



## 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: TransCanada Energy Ltd.

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

*Market Participant Class:*  
Generator

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### 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-00407-R00 and MR-00407R01

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:** March 27, 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.

#### **Background**

On March 27, 2014, stakeholder comments were requested on three market rule amendment proposals related to the General Conduct Rule proposed by the Independent Electric System Operator's (IESO) Market Assessment and Compliance Division (MACD), namely:

- MR-00407-R00: General Conduct Rule, which proposes to amend the market rules to support the well-functioning of the IESO-administered markets;
- MR-00407-R01: General Conduct Rule – Governance, which proposes to provide market participants the option of a hearing before the Ontario Energy Board to determine whether a breach has occurred under the general conduct rule; and
- MR-00407-R01: General Conduct Rule – APPrO, which consists of the Association of Power Producers of Ontario's (APPrO) proposed alternate language for the GCR.

The following constitutes the comments of TransCanada Energy Ltd. (TCE) regarding these market rule amendments. TCE's comments will address its lingering concerns regarding the language of the proposed GCR. In sum, TCE believes that while the stakeholder consultation has led to considerable progress being made on the governance structure, similar progress has not been made on the language of the GCR. Rather, the language of MR-00407-R00 is now more vague than when the consultation process began. TCE also has concerns regarding the IESO's proposed scope for the legitimate business purpose clause, as well as the applicability of the GCR to conduct of the IESO.

Despite the submissions of the IESO to date, TCE believes the current wording of the GCR to be unworkable and therefore urges the Technical Panel not to recommend the IESO's GCR to the IESO Board at this time but rather, to direct further stakeholder consultation on the language of the GCR. Alternatively, in the event that the Technical Panel finds it necessary to move forward with a GCR at this time, that it does so using the more concise and clear language proposed by APPrO.

To date, TCE has participated in the stakeholder consultation through APPrO and TCE fully supports the comments submitted concurrently by APPrO regarding these market rule amendments. Given the importance of this rule to the Ontario market, TCE wishes to lend support to the position of APPrO with the submission of its own comments.

#### **Section 10A.1 – Vague Prohibitions**

TCE believes that the expression of certain conduct prohibited by section 10A.1 of the GCR is so vague that it is likely unworkable.

TCE recognizes that the wording and scope of a GCR must be necessarily broader than existing market rules, as its very purpose is to fill gaps that may exist between those more prescriptive prohibitions. As noted by the IESO in its July 18, 2013 Position Paper:

Most of the existing market rules speak to discrete activities associated with participation in the market, such as the submission of bids and offers, matters pertaining to dispatch and settlement, etc. Reliability standards are likewise typically narrow in focus. A general conduct rule...can speak in broad terms in order to be applicable across a wide array of possible scenarios. At the same time it must be understandable to market participants, and not unduly vague, such that

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it is a reasonable expectation that its requirements can be met.

[emphasis added]

Neither APPrO, nor TCE, have taken issue with MACD's reasons for wishing to implement a GCR. However, TCE submits, and the IESO has clearly acknowledged, that any GCR adopted must be sufficiently clear in order for market participants to reasonably comply with it. In TCE's view, the language currently proposed by the IESO is unduly vague. In addition to the issues addressed by APPrO, TCE wishes to comment on the language of 10A.1.1 and 10A.1.3 specifically.

*10A.1.1 – Exploiting the Market*

Section 10A.1.1 of the IESO's proposed GCR prohibits market participants from engaging or attempting to engage in conduct that "exploits the IESO-administered markets, including by, without limitation, exploiting any gap or defect in the market rules."

It is trite to say that "exploit" can have a variety of different meanings depending on its context – a simple perusal of the definition makes this clear. The Oxford Dictionary defines exploit to mean to applying or exerting oneself, acting with effect or prospering. Webster's dictionary suggests that it refers to conduct that puts something to productive use. Webster's also indicates that it may refer to the act of taking advantage of something, whether that might be utilizing one's own talents or another's weaknesses.

The concluding phrase of 10A.1.1 "exploiting any gap or defect in the market rules" appropriately captures the intent of the GCR – to prohibit conduct that would otherwise benefit or profit from weaknesses in the existing rules. However, the opening phrase, "exploits the IESO-administered markets", broadens the prohibited conduct to the point of absurdity. Are market participants prohibited from putting their knowledge and expertise to productive use? Or succeeding or prospering in Ontario's market for electricity? Clearly not. Nor does TCE suggest that this was the IESO's intent when it proposed the language of 10A.1.1 for inclusion in the GCR. Nevertheless, if the Technical Panel recommends the GCR to the IESO Board at this time, it will be asking the Board to vote on the GCR despite the foregoing uncertainties inherent in the language of 10A.1.1, in addition to others discussed by APPrO. Section 10A.1.1 is but one example of why the GCR requires, and will benefit significantly from, further discussion and refinement prior to a vote by the IESO Board.

While some refinement has indeed occurred throughout the stakeholder process, it has not always tended towards clarity. The example of 10A.1.1 is, once again, instructive. When first proposed by the IESO in February of 2013, the section prohibited conduct that "exploits or attempts to exploit any of the market rules, including any gap or defect in the market rules." TCE submits that the conduct prohibited by this original language is much clearer. Rather than broadening the prohibition by referring to exploitation of a market generally (which conduct is unduly vague and arguably should not be prohibited at all) the original language prohibited exploitation of market rules and further clarified, without limiting, the prohibited conduct with specific reference to conduct that exploits gaps or defects in the rules.

