

**Revisions to AUC Rule 019 – Specified Penalties for Contravention of ISO Rule**  
**Stakeholder Comments and AUC Response Matrix**  
**Comment Period – January 27, 2010 to February 16, 2010**

Issue/Topic	AUC Response
<b><i>Issue 1: Application of ISO Rule 019</i></b>	
<p><b>AltaLink Management Ltd.</b></p> <p>AltaLink’s concerns are in respect of the applicability of AUC Rule 019 to Transmission Facilities Owners (“TFOs”) and disclosure of commercially sensitive information under section 5(1).</p> <p>AltaLink is a TFO whose rates are set by the AUC and is therefore fundamentally distinct from, and subject to different financial incentives than, generation or power marketing entities. However appropriate the compliance framework associated with AUC Rule 019 may be to address economic benefit derived from gaming and market manipulation, it is unreasonable for companies limited to the provision of transmission services such as AltaLink. TFOs may be inadvertently captured by AUC Rule 019 and subject to substantial monetary penalties. Furthermore, the potential for specific penalties of up to \$10,000 per event is disproportionate to a TFO’s unintended contravention of AUC Rule 019.</p> <p>AltaLink requests that the AUC add, as a further revision, an exemption of regulated TFOs from the scope of AUC Rule 019. An exemption for TFOs is fully consistent with AUC Rule 019 because, among other reasons, there are no transmission-specific ISO Rules listed as Category 1, 2 or 3 contraventions in the Penalty Table.</p> <p>AltaLink proposes the following language as revisions to sections 1 and 2 of AUC Rule 019 as amended:</p>	<p>Section 20.8 of the <i>Electric Utilities Act</i> requires market participants to comply with ISO rules 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>An exemption from AUC Rule 019 would not exempt a market participant from its obligation to comply with ISO rules, nor would it remove exposure to monetary penalties.</p> <p>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>

Issue/Topic	AUC Response
<p><b>Definitions</b></p> <p>1(1) In these rules:</p> <p>...</p> <p>(f) “Transmission Facilities Owner” shall mean an owner of transmission facilities as defined under the <i>Electric Utilities Act</i>.</p> <p><b>Application</b></p> <p>2(1) These rules apply to the contravention of ISO Rules;</p> <p>2(2) These rules shall not apply to Transmission Facilities Owners whose activities are regulated by the Commission.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Section 2</u></p> <p>We note that while AUC Rule 019 applies to the contravention of ISO rules, the language focuses on “market participants” and thus does not capture the reality that the AESO itself may be subject to (and may therefore contravene) an ISO rule. An example would be ISO rule 9.2, which places various mandatory requirements on the AESO. The effect of the focus on “market participants” only is then to preclude use of AUC Rule 019 in cases where AESO compliance is at issue.</p> <p>We would submit that, as in the case of compliance with Alberta reliability standards, it is appropriate to be symmetrical as between market participants and the AESO where reasonably possible.</p> <p>Section 52 of the <i>Alberta Utilities Commission Act</i> (AUCA) speaks to “persons”, and thus allows AUC Rule 019 to speak more broadly also. The MSA would submit that the use of “person” or “persons”, as applicable, would be appropriate even if AUC Rule 019 is not yet made applicable to all ISO rules (please also see comments below re:</p>	<p>As noted above, section 20.8 of the <i>Electric Utilities Act</i> requires market participants to comply with ISO rules that are in effect. It is for this reason that the language in AUC Rule 019 focuses on “market participants” as opposed to “persons”.</p> <p>Section 51 of the <i>Alberta Utilities Commission Act</i> states that if the MSA is satisfied that a person has contravened an ISO rule, the MSA may give written notice to the Commission. This would include any contravention of an ISO rule by the ISO. Further, section 26 of the <i>Electric Utilities Act</i> enables any person to make a written complaint to the Commission about the conduct of the ISO.</p>

Issue/Topic	AUC Response
Penalty Tables).	
<b><i>Issue 2: Limitation Period</i></b>	
<p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 3(4)</u></p> <p>TransCanada notes that the provision outlining the timeframe within which the Market Surveillance Administrator (“MSA”) must issue a notice of specified penalty remains:</p> <p>(a) Two years after the date on which the Market Surveillance Administrator 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 occurred, whichever period expires first.</p> <p>TransCanada submits that the timeframe is excessive and places an unreasonable burden on market participants to maintain detailed records and personal recollection of events that may eventually become the subject of a specified penalty. Until the MSA issues a notice, the Market participant may not even be aware that they have contravened an ISO rule. To expect that personnel will retain knowledge of events up to four years in the past without any indication that a potential contravention occurred is not realistic. Further, personnel changes are also possible during this period in which case Market participants could lose the ability to respond appropriately.</p> <p>As indicated in stakeholder consultations held to discuss the Commission process for MSA proceedings, TransCanada submits that the appropriate length of time within which notices of specified penalties ought to be brought is within one year of when the MSA becomes aware of the contravention or two years from the date on</p>	<p>As noted by TransCanada, the appropriate length of time within which notices of specified penalties ought to be brought was the subject of stakeholder consultations and discussions held regarding the Commission process for MSA proceedings (see <a href="#">Bulletin 2009-15</a>, <a href="#">Bulletin 2009-16</a> and related materials on the AUC website for more details regarding this discussion).</p> <p>The Commission has determined that it will not, at the present time, alter or eliminate the limitations periods that are currently identified in AUC Rule 019. The Commission will address the issue further in its response to the consultation on MSA proceedings.</p>

