

Revisions to AUC Rule 019 – Specified Penalties for Contravention of ISO Rules

Stakeholder Comments and AUC Responses Matrix

Comment Period – July 20, 2011 to August 19, 2011

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<i>Issue 1: Justification for inclusion of additional ISO rules in AUC Rule 019</i>	
<p>AltaLink</p> <p>AltaLink’s submissions on Bulletin 2011-17 and AUC Rule 019 are meant to be constructive and for the purposes of developing the best possible regulatory framework in Alberta. AltaLink’s comments should not be construed as an indication that it would be non-compliant with amendments to AUC Rule 019.</p> <p>On February 16, 2010, AltaLink filed submissions with the AUC respecting Bulletin 2010-05 and amendments to AUC Rule 019 which preceded proposed changes under Bulletin 2011-17. AltaLink limited its comments to the context that a compliance framework aimed at generation and power marketing entities is ill-suited for transmission facilities owners (“TFOs”).¹</p> <p>Changes proposed by Bulletin 2011-17, particularly the ISO Rules and operating policies and procedures (“OPPs”) for inclusion in AUC Rule 019 (the “Affected Rules/OPPs”), are a significant departure from Bulletin 2010-05.</p> <p>There is no basis for the July 20, 2011 amendments to AUC Rule 2011-17. The Affected Rules/OPPs do not address the core transmission requirements of safety and system reliability. The amendments are primarily associated with detailed industry processes in respect of administrative practices and reporting obligations between market participants and the ISO. There is no evidence of harm created by the Affected Rules/OPPs remaining outside of AUC Rule 019. The inclusion of the Affected Rules/OPPs in AUC Rule 019 is unnecessary. Moreover, the July 20, 2011 amendments create no identified benefits and accordingly, their effects on TFOs are disproportionate and unwarranted.</p> <p>Based on the foregoing, AltaLink submits that the Commission should not approve the July 20, 2011 amendments to AUC Rule 019 and should direct the ISO to perform proper consultation on the matter. AltaLink further submits that, consistent</p>	<p>AltaLink raised the matter of the Commission’s consultation regarding AUC Rule 019 in Bulletin 2010-05. The Commission responded to comments regarding Bulletin 2010-05 as follows:</p> <p style="padding-left: 40px;">Section 20.8 of the <i>Electric Utilities Act</i> requires market participants to comply with ISO rules and reliability standards that are in effect. Market participants include any person that supplies, generates, transmits, distributes, trades, exchanges, purchases or sells electricity, electric energy, electricity services or ancillary services.</p> <p style="padding-left: 40px;">An exemption from AUC Rule 019 would not exempt a market participant from its obligations to comply with ISO rules, nor would it remove exposure to monetary penalties.</p> <p style="padding-left: 40px;">Accordingly, the Commission does not see merit in AltaLink’s request that Transmission Facilities Owners be exempted from the scope of AUC Rule 019.</p> <p>Transmission Facilities Owners (TFOs) are expected to comply with Section 20.8 of the <i>Electric Utilities Act</i>.</p> <p>The Commission is not convinced that the ISO rules and OPPs identified by the AESO for inclusion in AUC Rule 019 (affected rules) should not be included in AUC Rule 019 because these address administrative practices and reporting obligations. Market participants (including TFOs) are required to comply with the affected rules. The key result of including the affected rules in AUC Rule 019 is that the MSA has the option of imposing specified penalties in addition to their current option of seeking administrative penalties.</p> <p>Section 21.1 of the <i>Electric Utilities Act</i> requires the ISO to refer suspected contraventions of ISO rules and reliability standards to the MSA.</p> <p>AUC Bulletin 2010-31 set out a process under which any stakeholder may request an update</p>

¹ AltaLink’s submissions of February 16, 2010 in response to AUC Bulletin 2010-05, page 1.

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<p>with the <i>Transmission Regulation</i> and stated ISO policies, the ISO must first consult with stakeholders on those amendments. Moreover, specified penalties for non-compliance with the Affected Rules/OPPs must apply equally to all market participants, including the ISO.</p> <p>ATCO Electric</p> <p>In the AESO letter attached to the bulletin, the AESO states that the proposed changes “... would be of benefit to the AESO in its role of monitoring compliance of market participants with ISO rules, and to all market participants, as the proposed changes will facilitate the expedient, effective and efficient handling of suspected contraventions of these rules. ...”</p> <p>It is not clear how the proposed imposition of specified penalties will accomplish any of these objectives. The AESO’s role in monitoring compliance with ISO rules is limited to identifying suspected non-compliance to the MSA, and that role and process is not changed by specifying penalties. An application of penalties specified under the proposed Rule 19 could have a significant impact on a market participant’s reputation. Such impacts could be much greater than was contemplated when the rules were originally drafted.</p> <p>It is difficult to understand how being a day or two late with meeting AESO reporting requirements in any way compromises the safe and reliable operation of the transmission system, especially to the extent where a penalty should be applied. Along with a clearer understanding of compliance measures, the rationale for including specific rules into each category should be clear and the supporting rationale communicated to parties. As an example, it is proposed that ISO rule 5.2 (scheduled generator outage reporting) be a category 2 penalty, while OPP 601 (Transmission outage coordination) attracts a category 1 penalty. However, no explanation for the difference in treatment has been provided. Once again, a new consultation process would be of benefit in addressing these types of issues.</p> <p>ATCO Power</p> <p>ATCO Power Ltd. (ATCO) has no issue with the AESO's proposal to add more ISO</p>	<p>to the penalty tables in AUC Rule 019 or AUC Rule 027. As indicated in the bulletin, updates are limited to changes to the penalty tables, the rules or reliability standards that are included in the penalty tables and the amounts of the penalties. The AESO has made a submission under the process set out in this Bulletin.</p> <p>In general, the Commission agrees with the MSA that “...the availability of specified penalties serves to increase regulatory efficiency given that it is an expedited mechanism to resolve non-compliance matters” and that “...the absence of an ISO rule from the Rule 019 penalty tables unavoidably imposes a regulatory burden relative to matters that do not warrant a proceeding.”</p> <p>The AESO does not determine the whether an ISO rule is listed in the penalty table or the penalty amounts as contained within AUC Rule 019. This is determined by the Commission on the following basis:</p> <ul style="list-style-type: none"> ▪ The specified penalty tables established in AUC Rule 019 are intended to be specified penalties and are differentiated from administrative penalties. (A further discussion regarding both administrative and specified penalty proceedings can be found in Bulletin 2010-17). ▪ The specified penalty tables do not take into account specific market impact or impact to others. ▪ Specified penalties are intended to be imposed for routine and typical contraventions. ▪ Specified penalties may not exceed a maximum of \$100,000 per day, while administrative penalties may not exceed a maximum of \$1,000,000 per day plus any economic benefit derived as a result of the contravention. ▪ For those ISO rules for which a specified penalty has been established, the Commission has established categories of contravention. The categories further differentiate between specified penalties based on the seriousness or severity of the contravention, the history of the ISO rule and the nature of how the ISO rule might be contravened. <p>The Commission has some concern in terms of making changes to ISO rules and their enforcement provisions in AUC Rule 019 when those rules are the subject of an ISO</p>

