

AUC Rule 032 Stakeholder comment table

[Stakeholders: ATCO Utilities and ATCO Energy (ATCO), Cognera Corp. (Cognera), ENMAX Energy Corporation (ENMAX), ENMAX Power Corporation (EPC), EPCOR Distribution and Transmission (EDTI), EPCOR Energy Alberta GP Inc. (“EEA”) and Encor by EPCOR (“Encor”) both entities referred to as (EPCOR), FortisAlberta Inc. (FortisAlberta), Alberta Utility Billing (AUB), Alberta Electric System Operator (AESO), AltaGas Utilities Inc. (AUI), Alberta Federation of Rural Electrification Associations (AFREA), Office of Utilities Customer Advocate (UCA), Direct Energy (Direct)]

Notes: To address stakeholder comments and concerns expressed at the consultation meeting of November 26, 2018, and subsequent written comments received by December 3, 2018, the AUC has made the following changes to Rule 032:

- Added Section 4 Factors to be considered
 In making a decision on whether to issue a specified penalty, the Commission may consider the following:
 - (a) the impact on any person adversely affected by the contravention;
 - (b) the number of persons affected by the contravention;
 - (c) the timeliness of the action taken by the person who committed the contravention to address the conduct, activity or omission that resulted in the contravention;
 - (d) the level of satisfaction of the person affected by the contravention resulting from any action taken by the person who committed the contravention;
 - (e) if the conduct, action, or omission that resulted in the contravention was an isolated instance or a recurring problem; or
 - (f) any action taken by the person who committed the contravention to ensure compliance in the future.
- Section 4 Penalty assessment of the proposed rule, has now become Section 5 of the final rule. The following was added to new Section 5:
 - (2) For contraventions of the AUC rules listed in the penalty table, the Commission 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 120-day rolling period.
 - (3) When a service guarantee has been paid to a customer in accordance with Rule 003, the Commission will reduce the specified penalty by that amount.
- The Commission has also changed the rolling period for contraventions from a 12-month rolling period to a 120-day rolling period and has adjusted the number of contraventions within each penalty column.

Section	Subsection	Proposed language (dated November 19, 2018)	Revised language	Stakeholder comments on proposed language	AUC Response
2 Application	(2)	(2) For purposes of this rule, the 12-month rolling period is the period which is 365 days before the date on which the contravention of the AUC rules occurred.	(2) For purposes of this rule, the 120-day rolling period is the period which is 120 days immediately before the date on which the contravention of the AUC rules occurred.		AUC: To address concerns about the escalation of the amount of the specified penalty in a 12-month rolling period, the Commission: (1) changed the period within which the total number of contraventions are assessed and the specified penalty amount is determined from 12-month rolling to 120-day rolling period; and (2) adjusted the number of contraventions within each penalty column.
3 Notice of specified penalty	3.1	The Commission may issue a notice of specified penalty under Section 63.1(1) of the <i>Alberta Utilities Commission Act</i> if the Commission is satisfied that a person has contravened the AUC rules listed in the penalty table.	3(1) The Commission may issue a notice of specified penalty under Section 63.1(1) of the <i>Alberta Utilities Commission Act</i> if the Commission is satisfied that a person has contravened one or more of the AUC rules listed in the penalty table.	UCA: Section 3 – Further details are needed to clarify the process for how compliance will be monitored and how the Commission will receive, review, investigate and publicly report contraventions. What type of monitoring does the Alberta Utilities Commission envision utilizing to identify stakeholder contravention(s) of Rule 032? The UCA recommends that the AUC conduct annual audits to investigate complaints including concerns from consumers that contacted the UCA as well as customers that bring forward matters to be investigated.	AUC: As currently contemplated, the Commission’s process to receive, review and investigate potential contraventions will be similar to the current enforcement process. Public reporting of contraventions is explicitly addressed within Rule 032 in sections 6(1) and 6(2).
	3.2	A notice of specified penalty will set out (a) the name of the person that is required to pay the specified penalty; (b) the date or dates of the contravention; (c) the AUC rule that was contravened;	3(2) A notice of specified penalty will set out ... (d) a description of the conduct of the person named, its officers, personnel, or agents, the activity or omission that resulted in the contravention and any other particulars relating to the contravention;	AFREA: 3.2.1: When the person required to be notified is a rural electrification association (REA), then the notice of a specified penalty will be sent to the registered representative of the REA. Some REAs contract their billing services under Rule 003. Once the contracts with these service providers is amended and updated to comply with the changes to Rule 003, presumably it would be the contractor, and not the REA who bears the liability of the penalty, and the public record of the violation.	AUC: In accordance with the penalty table, any notice of specified penalty will be sent to the corporate entity (or entities) responsible for the contravention.