Issue/Topic	AUC Response
which the contravention occurred, whichever period expires first.	
<b>Issue 3: Self-Disclosures</b>	
<p><b>ATCO Power</b></p> <p>ATCO Power supports the Commission not limiting the number of self reports available in a rolling 12-month period.</p> <p><b>Market Surveillance Administrator</b></p> <p><u>Section 4(3)</u></p> <p>The proposed removal of the limitation in Section 4(3) regarding the number of self-disclosures is a positive change which should help to foster efforts toward compliance. The change also removes the explicit need for the MSA to track the number of self-disclosures (for penalty calculation) and thus should create a small increase in process efficiency for us.</p> <p><u>Section 4(4)</u></p> <p>We would suggest that there is value in having self-disclosures also reported to the AESO, as applicable, at the same time as they are notified to the MSA. This will ensure that the AESO does not, through its regular monitoring, flag and follow up on the self-disclosed matter unnecessarily; again facilitating administrative efficiency.</p> <p><b>TransCanada Energy Ltd.</b></p> <p><u>Section 4(3)</u></p> <p>Section 4(3) provides that where a market participant self-reports the amount of the penalty will be reduced by 50%. TransCanada submits</p>	<p>There appears to be general support for the removal of the limitation in section 4(3) of the AUC Rule 019 regarding the number of self-disclosures.</p> <p>The Commission sees no need to replicate the provisions of regulatory forbearance outlined in section 57 of the <i>Alberta Utilities Commission Act</i> in AUC Rule 019. Further, the Commission does not see the provisions of AUC Rule 019 as restricting the MSA’s application of the provision of section 57.</p> <p>The Commission will amend section 4(4) of AUC Rule 019 to require a copy of a self-disclosure be made in writing to the ISO.</p>

<sup>1</sup> The MSA has outlined its proposed approach to regulatory forbearance at section 3.2, pp. 10-12, of its report entitled “MSA Report Compliance Review 2009” dated January 298, 2010.

Issue/Topic	AUC Response
<p>that section 4(3) should also incorporate the forbearance powers granted to the MSA pursuant to s. 57 of the <i>Alberta Utilities Commission Act</i>, by requiring the MSA to determine, in the case of self reporting, whether forbearance is appropriate in the circumstances.<sup>1</sup></p>	
<b><i>Issue 4: Mitigation Plans</i></b>	
<p><b>Alberta Electric System Operator</b></p> <p>AUC Bulletin 2010-06 <i>Introduction of Proposed Rule 027 - Specified Penalties for Contravention of Reliability Standards</i> introduces the concept of a mitigation plan which may be provided by a market participant who has been found to be in contravention of a reliability standard. The proposed Rule 027 outlines the requirements for the submission of a mitigation plan, the required approval of the plan by the MSA, and the potential change to any resulting penalty when the MSA has approved the plan. The AESO believes this to be a useful concept for the treatment of contraventions of ISO rules as well as reliability standards. Providing an incentive for a participant to formalize in writing, changes that will be made to reduce the likelihood of future contraventions of an ISO rule, is in the AESO's view, a potentially useful tool for reducing incidents of non-compliant behavior. As such, the AESO suggests that mitigation plans be considered for inclusion in AUC Rule 019 as well. The AESO's view is that the obligations and treatment of mitigation plans in Rule 019 should be consistent with their handling in Rule 027.</p>	<p>The Commission introduced the concept of mitigation plans in proposed AUC Rule 027, in part, in order to strike a balance between NERC's approach to reliability standards and our own approach to ensuring compliance in Alberta.</p> <p>Mitigation plans may be useful to allow market participants a period of time to transition from a state of non-compliance with a relatively new set of reliability standards, but should not be required in any significant manner with respect to ISO rules that have been in place, monitored and enforced for many years. Further, as noted above, the MSA has authority through regulatory forbearance to refrain, in whole or in part, conditionally or unconditionally, from the exercise of any power or the carrying out of any part of its mandate pursuant to section 57 of the <i>Alberta Utilities Commission Act</i>.</p>
<b><i>Issue 5: Posting of Notice of Specified Penalty</i></b>	
<p><b>AltaLink Management Ltd.</b></p> <p>Finally, the automatic posting of a specified penalty on the MSA's</p>	<p>The Commission addressed the issue of publication of a notice of specified penalty in <a href="#">Bulletin 2009-17</a>. In that bulletin, the</p>



