



## Market Rule Amendment Written Submission

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](mailto:Rule.Amendments@ieso.ca)  
**Attention: Market Rules Group**  
**Subject: Market Rule Written Submission**

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: HQ Energy Marketing Inc., Powerex Corp. and RBC Capital Markets

(if applicable) *Market Participant / Metering Service Provider* No.<sup>1</sup>: \_\_\_\_\_ *Market Participant Class*: \_\_\_\_\_

Telephone: 416-842-4434 Fax: \_\_\_\_\_

E-mail Address: liz.jordan@rbccm.com

### 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:** MR-407-R00-R01

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

**Date Relevant *Amendment Submission*, Proposed or Recommended Rule Amendment Posted for Comment:** April 17, 2014

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

**PART 3 – COMMENTS ON RULE AMENDMENT**

Provide your comments.

HQ Energy Marketing Inc. (“HQEM”), Powerex Corp. and RBC Capital Markets (together, the “Wholesalers”) are pleased to submit the following comments to the Technical Panel on the proposed General Conduct Rule (“GCR”). The Wholesalers are supportive of the GCR package generally and appreciate the IESO’s efforts to improve the integrity of the electricity marketplace. Wholesalers believe that Amendment Proposals R00 and R01 generally meet the requests Wholesalers made to the IESO in previous sets of comments. Our comments below are primarily with respect to the limitation period associated with the GCR.

As the Wholesalers have previously indicated, we support a limitation period that is consistent with the approach taken by the province in the *Limitations Act*, which imposes a general two year limitation period from the date a cause of action is or should have been discovered. The Wholesalers propose that the language of the rule be changed so that the IESO is required to serve a *notice of intention* no later than two years after the day on which the alleged breach of the GCR was discovered by the IESO.

Our concern with the limitation period has always been to ensure a timely prosecution of any misconduct that will enable the market participant(s) involved to produce records and relevant personnel for a meaningful and fulsome investigation of any alleged misconduct by the IESO. A relatively speedy investigation will act as a deterrent to market misconduct. The IESO’s proposed limitation period of six years does not merely give MACD six years to finish its case, but allows the IESO to serve a *notice of intention* “six years after the day on which the alleged breach of ...[the GCR] was discovered by the IESO.” Given the IESO’s proposal to adapt the *Limitations Act* meaning of “discovered”, there may be a substantial length of time beyond the six year period proposed before the IESO is required to serve a notice of intention to determine a breach of the GCR. The actual proceeding, once the notice of intention is issued, could take some time. It is the Wholesalers view that this six year period to issue the notice of intention (once the misconduct is discovered by the IESO) is excessive, given that all that is required within the two year time frame the Wholesalers are proposing is that the IESO issue a notice of intention.

For clarity, Wholesalers note that there is a distinction between a limitation period and a record retention period, and that those two concepts should not be confused. If the IESO is primarily concerned with the continued availability of company information after two years or that records relevant to its investigation may be destroyed, then it would be appropriate for the IESO to encourage, or perhaps even obligate, market participants to keep their records for more than two years. Both FERC and NERC have several explicit record retention periods, which are designed to ensure that records evidencing compliance with certain regulatory obligations are maintained. Wholesalers respectfully submit that a record retention period is more appropriate to assure the availability of company information than an unreasonable extension of the statutory limitation period in Ontario. Wholesalers are of the view that two years, coupled with a record retention period that allows IESO access to relevant company records, is more than enough for the IESO to come to an informed conclusion about the behaviour being investigated.

Accordingly, Wholesalers suggest that the proposed 6.2B.19 be revised to provide that a *notice of intention* be served no later than two years after the day on which an alleged breach of the GCR has occurred.

Finally, we had some minor comments on the proposed Section 10A outlined in the IESO’s Amendment Proposal R00, highlighted in red text below:

“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, **by** exploiting any 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, **by** manipulating the determination of a *settlement amount*;

**PART 3 – COMMENTS ON RULE AMENDMENT**

10A1.4 undermines, through any means, the ability of the *IESO* to carry out its powers, duties and functions under the *Electricity Act, 1998* ~~and~~ or the market rules...”

The Wholesalers thanks the Technical Panel for the opportunity to make submissions on the GCR.

*HQ Energy Marketing Inc.*

*Powerex Corp.*

*RBC Capital Markets*

**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 Stakeholdering meeting necessary/desirable (please indicate with x):

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