Indeed, the language proposed by APPrO attempts to provide even further clarity by simply prohibiting conduct that "exploits any unintended gap or defect in the market rules". While it may be arguable whether the language proposed by APPrO is underinclusive in light of the goals of the GCR (TCE believes it is not), it is certainly arguable that the language proposed by the IESO is overly broad. The lack of convergence on language going to the heart of conduct sought to be prohibited by the GCR demonstrates that further consultation and refinement is necessary before the IESO Board is asked to

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vote on the IESO's proposed GCR.

*10A.1.3 – Determination of a Settlement Amount*

TCE holds similar concerns regarding the current language of section 10A.1.3, which prohibits conduct that “manipulates any of the IESO-administered markets, including by, without limitation, manipulating the determination of a settlement amount.”

TCE submits that the “determination” of the point at which price settles in the Ontario market is undertaken wholly within the confines of the IESO's organization - it is unknown to TCE how a market participant might interfere with the IESO's internal procedures for arriving at this determination. TCE understands that APPrO has questioned the IESO regarding 10A.1.3 but at this point remains unclear as to precisely what conduct the IESO is seeking to prohibit by the language of this section.

In any event, the GCR proposed by the IESO already contains a prohibition on conduct that undermines the ability of the IESO to carry out its duties, in section 10A.1.4. As a result, TCE believes that section 10A.1.3 is duplicative and redundant. Furthermore, the wording of 10A.1.5 could be easily revised to prohibit interference with a settlement amount directly, rather than interference with the determination of a settlement amount. The language giving rise to this lack of clarity and potential redundancy requires further refinement and is yet another reason supporting further stakeholder consultation

**Section 10A.2 – Legitimate Business Purpose (LBP)**

TCE will limit its comments on the issues surrounding the LBP, as this issue has been thoroughly addressed in the comments submitted by APPrO, which TCE supports. As noted by APPrO, market participants, including TCE, raised the issue of the LBP at the very outset of the stakeholder process. Indeed, the IESO noted in its September 19, 2013 Position Paper that it was considering how and whether an LBP concept:

...would fit within the construct of the general conduct rule. When a market participant can show a predominant legitimate business purpose for its conduct, the wrongful intent element in the general conduct rule may not be met. In such a circumstance, that finding could lead to a determination by MACD that no breach of the general conduct rule occurred.

Shortly after, at the November 29, 2013 stakeholder meeting, the IESO advised that “Market participants...will be able to establish a legitimate business purpose defense for [its] conduct.” As noted by APPrO, market participants like TCE took this as indication that the issue was no longer whether an LBP would be contemplated as part of the GCR framework, but rather, whether it would be implicit or explicit. Indeed, the IESO's presentation materials for the meeting included conceptual language for an LBP, which read:

Where a market participant establishes that its conduct was carried out entirely or predominantly for a legitimate business purpose consistent with the efficient, fair, competitive and reliable operation of the IESO-administered markets and of the IESO-controlled grid, the conduct will be deemed to be consistent with the requirement set out in section 1.1.

It was not until March 25, 2014 that the IESO informed stakeholders of its belief that market participants should not be able to rely on a legitimate business purpose defence. As a result, in its current form, the LBP proposed by the IESO is overly narrow and applies only to conduct entirely or

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predominantly connected to procurement contracts under the Electricity Act or an order of the Ontario Energy Board. TCE instead supports the wording as set out in the APPrO-proposed rule.

While TCE recognizes that the GCR has evolved through the stakeholding process since November 2013 – particularly from an obligation model to a prohibition model - TCE does not believe it was necessary or justifiable to limit the application of an LBP to the extent proposed by the IESO. In spite of this evolution, the GCR remains intentionally broad in order to prohibit undesirable conduct that may not be captured by existing rules. As a result, TCE submits that an LBP is necessary to ensure that these broad prohibitions do not capture otherwise legitimate conduct unconnected to market incentives – such as business decisions driven by practical requirements of gas transmission, steam host issues, etc.

#### **Section 10A.3 - Applicability of the GCR to the IESO**

TCE will also limit its comments regarding the applicability of the GCR to the IESO and supports the comments of APPrO on this issue. In its March 25, 2014 presentation to the Technical Panel, the IESO noted that the GCR had been revised to address stakeholder concerns regarding the inclusion of the IESO. TCE submits that the language proposed does not address its concerns at all, as it is difficult to see what, if any, IESO conduct might be subject to the GCR. In its current format, “conduct” explicitly excludes IESO activities “pertaining to market design, policy or rulemaking”.

While TCE is alive to the IESO’s concern that the GCR not be used to second-guess policy activities, the language proposed for section 10A.3 does not properly reflect this concern. TCE supports the language proposed by APPrO, which would see the applicability provision narrowed to only exclude “market rules made by the IESO in accordance with s. 32(1) of the *Electricity Act, 1998*.” TCE believes this language to be more consistent with the applicability of general conduct rules to ISO’s in other jurisdictions, such as those regulated by FERC, or the regulation of the Alberta ISO by the Alberta Utilities Commission.

#### **Conclusion**

In sum, TCE urges the Technical Panel to direct the IESO to undertake further consultation rather than recommending the GCR, in its current form, to the IESO Board. TCE believes that many of the outstanding issues between the IESO and stakeholders can be resolved by further consultation and negotiation. Indeed, it appears to TCE that inordinate focus was placed on readying a GCR ahead of the IESO Board’s June meeting, at the expense of refinement towards a workable rule.

Alternatively, should the Technical Panel find it necessary to proceed with a GCR at this juncture, TCE submits that the APPrO version better reflects the need for, and goals of, a GCR in the Ontario market in addition. Moreover, the APPrO proposal does not suffer from the language and drafting issues that currently plague the IESO proposal.

### 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):

**PART 4 – EXTERNAL CONSULTATION MEETING**

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

Please see above.