Issue/Topic	AUC Response
<p>Review 2009 report in which the MSA indicates:</p> <p>The MSA is considering moving to a simpler format separating the information specific to a particular NSP from the general information. In addition, we are considering removing the names of the addressee from the NSP (the required persons would receive the notice via email but the notice posted to the MSA’s website would contain no named persons).<sup>2</sup></p> <p><u>Section 5(2)(b)</u></p> <p>Section 5(2)(b) could be made clearer by adding the following at the beginning of the subsection:</p> <p>“Once the Commission has rendered a decision with respect to the specified penalty...”</p>	<p>an individual. The Commission expects very few, if any, cases will involve market participants that are individuals.</p> <p>The Commission will make the suggested change, as made by TransCanada Energy Ltd., to section 5(2)(b).</p>
<b><i>Issue 6: Person to Whom Notices of Specified Penalties are Sent</i></b>	
<p><b>ATCO Power</b></p> <p>ATCO Power supports the Commission simplifying the list of individuals to whom Notices of Specified Penalties are sent.</p> <p><b>Market Surveillance Administrator</b></p> <p>The proposed changes regarding the person (individual) to whom the notice of specified penalty must be sent in particular cases are helpful, and should serve to simplify the administration of specified penalties without losing the desired effect of such notice. Further, the MSA believes that where the compliance function is carried out by a person with sufficient authority and direct access/reporting to a senior executive, it is reasonable to provide an option for all notices to go to that compliance person.</p>	<p>The Commission had revised AUC Rule 019 to require the MSA to send notices of specified penalty to the most senior executive of the market participant (i.e. president, chief executive officer) in instances of four or more contraventions in a rolling 12-month period and where the amount of the specified penalty is \$10,000. The Commission notes the comments of the MSA, and will further amend the rule to allow notices of specified penalty to be sent to the most senior executive of the market participant, or in cases where the market participant has established the position of chief compliance officer, to send the notices to the person in that</p>

Issue/Topic	AUC Response
<p><b>Powerex Corp.</b></p> <p>Powerex supports the amendment to the list of individuals to whom Notices of Specified Penalty are sent so that the notice is sent to the appropriate level of the market participant's organization in proportion to the penalty level.</p> <p><b>TransAlta Corporation</b></p> <p>The AUC has proposed for the first, second and third contravention that the Notice of Specified Penalty be sent to the Senior Executive of the Business Unit, and that for the fourth to eighth contravention, the notice be sent to the senior most executive of the market participant (e.g. CEO).</p> <p>TransAlta recognizes that is appropriate in certain circumstances for the senior most executive to be notified; however, TransAlta believes that what the AUC has proposed may not allow sufficient time for the business unit of the market participant to address a compliance issue prior to the notification being sent to the senior most executive.</p> <p>One of the goals of penalties for contraventions is to encourage compliance. Often when a contravention of an ISO Rule is identified, it takes some time for the market participant to respond and address the problem. This is because the solution may include such things as creating new policies or procedures, providing additional training, or changing IT systems. These solutions are not always quick to implement. So while a market participant may be actively working on correcting a problem to avoid future contraventions (i.e. ensuring compliance), contraventions may continue to occur until the new processes, systems, etc. are in place. Thus, notification to the senior executive on the fourth contravention may be premature.</p> <p>TransAlta recommends removing the notification to the senior most executive, and leaving it to the discretion of the MSA to notify the</p>	<p>position.</p> <p>The Commission has made modifications to address the suggestions made by the MSA (see above). The Commission does not consider it premature, in circumstances where the specified penalty is \$10,000 and a rule has been contravened four or more times in a 12 month period, to contact either the most senior executive of the market participant or the chief compliance officer of the market participant.</p>

Issue/Topic	AUC Response
<p>senior most executive only in circumstances where the MSA is not satisfied that the market participant is actively taking steps to address the compliance problem.</p>	
<p><b><i>Issue 7: Categories of Specified Penalties</i></b></p>	
<p><b>Market Surveillance Administrator</b></p> <p>In order to further simplify the administration of specified penalties, we submit that it would be appropriate to combine all of the three Penalty Tables into a single category. There is significant similarity in the quantum of specified penalty as between the existing three categories, and it is not clear why a single category would not be sufficient. Also, there is no defined rationale which sets out the reasoning underlying the placement of an ISO rule in a particular category (or the quantum of specified penalty then associated to contravention(s) of that rule).</p>	<p>The Commission does not propose to combine all categories of ISO rule contravention into a single category. The Commission is of the view that it is useful to distinguish between the various ISO rules, as the impact associated with the contravention of each rule is not identical.</p>
<p><b><i>Issue 8: Number of Contraventions Addressed in Specified Penalty Tables</i></b></p>	
<p><b>Alberta Electric System Operator</b></p> <p>The Commission has proposed a change in the Penalty Table to cap the number of contraventions per ISO rule per participant in which a specified penalty can be assessed at 8 per rolling 12-month period. The AESO does not support establishing this cap. In the AESO's experience, certain ISO rules may be contravened multiple times in a single month and it is conceivable that a participant may accumulate more than 8 contraventions in a single year. In such a case, any subsequent contraventions will potentially incur the increased costs and effort of pursuing through an Administrative Penalty process when the more efficient Specified Penalty process may be as effective in deterring non-compliant behavior.</p>	<p>After consideration of the comments from market participants, the Commission proposes to leave the fourth column of the penalty table with its original wording such that the fourth column of the penalty table will be applicable to the fourth and subsequent contravention in a rolling 12 month period.</p> <p>The Commission had proposed the change as a result of its observation that eight or more instances of a rule contravention had occurred in a 12 month rolling period by more than one market participant. In each of these instances, the MSA had applied a specified penalty. The Commission recognizes that specified penalty are a more efficient way of addressing rule</p>

