Renewed Market Rules

Chapter 3

Administration, Supervision, Enforcement

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Renewed Market Rules – :

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1. Introduction

1.1 Scope of Chapter

1.1.1 This Chapter sets forth:

1.1.1.1 the dispute resolution mechanism applicable to certain disputes arising under the *market rules*;

1.1.1.2 the manner in which market monitoring and surveillance responsibilities will be carried out;

1.1.1.3 the procedures pursuant to which the *market rules* may be amended;

1.1.1.4 the procedures which govern the protection, use and disclosure of *confidential information* by the *IESO* and *market participants*; and

1.1.1.5 the manner in which the *IESO* will monitor, assess and enforce compliance with the *market rules*.

2. Dispute Resolution

2.1 Interpretation and General Procedural Provisions

2.1.1 The provisions of this section 2 shall be liberally construed to secure the most expeditious, just and least expensive determination on its merits of every proceeding conducted hereunder.

2.1.2 Where no procedures are provided for in this section 2 or the applicable *market manual*, a *mediator* or an *arbitrator* may do whatever is reasonably necessary and permitted by law to enable the effective mediation or adjudication of any matter before the *mediator* or the *arbitrator*.

2.1.3 The parties to a dispute may agree to dispense with, supplement or vary the application of all or any part of the provisions of sections 2.5.3A to 2.7. A *mediator,* an *arbitrator* or the *secretary* may, in the context of the resolution or the attempted resolution of a specific dispute pursuant to this section 2, dispense with, supplement or vary the application of all or any part of the provisions of sections 2.5.3A to 2.7, including as to any prescribed time periods, if special circumstances or the public interest require, or with the consent of the parties to the dispute. The *secretary's* authority to dispense with, supplement or vary the application of all or any part of

the provisions of sections 2.5.3A to 2.7 lapses with respect to a particular dispute once a *mediator* or *arbitrator* is appointed in respect of that dispute.

2.1.4 The *IESO* shall from time to time *publish* and notify *market participants* of the address of the *secretary* for filing purposes.

2.1.5 Unless otherwise specified in this section 2 or otherwise directed by the *secretary*, a *mediator* or an *arbitrator*, only one copy of any document is required to be served or filed.

2.1.6 The following provisions of the *Arbitration Act, 1991* do not apply to any proceeding conducted under this section:

2.1.6.1 subsection 10(1)(b);

2.1.6.2 subsection 13(1)2;

2.1.6.3 subsection 23(1);

2.1.6.4 section 24;

2.1.6.5 subsections 25(3) to 25(5);

2.1.6.6 sections 34, 37, 39, 45, 48 and 53;

2.1.6.7 subsections 54(5) and 54(6); and

2.1.6.8 sections 55 and 56, insofar as they may be applicable to the fees payable to an *arbitrator* and to the extent that such fees have been approved by the *Ontario Energy Board*.

2.2 Application

2.2.1 Subject to sections 2.2.3 and 3.8 and to MR Ch.2 s.8.8.1, 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;

2.2.1.2 any denial by the *IESO* of authorization to any person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, out of or through the *IESO-controlled grid*, as to the denial of such authorization;

2.2.1.3 an application by a *generator* or *electricity storage participant* for compensation pursuant to MR Ch.5 s.6.7.5 in respect of an *outage* rejected by the *IESO*;

2.2.1.4 a*reviewable decision*;

2.2.1.5 a dispute referred to in MR Ch.9 s.6.10.1;

2.2.1.6 [intentionally deleted];

2.2.1.7 any dispute between the *IESO*, on the one hand, and any *market participant*, *connection applicant* or *metering service provider*, on the other hand, pursuant to the terms of any agreement or contract referred to in these *market rules* or in any policy, guideline or other document referred to in MR Ch.1 s.7.7 or any *market manual*, unless in respect of a given dispute the agreement or contract or the *licence* of a party to the dispute either provides for an alternative dispute resolution mechanism or provides that the dispute resolution regime provided in this section 2 shall not be applicable;

2.2.1.8 a dispute between *market participants* referred to in MR Ch.9 s.2.2.7 in respect of the apportionment of *energy* associated with *connection station service* and with site specific losses;

2.2.1.9 the *IESO's* determination under MR Ch.5 ss.3.2.5, 3.2.6, and 3.2.7 regarding the applicability of *reliability standards*;

2.2.1.10 a dispute referred to in MR Ch.6 s.10.4.8; and

2.2.1.11 a dispute referred to in section MR Ch.10 s.6C.1.5.

2.2.2 The dispute resolution regime provided for in this section 2:

2.2.2.1 shall apply to a dispute between *market participants* referred to in MR Ch.9 s.2.2.7 and MR Ch.5 s.8.4.2; and

2.2.2.2 may also apply to any other disputes between *market participants* where all of the *market participants* which are party to the dispute consent in writing to the application thereof.

2.2.2A A *market participant* that has, pursuant to section 2.2.2.2, consented to the application of the dispute resolution regime provided for in this section 2 may, prior to the date on which the *secretary* takes the action referred to in section 2.6.2.1 or 2.6.2.2, as the case may be, withdraw its consent in the event that a *respondent* to a crossclaim objects to the application of such regime.