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		<p>(d) a description of the conduct of the person named, its officers, personnel, or agents, activity or omission that resulted in the contravention and any other particulars relating to the contravention;</p> <p>(e) a description of the facts upon which the Commission relied to conclude that a contravention had taken place;</p> <p>(f) the amount of the specified penalty for each day of the contravention, if the contravention continued for more than one day;</p> <p>(g) whether any adjustment to the specified penalty was made due to self disclosure of the contravention by the person;</p> <p>(h) the date, no less than 30 days from the date of issuance, on which the payment of the specified penalty is due and to whom the amount of the specified penalty is payable;</p> <p>(i) a notice that failure to pay the specified penalty will result in a hearing or other proceeding before the Commission; and</p> <p>(j) information about how a person that disputes the issuing of the notice may notify the Commission of such dispute and that a hearing or other proceeding before the Commission will result.</p>	<p>...</p> <p>(g) whether any adjustment to the specified penalty was made due to self-disclosure of the contravention by the person or to the payment of a service guarantee to a customer under Rule 003: Service Standards for Energy Service Providers;</p> <p>(h) the date, no less than 30 days from the date of issuance, on which the payment of the specified penalty is due and the person or persons to whom the amount or any part of the amount of the specified penalty is payable;</p>		
	3.3	The Commission shall send the notice of specified penalty to the person in the position identified in the penalty table.	3(3)	UCA: Section 3.3 – The AUC states that the Commission will send the notice of specified penalty to the person in the position identified in the penalty table. If multiple individuals are involved in the contravention of the AUC rule(s) listed in the penalty table will multiple individuals receive the notice?	AUC: In accordance with the penalty table, any notice of specified penalty will be sent to the corporate entity (or entities) responsible for the contravention.
	3.4	<p>The Commission must issue a notice of specified penalty within</p> <p>(a) two years after the date on which the Commission first knew, or in the circumstances ought to have known of the contravention, or</p> <p>(b) four years after the date on which the contravention</p>	3(4)	<p>Cognera: 3.4 Clarify that a contravention would not apply to anything before Jan 1, 2019.</p> <p>Clarification whether a contravention (event) that effects many customers is considered one or many events?</p> <p>Direct: In Section 3.4, the retroactive periods are identical to those in Rule 019, but should be amended to only cover 24 months, since these errors are not similar to the contraventions that are penalized in Rule 019 and customers should hold some responsibility to report any billing errors in a timely fashion.</p> <p>ENMAX: iii) Section 3.4:</p> <p>ENMAX submits that the historical timeframe for which the AUC will levy a specified penalty should be reduced to:</p>	<p>AUC: Rule 032 is effective January 1, 2019.</p> <p>The AUC will consider all of the facts of an apparent contravention and make a determination as to whether to levy one or more specified penalties.</p> <p>The AUC is of the view that the limitation periods are fair and no change was made.</p>

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		occurred, whichever period expires first.		(a) "one year after the date on which the Commission first knew, or in the circumstances ought to have known of the contravention or, (b) two years after the date on which the contravention occurred, whichever period expires first." ENMAX believes the reduced timeframe is reflective of the expedited process the Commission is seeking and provides a reasonable timeframe for all parties to investigate a potential error. ENMAX also requests confirmation that the timeframe referenced above will begin on January 1, 2019.	
New 4 Factors to be considered		None. New section in revised language.	4 Factors to be considered In making a decision on whether to issue a specified penalty, the Commission may consider the following (a) the impact on any person adversely affected by the contravention; (b) the number of persons affected by the contravention; (c) the timeliness of the action taken by the person who committed the contravention to address the conduct, activity or omission that resulted in the contravention; (d) the level of satisfaction of the person affected by the contravention resulting from any action taken by the person who committed the contravention; (e) if the conduct, action, or omission that resulted in the contravention was an isolated instance or a recurring problem; or (f) any action taken by the person who committed the contravention to ensure compliance in the future.		AUC: This section formalizes the Commission's discretion when determining whether to issue a notice of specified penalty. The section is intended to address concerns raised by stakeholders about explicitly outlining those factors that the Commission may take into consideration when deciding whether to issue a notice of specified penalty.
5 Penalty assessment	5(1)	4 Penalty assessment 4.1 The Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table.	5 Penalty assessment 5(1) The Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table.	UCA: Section 4.1 – The UCA submits that this Rule should define the specific criteria to be used by the AUC to determine the seriousness of the identified conduct.	AUC: As currently contemplated, the Commission's process to receive, review and investigate potential contraventions will be similar to the current enforcement process. The penalty table escalates the amount of the penalty based on the number of contraventions within the 120-day rolling period.
	5(2)	4.2 For contraventions of the AUC rules listed in the penalty table, the Commission will escalate the amount of the specified penalty at the level of reoccurrence in the penalty table, in accordance with the number of contraventions	5(2) For contraventions of the AUC rules listed in the penalty table, the Commission 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		AUC: To address concerns about the escalation of the amount of the specified penalty in a 12-month rolling period, the Commission: (1) changed the period within which the total number of contraventions are assessed and the specified penalty amount is determined from 12-month rolling to 120-day rolling period; and (2) adjusted the number of contraventions within each penalty column.