Issue/Topic	AUC Response
<p><b>ATCO Power</b></p> <p>ATCO Power would appreciate insight into why the Commission has proposed to limit the penalty table to eight contraventions. Market participants with a number of assets may be at a disadvantage to market participants with one asset if a limiter is placed.</p> <p><b>Market Surveillance Administrator</b></p> <p>We would also submit that putting a limiter of 8 contraventions in the last column of the Penalty Tables (or a single Penalty Table) may be counter-productive. It is reasonably foreseeable that certain ISO rules may be contravened on multiple occasions despite compliance efforts seeking to avoid that outcome. A good example is ISO rule 6.6, which applies to each asset for each 10 minute clock period and which has multiple compliance requirements within the rule.</p> <p>Limiting the use of AUC Rule 019 in the manner suggested will naturally reduce the opportunity for use of this administratively efficient enforcement mechanism where it is otherwise warranted. The MSA supports the view that repeated contraventions should generally attract increased sanctions and that in some cases AUC Rule 019 is not the right enforcement approach. However, given that the MSA has per <i>AUCA</i> Section 52 the option to take any alleged ISO rule contravention directly to the Commission, and not through AUC Rule 019, we would also submit that the proposed limiter is actually not necessary.</p> <p><b>Powerex Corp.</b></p> <p>Powerex requests that the Commission clarify its rationale for capping to 8 the number of contraventions subject to specified penalties per ISO rule in a rolling 12-month period. You have indicated that contraventions in excess of 8 would need to follow administrative penalty procedures requiring the MSA to bring those</p>	<p>contraventions, however administrative efficiency is not the only consideration that should be made when choosing to apply a specified penalty. The Commission is of the view that at some point in time the continued application of a specified penalty may become unproductive relative to the enforcement of ISO rules. The Commission agrees with the MSA that the MSA has the option, pursuant to section 52 of the <i>Alberta Utilities Commission Act</i>, to take any alleged ISO rule contravention directly to the Commission and not through AUC Rule 019. The Commission will continue to monitor the application of specified penalties versus administrative penalties.</p>

Issue/Topic	AUC Response
<p>cases before the Commission to determine the appropriate penalty.</p> <p>Powerex believes that setting a limit where specified penalties apply is a significant departure from the intent of the specified penalty framework. The limit seems unnecessary given that the MSA always has the option to seek an administrative penalty from the Commission for an ISO rule breach in addition to the specified penalties. The limit would also fail to recognize that it is very easy to exceed the threshold of 8 breaches notwithstanding strong systems to prevent such breaches. For example, Powerex had energy transactions on the BC/Alberta intertie in 5533 hours for the period January to September 2009 (84% of all hours during the period) and had five hours of Rule 6.3.3 breaches (0.09% of total transaction hours during the period). Even if the number of unintentional breaches were double during the period and in excess of the proposed cap of 8, the contravention rate would only be 0.18 %. Put another way, 10 hours of breaches equates to a performance rate of 99.82%. The Commission's proposal to cap specified penalties to the first 8 breaches creates an unintended consequence for ISO rule 6.3.3 of unnecessarily referring cases to the Commission's administrative penalty process for near 100% compliance. Powerex believes that such a zero tolerance approach for unintentional violations does not best serve the Commission in furthering its compliance goals.</p> <p>Powerex is aware of other jurisdictions that have faced similar issues in trying to find the appropriate penalty framework that will provide both sufficient incentives for market participants to maintain a high performance rate on their intertie transactions and also minimize the regulatory burden of administrating such a penalty framework. For example, the California ISO (CAISO) applies a penalty framework to hour ahead intertie obligations that are declined/undelivered. Over a calendar month period, the CAISO applies their penalty to MWh of undelivered intertie energy in excess of 10% of the total MWh of</p>	

