



This form is used to provide comment on a *market rule* amendment under consideration by the *IESO*. Please complete all four sections of this form and submit the completed form by email to the following:

Email Address: Rule.Amendments@ieso.ca

Attention: Market Rules Group

Subject: General Conduct Rule

All information submitted in this process will be used by the *IESO* solely in support of its obligations under the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Market Rules* and associated policies, standards and procedures and its licence. All submitted information will be assigned the *confidentiality classification* of “Public” upon receipt. You should be aware that the *IESO* intends to *publish* this written submission.

Terms and acronyms used in this Form that are italicized have the meanings ascribed thereto in Chapter 11 of the *Market Rules*.

PART 1 – SUBMITTER’S INFORMATION

Please enter your organization and contact information in full.

Name: Association of Power Producers of Ontario (“APPrO”)

(if applicable) *Market Participant / Metering Service Provider* No.¹: _____ *Market Participant Class*: _____

Telephone: David Butters – (416) 322-6549 Fax: _____

E-mail Address: David.Butters@appro.org

PART 2 – MARKET RULE AMENDMENT REFERENCE

Type of Rule Amendment Being Commented on (please indicate with x):

Amendment Submission Proposed Rule Amendment Recommended Rule Amendment

MR Number: _____

This *Market Rule* number is located on the “Current Market Rule Amendment” web page.

¹ This number is a maximum of 12 characters and does not include any spaces or underscore.

PART 1 – SUBMITTER’S INFORMATION

Date Relevant Amendment Submission, Proposed or Recommended Rule Amendment Posted for Comment: See Schedule A attached for Proposed Rule Amendment

PART 3 – COMMENTS ON RULE AMENDMENT

Provide your comments.

On November 26, 2013 the IESO proposed a General Code Rule (“GCR”) for the Technical Panel’s Consideration. On January 13, 2014, APPrO proposed an alternative GCR for the Technical Panel’s Consideration (MR 00408).

On January 25, the Technical Panel determined that the concept of a GCR warranted consideration without endorsing the text of either the IESO or the APPrO proposed rule. According to the Minutes of that meeting:

“The Chair noted that APPrO had submitted to the IESO an alternative GCR market rule amendment submission for possible circulation to the Panel but that APPrO agreed to have only a single amendment submission brought forward for this meeting, for the purpose of a warrants consideration vote. It was agreed that submission would not be reflective of the conceptual language originally put forward by the IESO and would only be about the concept of the need for a GCR. Market rule language would not be included with the submission.”

On February 25, 2014 the IESO provided language for a GCR that was considered by the Technical Panel. The Minutes of the Technical Panel’s meeting stated:

“The Chair agreed that the market rule should be presented in totality prior to the Panel being requested to vote and summarized the outstanding concerns expressed by the Panel:

- Some concern around the market rule language in sections 10A.1.1 to 10A.1.5, noting that it may not be possible to give greater clarity on these sections;
- A need for the term “legitimate business purpose” in the rules and greater clarity on its scope;
- Potential need for greater clarity on the applicability of the GCR to the IESO; and
- Inclusion of a limitations period and the inability for the IESO to apply the GCR retroactively.”

On February 27, 2014, the IESO proposed an amendment to its proposed GCR. APPrO has reviewed those amendments and is concerned that they do not address the concerns of its members or of the Technical Panel. APPrO shared these concerns with the IESO.

PART 3 – COMMENTS ON RULE AMENDMENT

On March 18, 2014, the IESO proposed additional amendments to its Proposed GCR. APPrO continues to have concerns with this proposal.

APPrO believes that the most efficient way to address the issues identified by the Technical Panel is to present the Technical Panel with its proposed amendments to the IESO's March 18, 2014 Rule Amendment Proposal so that the Technical Panel can make an informed decision about which rule language it should post for comment. APPrO's proposed GCR is attached as Schedule A. A blackline comparison to the IESO's March 18, 2014 amendment is attached at Schedule B.