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		which have been issued in the 12-month rolling period.	have been issued in the 120-day rolling period.		
	5(3)	None. New subsection in revised language	5(3) When a service guarantee has been paid to a customer in accordance with Rule 003, the Commission will reduce the specified penalty by that amount.		
	5(4)	4.4 When a person voluntarily discloses that it has contravened an AUC rule listed in the penalty table, the Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table and may reduce the amount of the specified penalty by 50 per cent.	5(4) When a person voluntarily discloses that it has contravened an AUC rule listed in the penalty table, the Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table and may reduce the amount of the specified penalty by 50 per cent.	<p>EPCOR: EPCOR understands that the Commission used AUC Rule 019 to draft Rule 032 and after review EPCOR noted there are some differences in language between the two Rules. For consistency purposes, EPCOR recommends that Rule 032 mirrors Rule 019, specifically language in Rule 019, section 4.3. EPCOR proposes language in Rule 032, section 4.4 read as follows:</p> <p>4.4 When a person voluntarily discloses that it has contravened an AUC rule listed in the penalty table, the Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table and may reduce the amount of the specified penalty by 50 per cent.</p> <p>AFREA: Rule 032, Section 3.2(j) reads: "Information about how a person that disputes the issuing of the notice may notify the Commission of such dispute and that a hearing or other proceeding before the Commission will result." This implies that parties have the right to dispute the specified penalty. The AFREA suggests that to aid in regulatory efficiency, self-disclosure should include a measure of discretion to allow the AUC to both ensure that the intention of Bill 13 is upheld, but not unreasonably so. The AFREA further suggests that eliminating the phrase "by 50 per cent" provides the Commission the opportunity to respond to due diligence or other legal measures that ought to be considered prior to the need for a hearing.</p> <p>When a person voluntarily discloses that it has contravened an AUC rule listed in the penalty table, the Commission shall determine the amount of the specified penalty in accordance with this section and the penalty table and may reduce the amount of the specified penalty. by 50 per cent.</p> <p>ENMAX: ENMAX has reviewed the draft AUC Rule 032 and requests clarity regarding the investigation process, the process for self-reporting, Section 3.4, Section 4.4, the penalty table and the application of a due diligence defence.</p> <p>i) Investigation Process</p> <p>ENMAX requests that the AUC confirm that the AUC will be the sole investigative body for suspected contraventions of AUC Rule 032. ENMAX also requests that the procedures for the investigation, including whether the investigation will be made public, be provided to market participants for comment.</p> <p>ii) Self-Report Process</p> <p>ENMAX requests clarification with respect to the self-reporting under Rule 032. Specifically, does the AUC expect that self-reports would be included in the quarterly and annual Rule 003 reports or via an additional mechanism? In addition, will parties that self-report receive confirmation from the AUC that the matter is closed?</p> <p>ENMAX is of the view that the Commission should take a consistent approach with AUC Rules 019 and 027. Accordingly, ENMAX proposes the following language for Section 4.4:</p> <p>" ... the specified amount penalty in accordance with this section and the penalty table will reduce the amount of the specified penalty by 50 per cent. ... "</p>	<p>AUC: The AUC is of the view that the difference between Rule 019 and Rule 032 is warranted. No change was made to the proposed language.</p> <p>Please see Section 6(2), a person may dispute a notice of specified penalty. Please also see new Section 4.</p> <p>AUC: Confirmed, the AUC will be the sole investigative body.</p> <p>As currently contemplated, the Commission's process to receive, review and investigate potential contraventions will be similar to the current enforcement process. Public reporting of contraventions is explicitly addressed within Rule 032 in sections 6(1) and 6(2).</p> <p>The manner in which a self-disclosure is made under Rule 032 is described in Section 5(4) and Section 5(5).</p>
	5(5)	4.5 A self-disclosure statement referred to in Section 4.4 must: (a) be made in writing to the Commission prior to the Commission contacting the person about the contravention; (b) include the name, address, telephone number and email	5(5) A self-disclosure statement referred to in Section 5(4) must (a) be made in writing to the Commission prior to the Commission contacting the person about the contravention; (b) include the name, address, telephone number and email address of the person;	<p>AFREA: 4.6: A transition period of twelve (12) months is provided under this rule to rural electrification associations (REAs). On or before the end of the transition period, the REA must inform the AUC if a contractor or other entity will provide data on behalf of the REA. Any changes to the representation of an REA must be reported to the AUC within sixty (60) days or the change.</p> <p>REAs are governed under the Rural Utilities Act (RUA), as well as the EUA and the changes made to filing requirements following Bill 13. Under the RUA, changes in governance require special motion or approval at an AGM. Those changes include compliance with the new Rule 003 which is on the Penalty Table at page 4 of Rule 032. For those REAs that choose to implement Rule 003 under self-governance and self-operation, governance models and administrative duties may need to change. For those REAs that contract their billing through an RRO contract, there will need to be contractual revisions to ensure that a) the parties have a meeting of the minds to have</p>	AUC: No transition period will be provided for any ESP.