2.2.3 The dispute resolution process provided for in this section 2 shall not apply to the following:

2.2.3.1 applications by any person to review a *market rule*, which applications shall be governed by section 4;

2.2.3.2 disputes with respect to a proposal to *amend* or not to *amend* any provision of the *market rules*;

2.2.3.3 disputes between the *IESO* and a *market participant* relating to the quantum of the fees chargeable by the *IESO* to the *market participant* to the extent that such fees have been approved by the *Ontario Energy Board*, unless the dispute relates to the manner of calculation of the fees payable by the *market participant* in any given case;

2.2.3.4 [Intentionally left blank]

2.2.3.5 disputes between the *IESO* and a *market participant* relating to a *suspension order* issued by the *IESO* or to a *termination order* issued by the *IESO*, in respect of which an appeal may be filed with the *Ontario Energy Board* pursuant to section 36 of the *Electricity Act, 1998*;

2.2.3.6 disputes between the *IESO* and a *market participant* to the extent that the *licence* of the *IESO* or of the relevant *market participant* provides for an alternative dispute resolution mechanism;

2.2.3.7 disputes between the *IESO* and a *market participant* relating to the standards, criteria or requirements established by a *standards authority* to the extent that an agreement with the relevant *standards authority* provides for an alternative dispute resolution mechanism;

2.2.3.8 an award of an *arbitrator* made pursuant to this section 2;

2.2.3.9 any dispute with respect to which these *market rules,* other than this section 2, provide for an alternative dispute resolution mechanism other than the independent review process described in MR Ch.7 s.22.8;

2.2.3.10 any dispute with respect to which these *market rules,* other than this section 2, provide for the non-application of the dispute resolution process provided for in this section 2;

2.2.3.11 a decision of a panel of the *IESO Board*:

(a) granting or rejecting an *exemption application*;

(b) respecting the terms and conditions of an *exemption*, other than with respect to the quantum of the costs payable by the *exemption applicant* or one or more *market participants* pursuant to MR Ch.1 s.14.5;

(c) removing or amending an *exemption* or the terms and conditions thereof, other than with respect to the quantum of the costs referred to in MR Ch.1 s.14.5;

(d) approving or denying the transfer of an *exemption*; or

(e) respecting *confidential information* provided to the *IESO* as part of or in respect of an *exemption application* including, without limitation the disclosure thereof; and

2.2.3.12 when considering an *exemption application*, including for certainty a reconsideration or transfer of an *exemption*, a determination or decision by a panel of the *IESO Board* regarding the interpretation of the provisions of any *market rule, market manual* or any standard, policy or procedure established by the *IESO* pursuant to the *market rules*.

2.2.4 Subject to such rights of appeal or review as may be prescribed by *applicable law,* an award of an *arbitrator* made pursuant to this section 2 is final and binding on the parties. Without limiting the generality of the foregoing, but subject to sections 2.2.5 and 3.8 and to MR Ch.2 s.8.8.1, where any dispute of a kind described in section 2.2.1 or 2.2.2 arises, the parties concerned shall comply with the procedures set forth in this section 2 before commencing a civil or other proceeding in relation to the dispute, including but not limited to the filing of an appeal pursuant to subsection 36(1) of the *Electricity Act, 1998*.

2.2.5 Nothing in this section 2 shall prevent a party to a dispute from making application to a court of competent jurisdiction in the Province of Ontario for urgent interlocutory or interim injunctive relief.

2.3 Continuing Obligations and Stay of Orders

2.3.1 Subject to section 2.3.3, where a dispute involves the payment or recovery of monetary amounts due under the *market rules*, the amount shall be due and payable at the time specified for payment under the *market rules* notwithstanding initiation of the dispute resolution process.

2.3.2 Subject to section 2.3.3, initiation of the dispute resolution process referred to in this section 2 does not stay implementation of an order made or a direction given to a *market participant* by the *IESO* pursuant to the *market rules*.

2.3.3 Where a dispute in respect of which the dispute resolution process has been initiated involves the payment of a financial penalty imposed upon a *market participant* by the *IESO* under section 6.2, the obligation of the *market participant* to pay the financial penalty shall be stayed pending the outcome of the dispute resolution process.

2.4 [Intentionally left blank – section deleted]

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 Subject to section 2.5.1B, 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* or *electricity storage participant* of rejection by the *IESO* of the *outage* in respect of which compensation is claimed pursuant to MR Ch.5 s.6.7.5;

2.5.1A.2 in the case of a dispute that involves a *reviewable decision* referred to in MR Ch.6 s.5.3.9, 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 dispute referred to in section MR Ch.10 s.6C.1.5, within 20 *business days* of the *market participant* receiving the relevant *settlement statement* with the adustments specified in accordance with MR Ch.10 s.6C;

2.5.1A.4 in the case of a dispute referred to in MR Ch.9 s.6.10.1, except for those matters identified in MR Ch.9 s.6.8.12.4, within the time specified in MR Ch.9 s.6.10.2.3;

2.5.1A.4A in the case of a dispute referred to in MR Ch.9 s.2.2.7, 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 referred to in MR Ch.6 s.10.4.8, within 20 *business days* of:

(a) the *IESO* notifying the *market participant* of the *IESO's* determination if the *IESO* concludes pursuant to MR Ch.6 s.10.4.4.1 that no further action is required; or

