



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

Identification No.:	MR-00426		
Subject:	Confidentiality		
Title:	Treatment of Confidential Information Related to Reliability Based Power System Studies and Transmission Service Charges		
Nature of Proposal:	<input checked="" type="checkbox"/> Alteration	<input checked="" type="checkbox"/> Deletion	<input checked="" type="checkbox"/> Addition
Chapter:	3	Appendix:	
Sections:	5.3		
Sub-sections proposed for amending:	5.3.1.13(new), 5.3.5.1, 5.3.10(new)		

PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
1.0	Draft for Technical Panel Review	April 19, 2016
2.0	Publish for Stakeholder Review and Comment	April 28, 2016
Approved Amendment Publication Date:		
Approved Amendment Effective Date:		

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

Provide a brief description of the following:

- The reason for the proposed amendment and the impact on the *IESO-administered markets* if the amendment is not made.
- Alternative solutions considered.
- The proposed amendment, how the amendment addresses the above reason and impact of the proposed amendment on the *IESO-administered markets*.

Summary

The IESO proposes to amend the market rules to explicitly allow the IESO to share reliability based confidential information directly to, or to a consultant of, a market participant, a connection applicant, or a person planning on constructing or modifying a facility for the purposes of completing reliability based power system studies.

In addition, it is proposed to eliminate the requirement for the IESO to advise every market participant affected by the disclosure of confidential information to an Ontario transmitter where such disclosure is required for transmitters to manage, operate and maintain their transmission system in a safe and reliable manner or for the reconciliation of applicable transmission service charges.

Background

Refer to MR-0426-Q00

Discussion

Chapter 3, section 5 provides the market rules and framework regarding confidential information. Section 5.3 lists exceptions and conditions where otherwise confidential information may be disclosed by market participants and/or the IESO.

Chapter 3Disclosure of Confidential Information for Reliability Based Power System Studies:Section 5.3.1.13 (new):

It is proposed to amend section 5.3 by adding to the list of exceptions to enable the IESO to disclose confidential information for the purposes of conducting reliability based power system studies. Subject to the conditions of a required non-disclosure agreement (NDA) which is detailed in new section 5.3.10 below, the IESO will have the explicit ability to disclose confidential information directly to, or to a consultant of, a market participant, a connection applicant, or a person planning on constructing or modifying a facility, solely for the purposes of completing reliability based power system studies. This confidential information will be limited to electrical modeling information required for reliability based power system studies and the IESO will have sole discretion to validate the need for the disclosure of the confidential information.

Section 5.3.10 (new):

In order to ensure that the confidential information disclosed is kept confidential, section 5.3.10 will obligate the IESO to enter into an NDA directly with, or with the consultant of, the market participant,

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

connection applicant, or person planning to construct or modify a facility, as applicable. The NDA will:

- Establish a legally enforceable obligation to treat confidential information provided by the IESO as confidential, which will survive the completion of any reliability based power system study;
- Require that the confidential information is solely used for the purposes of completing the reliability based power system studies required by the IESO;
- Require the person to whom the disclosure is made, to destroy or return confidential information provided by the IESO at the conclusion of the reliability based power system studies, or five business days after request to destroy or return the confidential information is received.

Disclosure of Confidential Information to Transmitters:Section 5.3.5.1 (delete):

For purposes of section 5.3.1.8, it is proposed to allow the IESO to disclose confidential information to Ontario transmitters without notifying all affected market participants, confidential information in the form of:

- a “basecase” electrical model of the IESO-controlled grid; and
- transmission charge information, coincident peak and non-coincident peak data for applicable market participants.

PART 4 – PROPOSED AMENDMENT**Chapter 3****5. Accessibility and Confidentiality of Information****5.3 Exceptions**

- 5.3.1 Unless prohibited by *applicable law* or by the provisions of these *market rules* other than this section 5, nothing in sections 5.2, 5.4 or section 5.5.1A of chapter 5 shall prevent:

- 5.3.1.1 the disclosure, use or reproduction of information if the information is, at the time of disclosure, generally and publicly available other than as a result of a breach of confidence by the *market participant* or the *IESO* who wishes to disclose, use or reproduce the information or by any person to whom the *market participant* or the *IESO* has disclosed the information;
- 5.3.1.2 the disclosure of *confidential information* by a *market participant* or the *IESO* to:
- a. a director, officer or employee of the *market participant* or of the *IESO* where such person requires the *confidential information* for the due performance of that person's duties and responsibilities and, in the case of the *IESO* for information that is classified highly confidential pursuant to section 5.4.2.6, where the person has the required security clearance assigned by the *IESO*; or
 - b. a legal or other professional advisor, auditor or other consultant of the *market participant* or of the *IESO* where such persons require the information for purposes of the *market rules* or of an agreement entered into pursuant to the *market rules* or for the purpose of advising the *market participant* or the *IESO* in relation thereto;
- 5.3.1.3 the disclosure, use or reproduction of *confidential information*:
- a. by the *market participant* or person that provided the *confidential information* pursuant to the *market rules*;
 - b. with the consent of the *market participant* or person that provided the *confidential information* pursuant to the *market rules*; or
 - c. in the case of *settlement data*, *metering data* or data contained in the *metering registry*, by or with the consent of the *market participant* to whom such data relates;
- 5.3.1.4 the disclosure, use or reproduction of *confidential information* to the extent required by *applicable law* or by a lawful requirement of:
- a. any government or governmental body, regulatory body, authority or agency having jurisdiction over a *market participant* or the *IESO* or an *affiliate* of a *market participant* or of the *IESO*; or
 - b. any stock exchange having jurisdiction over a *market participant*, the *IESO* or an *affiliate* of a *market participant* or the *IESO*;
- 5.3.1.5 except as otherwise provided in section 2, the disclosure, use or reproduction of *confidential information* if required in connection with legal proceedings, mediation, arbitration, expert determination or other dispute resolution mechanism relating to the *market rules* or to an agreement entered into pursuant to the *market rules* or for the purpose

of advising a person in relation thereto;

- 5.3.1.5A if required by the *IESO Board* or a committee established by the *IESO Board*, the disclosure, use or reproduction of *confidential information* if required in connection with the issuance of *suspension, termination or disconnection orders* in respect of one or more *market participants* the revocation of the registration in respect of one or more *metering service providers* and any show cause hearings in respect thereof under section 5.3 of chapter 6 or section 6.2A;
- 5.3.1.6 the disclosure of *confidential information* if required to ensure the safety of any person, prevent the damage of equipment, prevent the violation of any *applicable law*, or to maintain the *reliability* of the *IESO-controlled grid*;
- 5.3.1.7 the disclosure, use or reproduction of *confidential information* as an unidentifiable component of an aggregate sum;
- 5.3.1.8 the disclosure by the *IESO* of *confidential information* to a *transmitter* for the purposes of:
- a. the safe and reliable management, operation and maintenance of its *transmission system* to the extent that *confidential information* is required pursuant to the terms of the *operating agreement*; or
 - b. the verification or reconciliation of the collection and administration of any applicable *transmission services charges*;
- 5.3.1.9 the disclosure by the *IESO* of *confidential information* to a *market participant*:
- a. during an *emergency* or where the *IESO-controlled grid* is in an *emergency operating state* or a *high-risk operating state*; or
 - b. where an *emergency, an emergency operating state* or a *high-risk operating state* is anticipated by the *IESO*;
- to the extent that such disclosure would, in the *IESO's* opinion:
- c. assist the *market participant* in responding to the conditions referred to in sections 5.3.1.9(a) and 5.3.1.9(b); or
 - d. assist the *IESO* in restoring the *IESO-controlled grid* to a *normal operating state*;
- 5.3.1.10 disclosure by the *IESO* of *confidential information* to a *standards authority, a control area operator, a security coordinator* or an *interconnected transmitter*;

- 5.3.1.11 disclosure by the *IESO* of *confidential information* to the *market surveillance panel*; ~~or~~
- 5.3.1.12 subject to sections 5.3.7 and 5.3.8, disclosure by the *IESO* of *confidential information* to the *market monitoring unit* of a *control area operator* or *security coordinator* relating to an investigation regarding conduct or activities which may have an adverse impact on market efficiency or effective competition; ~~or~~

5.3.1.13 subject to section 5.3.10 and at the sole discretion of the *IESO*, disclosure by the *IESO* of *confidential information* for the purposes of conducting reliability based power system studies directly to, or to a consultant of, a *market participant*, a *connection applicant*, or to a person planning to construct or modify a *facility*.