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<p>rules and OPPs to the <i>AUC Rule 019 Specified Penalties for Contravention of ISO Rules</i> Penalty Table. ATCO understands that doing so would simplify enforcement of the rules for the regulators and believes that, in general, market participants would prefer the expediency of a specified penalty rather than the time and expense involved in an alternative process, which to date has typically involved a negotiated settlement requiring AUC approval. We also note that the option of an escalated process such as an AUC hearing is always available to the Market Surveillance Administrator if it determines the nature of a contravention warrants more rigorous treatment and presumably a harsher penalty than AUC Rule 019 would allow.</p> <p>Capital Power</p> <p>At the outset, Capital Power notes that it continues to support the Commission’s use of a specified penalty matrix, particularly as it ensures that penalties issued for incidents of non-compliance are applied consistently and are proportionate to the severity of the infraction. The specified penalty structure also enables investigations and the issuing of penalties, where found to be appropriate, to be completed in a timely manner. An expedited process also allows market participants to respond to any rule infractions by implementing appropriate internal mitigation measures swiftly.</p> <p>In these respects, Capital Power notes and supports the Alberta Electric System Operator’s (“AESO”) proposed addition of several ISO Rules to the specified penalty tables as described in the AUC Bulletin.</p> <p>TransAlta</p> <p>TransAlta does not believe that additional ISO Rules should be included in the Specified Tables until further consultation has been completed. TransAlta would like the AESO to clarify how it determines the severity of contravention of each ISO rule.</p> <p>By way of example, TransAlta does not agree with the penalty now attached to OPP 1306: Reporting Equipment Changes. If the equipment at a facility were replaced with the same equipment (same make and model), but the Facility Owner fails to submit the documentation in a timely manner, this would pose no risk to the safe and reliable operation of the AIES since there has effectively been no change to the technical</p>	<p>consultation. The Commission notes that the ISO has issued letters of notice or invitations to participate as follows:</p> <p style="padding-left: 40px;">OPP 1305 on January 29, 2009</p> <p style="padding-left: 40px;">OPP 1306 on May 12, 2011</p> <p>Given this situation, the Commission will not add OPP 1305 or OPP 1306 to the penalty tables.</p>

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<p>operation of the facilities.</p> <p>TransCanada</p> <p>TCE is not opposed to the inclusion of additional ISO Rules within the Rule 019 specified penalty framework if the ISO Rules are unambiguous and set out clear and reasonable expectations.</p> <p>However, TCE questions why the proposal to include additional ISO Rules in the specified penalty framework was put forward by the AESO. TCE understands the AESO's mandate to include monitoring compliance with ISO Rules and referring suspected contraventions to the MSA. The MSA may then issue specified penalties under Rule 019 in appropriate circumstances or otherwise seek administrative penalties before the Commission. In light of these differing mandates, TCE believes that the MSA is the appropriate entity to propose the inclusion of additional ISO Rules in the specified penalty framework. TCE would appreciate clarity regarding the roles and responsibilities of the AESO and MSA in this regard, including how the proposal of amendments to Rule 019 by the AESO enables it to discharge its mandate more effectively.</p>	
<p><i>Issue 2: Insufficient consultation and rules not drafted with specified penalties in mind</i></p>	
<p>AltaLink</p> <p>Respecting the rules and OPPs the ISO now seeks to include in AUC Rule 019, AltaLink is not aware of any ISO consultation with stakeholders. To the extent that the ISO proposes to have Affected Rules/OPPs subject to specified penalties, AltaLink submits that industry-wide consultation on the rules and OPPs is required in order to determine whether any changes to the rules and OPPs is appropriately required to enable a penalty compliance framework being now applied to the rules and OPPs that were initially developed as detailed industry processes.</p> <p>Turning specifically to consultation, starting in the year 2005, the ISO consulted</p>	<p>AUC Rule 017: <i>Procedures and Process for Development of ISO Rules and Filing of ISO Rules with the Alberta Utilities Commission</i> (AUC Rule 017) sets out the procedures and process for development of ISO rules and filing of ISO rules with the Commission. Generally speaking, AUC Rule 017 requires the ISO to consult with stakeholders on draft ISO rules (with the exception of expedited ISO rules).</p> <p>The AESO's request on May 9, 2011, does not purport to change any ISO rules – rather it requests changes to AUC Rule 019.</p> <p>The process for requesting an update to the penalty tables in AUC Rule 019 and AUC Rule 027 is outlined in AUC Bulletin 2010-31. There is no requirement for a stakeholder to</p>

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<p>with stakeholders on several of the Affected Rules/OPPs when those rules and OPPs were initially developed.² AltaLink actively participated in that consultation. The ISO’s consultation on the Affected Rules/OPPs was only for the purpose of developing industry processes which would not be subject to specified penalties. The ISO’s own correspondence, illustrated by the examples below, confirms that the ISO did not intend for the Affected Rules/OPPs to be enforced by specified penalty.</p> <p>In the ISO’s initial consultation on the Affected Rules/OPPs, AltaLink is not aware of the ISO making reference to those rules or OPPs being subject to specified penalty. Between 2005 and 2008, many of those rules and OPPs were subject to amendment. In the course of consulting on those amendments, the ISO did not indicate that the changes to ISO Rules and OPPs would trigger specified penalties.³</p> <p>The ISO not only refrained from consulting in respect of potential specified penalties for the Affected Rules/OPPs, it indicated in its consultation that the nature of certain Affected Rules/OPPs is inconsistent with specified penalties. For example, the ISO specifically stated that the application of OPP 601,⁴ OPP 1305⁵ and ISO Rule 9.1.2⁶ would have “low impact on the industry or the ISO” and requires “little or no effort by stakeholders for implementing a solution”. Specified penalties are quasi-criminal in nature and have significant financial and reputational impacts. The ISO’s suggestion that certain of the Affected Rules/OPPs are of “low impact” confirms that</p>	<p>consult prior to making a request for updates to AUC Rule 019 or AUC Rule 027.</p> <p>Thus, the question before the Commission in this stakeholder consultation does not involve any changes to ISO rules or the process used to develop the ISO rules. Rather, the question is whether the MSA should be permitted to issue specified penalties for contravention of the affected rules in addition to its current authority to seek relief in the form of an administrative penalty for contravention of the affected rules. Given that administrative penalties already apply to any contravention of ISO rules, there does not appear to be any additional risk to market participants through the introduction of specified penalties. Further, to the extent that a market participant disputes the issuance of a specified penalty, the market participant can have the matter heard by the Commission pursuant to the provisions of Section 52 of the <i>Alberta Utilities Commission Act</i>.</p> <p>With respect to the suggestion that there may be some risk of redundancy or inconsistent application between the affected rules and Alberta Reliability Standards, the MSA has the authority under Section 51 of the <i>Alberta Utilities Commission Act</i> to file written notice to the Commission for contravention of both an ISO rule and a reliability standard. To the extent that a market participant disputes the issuing of such a notice, the market participant can have the matter heard by the Commission pursuant to the provisions of Section 52 of the <i>Alberta Utilities Commission Act</i>.</p> <p>The Commission does not consider that a transition period, as suggested by ATCO Electric,</p>

² For example, a discussion of the AESO’s consultation on Rule 9.1 in 2005 is set out at [http://www.aeso.ca/downloads/Letter_to_Stakeholders_compliance_review_Dec18_07\(1\).pdf](http://www.aeso.ca/downloads/Letter_to_Stakeholders_compliance_review_Dec18_07(1).pdf).

