



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

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| Identification No.: | MR-00407-R01: General Conduct Rule - Governance | | |
| Subject: | Compliance | | |
| Title: | General Conduct Rule – Governance | | |
| Nature of Proposal: | <input checked="" type="checkbox"/> Alteration | <input type="checkbox"/> Deletion | <input checked="" type="checkbox"/> Addition |
| Chapter: | 3, 11 | Appendix: | |
| Sections: | Ch 3, sections 2.2.1.1A (new), 2.2.1.1B (new), 2.5.1A.4D (new), 2.5.1A.4E (new), 2.7.1.2A (new), 2.7.24, 6.2.7, 6.2.7A (new), 6.2B (new), Ch 11 Definitions | | |
| Sub-sections proposed for amending: | | | |

PART 2 – PROPOSAL HISTORY

| Version | Reason for Issuing | Version Date |
|--------------------------------------|--|-------------------|
| 1.0 | Draft for Technical Panel Review | February 26, 2014 |
| 2.0 | Draft for Technical Panel Review | March 18, 2014 |
| 3.0 | Publish for Stakeholder Review and Comment | March 27, 2014 |
| 4.0 | Submitted for Technical Panel Vote | April 29, 2014 |
| 5.0 | Recommended by Technical Panel; Submitted for IESO Board Approval | May 14, 2014 |
| 6.0 | Approved by IESO Board | June 12, 2014 |
| | | |
| Approved Amendment Publication Date: | June 12, 2014 | |
| Approved Amendment Effective Date: | The effective date will be the date on which the corresponding IESO licence amendments to enable the proposed governance structure, if approved by the Ontario Energy Board, go into effect. | |

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 by introducing a general conduct rule to support the well-functioning of the IESO-administered markets.

To support the general conduct rule (GCR), an alternative enforcement process is proposed. It will provide market participants the option of a hearing before the Ontario Energy Board (OEB) to determine whether a breach has occurred under the GCR.

This proposal is based on stakeholder consultation as part of SE-112: General Conduct Rule.

Further information on SE-112 can be found on the IESO's website at:

[IESO General Conduct Rule \(SE-112\)](#)

Background

The IESO plays an enforcement role under the *Electricity Act, 1998* and the market rules. Chapter 3 of the market rules allows for the imposition of financial penalties, among other sanctions, on market participants who are found to be in breach of a market rule. The IESO also has the authority to enforce compliance with reliability standards. As set out in the market rules, IESO (through its Market Assessment and Compliance Division - MACD) will “monitor, assess and enforce compliance with the market rules, including by means of the imposition of financial penalties, the issuance of non-compliance letters, suspension orders, termination orders and disconnection orders and the taking of such other enforcement actions as provided for in the market rules.”¹