- 5.3.2 Prior to making any disclosure pursuant to section 5.3.1.2(b), the person wishing to disclose the information shall inform the proposed recipient of the confidential nature of the *confidential information* to be disclosed and shall use all reasonable endeavours, including but not limited to the execution of an appropriate confidentiality agreement, to ensure that the recipient keeps the *confidential information* confidential in accordance with the provisions of section 5.2 and does not use the *confidential information* for any purpose other than that permitted under section 5.3.1.2(b).
- 5.3.3 Prior to making any disclosure pursuant to section 5.3.1.4, 5.3.1.5 or 5.1.3.5A, a person being requested or demanded to disclose the *confidential information* shall advise the person affected by the request or demand as soon as reasonably practicable so as where possible to permit the affected person to challenge such request or demand or seek terms and conditions in respect of any such disclosure.
- 5.3.4 In making any disclosure pursuant to section 5.3.1.6, the disclosing person shall advise the person affected by the disclosure as soon as is reasonably practicable and shall use all reasonable endeavours to protect the confidentiality of the *confidential information* insofar as may be reasonably practicable in the circumstances.
- 5.3.5 Where the *IESO* makes any disclosure pursuant to section 5.3.1.8:
- 5.3.5.1 ~~the *IESO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and~~
[Intentionally left blank – section deleted]
- 5.3.5.2 the *transmitter* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.8 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information*.
- 5.3.6 Where the *IESO* makes any disclosure pursuant to section 5.3.1.9:

- 5.3.6.1 the *IESO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and
- 5.3.6.2 the *market participant* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.9 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances.
- 5.3.7 Where the *IESO* proposes to disclose any *confidential information* pursuant to section 5.3.1.12 the *IESO* shall either require the *market monitoring unit* to demonstrate that their governing documents limit further disclosure, or enter into a non-disclosure agreement with the *market monitoring unit*. The *market monitoring unit's* governing documents or non-disclosure agreement shall:
- 5.3.7.1 establish a legally enforceable obligation to treat *confidential information* provided by the *IESO* as confidential. Such obligation shall be of a continuing nature and survive the termination of any investigation for which the *confidential information* has been requested;
- 5.3.7.2 require the *market monitoring unit* to whom the disclosure is made to promptly notify the *IESO* of any third party requests for additional disclosure of the *confidential information* and seek appropriate relief to prevent or, if it is not possible to prevent, to limit disclosure in the event that a subpoena or other compulsory process seeks to require disclosure of *confidential information* provided by the *IESO*;
- 5.3.7.3 require the *market monitoring unit* to whom the disclosure is made to use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.12, and to use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances; and
- 5.3.7.4 require the *market monitoring unit* to whom the disclosure is made to destroy or return *confidential information* provided by the *IESO* at the conclusion or resolution of the investigation or five *business days* after a request to destroy or return *confidential information* from the *IESO* is received by the *market monitoring unit*.
- 5.3.8 Prior to making any disclosure pursuant to section 5.3.1.12, the *IESO* shall advise the *market participant* affected by the request as soon as reasonably practicable so as where possible to permit the affected *market participant* to challenge such request or seek terms and conditions in respect of any such disclosure. The *IESO* shall not be required to advise the affected *market participant* if the *IESO* reasonably determines that such notification will jeopardize the investigation.
- 5.3.9 *Confidential information* provided by a *market monitoring unit* to the *IESO* shall

be destroyed or returned to the *market monitoring unit* that provided the *confidential information* at the conclusion or resolution of the investigation or five *business days* after a request to destroy or return *confidential information* from the *market monitoring unit* is received by the *IESO*.

5.3.10 Prior to making any disclosure pursuant to section 5.3.1.13, the *IESO* shall enter into a non-disclosure agreement directly with, or with the consultant of, a *market participant*, a *connection applicant*, or with a person planning to construct or modify a *facility*. The non-disclosure agreement shall:

5.3.10.1 establish a legally enforceable obligation to treat *confidential information* provided by the *IESO* as confidential. Such obligation shall be of a continuing nature and survive the completion of any reliability based power system study for which the *confidential information* was required;

5.3.10.2 require that the *confidential information* so disclosed is used solely for the purposes referred to in the non-disclosure agreement and in section 5.3.1.13, and to use all reasonable efforts to protect the confidentiality of such *confidential information*; and

5.3.10.3 require the destruction or return of the *confidential information* provided by the *IESO* at the conclusion of the reliability based power system study, or five *business days* after a request for the destruction or return of the *confidential information* from the *IESO* is received.

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Chapter 11

connection applicant means any of:

- (i) a *market participant* or person that applies to the *IESO* for approval of a new *connection* to the *IESO-controlled grid* or for approval of the modification of an existing *connection* to the *IESO-controlled grid*, or
- (ii) a *distributor* in whose *distribution system* a *market participant* or person is or intends to be connected as an *embedded generator* whose *generation facility* is or will be rated greater than 10 MW, that seeks to establish a new or modify an existing connection pursuant to section 6.1.6 of Chapter 4;

PART 5 – IESO BOARD DECISION RATIONALE

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