APPrO's proposal has the following main objectives:

1. Clarification of the conduct listed in 10A.1 to avoid duplication while at the same time addressing the concerns expressed by the IESO.
2. Revised language to address the business purpose defence. The IESO's March 18, 2014 Rule Amendment Proposal does not recognize a business purpose defence and introduces a causation requirement with respect to defences based on OPA contracts and OEB regulations. APPrO's proposed draft has contracts and regulations as examples of legitimate business purposes.
3. Address the restrictions on the GCR's application to the OPA and the IESO in a manner consistent with the legitimate business purpose rule so that the conduct is "entirely or predominantly" for a specified purpose and that the party claiming the defence has the onus to prove it. Also, the exclusion is specified to the implementation of government policy through market rules and OPA contracts. The exclusion for the implementation of government policy applies to market participants as well. Requiring IESO rule making to be consistent with the GCR is the standard practice in other jurisdictions (e.g., the Alberta and American states) where ISO rule making is required to be consistent with general conduct requirements.
4. Proposes a more meaningful limitations period.

APPrO looks forward to presenting its proposed GCR to the Technical Panel at its March 25, 2014 meeting so that the Technical Panel can have an informed view of the GCR language that it decides to post for comment.

PART 4 – EXTERNAL CONSULTATION MEETING

If you believe that a special meeting of stakeholders would be necessary/desirable to discuss the issues raised by the rule amendment, please complete the following information:

External Stakeholding meeting necessary/desirable (please indicate with x): X

Reason(s) why you believe a meeting is necessary/desirable:

The General Conduct Rule raises policy issues that benefits a wide range of market participants and other interested parties, including the Ontario Power Authority and the Ontario Energy Board. It would be very helpful to have broader input and participation in this process.

Schedule A: APPrO Proposed GCR

10A. General Conduct

10A.1 *Market participants* and the *IESO* shall not directly or indirectly engage or attempt to engage in conduct, alone or with another person, that they know, or ought reasonably to know:

10A.1.1 exploits any unintended gap or defect in the *market rules*;

10A.1.2 circumvents any of the *market rules*;

10A.1.3 undermines through any means the ability of the *IESO* to carry out its powers, duties and functions under the *Electricity Act, 1998* and the *market rules*; or

10A.1.4 through manipulation or gaming undermines or interferes with the determination of a *market price, settlement amount, or dispatch* outcome by competitive market forces.

10A.2 Nothing in this section prohibits conduct that is carried out entirely or predominantly for a legitimate business purpose, including conduct that is required by or connected to:

10A.2.1 a procurement contract as defined in the *Electricity Act, 1998*;

10A.2.2 an order of the Ontario Energy Board made in accordance with s. 78.1 of the Ontario Energy Board Act, 1998; or

10A.22 the purpose of implementing government policy.

For greater certainty, the party asserting a legitimate business purpose in respect of its conduct shall have the burden of establishing that its conduct is related to such purpose.

10A.3 Nothing in this section prohibits conduct that is carried out by the *IESO* or the *OPA* entirely or predominantly for the purpose of implementing government policy, including conduct that is required by or connected to:

10A.3.1 the design or implementation of a procurement contract as defined in the *Electricity Act, 1998*; or;

10A.3.2 a market rule as defined in the *Electricity Act, 1998*.

For greater certainty, the party asserting that its conduct implements government policy shall have the burden of establishing that its conduct is related to such purpose.

10A.4 For the purposes of this section 10A, “conduct” includes acts and omissions.

11. Information Disclosure

Chapter 3

NOTE: The following proposed section is an addition to the proposed section 6.2B (new) in MR-00407-R01: General Conduct Rule – Governance

6.2B.18 The *IESO* shall, pursuant to section 6.2B.2, serve a *notice of intention* no later than two years after the day on which the alleged breach of section 10A of Chapter 1 occurred or was discovered by the *IESO*, whichever is later.

6.2B.19 Notwithstanding section 6.2B.18, the *IESO* shall not serve a *notice of intention* later than five years after the day on which the alleged breach of section 10A of Chapter 1 occurred.