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		<p>address of the person;</p> <p>I describe in detail the contravention, including the AUC rule that was contravened, the date and duration of the contravention of the AUC rule, a description of the conduct, activity or omission that resulted in the contravention, any mitigating or aggravating factors in relation to the contravention and any other particulars relating to the contravention;</p> <p>(d) describe in detail the action taken to reasonably resolve the issue with the customer, or any other affected party (i.e., retailer, distributor) for the contravention; and</p> <p>(e) provide any other information the person considers to be relevant to the events that took place.</p>	<p>(c) describe in detail the contravention, including the AUC rule that was contravened, the date and duration of the contravention of the AUC rule, a description of the conduct, activity or omission that resulted in the contravention, any mitigating or aggravating factors in relation to the contravention and any other particulars relating to the contravention;</p> <p>(d) describe in detail any action taken to resolve the issue with the person affected by the contravention; and</p> <p>(e) provide any other information the person considers to be relevant to the events that took place.</p>	<p>the contractor conduct Rule 003 compliance on behalf of the REA, and b) that the liability of any non-compliance is resolved. AFREA respectfully requests a transition time to allow for changes in governance and contract negotiations to occur, and proper approval made at an AGM or by special resolution in accordance with the REA bylaws and the RUA and its regulations.</p> <p>UCA: Section 4.5 I should read Section 4.5 (c). The UCA submits that Section 4.5 (c) should also include a requirement to indicate how the contravention was discovered.</p> <p>Section 4.5 (d) the UCA suggests adding whether a service guarantee or goodwill gesture was paid to the consumer.</p>	<p>AUC: The section numbering has been updated accordingly Please see the AUC response in Section 5(4).</p> <p>Please see new Section 5(3).</p>
<p>6 Posting of notice of specified penalty</p>		<p>5 Posting of notice of specified penalty</p> <p>5.1 The Commission will make public any notice of specified penalty issued for a contravention of AUC rules under Section 63.1(1) of the <i>Alberta Utilities Commission Act</i> at the same time the notice of specified penalty is issued and post the notice on the Commission's website.</p> <p>5.2 Where a person has failed to pay the specified penalty or a person disputes the notice of specified</p>	<p>6 Posting of notice of specified penalty</p> <p>6(1) The Commission will make public any notice of specified penalty issued for a contravention of AUC rules under Section 63.1(1) of the <i>Alberta Utilities Commission Act</i> at the same time the notice of specified penalty is issued and post the notice on the Commission's website.</p> <p>6(2) Where a person has failed to pay the specified penalty or a person disputes the notice of specified penalty, the Commission will</p>	<p>Cognera: 5.1 – Will they post on the website before the dispute mechanism has kicked in or after?</p> <p>Is this penalty distributed to the customer or given to the AUC?</p> <p>UCA: Section 5.0 Posting of notice of specified penalty – The UCA supports the Commission making public any notice of specified penalty issued for a contravention of AUC rules. The UCA recommends that the amount and specifics of all specified penalties along with the corrective actions that are implemented should be included in the notice of specified penalty.</p> <p>The UCA submits a section 5.3 should be added to state that a regulated rate provider or default supply provider shall not include for recovery in a regulated rate tariff application or a default rate application, specified penalty, hearing costs defending specified penalties or goodwill gesture amounts paid to customers.</p> <p>Penalty Table- The UCA understands that the AUC's initial focus is implementing rules that pertain to applying specified penalties for contravention related to billing and customer care, however, the UCA submits that contravention of Rule 002 should also be included in the proposed Penalty Table.</p> <p>The UCA would like to understand why the Commission plans to wait until the eighth and ninth contravention in a rolling 12-month period before notifying the most senior executive of the person (i.e., president, chief executive officer) or its parent company if the regulated entity is a wholly owned subsidiary or affiliate , or chief compliance officer, if applicable. The UCA recommends that the most senior executive of the person or its parent company notification should occur from the fourth and fifth contravention in a rolling 12-month period.</p> <p>The UCA believes that it would be helpful to clarify what constitutes a specified penalty event. For example: A retailer makes changes to their billing system and in error sends two customers "Notice of Disconnection" communications. Is this considered one event or two events?</p>	<p>AUC: Please see Section 6(1), which states that the notice of specified penalty will be posted once it is issued.</p> <p>Please see Section 3(2)(h). The AUC will state in the notice of specified penalty to whom the amount or any part of the amount of the specified penalty is payable.</p> <p>Please see Rule 003 Section 3.4.2(2).</p> <p>The AUC plans to initiate changes to Rule 002 in 2019.</p> <p>The AUC is of the view that no change was needed. As the number of contraventions and the specified penalty amounts escalate within a particular rolling period, the matter is brought to the attention of the president or the senior executive officer.</p> <p>The AUC will consider all of the facts of an apparent contravention and make a determination as to whether to levy one or more specified penalties.</p>

