requires for administrative procedures and business practices (Administrative Procedures and Business Practices). This category of rules pertains to financial settlement, billing and alternative dispute resolution, and others (e.g. Rules 1, 2, 8 and 11). Breaches of these rules may warrant a creative, and perhaps non-monetary, form of penalty.</p> <p>The third category of rules is those that the AESO develops mostly for internal operating policies and procedures (Operating Policies and Procedures – OPPs). These primarily relate to the AESO’s responsibilities, and there may be no intuitive penalty to assess for breaches to these rules. However, it is recognized that through these OPPs, directives are given to market participants and compliance with those directives can be handled under the System and Market</p>	

Issue/Topic	AUC Response
<p>Rules mechanism described above.</p> <p>Powerex Corp.</p> <p>Issue 3:</p> <ul style="list-style-type: none"> • Powerex supports Option 2, the categorization of ISO rules with such broad categorization then allowing for the setting of different penalty amounts. • With regard to the notion that the penalty amount should be set against or based upon "perceived risk" to the reliability of the system, the crucial element will be the definition of reliability. <p>TransAlta Corporation</p> <p>Issue 3: Specified Penalty Matrix</p> <p>TransAlta believes it would be wrong to adopt the first approach suggested and have a one-size fits all approach because of the wide range of severity of contraventions and impact of contraventions. TransAlta suggests that for non-reliability based provisions there be a graduated penalty level to a cap of \$5,000. For reliability based provisions where there is no impact, TransAlta also suggests there be a graduated penalty level to a cap of \$10,000. Where reliability is materially impacted, the non compliance should be forwarded to the AUC to be dealt with under Rule 013.</p> <p>Thank you for the opportunity to provide comments. TransAlta strongly recommends that AUC Rule 019 on specified penalties not proceed until the stakeholder concerns with the proposed AUC rule are fully vetted. The consultation conference in March is a start towards vetting those concerns.</p> <p>TransCanada Energy Ltd.</p>	

Issue/Topic	AUC Response
<p>To provide clarity to the ISO rules and hence the application of specified penalties, TransCanada suggests the ISO rules be split into three (3) separate categories:</p> <ol style="list-style-type: none"> 1. System and Market Rules – rules that pertain to the safe, reliable and economic operation of the system and market. (e.g. rules 3, 4, 5, 6) It is imperative that a fulsome review of these rules is conducted especially ISO rule 6.6 before any application of specified penalties for non-compliance. 2. Administrative Procedures and Business Practices - rules that pertain to financial settlement, billing and alternative dispute resolution, and others (e.g. Rules 1, 2, 7, 8 and 11). Specified penalties can perhaps be applied and/or other enforcement actions like suspension of market participant status. 3. Operating Policies and Procedures – (“OPPs”) These primarily relate to the AESO’s responsibilities and there may be no intuitive penalty to assess for breaches. However, it is recognized that through these OPPs, directives are given to market participants and compliance with those directives can be handled under the System and Market Rules mechanism described above <p>As can be appreciated, separating the existing ISO rules into these three categories and then evaluating the intent and wording of each rule could be a lengthy process and an interim compliance mechanism needs to be put in place. TransCanada suggests maintaining the current version of AUC Rule 019 until an amended specified penalty matrix is established based on more clear ISO rules. Additionally, it would be beneficial for the AESO to maintain a certain level of discretion in their monitoring role perhaps through a regulation. This discretion would allow the AESO to determine whether the breach of the rule is worth reporting. (i.e. the market does not need the FBI writing parking tickets!)</p> <p>To minimize the number of non-compliance events, ISO rule 6.6 requires immediate attention as generators handle upwards of one</p>	