(b) receipt of the *settlement statement* on which the adjustment is reflected if the *IESO* concludes an adjustment is required pursuant to MR Ch.6 s.10.4.4.2;

2.5.1A.4C in the case of a dispute involving an order, direction, instruction or decision of the *IESO*~~, including a matter referred to in MR Ch.9 s.6.8.12.4 that involves an order, direction, instruction or decision of the *IESO*~~ relating to a compliance and enforcement action described in section 6, and including a matter related to compliance enforcement referred to in MR Ch.9 s.6.8.12.4, ~~issued on or after January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A,~~ within ~~two years~~20 *business days* of the date of receipt of the order, direction, instruction or decision, with the time for service determined based on the *market rules* as they were at the time of the order, direction, instruction or decision;

2.5.1A.4C1 in the case of a dispute involving an order, direction, instruction or decision of the *IESO*, including a matter referred to in MR Ch.9 s.6.8.12.4, and not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, and 2.5.1A.4C, within two years of the date of receipt of the order, direction, instruction or decision;

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;

2.5.1A.4F 2.5.1A.4F in the case of a dispute referred to in MR Ch.7 s.7.6.5, within 20 *business days* of:

(a) the *IESO* notifying the *market participant* of its determination if the *IESO* determines pursuant to MR Ch.7 s.7.6.3.2that the *market participant* is not entitled to compensation; or

(b) the receipt of the *settlement statement* on which the compensation is reflected if the *IESO* determines pursuant to MR Ch.7 s.7.6.3.2 that the *market participant* is entitled to compensation;

2.5.1A.4G in the case of matters referred to in MR Ch.9 s.6.8.12.4, except for a compliance and enforcement action described in MR Ch.3 s.6, within 20 *business days* of the *market participant* receiving the relevant *settlement statement* with the adustments specified in accordance with the relevant provision;

2.5.1A.4H in the case of a dispute related to an independent review conducted pursuant to MR Ch.7 s.22.8, no later than 22 *business days* following the day on which the *IESO* registers *reference levels* and *reference quantities* for the relevant *resource* following completion of the independent review; and

2.5.1A.5 in all other cases, within the applicable limitation period set out in the *Limitations Act, 2002*.

2.5.1B Commencing with *settlement amounts* which were invoiced or should have been invoiced on or after *RSS commencement date* and in regards to sections 2.5.1A.1, 2.5.1A.3, 2.5.1A.4, 2.5.1A.4B, and 2.5.1A.4F, in no circumstance shall a *notice of dispute* be served more than 24 months following the earlier of (a) the initial date when the *IESO* would have the right or obligation to settle the transaction, charge or payment that is the subject of the dispute; or (b) the date on which the *IESO* issues an *invoice* in respect of the transaction, charge or payment that is the subject of the dispute. This section and section 2.5.1A shall apply whether or not the transaction, charge or payment that is the subject of the dispute was capable of being identified or discovered within the time specified in section 2.5.1A and this section 2.5.1B. Notwithstanding the foregoing, where entitlement to a *settlement amount* is prescribed by *applicable law*, in no circumstance shall a notice of dispute be served beyond the limitation period, if any, provided pursuant to *applicable law*.

2.5.2 The *notice of dispute* shall be in such form as may be established by the *IESO,* shall be signed by a person with authority to bind the *applicant* and shall specify, in reasonable detail and to the best of the *applicant*'s knowledge:

2.5.2.1 the nature of and basis for the complaint;

2.5.2.2 the *market rules* in issue;

2.5.2.3 the parties to the dispute and the name of any person having knowledge of or who may be directly affected by the dispute;

2.5.2.4 a concise summary of the facts underlying the dispute;

2.5.2.5 the relief sought and a summary of the grounds for such relief; and

2.5.2.6 any documentation upon which the *applicant* intends to rely in support of its complaint.

2.5.3 [Intentionally left blank – section deleted]

2.5.3A Upon service of a *notice of dispute,* the *applicant* and the *respondent* to a *notice of dispute* shall make good faith efforts to negotiate for a minimum period of thirty days to resolve the dispute between them. In regards to disputes where an *IESO* determination is still pending, as contemplated in MR Ch.9 s.6.8.15 and MR Ch.6

s.10.4.8, the thirty-day period to resolve the dispute through good faith negotiations shall not commence until the *IESO* has completed its determination. Each person who is a party to a dispute shall, to this end, designate an individual with authority to negotiate the matter in dispute and to participate in such negotiations. The parties to the dispute may conduct the good faith negotiations in any manner they so agree.

2.5.3B Communications made in the course of negotiations are confidential, are made without prejudice and are not subject to voluntary disclosure in any subsequent proceeding or to be voluntarily produced into evidence for any purpose other than as reflected in a settlement agreement.

2.5.3C In the event that a dispute is not settled through good faith negotiations, a party may file with the *secretary,* on written notice served on each other party, a copy of the *notice of dispute,* together with proof of service of the *notice of dispute* on each other party. The *notice of dispute* shall be accompanied by a summary of the *notice of dispute* for *publication* in accordance with section 2.9.2.1.

2.5.4 A *respondent* shall, within ten *business days* of the filing of a *notice of dispute* with the *secretary* under section 2.5.3C, serve a written response (the "*response*") on the *applicant* and on any *respondent* to a counterclaim or crossclaim identified in the *response*, and shall file with the *secretary* a copy of the *response,* together with proof of service of the *response* on the *applicant* and on any such *respondent*.