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		penalty, the Commission will: (a) indicate on its website that the specified penalty has not been paid or that the notice of specified penalty is being disputed; and (b) once the Commission has held a hearing on a disputed specified penalty and rendered a decision with respect to the specified penalty, post a link to the Commission's decision on its website.	(a) indicate on its website that the specified penalty has not been paid or that the notice of specified penalty is being disputed; and (b) once the Commission has held a hearing on a disputed specified penalty and rendered a decision with respect to the specified penalty, post a link to the Commission's decision on its website.																				
General comments from stakeholders				<p>Direct: Direct Energy (DE) understands that AUC Rule 019: Specified Penalties for Contravention of ISO Rules was used as the template for Rule 032, but notes that Rule 019 was constructed to penalize wholesale power producers who generate electricity under the ISO rules. Rule 032, in contrast, is intended to penalize utilities for service that is provided by way of millions of customer bills each month. DE notes that the magnitude of the penalties has not been reduced to recognize the vast difference in the type of contraventions being penalized under each of these rules. For example, sharing non-public power plant outage information with the traders on a generator's trade floor is not comparable to sending out gas and electricity bills, that may not impact a customer financially, but may simply include the incorrect spelling of a line item. In this way, the scale of the penalties in Rule 032 should be reduced to align with the gravity of the potential errors. In addition, first infractions should be spared a penalty.</p> <p>DE notes that if 5% of the cases referred by the AESO to the MSA result in specified penalties under Rule 019, the issuance of specified penalties under Rule 032 should be similarly rare, or extremely rare if the scale of Rule 032 penalties is not reduced.</p> <p>In the event that the billing error was the result of incorrect tariff files, the blame rightfully resides with the distributor and should not be included in Rule 032.</p> <p>As a critical final point, DE notes that one event should be considered one contravention. The number of customers involved in a contravention should not alter the fact that only one contravention occurred. This would allow a larger provider to not be penalized more commonly due to a broader billing base of customers, which helps in maintaining the fair application of Rule 032.</p> <p>EDTI: EDTI does not have any suggested changes or comments regarding Rule 032.</p> <p>EPCOR: From the consultation meeting on November 26, 2018, EPCOR understands that the AUC's intent with Rule 032 is to not penalize utility companies when operating with best intent and providing excellent customer care. EPCOR further understands that the AUC views EPCOR as a responsible utility that does not negatively impact customers. The penalty structure would levy material penalties against EPCOR for less than a 0.2% error rate per year. In 2017 and 2018 YTD EEA issued 47 and 54 service guarantee credits YTD respectively. Using the specified penalty structure outlined in AUC Rule 032, EEA calculated the following:</p> <table border="1" data-bbox="1299 1528 2352 1695"> <thead> <tr> <th>Year</th> <th>Number of Service Guarantee Credits Issued</th> <th>Total Penalty (\$)</th> <th>Total Disconnects</th> <th>Total Disconnects in Error</th> <th>Error %</th> </tr> </thead> <tbody> <tr> <td>2017</td> <td>47</td> <td>\$412,500</td> <td>24,456</td> <td>42</td> <td>0.17</td> </tr> <tr> <td>2018</td> <td>54</td> <td>\$482,500</td> <td>23,234</td> <td>34</td> <td>0.15</td> </tr> </tbody> </table> <p>(7) At the consultation, there were discussions around including a timeline of when resolution would be completed for a contravention which would mean the potential of no penalty issued to the RSP. EPCOR would like to propose that language be added into AUC Rule 032 section 3, Notice of specified penalty:</p> <p>Should an RSP and/or WSP/DSO demonstrate that resolution has been communicated to the customer with a date outlining when the issue will be resolved, and is communicated within 30 days of the utility knowing</p>	Year	Number of Service Guarantee Credits Issued	Total Penalty (\$)	Total Disconnects	Total Disconnects in Error	Error %	2017	47	\$412,500	24,456	42	0.17	2018	54	\$482,500	23,234	34	0.15	<p>AUC: In accordance with the penalty table, any notice of specified penalty will be sent to the corporate entity responsible for the contravention.</p> <p>The Commission has considered these concerns and has added Section 4, which sets out the factors to be considered on whether to issue a notice of specified penalty. In addition, the Commission has also changed the rolling period for contraventions from the 12-month rolling period to the 120-day rolling period and has adjusted the number of contraventions within each penalty column.</p> <p>Please see new Section 5(3).</p>
Year	Number of Service Guarantee Credits Issued	Total Penalty (\$)	Total Disconnects	Total Disconnects in Error	Error %																		
2017	47	\$412,500	24,456	42	0.17																		
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				<p>of the issue or the customer notifying the utility, whichever is earlier, then a penalty will not be issued to the RSP and/or the WSP/DSO.</p> <p>AUI: In the event that AUI's proposed changes are not incorporated into Rule 003, AUI is of the view that further amendments should be made to the proposed text of Rule 032 to explicitly permit the Commission to consider mitigating factors when determining whether a specified penalty is warranted. While AUI understands that Rule 032 is largely based on Rule 019, consideration should be given to the differences between the markets (e.g. number of customers and processes that occur on an hourly or very frequent basis such as enrolments, de-enrolments and the issuing of bills) the two rules are intended to address, as using the same thresholds for penalties may not be appropriate. Furthermore, additional clarity as to what would constitute a single contravention is necessary as the 'Nature of contravention' column of the Penalty Table references sections that include many elements.</p> <p>ATCO: The ATCO Utilities and ATCO Energy (collectively referred to as "ATCO") provide the following comments with respect to Rule 032 (referred to as "Rule") in response to AUC Bulletin 2018-16 dated November 19, 2018. ATCO is appreciative of the Commission holding the stakeholder review meeting which was held on Monday, November 26, 2018, and found it to be very valuable in gaining a better understanding of the proposed Rule and the Commission's intention in administering the Rule.</p> <p>In general, ATCO does not consider the application of specified penalties to be appropriate in all circumstances and considers it important for the Commission to take into account the conditions that were in place when a contravention to a Rule took place. Additionally, it is important that entities be provided the opportunity to correct and resolve issues that are brought forward within a reasonable amount of time rather than having an automatic penalty assessed. Without an understanding as to why the contravention happened and the reasons involved, ATCO is of the view that it is inappropriate to impose automatic specified penalties blindly to all circumstances. Therefore, ATCO submits that the Rule must ensure that the Commission has the ability to waive the specified penalties should they need to do so from time to time and impose penalties only once a reasonable time frame has passed and the entity has been provided the opportunity to resolve the issue.</p> <p>Moreover, ATCO is concerned with the proposed implementation date of January 1, 2019 for Rule 32 to become effective. Throughout the consultations that the Commission has recently undertaken with respect to Rule 021 and Rule 028, ATCO has notified the Commission that there will be a transition time required to implement the proposed changes to these Rule and therefore ATCO submits it would be a reasonable approach for the Commission to ensure that no specified penalties are provided until such time that parties have been afforded a reasonable time period to ensure the changes to Rule 021 and 028 are tested and implemented accordingly.</p> <p>ATCO is also concerned with how investigations would take place under the Rule which were discussed at the stakeholder meeting. While the discussion at the meeting provided some satisfaction to ATCO that the Commission would impose penalties only after issues remained unresolved for a specified length of time, Rule 032 simply does not outline these processes, procedures and interpretations the Commission expects to follow. In order to ensure all stakeholders are clear on the processes that will take place and how specified penalties will be imposed, ATCO would recommend the Commission incorporate additional clarity and transparency within the Rule itself in order to provide assurance to stakeholders as to how the processes around imposing specified penalties would be implemented.</p> <p>Furthermore, the Rule as drafted lacks a fulsome description of what a single instance of a contravention would be and therefore an understanding and possible example of how the contraventions would be determined and how the frequency of these occurrences would be determined would further add clarity to the draft Rule.</p> <p>ATCO understands that the AUC is planning on adding additional Rules to be applicable to Rule 032 where specified penalties would apply into the future. ATCO requests that a fulsome consultation process be used with parties and that parties are provided sufficient time to understand the proposed changes, be able to provide comments and have the concerns addressed prior to changes to Rule 032 taking place. ATCO highly recommends that a clause allowing for an annual review be added to the draft Rule and for this to be required.</p> <p>FortisAlberta: It is the expectation that a customer would first contact the retailer regarding any concern and the two parties would work to resolve the concern. Next, if the issue is not resolved to the customer satisfaction, the customer would then contact the UCA to work to resolution. Finally, if the issue has not been resolved to the customer's satisfaction after working with the retailer and the UCA, the customer would contact the AUC. At that point an investigation may be triggered. If that investigation determines that an infraction had occurred, a specified penalty in accordance with the Penalty Table.</p>	<p>Although the system implementation for Rule 021 and Rule 028 is set for June 22, 2019, the Commission will continue to require that the most accurate and up-to-date information be provided in accordance with Rule 021 and Rule 028 as of January 1, 2019.</p> <p>The Commission will use its current enforcement process set out on the AUC's website. Also, the penalty table escalates the amount of the penalty based on the number of contraventions within the 120-day rolling period.</p> <p>Please also see new Section 4.</p>