Issue/Topic	AUC Response
<p>hour ahead intertie energy obligations. In other words, penalties do not apply unless there is less than 90% compliance. The CAISO treats imports and exports separately and symmetrically in determining the penalties. Powerex believes that a framework like the one adopted by the CAISO would be consistent with the AESO's original rationale for changes to ISO Rule 6.3.3 as part of "Quick Hits" which was to minimize price chasing by importers and exporters. However, Powerex does not believe that the AESO intended to have the Rule 019 layer on top of ISO Rule 6.3.3 to penalize participants that maintained their high intertie performance rates before and after "Quick Hits".</p>	
<p><b><i>Issue 9: Rules in Specified Penalty Tables</i></b></p>	
<p><b>Alberta Electric System Operator</b></p> <p>In Category 2 of the Penalty Table, the Commission is proposing to add ISO rules 6.5.2 and 6.5.3. The AESO is in support of this addition. These rules detail participant obligations in response to Ancillary Service directives sent by the AESO System Controller. These directives are sent only under very specific system conditions and typically in these conditions, proper and timely response to the directive is critical for the safe and reliable operation of the AIES. The AESO has already referred a number of suspected contraventions of these rules to the MSA. Inclusion of these rules in the Penalty Table will facilitate timely and efficient handling of these types of contraventions in the future.</p> <p>For those ISO rules which are not explicitly mentioned in the Rule 019 Penalty Table, the MSA has indicated that it will typically pursue an Administrative Penalty if it determines that it is appropriate to penalize a market participant for a contravention of that rule<sup>3</sup>. They</p>	<p>ATCO, the AESO and the MSA support the addition of ISO rules 6.5.2 and 6.5.3 to Category 2 of the penalty table. Capital Power and TransCanada point to contractual provisions for failure to deliver, and suggest that the application of a penalty regarding ISO rules 6.5.2 and 6.5.3 is duplicative and unnecessary (Capital Power), or otherwise creates a more rigidly defined double jeopardy situation that may affect the risks associated with providing ancillary services (TransCanada). TransAlta objects to ISO rules 6.5.2 and 6.5.3 being added to AUC Rule 019.</p> <p>The Commission notes that there appear to be two issues regarding ISO rules 6.5.2 and 6.5.3. The first issue is whether a penalty regarding contravention of ISO rules 6.5.2 and 6.5.3 should attract a specified penalty or an administrative penalty. If ISO rule 6.5.2 and 6.5.3 are included in the penalty tables in AUC Rule 019, any contravention will attract a specified penalty unless determined</p>

<sup>3</sup> See MSA Report – Compliance Review 2009, January 29, 2010.

Issue/Topic	AUC Response
<p>also indicated that the Administrative Penalty process requires considerable additional time and effort as compared to the Specified Penalties process<sup>4</sup>. To ensure timely and efficient handling of contraventions, the AESO requests that a number of other ISO rules also be included in Category 2 of the Rule 019 Penalty Table. The following are ISO rules for which the AESO has either referred suspected contraventions to the MSA or has identified potential contraventions during its screening: ISO rule 3.5.4, ISO rule 6.4.3, ISO rule 9.1, OPP 003.2, OPP 102, OPP 403, OPP 404, OPP 603, OPP 606 and OPP 806. Each of these contains obligations for participants which, if not fulfilled, may pose a potential risk to system reliability or the fair and efficient operation of the market. The AESO's view is that any suspected contraventions of these rules should be dealt with in as efficient and timely a manner as possible and this would be facilitated by the inclusion of the specific rules within the Penalty Table.</p> <p>Although the AESO carries out monitoring in relation to a number of specific ISO rules, referrals from other internal AESO groups can give rise to a significant number of compliance assessments. It is difficult to anticipate which rules may be potentially contravened in these types of cases. As a result, the AESO's preference would be for Rule 019 to provide for a specified penalty for any contraventions of ISO rules which are not explicitly mentioned in the Penalty Table. This would allow for the most efficient handling of contraventions of this type. Adoption of this more general approach to the handling of any ISO rule contravention would obviate the need to include, in the Penalty Table, the specific ISO rules mentioned in the preceding point.</p>	<p>otherwise by the MSA in accordance with section 52 of the <i>Alberta Utilities Commission Act</i>. If ISO rules 6.5.2 and 6.5.3 are not included in AUC Rule 019, any contravention will attract an administrative penalty, unless otherwise determined by the Commission.</p> <p>The second issue is whether ISO rules 6.5.2 and 6.5.3 should be ISO rules given the contractual provisions between the AESO and ancillary service providers.</p> <p>Regarding the first issue, the Commission is of the view that contraventions of ISO rules 6.5.2 and 6.5.3 should be eligible for a specified penalty.</p> <p>Regarding the second issue, the Commission would like to address the suggestion that inclusion of this rule is akin to imposing a market participant to the risk of "double jeopardy" if these ISO rules are included in the Specified Penalty table. The Supreme Court of Canada has recently commented at length regard this doctrine in <i>R. v. Mahalingan</i> [2008] 3 S.C.R. 316.</p> <p>In this decision the court stated:</p> <p><b>106</b> Accordingly, <i>res judicata</i> may be best understood by reference to its underlying concerns about the relitigation of decided issues. Ensuring finality in litigation is, at its core, a matter of fairness and justice. As a general rule, persons should not be twice vexed by the same cause. In the criminal context, the protection against <b>double jeopardy</b> has acquired a constitutional dimension under s. 11(h) of the <i>Charter</i>. Putting a stop to repeated litigation is also important for the efficiency and reputation of the judicial system. It avoids the squandering of scarce judicial</p>

<sup>4</sup> See MSA Report – Compliance Review 2009, January 29, 2010.