2.5.5 The *response* shall be in such form as may be established by the *IESO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent's* knowledge:

2.5.5.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *notice of dispute*;

2.5.5.2 a concise *response* to the allegations made against the *respondent* in the *notice of dispute*;

2.5.5.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or crossclaim against the *applicant* or against any other *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and

2.5.5.4 any documentation upon which the *respondent* intends to rely in support of its *response*, including as to any counterclaim or crossclaim, and which was not identified by the *applicant*.

2.5.6 The *response* shall be accompanied by a summary of the *response* for *publication* in accordance with section 2.9.2.1.

2.5.6A A *respondent* to a counterclaim or crossclaim shall, within ten *business days* of service of a *response* or of a response to a counterclaim or crossclaim, serve a written response to the counterclaim or crossclaim on the *applicant* and on any other *respondent* and shall file with the *secretary* a copy of the response to the counterclaim or crossclaim, together with proof of service of the response to the counterclaim or crossclaim on the *applicant* and on any other *respondent*, including a *respondent* to a counterclaim or crossclaim identified in the response to the counterclaim or crossclaim.

2.5.6B The response to the counterclaim or crossclaim shall be in such form as may be established by the *IESO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent's* knowledge:

2.5.6B.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *response* containing the counterclaim or crossclaim;

2.5.6B.2 a concise response to the allegations made against the *respondent* in the *response* containing the counterclaim or crossclaim;

2.5.6B.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or a crossclaim against the *applicant* or another *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and

2.5.6B.4 any documentation upon which the *respondent* intends to rely in support of its response to the counterclaim or crossclaim, including as to any counterclaim or crossclaim, and which was not identified by the *applicant* or by the *respondent* whose *response* contains the counterclaim or crossclaim.

2.5.6C The response to a counterclaim or crossclaim shall be accompanied by a summary of the response for *publication* in accordance with section 2.9.2.1.

2.5.7 Subject to sections 2.1.3 and 2.5.9, the *secretary* shall reject and shall not take any further action with respect to a *notice of dispute*, a *response*, or a response to a counterclaim or crossclaim that does not comply with the provisions of this section 2.5.

Where the *secretary* rejects a *notice of dispute*, a *response* or a response to a counterclaim or crossclaim pursuant to this section 2.5.7, the *secretary* shall so

notify the *applicant* and the *respondent* filing the *response* or the response to the counterclaim or crossclaim, as the case may be, and shall provide written reasons for the rejection.

2.5.8 [Intentionally left blank – section deleted]

2.5.9 Where the *secretary* rejects a *response* or a response to a counterclaim or crossclaim pursuant to section 2.5.7:

2.5.9.1 such rejection shall be without prejudice to the right of the *applicant* or the *respondent* whose *response* includes the counterclaim or crossclaim, as the case may be, to proceed with the resolution of the dispute in accordance with section 2; and

2.5.9.2 where such rejection relates to a *response*, section 2.6.1 shall not apply to the dispute and the *applicant* may following receipt of the notice referred to in section 2.5.7 request that the *secretary* take the action referred to in section 2.7.1.

2.6 Mediation

2.6.1 Subject to sections 2.6.1A and 2.6.1B, no party to a dispute may proceed to arbitration of the dispute until such time as the mediation process described in this section 2.6 has been terminated in accordance with section 2.6.14.

2.6.1A Absent agreement of the parties, section 2.6.1 shall not apply to:

2.6.1A.1 an application by a *generator* or *electricity storage participant* for compensation pursuant to MR Ch.6 s.6.7.5 in respect of an *outage* rejected by the *IESO*;

2.6.1A.2 a dispute referred to in MR Ch.9 s.6.10.1, except those matters described in MR Ch.9 s.6.8.12.4;

2.6.1A.3 a dispute that involves a *reviewable decision* referred to in MR Ch.6 s. 5.3.9; or

2.6.1A.4 a dispute referred to in section 2.5.9.2~~.~~; or

2.6.1A.5 a dispute pertaining to an order issued by the *IESO* pursuant to section 6.2.7.

2.6.1B Where all of the parties to a dispute so agree, the parties may dispense with mediation in respect of the dispute. In such a case, the parties shall file with the *secretary* a notice of intent to dispense with mediation in such form as may be established by the *IESO*.

2.6.2 Subject to section 2.6.2C, within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies or of 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 in all other cases, the *secretary* shall, provided that the *secretary* is satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies and that the dispute has not been resolved:

2.6.2.1 in the case of a dispute referred to in section 2.6.1A, upon receipt of the notice referred to in section 2.6.1B or upon receipt of the request referred to in section 2.5.9.2, take the action referred to in section 2.7.1 or 2.7.1D, as the case may be; or

2.6.2.2 in any other case, subject to section 2.6.2A, assign one member of the *dispute resolution panel* who is independent of the parties to inquire into and act as *mediator* in respect of the dispute and shall advise the parties to the dispute as to the identity and address for service of the *mediator*.

Where the *secretary* is not satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies, the *secretary* shall so advise the parties.

2.6.2A Where all of the parties to a dispute so agree, they may appoint a qualified person that is not a member of the *dispute resolution panel* to mediate the dispute. In such a case, the parties shall advise the *secretary* as to the identity and address for service of the *mediator*.