³ Evidence of this is found, for example, in the consultation histories of OPP 601 (AESO correspondence to stakeholders of April 11, 2005, set out at <http://www.aeso.ca/downloads/InterimapprovedOPPLetter20050411.pdf>; see also AESO correspondence to stakeholders of October 30, 2008, set out at [http://www.aeso.ca/downloads/Letter_of_Notice_\(LII_LIII_OPPs\)_Oct_30_2008.pdf](http://www.aeso.ca/downloads/Letter_of_Notice_(LII_LIII_OPPs)_Oct_30_2008.pdf)), OPP 1306 (AESO correspondence to stakeholders of October 30, 2008, set out at [http://www.aeso.ca/downloads/Letter_of_Notice_\(New_OPP_1306\)_Oct_30_2008.pdf](http://www.aeso.ca/downloads/Letter_of_Notice_(New_OPP_1306)_Oct_30_2008.pdf)) and ISO Rule 9.1.2 (AESO correspondence to stakeholders of April 9, 2008, set out at [http://www.aeso.ca/downloads/Letter_of_Notice_\(Serv_Prop\)_Apr_9_2008.pdf](http://www.aeso.ca/downloads/Letter_of_Notice_(Serv_Prop)_Apr_9_2008.pdf)).

⁴ AESO correspondence to stakeholders of March 24, 2005, page 10 set out at http://www.aeso.ca/downloads/Proposed_Changes_Letter_May05Process.pdf.

⁵ AESO correspondence to stakeholders of January 21, 2005, page 18, set out at http://www.aeso.ca/downloads/Proposed_Changes_Letter_Jan21.pdf.

⁶ AESO correspondence to stakeholders of April 9, 2008, page 3 set out at [http://www.aeso.ca/downloads/Letter_of_Notice_\(Serv_Prop\)_Apr_9_2008.pdf](http://www.aeso.ca/downloads/Letter_of_Notice_(Serv_Prop)_Apr_9_2008.pdf).

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<p>those rules and OPPs are an improper fit for the application of specified penalties. In its submissions on AUC Bulletin 2009-20, the ISO “identified a number of possible enhancements to that consultation process”.⁷ The ISO stated that its rules consultation process “has not been fully committed to writing, nor has it been applied consistently across all rule consultations” and that it sought to improve its consultation through “commencing the AESO’s consultation process as early as possible by formal notice to stakeholders”.⁸ Given the import of specified penalties, the lack of consultation on those penalties, and the scope of potential deficiencies respecting ISO rules consultation, AltaLink submits that the ISO’s consultation on the Affected Rules/OPPs is insufficient for the purposes of amending AUC Rule 019.</p> <p>Not only was the ISO’s consultation on the Affected Rules/OPPs insufficient, AltaLink is not aware of any consultation with stakeholders in respect of the July 20, 2011 proposed changes. The application of specified penalties for non-compliance with the Affected Rules/OPPs is a change to the scope of those rules and OPPs. The ISO should be required to consult on rule changes and, with respect to the July 20, 2011 amendments, has not done so.</p> <p>Pursuant to the <i>Transmission Regulation</i>, the ISO must consult with market participants on matters of significant import to the electricity industry.⁹ More particularly, it is the ISO’s stated policy to consult with market participants on ISO Rules:</p> <p style="padding-left: 40px;">The ISO consults with stakeholders regarding the development of new ISO rules, for ISO rules changes, and for the removal of ISO rules that are no longer required due to changed circumstances (collectively "draft ISO rules changes").</p> <p style="padding-left: 40px;">An effective consultation process will involve a full discussion of the</p>	<p>to “...allow the market participants to develop their compliance processes and obtain the necessary resources” is necessary given that market participants are currently required to comply with the affected ISO rules.</p> <p>Finally, with respect to the submission that specific ISO rule changes are required, the submission of those changes should be made directly to AESO. To the extent that the AESO determines that ISO rule changes are required, the AESO is required to inform market participants in accordance with AUC Rule 017.</p>

⁷ ISO Submissions on Bulletin 2009-20, page 1.

⁸ ISO Submissions on Bulletin 2009-20, page 1.

⁹ See, for example, *Transmission Regulation*, sections 2, 5(4)(d) and 18(3).

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<p>views of the consulting parties, to enable the ISO to make the best decision possible in the context of the ISO mandate to make ISO rules pursuant to the legislation and regulations.</p> <p>The ISO is committed to a comprehensive, inclusive, transparent, fair and efficient consultation process.¹⁰</p> <p>The ISO has further indicated the type of process it would include in stakeholder consultation on ISO Rules:</p> <ul style="list-style-type: none"> • commencing the ISO’s consultation process as early as possible by formal notice to stakeholders; • encouraging stakeholders to register their interest in participating in the consultation; • seeking stakeholder input into a terms of reference as the basis upon which the consultation will proceed to include, for example, the purpose for the rule, the objectives, a list of stakeholders involved in the process and a draft schedule of consultation events; • documenting comments from stakeholders and rationale for why the ISO has accepted or rejected stakeholder recommendations; • encouraging stakeholders to raise all concerns or suggestions for initial design or improvement to the rule in question, to provide those concerns or suggestions for improvement in writing for discussion with others in the consultation process and to share information necessary for others to understand and evaluate those concerns or suggestions for improvement in a full and effective manner; • requiring stakeholders to submit a position letter with written reasons for their position to the ISO and other parties before the new or amended rule is internally approved by the ISO; and • providing stakeholders with an opportunity to provide the ISO with comments or suggestions for future consultation, which, in conjunction with the discussion to develop the terms of reference for each rule 	

¹⁰ <http://www.aeso.ca/rulesprocedures/21369.html>.