Issue/Topic	AUC Response
<p><b>ATCO Power</b></p> <p>ATCO Power is pleased to see the addition of ISO Rules 6.5.2 and 6.5.3. In order to meet the needs of efficiency and equivalent publication, we recommend the addition of a catch-all Category as illustrated.</p> <p>[Please see table in ATCO Power’s submission]</p> <p>A catch-all Category does not impede the Market Surveillance Administrator from pursuing an alternative penalty or order if the specified penalty is not appropriate for a specific contravention.</p> <p>Absent a catch-all category, we believe the following rules should be included in Rule 019:</p> <ul style="list-style-type: none"> <li>• OPP 603 Managing the Commissioning and Testing of Generators.</li> <li>• OPP 606 Generator Outage Coordination</li> <li>• ISO Rule 6.2.2 and 6.2.3 Communication, Receiving and Implementing Directions</li> <li>• ISO Rule 10.10 Load Outage Reporting</li> </ul> <p><b>Capital Power Corporation</b></p> <p>Clear rules and a transparent and consistent enforcement framework are crucial for the development of an effective framework for compliance. With this in mind, it is of paramount importance that regulators (the Commission and Alberta Electric System Operator (AESO)) draft rules that are clearly understood by all market participants and that ensure the enforcement consequences are reasonable and just. We commend the Commission for taking the initiative to include more ISO rules into the specified penalties matrix; by doing so, the Commission has helped to ensure that</p>	<p>resources and the scandal of inconsistent findings between courts.</p> <p><b>112</b> It is well established in the civil context that three preconditions must be met for issue estoppel to be successfully invoked: (1) the issue must be the same as the one decided in the prior decision; (2) the prior judicial decision must have been final; and (3) the parties to both proceedings must be the same, or their privies: <i>Danyluk</i>, at para. ...</p> <p><b>121</b> The same question requirement for issue estoppel (as opposed to "cause of action estoppel" which is not relevant to our discussion) will be met when the question sought to be estopped has been "distinctly put in issue and directly determined" by a court of competent jurisdiction in a prior proceeding: <i>McIntosh v. Parent</i>, [1924] 4 D.L.R. 420 (Ont. S.C., App. Div.), at p. 422, quoted in <i>Danyluk</i>, at para. 24. In order to satisfy this test, the question must not only have been distinctly put in issue in the earlier proceeding, it must have been "fundamental to the decision arrived at": <i>Angle v. Minister of National Revenue</i>, [1975] 2 S.C.R. 248, at p. 255. It must also be clear that the question was determined in favour of the moving party. This Court in <i>Gushue v. The Queen</i>, [1980] 1 S.C.R. 798, at p. 807, adopted the following statement from M. L. Friedland, <i>Double Jeopardy</i></p> <p><b>15 134</b> In order to raise an estoppel, the issue in question must have been conclusively determined as between the parties in a prior proceeding.</p>

Issue/Topic	AUC Response
<p>enforcement is better aligned to the nature of the compliance contravention.</p> <p>We encourage the Commission to endeavor to expand the specified penalty matrix to more of the ISO rules. This exercise not only ensures that enforcement action is commensurate with non-compliance event but also makes market participants more aware of the compliance issues that are more frequent or of growing concern to the AESO and Market Surveillance Administrator.</p> <p>Capital Power would like draw the Commission’s attention to the inclusion of ISO rules 6.5.2 and 6.5.3 in the penalty matrix. In particular, the inclusion of these rules applies a penalty to an act that is remedied in the contract provisions for failure to deliver in the current Natural Gas Exchange (NGX) agreement (Article 5, Recourse and Liability, Section 5.1, Failure to Deliver). As such, we view the application of a penalty as a duplicative and unnecessary.</p> <p><b>Market Surveillance Administrator</b></p> <p>The proposed addition of ISO rules 6.5.2 and 6.5.3 to the list of ISO rules eligible for AUC Rule 019 treatment should be helpful. However, the MSA submits that AUC Rule 019 should be made applicable to all ISO rules. If the Commission does not see fit to create a single category for all ISO rules, per comments above, then perhaps another category should be added to catch non-listed ISO rules as a default. Making all ISO rules eligible for AUC Rule 019 would allow the opportunity for broader use of the administrative efficiency enabled by AUCA Section 52.</p> <p>In addition, it would obviate the need for reiterative consultations regarding AUC Rule 019, as the body of ISO rules changes and evolves (as it inevitably will). Apart from the fact that new ISO rules are added with some frequency, we note that the AESO is engaged in its ongoing Transfer of Authoritative Documents (TOAD) initiative</p>	<p>Given the requirements set out by the Supreme Court of Canada in the decision above, the Commission considers that the contractual obligation entered into as compared to the legislative authority to impose a civil penalty falls far short of meeting the test for “double jeopardy” or even the more general test required to be met for estoppel.</p> <p>The Commission notes that ISO rules 6.5.2 and 6.5.3 are currently in effect, and the ISO has not made a notice of filing with the Commission in accordance with AUC Rule 017 in order to amend or remove ISO rules 6.5.2 and 6.5.3. As such, the question before the Commission is not whether there should be an ISO rule but in what manner should the ISO rule be enforced. That is, by specified penalty or by administrative penalty. To the extent that market participants seek to amend or remove ISO rules 6.5.2 and 6.5.3, the Commission suggests that these submissions be addressed to the ISO.</p> <p>Requests were made to add the following ISO rules to the AUC Rule 019 Penalty Table:</p> <ul style="list-style-type: none"> <li>• ISO rule 3.5.4 (request by the AESO)</li> <li>• ISO rule 6.4.3 (request by the AESO)</li> <li>• ISO rule 6.2.2 (request by ATCO)</li> <li>• ISO rule 6.2.3 (request by ATCO)</li> <li>• ISO rule 9.1 (request by the AESO)</li> <li>• ISO rule 10.10 (request by ATCO)</li> <li>• OPP 003.2 (request by the AESO)</li> <li>• OPP 102 (request by the AESO)</li> </ul>

