

Memorandum

To: Technical Panel

From: Adam Cumming

Date: March 16, 2021

Re: Market Rule Amendment MR-00448-R00 – Uninsured Liability Risk

Under the market rules, the IESO may be liable for negligence, with some limitations, and as such requires a specialized form of errors and omissions (E&O) insurance. This is a specialized insurance product, which covers claims alleging negligent errors and omissions, but that is tailored for the unique risks related to the IESO's operations. 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. A limited number of non-Canadian insurers offered the IESO coverage for gross negligence.

As a non-profit entity, 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. In order to align the market rules with available insurance and align the IESO indemnity with that provided by most North American ISOs, the IESO is proposing to amend the market rules to limit the IESO to losses caused by gross negligence, subject to the current limitations on recoverable damages.

During the February 16, 2021 Technical Panel (TP) meeting, the TP voted to post the proposed amendment for stakeholder comment. Notice was sent to stakeholders in the February 18th IESO Bulletin and an additional stakeholder engagement was held on February 22nd.

Stakeholder feedback

The IESO has held stakeholder sessions to discuss options to address its uninsured liability risk. Materials from these sessions including presentations and stakeholder feedback is available on the [Options to Address Uninsured Liability Risk webpage](#).

IESO received one written submission in response to the TP 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.

Recommendation

The IESO recommends that the Technical Panel votes to recommend MR-00448-R00 to the IESO Board of Directors for consideration.

Accompanying Materials

Market Rule Amendment Proposal - MR-00448-R00

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