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<p>consultation should ensure that the ISO rule consultation process continues to meet the needs of all parties on an ongoing basis.¹¹</p> <p>Respecting the rules and OPPs the ISO now seeks to include in AUC Rule 019, AltaLink is not aware of any ISO consultation with stakeholders, let alone ISO’s execution of the foregoing procedural steps. To the extent that the ISO proposes to have Affected Rules/OPPs subject to specified penalties, AltaLink submits that industry-wide consultation on the rules and OPPs is required in order to determine whether any changes to the rules and OPPs is appropriately required to enable a penalty compliance framework being now applied to the rules and OPPs that were initially developed as detailed industry processes.</p> <p>In addition to being unclear on the ISO’s compliance responsibilities, the amendments to AUC Rule 019 create the risk of redundancy and inconsistent application. Examples include the following:</p> <ul style="list-style-type: none"> • OPP 1306, proposed Alberta reliability standard MOD-10 and MOD-12, as well as North American Electric Reliability Corporation standards PRC-001, FAC-008 and FAC-009 have similarities and may overlap, creating the significant risk of double jeopardy and mandated specific penalties for the same or related non-compliance incidents. • Self-reporting requirements for Alberta reliability standards may not comport with a reporting regime on specified penalties ultimately established by the ISO. • The ISO has provided no explanation of how the specified penalty regime would correspond to the Market Surveillance Administrator’s (“MSA”) ability to seek administrative penalties. <p>With respect to general dispute resolution principles, the ISO has historically proposed a framework which avoids the application of specified penalties where possible. The ISO’s preferred “process design” for resolution of disputes between</p>	

¹¹ ISO Submissions on Bulletin 2009-20, pages 2-3.

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<p>market participants and the ISO, including in respect of ISO Rules, involves varied options and flexibility¹² but does not mention the application of specified penalties. A further example is the ISO's statement that penalties with respect to constraints management, the subject matter of numerous ISO Rules and OPPs, are not mandatory.¹³ These positions now appear out of step with Bulletin 2011-17, creating additional uncertainty.</p> <p>AltaLink is concerned that the amendments to AUC Rule 019 are proposed in the absence of clarity on a broader compliance framework. To ensure the regulatory certainty critical to Alberta's electricity market, a broader review of, and further consultation on, the compliance framework applicable to the ISO and TFOs is likely necessary prior to approving the proposed amendments to AUC Rule 019.</p> <p>ATCO Electric</p> <p>It must be recognized that a measure of operating judgment is applied to the strict compliance with the operating policies. When these rules and operating policies were developed the intent was to provide rules on how the TFOs and the ISO would work together. This approach contemplated a method for resolving issues through a dispute resolution process. Moving these operating policies and rules to the imposition of a stipulated penalty violates the spirit under which the rules were drafted. If the intent is to move these to a stipulated penalty, then a re-consultation process must take place for individual rules. Following such consultation, if penalties are deemed necessary, the rules should be developed with that level of compliance in mind, along with a clearer sense of how compliance would be measured. Some of the new rules proposed to be included in the penalty structure are subject to uncontrollable delays and interpretation due to multi-party input. As a result, timelines can be unmanageable, resulting in penalties or unnecessary conflict or litigation.</p> <p>Based on the above information, we respectfully request that the AUC deny the requested changes to AUC Rule 19 as no consultation process has occurred and the</p>	

¹² For example, AESO Dispute Resolution Process Discussion Paper (December 20, 2007), page 8.

¹³ AIES Transmission Constraints Management Discussion Paper (October 13, 2005), page 12.

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<p>AESO has not demonstrated how these proposed changes achieve the objectives they outlined in their correspondence. Contrary to the intent of these changes, in reality the changes could have material negative consequences that do not appear to have been considered.</p> <p>If the decision is made to proceed with changes to Rule 19, then the AESO must conduct a consultation process where the policies can be reviewed with penalties for non-compliance in mind, and include a transition period to allow the market participants to develop their compliance processes and obtain the necessary resources.</p> <p>EPCOR Distribution & Transmission</p> <p>Rule 019 is in place to help ensure compliance with ISO rules. EDTI believes that some ISO rules proposed to be subject to Rule 019 penalties should be reviewed through a consultation process to ensure that the appropriate penalties are assigned to each rule and that the rules are sufficiently clear. Below are some of the issues that are of concern to EDTI arising from making these ISO Rules, as they are currently drafted, subject to Rule 019 penalties.</p> <p><i>ISO Rule 9.1.2</i></p> <p>This rule sets out TFO obligations to provide Service Proposals, Service Proposal Estimates, Service Proposal Estimate Updates and Need Identified Document ("NID") Estimates.</p> <p>Service Proposals and NID estimates are provided by the TFO in response to an AESO Direction. Situations sometimes arise whereby TFOs cannot complete the required work by the date written in the Direction letter. This can occur for various reasons, but EDTI is concerned that situations may arise beyond the control of the TFO that would put the TFO off-side.</p> <p><i>ISO Rule 9.1.3</i></p> <p>This rule describes various reporting requirements for TFOs carrying out</p>	

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<p>transmission facility projects, such as monthly reporting, project variance reporting, project change proposals and final cost reports. It is not clear that making Rule 9.1.3 subject to the Section 019 penalty provisions would reduce instances of TFO non-compliance with reporting requirements.</p> <p><i>OPP 601</i></p> <p>This OPP describes the administrative process for TFOs to get schedules of planned transmission outages approved by the ISO. Because the AESO is currently reviewing and may amend OPP 601, this might not be the ideal time to making OPP 601 subject to Rule 019 penalties.</p> <p><i>OPP 1306</i></p> <p>This OPP sets out the policy and responsibilities for timely reporting of equipment and facilities changes, by Facility Owners, to the AESO in order to maintain accurate system models.</p> <p>OPP 1306 states that "All facility owners must report to the AESO, changes in rating, capability, settings, or characteristics arising from an addition, upgrade, replacement, retirement or modification of electrical equipment connected to the AIES." EDTI has concerns as to how enforcement of OPP 1306 requirements under Section 19 would work in practice. Not all of the items listed in OPP 1306 - ratings, capabilities, settings and characteristics - pertain to all of the equipment lists in the OPP in all circumstances, and the TFOs might thus face more onerous reporting requirements than are warranted. In such cases, would it be appropriate for the provisions of Section 19 to apply? Until such time that this has been discussed among the interested parties and clarified, EDTI does not believe that OPP 1306 should be subject to Rule 019 penalties.</p> <p><i>ISO Rule 502.4</i></p> <p>This rule sets out obligations for market participants with facilities connected to the</p>	