Issue/Topic	AUC Response
<p>which may not only change the content of existing ISO rules, but also renumber them even where there is no change to the existing content. Those changes affect the stability of AUC Rule 019 as it is presently drawn.</p> <p><b>Powerex Corp.</b></p> <p>In Powerex' August 28, 2009 comments to the Commission, Powerex requested that the Commission consider changes to the specified penalty treatment of ISO rule 6.3.3. The Commission has departed from a zero tolerance approach in its treatment of ISO rule 6.6 and Powerex believes that a similar approach should be adopted for ISO rule 6.3.3.</p> <p>Powerex requests that a separate stakeholder process be initiated to consider changes to the treatment of ISO rule 6.3.3 under Rule 019. Such a stakeholder process would require the participation by the AESO and MSA as they have the complete data set of market participant performance under ISO Rule 6.3.3. Powerex believes that a specified penalty regime for ISO rule 6.3.3 like the treatment of ISO Rule 6.6 should be performance based. For example, a MWh tolerance band would be set where the amount of MWh of energy not delivered (imports) or received (exports) above the tolerance band would be subject to the penalty. This would be similar in form to the +/- 5 MW tolerance band for ISO rule 6.6.</p> <p>Powerex appreciates the Commission's consideration of our comments including the proposal for further stakeholder process to specifically address changes to the treatment of ISO rule 6.3.3 under Rule 019.</p> <p><b>TransAlta Corporation</b></p> <p>TransAlta objects to the addition of ISO Rules 6.5.2 (Ancillary Service Provider Discretion) and 6.5.3 (Ancillary Service</p>	<ul style="list-style-type: none"> <li>• OPP 403 (request by the AESO)</li> <li>• OPP 404 (request by the AESO)</li> <li>• OPP 603 (request by ATCO and the AESO)</li> <li>• OPP 606 (request by ATCO and the AESO)</li> <li>• OPP 806 (request by the AESO)</li> </ul> <p>The Commission will add ISO rule 3.5.4 to Category 2, as this rule contains provisions for the bid side of the market that somewhat parallel the provisions of ISO rule 3.5.3.</p> <p>The Commission will also add ISO rules 6.4.3 and 10.10 to Category 2 of the Penalty Table.</p> <p>The Commission will add OPP 003.2, OPP 102, OPP 403, OPP 404, OPP 603 and OPP 806 to Category 1 of the Penalty Table.</p> <p>The Commission notes that ISO rules 6.2.2 and 6.2.3 are currently in the Penalty Table, and no further action is required.</p> <p>The Commission notes that the AESO submitted to the Commission that it intends to file for withdrawal of OPP 606 in the near future, and therefore the Commission will not add OPP 606 to the Penalty Table.</p> <p>The Commission is not opposed to including ISO rule 9.1 in the Penalty Table, but will seek further input from the AESO and stakeholders regarding reasonable penalty amounts prior to adding this rule to the Penalty Table.</p> <p>ATCO, the AESO and the MSA also suggest that AUC Rule 019 provide for a specified penalty for any contravention of an ISO rule which is not explicitly mentioned in the Penalty Table. ATCO characterized this as a “catch-all” category. The</p>