2.6.2B A *mediator* appointed under section 2.6.2A shall not be required in any proceeding to give testimony with respect to information obtained in the course or resolving or attempting to resolve the dispute.

2.6.2C Where a *response* or a response to a counterclaim or crossclaim contains a counterclaim or crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.6.2.1 or 2.6.2.2 until five *business days* following:

2.6.2C.1 the filing of the response to a counterclaim or crossclaim in respect of the last counterclaim or crossclaim filed in the same dispute; or

2.6.2C.2 the expiry of the time for filing a response to a counterclaim or crossclaim pursuant to section 2.5.6A in respect of the last counterclaim or crossclaim filed in the same dispute,

whichever is the earlier.

2.6.3 The *mediator* shall fix a date, time and place for the mediation session, which date shall be no more than seven *business days* from the date of notice of his or her appointment or such later date as may be agreed by each party to the dispute, and shall attempt to assist the parties to resolve their dispute. The *mediator* may

continue the mediation session at such times and places as the *mediator* determines in an effort to assist the parties in resolving their dispute.

2.6.4 Each party shall send to the mediation session a representative who has the authority to bind the party.

2.6.5 Prior to participating in a mediation session, the parties must sign and file with the *secretary* an agreement that statements made at a mediation session are confidential, are made without prejudice and are not subject to voluntary disclosure in any subsequent proceeding or to be voluntarily produced into evidence for any purpose.

2.6.6 Mediation sessions shall be private and there shall be no stenographic record of any mediation session. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of all of the parties, with the consent of the *mediator* and upon such conditions including, but not limited to, conditions relating to confidentiality, as the *mediator* determines appropriate.

2.6.7 *Confidential information* disclosed to a *mediator* by the parties or by other persons in the course of the mediation shall not be divulged by the *mediator*. All records, reports or other documents prepared for the mediation and received by a *mediator* while serving in that capacity shall be treated as confidential unless all of the parties to the dispute otherwise agree.

2.6.8 The *mediator* may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement. Recommendations for settlement made, and views expressed by, the *mediator* at such meetings or at a mediation session are confidential and are not subject to voluntary disclosure in any subsequent proceeding and are not voluntarily to be produced into evidence for any purpose.

2.6.9 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide the *mediator* with any information or documentation which is not *confidential information* and which the *mediator* considers relevant to the conduct of the mediation, and the *mediator* shall provide any such information or documentation to the parties in advance of the mediation session at which such information or documentation is to be considered.

2.6.10 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide the *mediator* with any information or documentation pertaining to a party to the dispute which is *confidential information* and which the *mediator* considers relevant to the conduct of the mediation. Such *confidential information* shall not, without the consent of the party to whom the *confidential information* relates, be disclosed by the *mediator* to the other parties to the dispute.

2.6.11 Whenever the *mediator* considers necessary, the *mediator* may, with the consent of the parties and upon such conditions relating to confidentiality as the *mediator* determines appropriate, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *mediator* or a party, as the *mediator* shall determine.

2.6.12 If an agreement to resolve the dispute is reached through mediation, it shall be reduced to writing, signed by the parties and filed with the *secretary*. The terms of the agreement shall be confidential, provided that if, in the case of a dispute referred to in section 2.2.1, the agreement consists of, embodies or reflects an element which, in the opinion of the *IESO Board*, is an important matter of public policy or interest having regard to the provisions of the *Electricity Act, 1998*, the *IESO* shall *publish* a statement describing such important matter of public policy or interest.

2.6.13 The *mediator* may terminate the mediation by written notice of termination whenever, in the judgement of the *mediator*, further efforts at mediation would not contribute to a resolution of the dispute between the parties. The *mediator* shall provide each party with a copy of the written notice of termination and shall file a copy of the notice of termination with the *secretary*, in each case together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15.

2.6.14 The mediation shall be terminated on the earlier of:

2.6.14.1 the date of execution by the parties of the agreement referred to in section 2.6.12;

2.6.14.2 the date of the notice of termination referred to in section 2.6.13; or

2.6.14.3 the date that is ten *business days*, or such longer period as may be agreed by each party to the dispute, from the date of the first mediation session.

2.6.15 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.2 or 2.6.14.3 they shall nonetheless make good faith efforts to arrive at an agreed statement of fact and/or of issues relating to the dispute.

2.6.16 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.3, the *mediator* shall issue a written notice of termination unless the *mediator* has, prior to that date, issued the written notice of termination referred to in section 2.6.13. The *mediator* shall provide each party with a copy of the notice of termination issued pursuant to this section 2.6.16, together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15, and file a copy of the foregoing with the *secretary*.

2.6.17 The parties are responsible for their own costs and legal expenses incurred in respect of the mediation. The parties must bear equally the *costs of the mediation* unless otherwise agreed to by the parties.

2.6.18 Upon termination of the mediation, the *mediator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the mediation*, together with all bills and other supporting documentation relating thereto.

2.6.19 Upon receipt of the invoice referred to in section 2.6.18, the *secretary* shall provide a copy of the invoice to the *IESO* and the *IESO* shall submit an invoice to each of the parties to the mediation in respect of their respective shares of the *costs of the mediation*. Each party shall, within *ten business days* of the date of receipt of such invoice, pay to the *IESO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.