Issue/Topic	AUC Response
<p>hundred thousand dispatches per year and it is virtually impossible to obtain 100% accuracy given the high degree of manual activities involved.¹</p> <p>¹ According to the AESO’s Compliance Monitoring Reports for 2005 and 2006, 60% of the Compliance Decisions Reached involve ISO rule 6.6. Also during that time period, 27% of the Compliance Decisions Reached involved ISO rule 3.5.2. and the new ISO rules to implement T-2 should substantially reduce non-compliance events with this rule.</p> <p>...</p> <p><i>Issue 3: Specified Penalty Matrix</i></p> <p>TransCanada believes it would be impractical for the “one-size fits all” model until the ISO rules are properly categorized and clarified. Grouping the ISO rules, as articulated above, fits much better into a “differentiated penalty” model especially with the additional principle suggested above. (Penalty fits the crime). Each category could then have an escalating penalty matrix similar to the current AUC Rule 019 matrix to encourage proper behavior recognizing materiality as a factor through categorizing a non-compliance act as Level 1, 2 or 3. (Consistent with the current specified penalty matrix)</p>	
<p><i>Issue 4: Other Issues</i></p>	
<p>AESO</p> <p>The AESO is also of the view that supplemental rules or regulations are required, that make clear that discretion may be applied by the AESO as part of its review process prior to when it ultimately has the legislated duty to refer infractions to MSA. In our opinion, it currently seems the most effective and transparent way to achieve this may be through a regulation.</p> <p>Independent Power Producers Society of Alberta</p>	<p><u>Additional Regulation</u></p> <p>The AUC notes the suggestions of the AESO and IPPSA that additional rules or regulations may be required to address various topics such as providing additional discretion to the AESO. The AUC is not in a position to address the need for additional regulations, and is of the view that the Commission can proceed with the Specified Penalty Matrix based on the legislation currently in place. To the extent that the Alberta Government issues additional regulations, the AUC may re-address the</p>

Issue/Topic	AUC Response
<p>As an alternative, IPPSA would support some direction from the DOE; such as a regulation if need be, that allows the AESO a degree of latitude in its monitoring of rules violations. This discretion would allow the AESO to determine whether a breach should be passed along to the MSA or not. In the absence of this, dozens of nuisance rules violations could occur on a monthly basis; all of which would require AUC adjudication. This outcome may not benefit the market, the system or Alberta taxpayers.</p> <p>...</p> <p>Finally, we would recommend that some AESO rules incorporate a degree of discretion for the AESO in their monitoring role. This discretion would allow the AESO to determine whether the breach of the rule is worth reporting. We seek the DOE's support for such discretion prior to the ROAD process beginning, as we would appreciate the option of incorporating discretion as each rule is reviewed within that process. For example, the dispatch tolerance rule 6.6 could allow the AESO some discretion to determine the materiality of the breach prior to their requirement to report it. With generators facing tens of thousands of dispatches a year, we see a binary approach to infractions of this rule as being administratively overwhelming. We do not believe that such a circumstance would serve the market, the system, the agencies or the government.</p>	<p>Specified Penalty Matrix, as required.</p>
<p>AltaLink Management Ltd.</p> <p>Based on the more detailed draft of Rule 019 provided by the AUC in December 2007, it appears that Rule 019 is not intended to focus on companies limited to the provision of transmission services, such as AltaLink, whose rates for transmission service are set by the AUC.</p> <p>Therefore, AltaLink recommends that Rule 019 clearly state that it does not apply to market participants that are purely regulated TFOs.</p>	<p>The AUC proposes that ISO rule 9 will not be included in the revised Specified Penalty Matrix.</p>