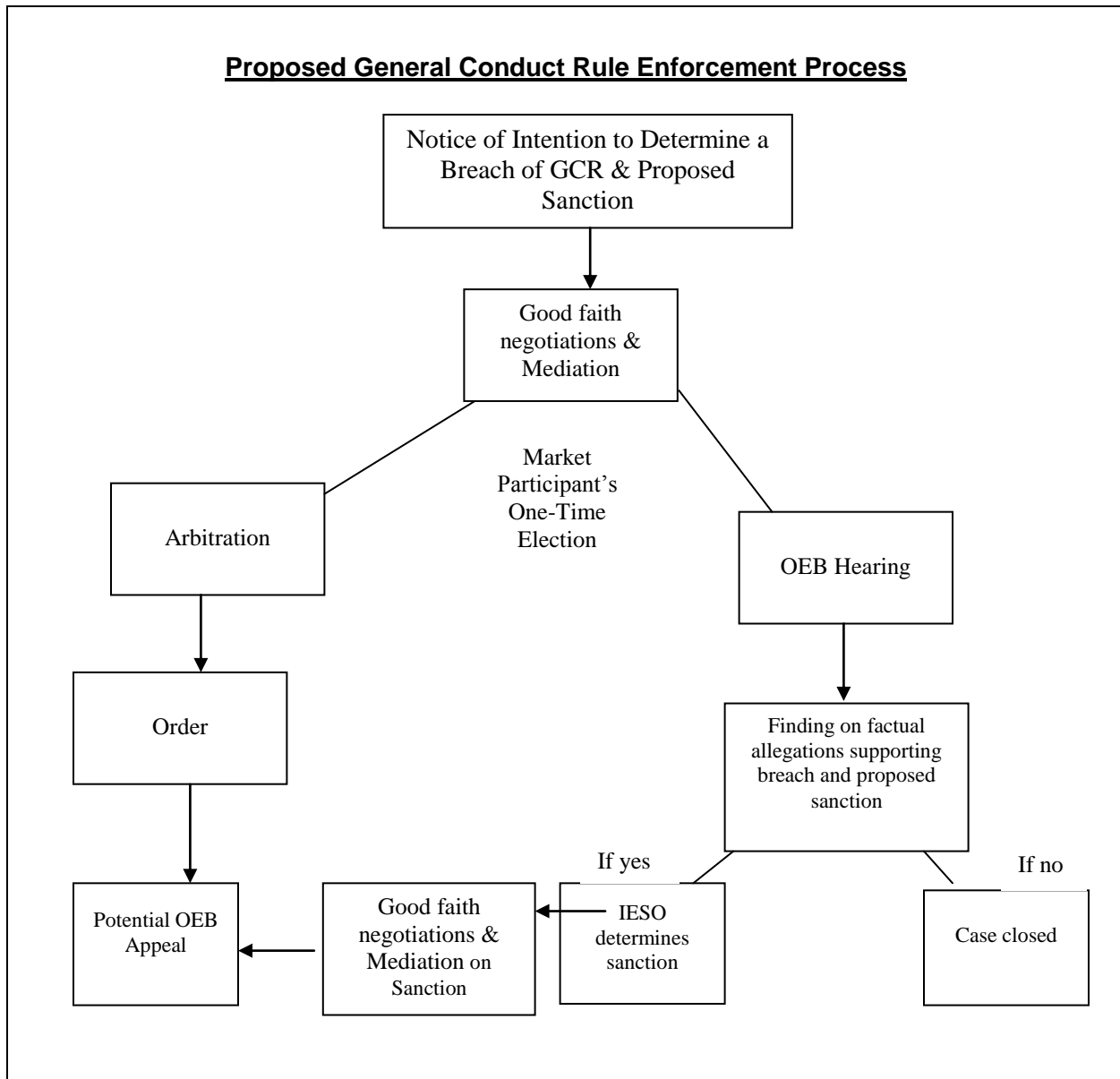
Under the proposed GCR enforcement process, market participants will have the option to make a one-time election to either pursue arbitration under section 2.5 of Chapter 3 of the market rules, or to request that the IESO apply to the OEB to determine whether a breach has occurred under the GCR. This alternative under the proposed enforcement process is shown in the attached Appendix A.

Discussion

The proposed amendments to chapter 3 and 11 are intended to capture the concepts and principles depicted in the following flowchart:

¹ IESO market rules, Ch 3 section 6.1.1.

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT



PART 4 – PROPOSED AMENDMENT

Chapter 3

2. Dispute Resolution

2.2 Application

2.2.1 Subject to sections 2.2.3 and 3.8 and to section 8.8.1 of Chapter 2, the dispute resolution regime provided for in this section 2 shall apply to:

2.2.1.1 any dispute between the *IESO* and any *market participant* which arises under the *market rules*, *market manuals* or any standard, policy or procedure established by the *IESO* pursuant to these *market rules*, including with respect to any alleged violation or breach thereof, whether or not specifically identified in the *market rules* as a dispute to which this section 2 applies;

2.2.1.1A a contested matter pursuant to section 6.2B.5 and section 6.2B.9, except as otherwise provided in section 6.2B;

2.2.1.1B a dispute involving an order of the *IESO* issued pursuant to section 6.2B.15, except as otherwise provided in section 6.2B;

2.5 Notice of Dispute, Negotiation and Response

2.5.1 The complaining person (the “*applicant*”) shall, within the time specified in section 2.5.1A, serve a written notice of the dispute (the “*notice of dispute*”) on any *respondent*.