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<p>AIES regarding communication systems.</p> <p>EDTI agrees with the AESO that the communication system between market participants and the AESO is important for the safe and reliable operation of the Alberta Interconnected Electric System (“AIES”). However, much of this rule is duplicated in the communication standards being drafted by the AESO to be adopted as Alberta Reliability Standards. Alberta Reliability Standards are subject to penalties on the basis of AUC Rule 027. EDTI is concerned that duplication of these standards could create confusion for TFOs.</p> <p>In conclusion, the initial proposal for ISO Rule 9 in 2008 did not envision the inclusion of that rule in the specified penalty matrix, so it is important that any proposal to bring Rule 9 or any other ISO rule into that matrix be carefully considered with input from the TFOs it affects. EDTI, like many other TFOs, works hard to ensure compliance with all AUC and ISO rules. For that reason, EDTI believes it can be a constructive participant in a consultation process reviewing these proposed changes.</p>	
<p><i>Issue 3: Unequal application</i></p>	
<p>AltaLink</p> <p>Many of the Affected Rules/OPPs, such as ISO Rules 9.1.2.3, 9.1.3.5, 9.1.3.7 and 9.1.5.8, create bilateral performance obligations on both the TFO and the ISO. For example, under ISO Rule 9.1.3.5 the ISO must review and take action on a TFO’s project change proposal by not later than 15 days following receipt of the proposal.¹⁴</p>	<p>The Commission understands that, contrary to AltaLink’s assertion, there is nothing in the AESO’s proposed changes to AUC Rule 019 that suggests the changes establish penalties for TFO’s but not the AESO. Many ISO rules, including those examples cited by AltaLink, place requirements on the ISO. There is nothing in legislation and/or the AUC rules to suggest that the AESO is not required to be in compliance with the ISO rules.</p>

¹⁴ **9.1.3.5 Project Change Proposal Review**

The **ISO** shall review the **Project Change Proposal** submitted by the **Designated TFO** pursuant to **rule 9.1.3.4**. As soon as reasonably practical, and no later than **15 days** following receipt of the **Project Change Proposal**, the **ISO** must do one or more of the following:

- a) approve such proposal, with or without amendments, in which event the **Project** shall be deemed amended;

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<p>The July 20, 2011 amendments establish penalties on TFOs but not on the ISO for non-compliance with the Affected Rules/OPPs.</p> <p>In order to ensure effective operation of AUC Rule 019 and Affected Rules/OPPs, the specified penalties framework must apply fairly and equitably to all market participants, including the ISO. A lack of reciprocity between market participants creates particular concern with respect to rules that operate bilaterally such as ISO Rule 9.1.3. If both parties are not equally at risk of penalty to meet their obligations under an ISO rule, the operation of the rule and ultimately the matters addressed by the rule are at risk.</p> <p>The unequal treatment of market participants under ISO Rules and OPPs reflects a major policy reversal. AltaLink is not aware of any ISO Rule or OPP in Alberta which, if parties are subject to penalties for non-compliance, does not have reciprocal sanctions enforcing bilateral requirements. The entire framework for dealings between the ISO and market participants is based on equitable treatment. Under the TFO Terms and Conditions of Service, for example, the ISO is subject to compliance requirements.¹⁵</p> <p>Not only does Bulletin 2011-17 create an unequal penalty structure, it is unclear how ISO obligations under the Affected Rules/OPPs would be enforced and monitored, who would monitor ISO compliance, and in the case of an ISO infraction, the reporting requirements and sanctions that would apply. Accordingly, while AltaLink opposes the inclusion of Affected Rules/OPPs in AUC Rule 019, to the extent that the Commission determines that they must be included, AltaLink requests that those amendments are drafted to apply equally to the ISO. Additionally, the AUC should provide clarity on the compliance framework (monitoring, audit, penalty process, complaint process) that would apply to the ISO.</p>	<p>In regards to enforcement and monitoring, the Commission notes Section 41 of the <i>Alberta Utilities Commission Act</i> which states that any person, the ISO or the Commission may make a complaint or refer a matter to the MSA. If the MSA, upon investigating, becomes satisfied that a person has contravened an ISO rule it has several options for enforcement including issuing a specified penalty, requesting the imposition of an administrative penalty, or forbearance.</p>

- b) reject such proposal with or without requesting a revised **Project Change Proposal**;
- c) cancel the **Project**; and/or
- d) recommend that the **TFO** apply to the **Commission** for an amendment to any approval it may have obtained pursuant to the **HEEA**.

¹⁵ See, for example, section 3.1(c) and (h) of the TFO Terms and Conditions set out under AUC *Decision 2010-116*.

Issue / Topic	AUC Response
Issue 4: Retroactivity	
<p>AltaLink</p> <p>AltaLink further submits that the proposed rule changes cannot apply retroactively and if implemented, require a future implementation date(s) in order for TFOs and the ISO to establish penalty-based compliance processes. Section 6 of AUC Rule 019 states that assessment of Category 1 or 2 penalties shall be “from the first contravention that occurred on or after July 1, 2008.” Section 6, if approved, would have retroactive application and result in changing the legal effect of activities which occurred in the past. Under principles of statutory interpretation and administrative law, retroactive applications “are generally considered to be the most objectionable since they involve changing the past as well as the future effects of a past situation” and may interfere with vested rights.¹⁶ Reaching into the past and declaring the law to be different from what it was, “is a serious violation of the rule of law”.¹⁷</p> <p>A fundamental principle on which the rule of law is based is advance knowledge of the law.¹⁸ TFOs operating under the Affected Rules/OPPs could not have known that their actions would be retroactively subject to specified penalties or what the nature of those penalties would be. The backward-reaching application of penalties to actions which occurred years ago, and not subject to sanction at the time, is unfair as well as arbitrary. Even for market participants who are not directly affected by changes to AUC Rule 019, the certainty and stability of electricity regulation in Alberta are diminished by retroactive rulemaking. AUC Rule 019 must be amended so that it does not attach new consequences to past events, and in particular, that section 6 be deleted.</p>	<p>Section 6 of Rule 019 states the following:</p> <p style="padding-left: 40px;">For purposes of subsection 4(2), the assessment of penalties shall be from the first contravention that occurred on or after July 1, 2008.</p> <p>Section 6 of AUC Rule 019 has been part of AUC Rule 019, in substantially the same form, since September 1, 2009. Bulletin 2011-17 does not purport to change Section 6 of AUC Rule 019.</p> <p>The purpose of Section 6 is to indicate a starting point for Section 4(2) of AUC Rule 019. Section 4(2) indicates that the MSA will escalate the amount of the specified penalty at the level of reoccurrence in the penalty table, in accordance with the number of contraventions which have been issued in the 12-month rolling period, as that term is defined in the rule. Section 6 indicates that for the purposes of this 12-month rolling period calculation, only contraventions that occurred on or after July 1, 2008 would be included.</p>

¹⁶ *Sullivan on the Construction of Statutes* (5th ed.), Ruth Sullivan (LexisNexis, 2008), page 669.

¹⁷ *Ibid.*, page 677.

¹⁸ *Ibid.*, page 677.