Section	Subsection	Proposed language (dated November 19, 2018)	Revised language	Stakeholder comments on proposed language	AUC Response
				<p>FortisAlberta suggests that this explanation of the expected escalation process be outlined to ensure a degree of procedural awareness and provide time for investigation and resolution. Outlining the expected process in the Rule would provide clarity and understanding to all impacted parties and improve the customer experience.</p> <p>FortisAlberta also notes that the penalty table states that failure to comply in whole or in part with sections in Rules 003, 021, and 028 may be considered contraventions for the sake of Rule 032. As the sections identified reflect proposed changes to the Rules, that these changes have neither been finalized nor approved, that the implementation date of the changes has not been confirmed, and that there are significant system changes and costs arising from these proposed changes, FortisAlberta suggests that Rule 032 acknowledge that investigations and potential specified penalties will only be triggered after the noted required implementation date rather than the effective date of the revised Rule.</p> <p>ENMAX: Given the likelihood that a billing system event would result in an error in multiple customer bills, ENMAX supports an approach to assessing penalties based on the number of system events rather than the number of billing errors.</p> <p>vi) Strict Liability</p> <p>Finally, ENMAX requests that the AUC confirm, and add language to Rule 032, that clarifies that specified penalties are strict liability offences.</p> <p>Given the nature of our identified concerns, ENMAX recommends that further consultation may be necessary.</p>	<p>AUC: In AUC Decision 2008-126, the Commission stated that the question as to whether a breach of the ISO rule in question effectively constituted an absolute liability offence, as opposed to a strict liability offence, was not argued by the parties as they determined to proceed on the basis that the offence was one of strict liability. The Commission was prepared to proceed on that basis, but notes that the issue is open for determination at a later time. As a consequence of proceeding on the basis of strict liability, the defence of due diligence was available. Consequently, the nature of a particular contravention may be argued before the Commission in a case where a specified penalty is disputed.</p> <p>In AUC Decisions 2008-114 and 2008-126, the Commission outlined the principles it would rely on in determining whether the defence of due diligence had been established.</p>