2.6.20 Where a *mediator* dies, resigns or otherwise becomes incapable of acting as *mediator* in respect of a dispute prior to termination of the mediation, subject to section 2.6.2A, the *secretary* shall assign another member of the *dispute resolution panel* to inquire into and act as *mediator* in respect of the dispute. With the consent of the parties to the mediation, the new *mediator* may continue the mediation. In the absence of such consent, the *mediator* shall commence the mediation anew and the time period prescribed in section 2.6.14.3 shall be extended accordingly.

2.7 Arbitration

2.7.1 Subject to section 2.7.1C, 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;

2.7.1.2A the filing of the *notice to elect* referred to 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, subject to section 2.7.1A, 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.

2.7.1A Where all the parties to a dispute so agree, they may appoint a qualified person that is not a member of the *dispute resolution panel* to arbitrate the dispute. In such a case, the parties shall advise the *secretary* as to the identity and address for service of the *arbitrator*.

2.7.1B An *arbitrator* appointed under section 2.7.1A shall not be required in any proceeding to give testimony with respect to information obtained in the course or resolving or attempting to resolve the dispute.

2.7.1C Where a *response* or a response to a counterclaim or crossclaim filed in respect of a dispute to which section 2.6.1A applies contains a counterclaim or crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.7.1.1 until five *business days* following:

2.7.1C.1 the filing of the response to a counterclaim or crossclaim in respect of the last counterclaim or crossclaim filed in the dispute; or

2.7.1C.2 the expiry of the time for filing a response to a counterclaim or crossclaim pursuant to section 2.5.6A in respect of the last counterclaim or crossclaim filed in the dispute,

whichever is the earlier.

2.7.1D Within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies, subject to section 2.7.1A, the *secretary* shall in accordance with the *Governance and Structure By-law* provide the *applicant* with a list of at least three names of members of the *dispute resolution panel* available to determine the amount of any compensation payable to the *applicant*. Where the *applicant* fails to select an *arbitrator* within ten *business days* of receipt of such list, subject to section 2.7.1A, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the application and shall by written notice so advise the *applicant*. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.

2.7.1E In the case of an application referred to in section 2.7.1D:

2.7.1E.1 sections 2.7.2, 2.7.8, 2.7.9, 2.7.10 and 2.7.32 shall not apply; and

2.7.1E.2 all other sections of this section 2.7 shall be read:

a. without regard to references to a *respondent*; and

b. by replacing all references to the word "party" or "parties" with the word "*applicant*".

2.7.2 The parties shall make good faith efforts to agree on the appointment of one of the members named on the list referred to in section 2.7.1 as the arbitrator to hear the dispute. Where the parties so agree, they shall by written notice so advise the *secretary*. Such member shall be the *arbitrator* for purposes of the resolution of the dispute and shall be deemed to have been appointed as of the date of such notice.

2.7.3 [Intentionally left blank]

2.7.4 [Intentionally left blank]

2.7.5 Where the parties to a dispute have failed to select an *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.1, or advise the *secretary* in accordance with section 2.7.1A, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the dispute and shall by written notice so advise the parties. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.

2.7.6 An *arbitrator* shall be independent of the parties and shall act impartially. An *arbitrator* who is or becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to the *secretary* and the parties.

2.7.7 An *applicant* shall, within thirty days of the appointment of the *arbitrator*, serve on any *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *applicant* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. The *applicant* must indicate if it will be represented by legal counsel or some other representative and provide such person's name and address for service.

2.7.8 A *respondent* shall, within thirty days of the date of receipt of the *applicant's* materials referred to in section 2.7.7, serve on an *applicant* and on any other *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *respondent* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. A *respondent* must indicate if

it will be represented by legal counsel or some other representative and provide such person's name and address for service.

2.7.9 The *applicant* may, within ten days of receipt of the *respondent's* materials referred to in section 2.7.8, serve and file written reply submissions.

2.7.10 Where a *respondent* has made a counterclaim or a crossclaim in his or her *response*, the *respondent* shall, for purposes of the application of sections 2.7.7 to 2.7.9 and, where appropriate, of section 2.7.19, be treated as an *applicant* and the person against whom the counterclaim or the crossclaim has been made shall be treated as a *respondent* in respect of the counterclaim or crossclaim.

2.7.11 The *arbitrator* shall fix a date, time and place for the hearing following:

2.7.11.1 in the case of an application referred to in section 2.7.1B, the filing of the *applicant's* materials referred to in section 2.7.7; and

2.7.11.2 in all other cases, the service and filing of the *respondent's* materials referred to in section 2.7.8 or, where applicable, the materials of a *respondent* to the counterclaim or crossclaim referred to in section 2.7.10, which date shall be no more than sixty days from the date of the service and filing referred to in section 2.7.8 or, where applicable, of the service and filing referred to in section 2.7.10, whichever is the later, or such later date as may be agreed by each party to the arbitration. The *arbitrator* shall file with the *secretary* a notice of the date, time and place so fixed.