Issue / Topic	AUC Response
<i>Issue 5: Changes to penalty amounts and merging Category 1 and 3</i>	
<p>ATCO Power</p> <p>Similarly, ATCO does not object to the AUC's proposal to move ISO rule 6.6 into the Category 1 section of the Penalty Table and increase the penalty amounts for first and second contraventions of Category 1 rules and OPPs.</p> <p>Capital Power</p> <p>The AUC Bulletin states that increasing the Category 1 first and second contravention penalty amounts is proposed by the Commission. The AUC further notes that the Commission is proposing this increase in fines “to better reflect the more severe nature of a Category 1 rule contravention compared to Category 2 contravention and to simplify AUC Rule 019 by merging Category 3 into Category 1.” Capital Power has several concerns and comments regarding these proposed changes.</p> <p>First, Capital Power submits that it is primarily the AESO’s responsibility to determine which ISO Rules are most critical to the reliable operation of the Alberta Interconnected Electrical System (“AIES”). Capital Power is not aware of any correspondence or communication from the AESO suggesting that there are reliability concerns warranting an increase in the current penalties relating to Category 1 rules to reflect the “more severe nature,” as the AUC puts it, of a Category 1 infraction vis-à-vis Category 2. In this respect, there does not appear to be a compelling basis for the Commission to nevertheless propose an increase in fines for Category 1 infractions at this time.</p> <p>Second, Capital Power submits that the current level of penalties is appropriate in terms of encouraging compliance on the part of market participants. Capital Power notes that Operating Policy and Procedure (“OPP”) 102 and ISO Rule 6.2.3 are the</p>	<p>The Commission proposed to increase the Category 1 first and second contravention penalty amounts by \$1000 to better reflect the more severe nature of a Category 1 rule contravention as compared to a Category 2 rule contravention and to simplify AUC Rule 019 by merging Category 3 into Category 1.</p> <p>At present, the penalty amounts for the first and second contraventions of ISO rules are the same in Category 1 and Category 2. It is only on the third, fourth and subsequent contraventions that the penalty amounts are different between Category 1 and 2. In the case of a third contravention the difference is \$2000, and in the case of a fourth or subsequent contravention the difference is \$5000.</p> <p>As discussed in the response to Issue 1, the AESO does not determine the severity of contraventions as contained within AUC Rule 019, and did not propose to change any penalty amounts as part of this consultation. The proposed changes were not a reflection of any concerns of the Commission with respect to reliable operations of the AIES, the number of violations in the past three years, or the overall level of non-compliance. Instead, as noted by the MSA, it was an effort to “simplif[y] the penalty tables and in so doing, consistently appl[y] the principle of a somewhat higher penalty amount to Category 1 identified rules.”</p> <p>Given that the proposed increases to the penalty amounts were not part of the AESO’s request on May 9, 2011, and in response to feedback from Capital Power, TransAlta and TransCanada, the Commission will leave the specified penalty amounts unchanged at the present time, and will consider possible changes in the context of future consultations.</p> <p>The Commission agrees with the comments of TransAlta that in prior consultations, ISO Rule 6.6 was determined to be different from other rules and thus a separate category was created for it. For this reason, the Commission will leave ISO Rule 6.6 in a separate category, and not combine Category 1 and Category 3.</p>

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<p>only Category 1 ISO rules, out of nineteen ISO rules currently listed in Category 1, for which a penalty has been issued in the last three years.¹⁹ Excluding the unique circumstance detailed in the footnote below, only 3 specified penalties were issued for Category 1 violations in the last three years. In these instances, the specified penalty framework was applied and worked as intended. The fact that the framework was invoked in these few isolated instances should not and cannot be viewed as suggesting that the current level of Category 1 penalties is somehow inadequate.</p> <p>Alberta market participants have clearly recognized the importance of complying with ISO rules and have demonstrated compliance with ISO rules in Category 1, such that there is no compelling basis to increase the penalties as proposed. Moreover, the fact that the Market Surveillance Administrator (“MSA”) may impose an administrative penalty if they determine that the specified penalty is insufficient for a particular circumstance must also be noted.</p> <p>Third, Capital Power expects that the intent of AUC Rule 019 is to encourage compliance with ISO rules. As discussed above, Capital Power submits it is clear that the current level of Category 1 penalties is effective and appropriate in promoting compliance. However, even in the event there was an issue with industry compliance, Capital Power submits that increasing the level of fines, by itself, would be effective or helpful in compelling market participants to improve their compliance with ISO rules. In the current version of AUC rule 019 ISO rule 6.6 is the only rule in Category 3, violations of which are subject to the most severe penalties. However, ISO rule 6.6 was the most frequently violated ISO rule prior to the new version’s implementation in mid-2009. Although investigations of potential violations of the new version of ISO Rule 6.6 still dominated the MSA’s enforcement activities in 2010 (excluding the two outlier cases in 2010 where one market participant violated OPP 102 43 times and another market participant violated rule 6.3.3 332 times) most of those investigations resulted in forbearance or a finding of no breach. In this case market participants’ improved compliance is largely attributed to the fact that the requirements in the new version of ISO Rule 6.6</p>	

¹⁹ When this rule was violated 43 times by the same market participant in 2010, a specified penalty of \$500 per infraction was determined to be sufficient.

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<p>are better defined and more practical.</p> <p>This demonstrates that compliance with ISO rules is facilitated and enabled by the development of market rules that have clearly defined requirements that are reasonable and easily understood by market participants, and enforced through an effective penalty regime. Higher penalties in isolation would not be more effective in achieving compliance or communicating the criticalness of a particular ISO rule, particularly if the rules they are intended to enforce are ambiguous or impractical.</p> <p>MSA</p> <p>With reference to the Commission’s draft Rule 019, the MSA is supportive of the proposed changes to the existing penalty table(s). In the MSA’s view, the combining of penalty tables and adjustment of penalty amounts appropriately simplifies the penalty tables and in so doing, consistently applies the principle of a somewhat higher penalty amount to Category 1 identified rules.</p> <p>TransAlta</p> <p>TransAlta believes that increasing the fines for Category 1 is unnecessary and that the more severe nature of a Category 1 rule contravention is reflected in the notice of specified penalty letter sent to the most senior executive when a fourth contravention occurs. This non-monetary penalty is a sufficient inducement for market participants to reduce their compliance incidents. According to the AESO’s Q2/11 Compliance Report, only two out of the last thirty-seven contraventions referred to the MSA were Category 1 contraventions. This demonstrates that the current fines are sufficient to induce market participants to reduce their contraventions in this category.</p> <p>TransAlta is very concerned about the merging of Category 1 and Category 3. We believe that these should remain separate categories because it would better reflect the nature of the ISO rules. Category 3 contains ISO rule 6.6: Pool Participant Non-Compliance with Energy Market Dispatches. Companies like TransAlta have thousands of dispatches per year and thousands of restatements per year. The numbers of restatements and dispatches results in a certain number of errors that are</p>	