Issue/Topic	AUC Response
Supplemental Response Filed by TransCanada on April 11, 2008	
<p>In addition to the issues and concerns raised in our letter to you dated March 18, 2008, TransCanada has observed a potential conflict between the current AUC Rule 019 and sections 6(3) and 6(4) of the <i>Market Surveillance Regulation</i>, AR 266/2007 (the MSA Reg).</p> <p>Specifically, the MSA Reg states:</p> <p>6(3) <i>In considering whether to make a record public, the MSA must take into account implications</i></p> <p style="padding-left: 40px;"><i>(a) to any market participant affected by making the record public, and</i></p> <p style="padding-left: 40px;"><i>(b) to the fair, efficient and openly competitive operation of the electricity market or the natural gas market, as the case may be, of making or not making the record public.</i></p> <p>(4) <i>Before the MSA makes public a record that will identify a market participant by name, the MSA must, <u>except when disclosure of the name of a party is permitted or required under the rules of the Commission or the Court,</u></i></p> <p style="padding-left: 40px;"><i>(a) consider</i></p> <p style="padding-left: 80px;"><i>(i) the benefits that might reasonably be foreseen of making public the name of the market participant for the purpose of carrying out the mandate of the MSA,</i></p> <p style="padding-left: 80px;"><i>(ii) whether making public the name of the market participant could reasonably be expected to</i></p> <p style="padding-left: 120px;"><i>(A) result in undue financial loss to the market participant, or</i></p> <p style="padding-left: 120px;"><i>(B) harm significantly the competitive position of the</i></p>	<p>As noted above, the AUC proposes to introduce, for those rules in the graduated enforcement model, four levels of enforcement that are tracked by asset. The first and second failure to comply with a particular ISO rule by a particular asset will not be made public by the MSA for the first year (July 1, 2008 to June 30, 2009). The third, fourth and subsequent failures to comply will be made public by the MSA. Effective July 1, 2009, all failures to comply with a particular ISO rule will be made public.</p> <p>The AUC is of the view that this approach to public disclosure will allow parties to learn from their mistakes, and at the same time, may encourage market participants to change behaviour as necessary in order to comply with ISO rules. The AUC notes that this is consistent with the second principle (as discussed regarding Issue 1) where specified penalty provisions are to be written in a manner that provides clearly defined parameters so as to minimize interpretation issues for market participants and discretionary action on the part of the MSA.</p> <p>The AUC agrees with TransCanada that absent any specific direction in the rules of the Commission, the MSA would be required to take into account the items outlined in sections 6(3) and 6(4) of the <i>Market Surveillance Regulation</i>. As it relates to the Specified Penalties Matrix, the AUC is of the view that it is appropriate to establish a less discretionary basis with respect to publishing a notice of specified penalty.</p>

Issue/Topic	AUC Response
<p><i>market participant,</i></p> <p><i>(iii) the implications of not making public the name of the market participant to other market participants,</i></p> <p><i>(iv) any practical alternatives reasonably known to the MSA, and</i></p> <p><i>(v) any other factors the MSA considers relevant,</i></p> <p><i>(b) determine that, on balance, the factors considered under clause (a) favour making public the name of the market participant, and</i></p> <p><i>(c) give written notice to the market participant of its intention to make the record public, and the notice</i></p> <p><i>(i) must include a copy of the content of the record that it intends to make public, and</i></p> <p><i>(ii) must provide at least 7 days for the market participant to file an objection with the MSA in respect of being identified by name in the record that the MSA intends to make public. (Underlining added)</i></p> <p>The current version of AUC Rule 019 states:</p> <p>5 <i>The Market Surveillance Administrator shall make public any notice of specified penalty issued for a contravention of the ISO rules under section 52 of the Act and post the notice on the MSA website, 30 days after the issuance of the notice. (Underlining added)</i></p> <p>TransCanada observes that although sections 6(3) and 6(4) set out a number of due diligence considerations that the MSA must follow in order to ensure appropriate decisions are made with respect to publishing a notice of specified penalty, section 5 of AUC Rule 019 effectively removes this due diligence process.</p>	

Issue/Topic	AUC Response
<p>As the current version of AUC Rule 019 is set to expire April 30, 2008, TransCanada requests the AUC consider the intent of section 5 of AUC Rule 019 given the requirements of sections 6(3) and 6(4) of the MSA Reg.</p> <p>TransCanada suggests that it may be more appropriate to word section 5 of AUC Rule 019 as “<i>subject to sections 6(3) and 6(4) of the Market Surveillance Regulation, the Market Surveillance Administrator may make public any notice of specified penalty...</i>”</p>	