Penalty Table

NEW SPECIFIED PENALTY TABLE

Nature of contravention	First contravention in a 120-day rolling period	Second to fifth contravention in a 120-day rolling period	Sixth to tenth contravention in a 120-day rolling period	Eleventh to fifteenth contravention in a 120-day rolling period	Sixteenth to twentieth contravention in a 120-day rolling period	Twenty-first and subsequent contravention in a 120-day rolling period
<p>Failure to comply in whole or in part with the following sections of AUC rules:</p> <p>AUC Rule 003 Sections 3.4.1 (2), 3.4.1 (3), 3.4.1 (4)</p> <p>AUC Rule 021 Sections 2.4, 2.5, 7.4, 9.4.6.14, 9.6.3, 9.6.4, 9.6.8</p> <p>AUC Rule 028 Sections 2.4, 2.5, 7.3, 8.4.6.12, 8.6.3, 8.6.4, 8.6.7</p>	<p>A specified penalty of \$500</p> <p>Notice of specified penalty issued to the senior executive of business unit of the person involved in the contravention.</p>	<p>A specified penalty of \$1,000</p> <p>Notice of specified penalty issued to the senior executive of business unit of the person involved in the contravention.</p>	<p>A specified penalty of \$2,500</p> <p>Notice of specified penalty issued to the senior executive of business unit of the person involved in the contravention.</p>	<p>A specified penalty of \$5,000</p> <p>Notice of specified penalty issued to the senior executive of business unit of the person involved in the contravention.</p>	<p>A specified penalty of \$7,500</p> <p>Notice of specified penalty issued to the most senior executive of the person (i.e., president, chief executive officer) or its parent company if the entity is a wholly-owned subsidiary or affiliate, or chief compliance officer, if applicable.</p>	<p>A specified penalty of \$10,000</p> <p>Notice of specified penalty to the most senior executive of the person (i.e., president, chief executive officer) or its parent company if the entity is a wholly-owned subsidiary or affiliate, or chief compliance officer, if applicable.</p>