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<p>a result of pure human error, which cannot be addressed through changes to policy or procedure. Category 1 contains contraventions against numerous rules; however, these rules do not require the degree of constant responses by the market participants as compared to ISO Rule 6.6. In prior consultations, ISO Rule 6.6 was determined to be different from other rules and thus a separate category was created for it. We believe that ISO Rule 6.6 remains different and thus we do not see any reason why it should be amalgamated with other categories.</p> <p>TransCanada</p> <p>Finally, TCE is opposed to any change to the quantum of specified penalties without justification. The amendments proposed by the AUC would increase the penalty for Category 1 violations by 300%. TCE is unaware of any concerns or issues regarding the existing penalty amounts that would justify such a large increase for this category of violations. Furthermore, in addition to confusion about the interest of the AESO in amending Rule 019, TCE is unaware of the basis for why the AESO has elected to designate the proposed added rules as either Category 1 or Category 2, and would appreciate further explanation in this regard. Without this understanding, TCE supports maintaining the status quo with respect to the categorization of offences and the respective penalty amounts.</p>	
<i>Issue 6: Discretion, business judgment and unintended consequences</i>	
<p>AltaLink</p> <p>The application of specified penalties to the Affected Rules/OPPs, and particularly ISO Rules 9.1.2, 9.1.3, and 9.1.5, will impair current, workable business practices and the application of reasonable business judgment. The use of business judgment is established on the wording of the Affected Rules/OPPs and reflects the historical practices of market participants. The ISO has acknowledged that discretion is inherent in its rules.²⁰</p>	<p>Section 20.8 of the <i>Electric Utilities Act</i> requires market participants to comply with ISO rules and reliability standards that are in effect. If the MSA is satisfied that a person has contravened ISO rule 9.1.2, 9.1.3 or 9.1.5, it may give written notice to the Commission. That notice to the Commission could seek to impose an administrative penalty, any terms and conditions the Commission considers appropriate or prohibit the engagement in specified conduct as determined by the Commission.</p> <p>Given that the above relief exists today, the Commission is not convinced that the</p>

²⁰ AESO Recommendation Paper Rule 6.6 Review (October 30, 2008), pages 2 and 4.

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<p>Moreover, the retention of a flexible approach to ISO Rules is consistent with the ISO's duty under section 17 of the <i>Electric Utilities Act</i> to facilitate an efficient transmission system.</p> <p>The July 20, 2011 amendments result in the inflexible enforcement of OPP 601 and ISO Rules 9.1.2, 9.1.3, and 9.1.5 under AUC Rule 019. Discretionary practices under the Affected Rules/OPPs which are currently functional would become subject to sanction under the July 20, 2011 amendments. Examples of such flexible past practices include:</p> <ul style="list-style-type: none"> • monthly TFO reporting which occurs on or before the 15th Business Day of each month; • actions by the ISO which occurs on or before the 15th Business Day of each month; and • as consented to by the ISO, the provision of outage plans by TFOs as commercially and technically required rather than strictly by 12:00 noon as indicated. <p>The types of practices captured under the Affected Rules/OPPs, such as those described above, are administrative in nature and do not impact system safety or reliability. Where the Affected Rules/OPPs require parties to meet specific deadlines for reporting or other exchange of information, AltaLink's experience is those deadlines are generally met. In instances where discretion with strict compliance is applied, delay of information provision is not more than a day or two. Both the ISO and TFOs have been subject to delays.</p> <p>AltaLink is not aware of disputes respecting the ISO's and TFOs' application of the Affected Rules/OPPs. AltaLink's experience is that TFOs and the ISO work within the spirit of the ISO Rules and that parties have been able to accommodate reasonable requests for diversions from strict application of the rules. There is no business or safety concern if parties continue to apply discretion to the Affected Rules/OPPs without penalty, and some risk that the application of such penalties will create inefficiencies in workable business practices. Additional enforcement through</p>	<p>application of specified penalties as a possible enforcement tool will impair the current business practices and the application of reasonable business judgment. Further, pursuant to Section 57 of the <i>Alberta Utilities Commission Act</i>, the MSA also has the option of exercising forbearance and is not required to impose specified penalties in each instance of ISO rule contravention.</p>

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<p>the application of specified penalties is therefore unnecessary.</p> <p>ATCO Electric</p> <p>While the intent is to be compliant in all instances with ISO rules and policies, there is a difference in how we manage compliance with the Alberta Reliability Standards (ARS) and the operating policies. Processes are developed to ensure compliance with and to be able to demonstrate compliance with, the ARS. These measures necessitate the incurrence of additional overheads related to record keeping and internal checks and balances, and result in a reduction in flexibility to apply judgment to deal with circumstances which do not fit strictly within any such process.</p> <p>As an example, the TFO may be requested to develop a NID estimate or Service Proposal, and in the course of the development these documents may discover that the existing system does not have adequate capacity and that system reinforcements are required. In these instances, we have worked with the AESO to incorporate required system reinforcements into the project, but that scope change resulted in a delay to the production of the planning document. That delay was less than what would have resulted if ATCO Electric had insisted on starting the process over if the scope changed. In the future, facing the possibility of penalties, the TFOs are likely to increase their staffing to manage anticipated peaks in workload, or to extend estimated delivery times for projects to ensure they are able to meet the targets. TFOs are also likely to insist on restarting the process if there are material changes to scope. None of these likely outcomes contribute to the efficient operation of the market and the transmission system. These implications need to be assessed before subjecting these matters to penalties.</p>	
<i>Issue 7: Transition period</i>	
<p>AltaLink</p> <p>If the Affected Rules/ OPPs ultimately become subject to specified penalties,</p>	<p>The ISO rules that are the subject of the AESO’s May 9, 2011 request have been in effect for some time and do not involve ISO rule changes. Any implementation period required</p>

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<p>AltaLink requests an effective date that is a minimum of nine months after the approval date of the rule changes. This transition period is required for TFOs to assess and implement appropriate compliance programs to ensure adherence, and is consistent with prior ISO Rule change initiatives.</p>	<p>would have already taken place prior to the ISO rules coming into effect.</p> <p>Section 20.8 of the <i>Electric Utilities Act</i> requires market participants to comply with ISO rules and reliability standards that are in effect. The Commission does not consider that a transition period is necessary given that market participants are currently required to comply with the affected rules.</p>
<p>Issue 8: Trends in the US</p>	
<p>ATCO Electric</p> <p>The US has gone through a trend of extensive compliance reporting and processing of penalties, and their system has become unworkable. They have announced a streamlined process on August 4, 2011 where:</p> <p style="padding-left: 40px;">“...The new process differentiates issues of noncompliance based on the level of potential risk to the reliability of the bulk power system. All instances of noncompliance will continue to be identified and mitigated. Issues that pose a more serious risk to the reliability of the bulk power system will be filed at the Federal Energy Regulatory Commission on a monthly basis in a further streamlined spreadsheet Notice of Penalty format. Matters that pose a low risk to reliability will be processed on a “find, fix, track and report” spreadsheet that will be submitted on a monthly basis to FERC. ...”²¹</p> <p>The original process for dispute resolution contemplated when the operating policies were drafted keeps the process for problem resolution simple and efficient. Nothing precludes the AESO from taking an issue of a more serious nature to the MSA for investigation and follow-up.</p>	<p>The compliance model adopted in Alberta, through legislation and regulations, is significantly different than the U.S. model. The Commission considered these differences in the context of the development of AUC Rule 027 – <i>Specified Penalties for Contravention of Reliability Standards</i> (AUC Rule 027).</p> <p>The Commission monitors activities in the United States with respect to the development and implementation of reliability standards. The language quoted by ATCO Electric is from a news release regarding the enforcement of reliability standards. Specified penalties have been widely adopted for reliability standards that have been approved in Alberta.</p>

²¹ http://www.nerc.com/fileUploads/File/News/MR_Enforcement_04AUG11.pdf.

