

# Memorandum

**To:** **MARKETS COMMITTEE OF THE BOARD OF DIRECTORS  
of the Independent Electricity System Operator**

**Presenter:** Michael Lyle, Vice President, Legal Resources and Corporate Governance  
Chair, IESO Technical Panel

**Date:** April 31, 2021

**Re:** Uninsured Liability Risk (Market Rule Amendment MR-00448-R00)

**Purpose of Item:** Recommendation for Approval to the Board

## **Executive Summary:**

The IESO is seeking a decision from the IESO Board on a proposed market rule amendment that will limit the IESO indemnity to losses caused by gross negligence, subject to the current limitations on recoverable damages (MR-00448-R00). The Technical Panel unanimously recommended this proposal to the IESO Board for consideration.

## **Significant Issues, Risks and Opportunities:**

Since September 2020, the IESO has been unable to acquire errors and omissions insurance. This poses a significant financial risk to the IESO. In order to address this risk, the IESO is proposing to amend Chapter 1, Section 13.1 of the market rules to limit the IESO indemnity to losses caused by gross negligence, subject to the current limitations on recoverable damages. This amendment would align the market rules with available insurance and align the IESO indemnity with that provided by most North American ISOs.

**Background:**

Under the market rules, the IESO may be liable for negligence, with some limitations, and as such previously obtained a specialized form of errors and omissions insurance. This specialized insurance product covers claims alleging negligent errors and omissions and is tailored for the unique risks related to the IESO's operations.

As a non-profit entity providing an essential public service, absent insurance or mechanisms under the market rules, the IESO has limited sources of funding to address the risk of financial liability under the market rules. Market rules Section 13.1 of Chapter 1 contains an IESO indemnity for losses caused by IESO willful misconduct and negligence.

Until recently, the IESO obtained errors and omissions insurance to match this liability risk. The IESO was unable to renew or obtain alternate errors and omissions insurance that matches the IESO's liability risk under the market rules. After a rigorous search, a limited number of insurers offered insurance limited to claims for gross negligence.

A scan of other Independent System Operators (ISOs), identified that a majority of ISOs in the United States limit their liability to gross negligence.

**Proposal and Analysis:**

By amending the market rules to limit the IESO indemnity to losses caused by gross negligence, subject to the current limitations on recoverable damages, the IESO will align its indemnity with available insurance and with that provided by most North American ISOs.

IESO received one written submission in response to the Technical Panel call for stakeholder comment. OPG suggested in their submission that the IESO should continue to monitor the insurance market and reassess the amendment if appropriate Errors & Omissions insurance becomes available in the future. The IESO agrees with this feedback, and will conduct periodic reviews, and report back to stakeholders if the conditions of the insurance market merit a reconsideration of this approach.

At the March 23, 2021 Technical Panel meeting, the panel voted unanimously to recommend this proposed market rule amendment to the IESO Board.

## **Next Steps / Implementation:**

I recommend that the Board accept the unanimous vote and recommendation of the Technical Panel to approve market rule amendment MR-00448: Uninsured Liability Risk with an effective date of 23 days following the publication of the IESO-Board approved market rule amendment proposal.

Michael Lyle

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Cc: IESO Records

Encls.

- a. Market Rule Amendment Proposal form
- b. Technical Panel Materials
  - i. Memo to Technical Panel from IESO staff
  - ii. TP member Rationale
- c. Stakeholder feedback summary, stakeholder engagement and Technical Panel
- d. Consumer Impact Assessment
- e. Draft Board Resolution