Issue/Topic	AUC Response
<p>Expectations) to AUC Rule 019. Participation in the Ancillary Services (AS) market is strictly voluntary, there are not any "Must Offer" requirements regarding the provision of AS, and provision of AS is not a regulated mandatory service. Those who wish to participate need only a facility technically capable of providing the service, the right to provide such service, and a valid contract. Every provider of AS must sign the AESO's Master Ancillary Services Agreement. This agreement provides for penalties associated with a failure to supply AS (Article 7 of the Master Ancillary Services Agreement). Specifically, section 7.1 (c) states that these penalties are to be sole penalty mechanism:</p> <p style="padding-left: 40px;">The amounts calculated in Section 7.1 (a) and/or 7.1 (b). as applicable, shall be the sole and exclusive remedy of the AESO against the Supplier in the event of the Supplier failing to supply the Contracted Ancillary Service and the AESO waives any other claims and remedies it may have at law or in equity.</p> <p>As the Master Ancillary Services Agreement already provides for penalties in the event of a failure to supply AS and states that shall be the sole remedy, TransAlta does not believe that it is appropriate for ISO Rules 6.5.2 and 6.5.3 to be included in the AUC's specified penalty matrix. Further, TransAlta does not believe that Rules 6.5.2 and 6.5.3 are even required given the contractual provisions in the Agreement that levy penalties for a failure to supply the contracted AS.</p> <p>To that end, TransAlta recommends:</p> <ol style="list-style-type: none"> <li>1) AESO Rule 6.5.2 and AESO Rule 6.5.3 are removed from AUC Rule 019.</li> <li>2) The AESO remove Rule(s) 6.5.3 and 6.5.3 from the AESO Rules and place those "expectations and discretion" where they belong</li> </ol>	<p>Commission notes that the AESO is engaged in a transition of authoritative documents (TOAD) initiative that may significantly change the format and content of ISO rules. At the present time it is not clear to the Commission as to how ISO rules might be revised at part of the TOAD amendments, additions and removals. Given this situation, the Commission will 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 TOAD initiative.</p> <p>The Commission did not make changes to ISO rule 6.6 as suggested by Powerex. The tolerance band that was incorporated in ISO rule 6.6 was made as an amendment to ISO rule 6.6 by the AESO, in accordance with AUC Rule 017. These changes were the result of consultations by the AESO with market participants and were not made by the Commission as an amendment to AUC Rule 019. To the extent that Powerex proposes changes with respect to ISO rule 6.3.3, Powerex should make submissions directly to the AESO.</p>

	<b>AUC Response</b>
<p>which is in the Master Ancillary Services Contract.</p> <p>3) The MSA to cease all investigations of suspected contravention(s) of AESO Rule 6.5.2 and 6.5.3 as the provisions and remedy of "non-compliance" are already strictly dealt with inside the mutually agreed to contract(s) between the AESO and Ancillary Service Providers.</p> <p><b>TransCanada Energy Ltd.</b></p> <p>Rules 6.5.2 and 6.5.3 address the provision of ancillary services. By adding these rules to the specified penalty matrix, indeed by having any penalty at all associated with rules 6.5.2 and 6.5.3, places Market participants in a position of having two layers of compliance obligations and potential penalties. The contracts with the AESO for the provision of ancillary services contain provisions for liquidated damages in the event that the services are not provided according to the terms of the agreement.</p> <p>Market participants face a further difficulty with the provision of ancillary services in that given the short timeline (e.g., ten minutes) for providing the ancillary services they are not able to determine whether they have complied with rule 6.5.3 until after the ten minute period has expired.</p> <p>The inclusion of rules 6.5.2 and 6.5.3 in the specified penalty matrix creates a more rigidly defined double jeopardy situation that may affect the risks associated with the provision of ancillary services.</p>	
<b><i>Issue 10: General Comments</i></b>	
<p><b>Alberta Electric System Operator</b></p> <p>The AESO's Transition of Authoritative Documents initiative may lead to an existing ISO rule being given a new identifying number which is no longer in the penalty tables. However, the documentation</p>	<p>The Commission agrees with the AESO that the change of a rule number, with the remainder of the rule substantially unchanged, should result in the ISO rule being treated as a contravention of</p>

Issue/Topic	AUC Response
<p>for the new version of the rule will reference the previous version of the rule. In the case where the participant obligations outlined in the rule remain substantially unchanged, the AESO’s suggestion is that a contravention of the new rule be treated as a contravention of the previous version for determination of a specified penalty. The AESO suggests that specific wording be added to Rule 019 to this effect.</p> <p><b>ATCO Power</b></p> <p>ATCO Power supports the changes to the penalty amounts.</p> <p><b>Market Surveillance Administrator</b></p> <p>Thank you for the opportunity to comment on the matters addressed in this Bulletin. Please find below the submissions of the Market Surveillance Administrator (MSA) in this regard. We would first note our understanding that the Bulletin requested comments only on the proposed changes; accordingly, the comments below generally do not seek to address other matters which may be relevant to AUC Rule 019.</p>	<p>the previous version of the ISO rule as identified in AUC Rule 019. The Commission does not consider it necessary to add wording to AUC Rule 019 to address this issue.</p> <p><a href="#">Bulletin 2010-05</a> identified a number of proposed changes to AUC Rule 019, and sought comments on these changes. At the same time, however, stakeholders were open to comment on any additional aspects of the rule that they considered to be relevant as evidenced by the variety of comments submitted to the Commission.</p>