2.7.12 A *market participant* who might be directly affected by the award of the *arbitrator* in a dispute referred to in section 2.2.1 or 2.2.2.1 and, in the case of an application referred to in section 2.7.1D or of a dispute referred to in section 2.2.2.1, the *IESO*, may apply to the *arbitrator*, on notice to the parties, no less than five *business days* prior to the date of the hearing, for leave to intervene at the hearing. Parties may make submissions on the application for leave to intervene. The *arbitrator* may, in his or her sole discretion, grant leave to intervene to any *market participant* who demonstrates that it has an interest in the subject matter of the arbitration and may be directly affected by the decision in the arbitration, on such terms and subject to such rights of participation as the *arbitrator* considers reasonable.

2.7.13 The procedures governing the arbitration shall be determined by the *arbitrator*, except as provided for under the *market rules* and by sections 19 to 22, 25 (other than 25(3) to 25(5)) to 33, 36, 36 and 40 to 44 of the *Arbitration Act, 1991*.

2.7.13.1 The *arbitrator* shall dismiss the *notice of dispute* and take no further action with respect to the *notice of dispute* if the the *notice of dispute* was served outside of the timelines set forth in section 2.5.1A.

2.7.14 Nothing in writing shall be accepted in evidence at the hearing nor any witness be permitted to give evidence at the hearing, in both cases by or on behalf of an *applicant* or a *respondent*, except with leave of the *arbitrator*, unless the party has complied with the requirements set forth in section 2.7.7 or 2.7.8, as the case may be.

2.7.15 Any party to a dispute may apply to the *arbitrator* for, and the *arbitrator* may order, such further and other production as the *arbitrator* sees fit, provided that the *arbitrator* may not order the production by the *market surveillance panel* or the *market assessment unit* of *confidential information* which relates to a person who is not a party to the dispute. Evidence may be admitted by the *arbitrator* even if not admissible as evidence in a court of law.

2.7.16 The *arbitrator* may, with the consent of all parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide the *arbitrator* with any information or documentation which is not *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration, and the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.

2.7.17 The *arbitrator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide the *arbitrator* with any information or documentation pertaining to a party which is *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration. Subject to section 2.8.1, the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.

2.7.18 Whenever he or she considers necessary, the *arbitrator* may, upon such conditions as to confidentiality as the *arbitrator* determines appropriate and upon notice to the parties, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *arbitrator* or a party, as the *arbitrator* shall determine, provided that where such arrangements are made by the *arbitrator*, the *arbitrator* shall provide to the parties advance notice of the identity of the expert advisor.

2.7.19 At the hearing, the *applicant* shall provide its case in chief, followed by the *respondent* in response, and then the *applicant* in reply.

2.7.20 Witnesses shall be examined under oath or affirmation and shall be made available for cross-examination. Nothing in this section 2.7.20 shall preclude the *arbitrator* from dispensing with the oral examination-in-chief of a witness provided that a written statement of the witness's evidence is provided in such form as the *arbitrator* determines appropriate.

2.7.21 Subject to section 2.8.1, the arbitration shall be open to the public and all documents filed will form part of the public record of the proceedings.

2.7.22 The *arbitrator* shall deliver his or her award in writing, with reasons, within 30 days of completion of the hearing or within such longer period as may be agreed by each party to the dispute.

2.7.23 The *arbitrator* shall file a copy of his or her award with the *secretary*.

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.*

2.7.25 Where, in the case of a dispute referred to in section 2.2.1.1 the *arbitrator* concludes that the *IESO* has violated, misinterpreted or misapplied a *market rule*, the *arbitrator* may, subject to MR Ch.1 s.13 and to any other provision of these *market rules* pertaining specifically to liability, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable. Without limiting the generality of the foregoing, where the *arbitrator* determines that the breach, misinterpretation or misapplication of a *market rule* by the *IESO* was intentional or could have been avoided by the exercise of due diligence by the *IESO*, the *arbitrator* shall direct the *IESO* to comply with the *market rules* or to interpret or apply the *market rules* in a particular manner. Any such direction may be included in the summary referred to in section 2.9.2.4.

2.7.25A Subject to MR Ch.1 s.13 and to any other provision of these *market rules* pertaining specifically to liability, the *arbitrator* may, in the case of a dispute referred to in section 2.2.1.2, 2.2.1.4 or 2.2.1.5, in addition to the orders referred to in section 2.7.26, 2.7.27 or 2.7.29, as the case may be, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable.

2.7.26 Where a dispute referred to in section 2.2.1.1 relates to the terms and conditions upon which the *IESO* has authorized a person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*, the *arbitrator* may confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* on such other terms and conditions, if any, which the *arbitrator* determines are just and reasonable. An award of the *arbitrator* under this section 2.7.26 may include the direction to the *IESO* referred to in section 2.7.25 and 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*.

2.7.27 The *arbitrator* may:

2.7.27.1 in the case of a dispute referred to in section 2.2.1.2, confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*, on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable;

2.7.27.2 in the case of a dispute referred to in section 2.2.1.5, and subject to section 2.7.29B, make such orders or directions as the *arbitrator* considers just and reasonable,

and an award of the *arbitrator* under this section 2.7.27 may include the direction to the *IESO* referred to in section 2.7.25 and 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*.

2.7.27A Notwithstanding section 2.7.27, in regards to those matters specified in section 2.5.1B, an *arbitrator* shall not order the *IESO* to take any action or make any adjustment in regards to any *settlement amount* which was invoiced, or the *IESO* had the right or obligation to invoice, more than 24 months before the date on which the *market participant* served the *notice of dispute*. Notwithstanding the foregoing, where entitlement to a *settlement amount* is prescribed by *applicable law*, an *arbitrator* shall not order the *IESO* to take any action or make any adjustment in regards to such *settlement amount* beyond the limitation period, if any, provided pursuant to *applicable law*.