6.2B.20 Where the *IESO* fails to serve a *notice of intention* within the times provided, no finding of breach of section 10A of Chapter 1 shall be made pursuant to the *market rules* in respect of that conduct.

6.2B.19 For the purposes of section 6.2B.18, “discovered” has the meaning prescribed in section 5 of the *Limitations Act, 2002*.

Schedule B: Comparison of APPrO and IESO Proposed GCRs

10A. General Conduct

10A.1 *Market participants* and the *IESO* shall not directly or indirectly engage or attempt to engage in conduct, alone or with another person, that they know, or ought reasonably to know:

10A.1.1 exploits ~~the IESO-administered markets, including by, without limitation, exploiting~~ any unintended gap or defect in the *market rules*;

10A.1.2 circumvents any of the *market rules*;

10A.1.3 ~~manipulates any of the IESO-administered markets, including by, without limitation, manipulating the determination of a settlement amount;~~ 10A.1.4 undermines through any means the ability of the *IESO* to carry out its powers, duties and functions under the *Electricity Act, 1998* and the *market rules*; or

10A. ~~4.5~~ 1.4 through manipulation or gaming undermines or interferes with the determination of a *market price*, settlement amount, or *dispatch* outcome by competitive market forces.

10A.2 ~~Notwithstanding any other defence a market participant may raise with respect to conduct set out in section 10A.1, a market participant will not have violated section 10A.1 where it establishes that its conduct was entirely or predominantly caused by:~~ Nothing in this section prohibits conduct that is carried out entirely or predominantly for a legitimate business purpose, including conduct that is required by or connected to:

10A.2.1 a procurement contract as defined in the Electricity Act, 1998;

10A.2.2 an order of the Ontario Energy Board made in accordance with s. 78.1 of the Ontario Energy Board Act, 1998; or

10A.2.2 the purpose of implementing government policy.

For greater certainty, the party asserting a legitimate business purpose in respect of its conduct shall have the burden of establishing that its conduct is related to such purpose.

10A.3 Nothing in this section prohibits conduct that is carried out by the IESO or the OPA entirely or predominantly for the purpose of implementing government policy, including conduct that is required by or connected to:

10A.~~2.1~~3.1 the design or implementation of a procurement contract as defined in the *Electricity Act, 1998*; or;

10A.2.2 ~~an order of the Ontario Energy Board made in accordance with s. 78.1 of the *Ontario Energy Board Act, 1998*.~~3.2a market rule as defined in the *Electricity Act, 1998*.

For greater certainty, the party asserting that its conduct implements government policy shall have the burden of establishing that its conduct is related to such purpose.

10A.~~34~~ For the purposes of this section 10A, “conduct” includes acts and omissions, ~~but with respect to the OPA and OEFC only includes acts or omissions in their capacity as market participants, and with respect to the IESO does not include activities pertaining to market design, policy or rulemaking.~~

11. Information Disclosure

Chapter 3

NOTE: The following proposed section is an addition to the proposed section 6.2B (new) in MR-00407-R01: General Conduct Rule – Governance

6.2B.~~19~~18 The IESO shall, pursuant to section 6.2B.2, serve a *notice of intention* no later than ~~six~~two years after the day on which the alleged breach of section 10A of Chapter 1 occurred or was discovered by the IESO, whichever is later.

6.2B.19 Notwithstanding section 6.2B.18, the IESO shall not serve a *notice of intention* later than five years after the day on which the alleged breach of section 10A of Chapter 1 occurred.

6.2B.20 Where the IESO fails to serve a *notice of intention* within the ~~time~~times provided, no finding of breach of section 10A of Chapter 1 shall be made pursuant to the *market rules* in respect of that conduct.

6.2B.~~20~~19 For the purposes of section 6.2B.~~19~~, ~~the term~~18, “discovered” has the meaning prescribed in section 5(~~1~~) of the *Limitations Act, 2002*.

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