Stakeholder comments on Penalty table:

Direct: DE notes that in the Penalty Table, Sections 3.4.2.2 and 3.4.2.3 from Rule 003 are included as contraventions, but since the RSP has already paid the \$150 service guarantee credit directly to impacted customers under Rule 003, these sections should be excluded from the Penalty Table, or RSPs will be “double penalized” for these errors. As a side note, “regulated entity” is denoted under the last two columns, when any retailer, REA or municipality could be the recipient of the specified penalties in these columns.

EDTI: EDTI does not have any suggested changes or comments regarding Rule 032.

EPCOR: (3) During consultation, the AUC reiterated that if stakeholders continue to use best practices, the AUC will not issue penalties. EPCOR is concerned that the proposed language in Rule 032 does not align with this intent and does not align with the materiality of the errors listed above. The current language in Rule 003 and 032 would lead EPCOR to be double penalized for service guarantee errors. Customers would receive a \$150 credit in addition to material penalties levied against EPCOR as specified above. EPCOR is supportive of the customer service guarantee credit as EPCOR recognizes the negative customer impact these errors create; however, the penalty should align with the materiality of the error and should not be doubled. The severity of the penalties are inconsistent with the customer impact. EPCOR views the \$150 proposed service guarantee credit as sufficient compensation for customers and proposes that sections 3.4.2.2 An RSP must not disconnect a customer unless and 3.4.2.3 An RSP must not refer a customer to a credit agency unless should not be included in the Rule 032 Penalty Table. EPCOR proposes both of these errors remain as service guarantee credits to customers and not specified penalties.

(4) Without changes to the Penalty Table in Rule 032, EPCOR will need to reassess existing processes around disconnections. These processes exist to mitigate high volumes of bad debt and unbilled revenue. With these material penalties, EPCOR will likely need to suspend disconnections of service leading to an increase in bad debt and unbilled revenue. This impact will affect all customer segments as EPCOR will likely file for a higher recovery on bad debt and unbilled revenue in the next Regulated Rate Tariff (“RRT”) application with the AUC. EPCOR believes that the intent of the changes to AUC Rule 003 and Rule 032 were not to negatively impact customers, but rather hold RSPs accountable for the service they provide. An increase to bad debt and unbilled revenue will negatively impact all customers. To ensure that all customers are not impacted, EPCOR continues to recommend removing sections 3.4.2.2 and 3.4.2.3 as referenced above.

(5) As such, EPCOR proposes the following language addition to AUC Rule 032:

- As RSPs provide customers a service guarantee credit as outlined in AUC Rule 003, Rule 032 will not include penalties for errors listed in Rule 003.

(6) Further to the above language proposal, EPCOR recommends that references to AUC Rule 003 be removed from Rule 032 to clarify that RSPs will not be penalized for any items related to Rule 003.

AUI: Draft Rule 032 – AUI proposes to remove ‘regulated’ in the Rule 032 Penalty Table (page 4), as noted below, in the columns identified as ‘Eighth and ninth contravention...’, and “Tenth and subsequent contravention...”: “Notice of specified penalty issued to the most senior executive of the person (i.e., president, chief executive officer) or its parent company if the regulated entity is a wholly-owned subsidiary or affiliate, or chief compliance officer, if applicable.”

ENMAX: Regarding the penalty table, ENMAX requests that the AUC confirm how the number of contraventions is determined on an individual and aggregate basis for entities such as ENMAX who are both a Regulated Rate Option provider and a competitive retailer.

ENMAX request that the AUC clarify how it would apply AUC Rule 032 in the following examples:

- If 50 customers were impacted due to the billing system error would this result in one fine or 50 fines for ENMAX?
- If one error resulted in multiple contravention as defined in Rule 003, would this result in one fine or two fines under Rule 032?
- Are the penalties additive for RRO providers and competitive retailers