2.5.1A A *notice of dispute* shall be served:

2.5.1A.1 in the case of an application referred to in section 2.2.1.3, within 20 *business days* of the date of receipt of notice by the *generator* of rejection by the *IESO* of the *outage* in respect of which compensation is claimed pursuant to section 6.7.5 of Chapter 5;

- 2.5.1A.2 in the case of a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6, within 20 *business days* of the date of receipt by the *metering service provider* of notice of the revocation of its registration by the *IESO*;
- 2.5.1A.3 in the case of a request or dispute referred to in section 6.8.2A or 6.8.2B of Chapter 9, within the time specified in section 6.8.8 of Chapter 9;
- 2.5.1A.4 in the case of a dispute referred to in section 6.8.9 of Chapter 9, within the time specified in section 6.8.10 of Chapter 9;
- 2.5.1A.4A in the case of a dispute referred to in section 2.1A.6A of Chapter 9, within 20 *business days* of the date of receipt of the first *invoice* that reflects the apportionment that is the subject-matter of the dispute;
- 2.5.1A.4B in the case of a dispute involving an order, direction, instruction or decision of the *IESO* issued prior to January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within six years of the date of receipt of the order, direction, instruction or decision;
- 2.5.1A.4C in the case of a dispute involving an order, direction, instruction or decision of the *IESO* issued on or after January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within two years of the date of receipt of the order, direction, instruction or decision; ~~and~~
- 2.5.1A.4D in the case where the market participant contests the notice of intention under section 6.2B.3, within the timelines set out in section 6.2B.3 and the response to the notice of intention shall be deemed to constitute the notice of dispute;
- 2.5.1A.4E in the case of a dispute involving one or more orders referred to in section 6.2B.15, within the timelines set out in section 6.2B.16; and
- 2.5.1A.5 in all other cases, within the applicable limitation period set out in the Limitations Act, 2002.

2.7 Arbitration

- 2.7.1 Subject to section 2.7.1A, within five *business days* of:

2.7.1.1 the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4, where the dispute is one to which section 2.6.1A.1, 2.6.1A.2 or 2.6.1A.3 applies;

2.7.1.1A the filing of the request referred to in section 2.5.9.2, where the dispute is one to which that section applies;

2.7.1.2 the filing of a notice of intent to dispense with mediation pursuant to section 2.6.1B, where the dispute is one to which that section applies; ~~or~~

2.7.1.2A the filing of the *notice to elect* referred to in section 6.2B.7 electing subsection 6.2B.7.1; or

2.7.1.3 the filing of the notice of termination referred to in section 2.6.13 or 2.6.16, in any other case,

the *secretary* shall in accordance with the *Governance and Structure By-law* provide the parties with a list of at least three names of members of the *dispute resolution panel* available to arbitrate the dispute. No person who acted as a *mediator* in respect of a dispute may be included on the list of members available to arbitrate the same dispute.

| 2.7.24

Where, in the case of a dispute referred to in section 2.2.1.1 ~~or 2.2.1.1A~~, the *arbitrator* concludes that a *market participant* has violated a provision of the *market rules*, the *arbitrator* may in his or her award impose such financial penalties, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable, provided that:

2.7.24.1 no financial penalty shall be imposed on a *market participant* unless the *arbitrator* determines that the breach of the *market rules* could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally; and

2.7.24.2 in fixing the amount of the penalty, the *arbitrator* shall have regard to the criteria set forth in section 6.6.7.

An award of the *arbitrator* under this section shall be deemed to be a decision or order of the *IESO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.

6. Enforcement

6.2 Procedures Concerning Alleged Breaches of the Market Rules

6.2.7 Subject to section 6.2.7A, ~~W~~where the *IESO* determines that a *market participant* has breached the *market rules*, the *IESO* may by order do any one or more of the following:

- 6.2.7.1 direct the *market participant* to do, within a specified period, such things as may be necessary to comply with the *market rules*;
- 6.2.7.2 direct the *market participant* to cease, within a specified period, the act, activity or practice constituting the breach;
- 6.2.7.3 impose additional or more stringent record-keeping or reporting requirements on the *market participant*;
- 6.2.7.4 issue a non-compliance letter in accordance with section 6.6;
- 6.2.7.5 impose financial penalties in accordance with section 6.6 indicating the time within which payment of the financial penalty must be made to the *IESO*, provided that no such penalties shall be imposed unless the *IESO* is satisfied that the breach could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally; or
- 6.2.7.6 take such other action as may be provided for in Appendix 3.1 in respect of the *market rule* that has been breached by the *market participant*.
- 6.2.7.7 [Intentionally left blank – section deleted]