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Issue 9: Other issues	
<p>Capital Power</p> <p>Capital Power continues to support the creation of an additional category applicable to all ISO rules not yet assigned to a particular category. This default category should impose nominal penalties of \$500, \$1000, \$1500, and \$2,000 for the first, second, third, and fourth and subsequent infractions respectively. This would be the most efficient way of enforcing ISO rules not yet assigned a severity ranking as it would alleviate the need for consultations each time a new ISO rule is added (or a rule number is changed as part of the AESO’s Transition of Authoritative Documents (“TOAD”) process).²² The MSA could still determine that an administrative penalty would be more appropriate for a particular circumstance and a stakeholder consultation could be initiated if a specific rule would be more appropriately placed in one of the other specified penalty categories.</p> <p>MSA</p> <p>The MSA is supportive of the AESO’s letter of May 9, 2011 in this matter, given the AESO’s important role to monitor the market in support of compliance with rules and standards and the alignment of that role with the MSA’s mandate of compliance enforcement.</p> <p>In principle, the MSA endorses broadening the applicability of the specified penalties framework set out in AUC Rule 019 to include all ISO rules not currently identified in the Rule 019 penalty tables. In the view of the MSA, the availability of specified penalties serves to increase regulatory efficiency given that it is an expedited mechanism to resolve non-compliance matters.</p> <p>Currently, in the event the AESO refers a suspected contravention of an ISO rule to the MSA for which there is no penalty specified in AUC Rule 019 and the MSA is satisfied that enforcement action is warranted, the MSA can take either of the</p>	<p>The introduction of a “catch-all” category, as suggested by Capital Power, was discussed in the previous consultation regarding AUC Rule 019 which took place from January 27, 2010 to February 16, 2010. At that time the Commission advised that it would not establish a “catch-all” category within AUC Rule 019, and will continue to review ISO rules on a case-by-case basis as changes take place through the roll out of the AESO’s TOAD initiative. Given the concerns expressed by the TFO’s with respect to the introduction of the affected rules as proposed by the AESO, the Commission continues to be of the view that it will not introduce a “catch-all” category. Instead, the case-by-case approach will allow parties the opportunity to raise any concerns to the Commission as specific ISO rules are brought forward by parties.</p> <p>Capital Power noted that ISO rule 4 has recently been removed from the ISO rules. Since ISO rules 4.2, 4.3, 4.4, 4.5 and 4.6 are no longer in effect, they will be removed from AUC Rule 019. Further, since ISO rule 10.10 and OPP 003.3 are no longer in effect, these rules will also be removed from AUC Rule 019.</p> <p>The Commission is not opposed to the suggestion made by the MSA that OPP 402 and OPP 515 be added to the specified penalty tables in AUC Rule 019. However, at the present time, both OPP 402 and OPP 515 have had letters of notice issued by the AESO. The letter of notice regarding OPP 402 was issued on January 29, 2009 and the letters of notice regarding OPP 515 were issued on February 17, 2011 and June 16, 2011. Given this situation, the Commission will not add OPP 402 or OPP 515 to the penalty tables at the present time.</p> <p>In response to the suggestion made by the MSA that ISO rule 6.5.3 be relocated to Category 1, the Commission reviewed the history of ISO rule 6.5.3 contraventions. The Commission agrees with the recommendation of the MSA and will relocate ISO rule 6.5.3 to Category 1.</p> <p>The Commission considered how parties might request changes to AUC Rule 019 as</p>

²² For example, ISO rule 4 included in proposed Category 1 has recently been removed from the ISO rules.

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<p>following actions:</p> <ul style="list-style-type: none"> • As set out in s. 51 of the <i>Alberta Utilities Commission Act</i> (AUCA), pursue an administrative penalty by filing a request for hearing or other proceeding before the Commission; • As provided in s. 44 of the AUCA, pursue a negotiated settlement which is then subject to approval by the Commission <p>In either case, there may be no basis on which to impose an administrative penalty substantially different from the range of penalties defined in AUC Rule 019 - i.e. the contravention may not involve disgorgement or demonstrable market impact. However, both of these procedural alternatives consume additional resources on behalf of all parties involved and result in longer times for resolution.</p> <p>The identification of an ISO rule within the Rule 019 penalty table(s) does not hinder the MSA from pursuing a penalty by other means - i.e. a different administrative penalty or other sanction as applicable. However, the absence of an ISO rule from the Rule 019 penalty tables unavoidably imposes a regulatory burden relative to matters that do not warrant a proceeding.</p> <p>In addition to consideration of the eleven ISO rules recommended by the AESO for inclusion into AUC Rule 019, the MSA recommends the inclusion of OPP 402 and OPP 515 on the basis that compliance matters have been reported to the MSA in regards to these OPP's during 2011. In addition, the MSA believes ISO rule 6.5.3 – Ancillary Services Expectations, warrants relocation to Category 1 of the redrafted rule. Rule 6.5.3 speaks to the response of an ancillary services provider to an ancillary services directive. The MSA considers compliance with system controller directives to be at least as significant as compliance with rules identified within the draft Category 1 penalty table and believes rule 6.5.3 should be positioned within the penalty tables accordingly.</p> <p>Finally, the MSA would like to take this opportunity to suggest the creation of linkage between the prevailing ISO rule approval process and consideration of ISO rules for inclusion in AUC Rule 019. (This would make sense for AUC Rule 027</p>	<p>outlined in Bulletin 2010-31. Given that the MSA's linkage suggestion is outside the scope of the present consultation, the Commission will refrain from introducing any process changes that create a linkage between the ISO rule approval process (as addressed in AUC Rule 017) and AUC Rule 019. The Commission will consider the suggestion in the event it seeks to consult on AUC Rule 017.</p>

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<p>also insofar as reliability standards, in our view.) The process of establishing a new ISO rule seems a natural opportunity and trigger for the Commission to consider (separately) whether that rule should be made eligible for treatment as a specified penalty. This would not preclude parties from bringing forward suggestions about changes to AUC Rule 019, but would help the Rule to organically adapt as appropriate.</p>	