6.2.7A If the *IESO* is satisfied that the *market participant* has breached section 10A of Chapter 1, and the *IESO* proposes to issue one or more orders under section 6.2.7, the *IESO* shall serve a *notice of intention on the market participant in accordance with section 6.2B*. The *IESO* may include in the *notice of intention* any or all alleged breaches of the *market rules* that were included in the notice issued under section 6.2.3. If the *IESO* does not include in the *notice of intention* an alleged breach described in the notice issued under section 6.2.3, excluding an alleged breach of section 10A of Chapter 1, then the *IESO* may make one or more orders under section 6.2.7 respecting that alleged breach.

6.2B Alleged Breaches of Section 10A of Chapter 1

- 6.2B.1 For the purposes of section 6.2B, excluding sections 6.2B.19 and 6.2B.20, a reference to section 10A of Chapter 1 shall be deemed to include all breaches described in the *notice of intention*.
- 6.2B.2 If the *IESO* is satisfied that the *market participant* has breached section 10A of Chapter 1, the *IESO* shall, prior to making any order under section 6.2.7, serve a written *notice of intention* on the *market participant*. The notice shall set out the following:
- 6.2B.2.1 the *market rules* that the *IESO* is satisfied that the *market participant* has breached;
- 6.2B.2.2 the reasons the *IESO* intends to determine that the *market participant* has breached section 10A of Chapter 1;
- 6.2B.2.3 the proposed order or orders under section 6.2.7;
- 6.2B.2.4 the *market participant's* right to contest the *notice of intention* pursuant to section 6.2B.3; and
- 6.2B.2.5 the time within which the *market participant* may contest the *notice of intention*.
- 6.2B.3 If the *market participant* wishes to contest the *notice of intention*, it shall serve a *response to the notice of intention* on the *IESO* within 20 *business days* of receipt of the *notice of intention*.
- 6.2B.4 If the *market participant* does not contest the *notice of intention* within 20 *business days* of the receipt of the *notice of intention*, the *IESO* may determine that the *market participant* has breached section 10A of Chapter 1 and impose one or more orders under section 6.2.7.
- 6.2B.5 If the *market participant* contests the *notice of intention*, the *market participant* and the *IESO* shall attempt to resolve the matter through good faith negotiations in accordance with sections 2.5.3A and 2.5.3B, except that the *response to the notice of intention* shall replace the *notice of dispute* referred to in section 2.5.3A and shall be served in accordance with section 2.5.1A.4D.
- 6.2B.6 Notwithstanding sections 2.5.3C and 2.5.4, if the parties are unable to resolve the matter through good faith negotiations, the mediation process described in section 2.6 shall apply and either party may file with the *secretary* on written notice to each other party a copy of the *notice of intention* and *response to the notice of intention* together with proof of service. The *secretary* and *mediator* shall rely on the *notice of intention* and *response to the notice of intention* in lieu of the *notice of dispute* and *response* for the purposes of section 2.6. The *IESO* shall provide a summary of the matter for *publication* in accordance with section 2.9.2.1.
- 6.2B.7 If the parties are unable to resolve the matter through the mediation process, then within 5 *business days* of the filing of the written notice terminating the mediation process, as referred to in section 2.6.1B, 2.6.13 or 2.6.16, the *market participant* shall file with the *secretary* and serve on the *IESO* a *notice to elect* electing one of the following available options:

- 6.2B.7.1 that the matter be referred to an *arbitrator* pursuant to the process described in section 2.7;
- 6.2B.7.2 that the *IESO* apply to the *Ontario Energy Board* to make a determination and findings of fact as described in section 6.2B.11; or
- 6.2B.7.3 not to pursue the matter under either subsections 6.2B.7.1 or 6.2B.7.2.
- 6.2B.8 Where the *market participant* elects not to pursue the matter under section 6.2B.7.3 or does not make any election as described in section 6.2B.7, the *IESO* may determine that the *market participant* has breached section 10A of Chapter 1 and impose one or more orders under section 6.2.7.
- 6.2B.9 Where the *market participant* elects that the matter be referred to an *arbitrator* pursuant to section 6.2B.7.1, section 2.7 shall apply. For the purposes of section 2.7, the *IESO* shall be deemed to be the *applicant* and the *market participant* shall be deemed to be the *respondent*.
- 6.2B.10 Where the *market participant* elects that the *IESO* apply to the *Ontario Energy Board* pursuant to section 6.2B.7.2, the *IESO* shall bring the application to the *Ontario Energy Board* within 20 *business days* of the service of the *notice to elect*.
- 6.2B.11 In an application brought pursuant to section 6.2B.10, the *IESO* shall request that the *Ontario Energy Board* make the following:
- 6.2B.11.1 a determination of whether the *market participant* has breached section 10A of Chapter 1; and
- 6.2B.11.2 findings of fact relevant to the imposition of one or more orders by the *IESO* under section 6.2.7.
- 6.2B.12 Where the *IESO* applies for a hearing before the *Ontario Energy Board* pursuant to section 6.2B.10 and the *Ontario Energy Board* dismisses the proceeding without a hearing under subsection 4.6(1)(b) of the *Statutory Powers Procedure Act*, the *notice to elect* shall be deemed to be a request for arbitration under section 6.2B.7.1 and the *IESO* shall refer the matter to an *arbitrator* in accordance with section 6.2B.9.
- 6.2B.13 Where the *Ontario Energy Board* holds a hearing referred to in section 6.2B.11 and determines that the *market participant* has not breached section 10A of Chapter 1, subject to any rights of appeal or review, the *IESO* shall adopt the *Ontario Energy Board's* findings.
- 6.2B.14 Where the *Ontario Energy Board* holds a hearing referred to in section 6.2B.11 and determines that the *market participant* has breached section 10A of Chapter 1, subject to any rights of appeal or review, the matter shall return to the *IESO* and the *IESO* shall adopt the *Ontario Energy Board's* determination on breach.
- 6.2B.15 Where the matter returns to the *IESO* under section 6.2B.14, the *IESO* may issue one or more orders pursuant to section 6.2.7 and, in doing so:

6.2B.15.1 shall adopt and apply all findings of fact made by the *Ontario Energy Board*; and

6.2B.15.2 may adopt and apply any information from the record of the hearing before the *Ontario Energy Board*,

that are relevant to the order or orders under section 6.2.7 but may not rely on any additional evidence.

6.2B.16 If the *market participant* wishes to dispute the *IESO*'s order or orders issued pursuant to section 6.2B.15, it shall serve a *notice of dispute* on the *IESO* within 20 *business days* of receipt of the order or orders.

6.2B.17 Where the *market participant* disputes the order or orders issued by the *IESO* pursuant to section 6.2B.15, the *market participant* and the *IESO* shall attempt to resolve the matter in accordance with sections 2.5 and 2.6.

6.2B.18 The arbitration process set out in section 2.7 shall not apply to disputes as described in section 6.2B.16. An order issued under section 6.2B.15 may be appealed as provided for in section 36 of the *Electricity Act, 1998* upon the filing of a notice under section 2.6.2B, 2.6.13 or 2.6.16 terminating the mediation process.

Chapter 11

1. Definitions

notice of intention means a notice issued by the *IESO* to a *market participant* under section 6.2B.2 of Chapter 3;

notice to elect shall be in such form as may be established by the *IESO* and means a written notice provided by the *market participant* to the *IESO* under section 6.2B.6 of Chapter 3;

response to the notice of intention shall be in such form as may be established by the *IESO* and means a notice provided by the *market participant* under section 6.2B.3 of Chapter 3;

Statutory Powers Procedure Act means the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*;

PART 5 – IESO BOARD DECISION RATIONALE

This amendment fulfills the IESO Board's direction to IESO Management to develop a market rule amendment, with input from stakeholders, that relates to the general conduct of market participants that is similar to equivalent provisions in other jurisdictions.

This amendment is intended to support the General Conduct Rule by providing market participants the option of a hearing before the Ontario Energy Board to determine whether a breach has occurred under the General Conduct Rule.