2.7.28 In the case of an application referred to in section 2.2.1.3, the *arbitrator* may determine that no compensation is payable to the *applicant* or may order the *IESO* to pay compensation to the *applicant* in such amount and within such time as may be fixed by the *arbitrator* in accordance with any applicable provisions of MR Ch.5 s.6.7.5.

2.7.29 In the case of a dispute referred to in section 2.2.1.4:

2.7.29.1 where the dispute relates to the *reviewable decision* referred to in MR Ch.6 s.2.1.2, the *arbitrator* may confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* in respect of the relevant *connection point* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25 and 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*;

2.7.29.2 where the dispute relates to the *reviewable decision* referred to in MR Ch.6 s.5.3.9, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to reinstate the registration of the *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable and the award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25;

2.7.29.3 where the dispute relates to the *reviewable decision* referred to in MR Ch.6 s.5.1.12, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to register the person as a *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25; or

2.7.29.4 where the dispute relates to the *reviewable decision* referred to in MR Ch.6 s.4.4.3 or 6.1.5, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to register the *metering installation* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25.

2.7.29A In the case of a dispute referred to in section 2.2.2.1, the *arbitrator* may:

2.7.29A.1 determine an alternative apportionment of the *energy* associated with *connection station service* and with site specific losses amongst all applicable *market participants*; and

2.7.29A.2 determine whether, and the extent to which, any such alternative apportionment should be applied, by means of payments amongst the

applicable *market participants*, to any period prior to the date on which the *IESO* gives effect to the proportions filed pursuant to MR Ch.9 s.2.2.8.

2.7.29B Subject to section 2.7.27A, in the case of a dispute referred to in MR Ch.9 s.6.10.1, the *arbitrator* may, in considering whether to order the *IESO* to adjust *settlement statements* of multiple *market participants*, take into account:

2.7.29B.1 the dollar amount that is the subject matter of the dispute;

2.7.29B.2 the time elapsed since the event that is the subject matter of the dispute took place; and

2.7.29B.3 the *IESO's* ability to perform such adjustments.

2.7.30 In the case of a dispute referred to in section 2.2.2.2, the *arbitrator* may make such award, including but not limited to an award of damages, as is just and reasonable in the circumstances.

2.7.31 [Intentionally left blank]

2.7.32 Subject to section 2.7.32A, the *arbitrator* may make such award as to costs as he or she determines just and reasonable provided that, except in exceptional cases:

2.7.32.1 where in the context of a dispute referred to in section 2.2.1 the award consists of damages for breach of the *market rules*, costs, including the *costs of the arbitration*, shall be awarded to the successful party;

2.7.32.2 where the award consists of the imposition of penalties on a *market participant*, costs, including the *costs of the arbitration*, shall be awarded to the *IESO*; and

2.7.32.3 where the award consists of the direction to the *IESO* to comply with the *market rules* or to interpret or apply a *market rule* in a particular manner pursuant to section 2.7.25, costs, including the *costs of the arbitration*, shall be awarded to the *market participant* seeking the direction.

2.7.32A Where an award relates to an application referred to in section 2.7.1D and:

2.7.32A.1 the award consists of a determination by the *arbitrator* that the *applicant* is not entitled to any compensation pursuant to MR Ch.5 s.6.7.5; or

2.7.32A.2 no award as to costs is made pursuant to section 2.7.32B,

the *applicant* shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration and, subject to any

determination of the *arbitrator* pursuant to section 2.7.33, shall bear the *costs of the arbitration*.

2.7.32B Where an award relates to an application referred to in section 2.7.1D and the award consists of a determination by the *arbitrator* that the *applicant* is entitled to compensation pursuant to MR Ch.5 s.6.7.5, the *arbitrator* may determine that some or all of:

2.7.32B.1 the *applicant's* costs and legal expenses associated with his or her participation in the arbitration; and

2.7.32B.2 the *applicant's* share of the costs of the arbitration,

be recovered by the *applicant*. Where the *arbitrator* makes such an award as to costs, the amount of such recoverable costs shall be paid by the *IESO* and recovered by the *IESO* in the same manner as the compensation referred to in MR Ch.5 s.6.7.5.

2.7.33 A person who intervenes in an arbitration shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration. The *arbitrator* may, in appropriate circumstances, require that an intervenor bear a portion of the *costs of the arbitration*.

2.7.34 An award of the *arbitrator* shall be enforceable in the manner provided in the *Arbitration Act, 1991*.

2.7.35 Where, in the case of a dispute referred to in section 2.2.1, the award consists of the payment of monies to the *IESO* or to a *market participant*, such award shall be considered to create an obligation under the *market rules* to pay the amount stated in the award and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly. Except as may otherwise be provided in the award, any monies payable pursuant to an award shall be payable within 30 days of the date of the award.

2.7.36 Failure to comply with an award of an *arbitrator* in respect of a dispute referred to in section 2.2.1 constitutes a breach of the *market rules*.

2.7.37 Upon completion of an arbitration, the *arbitrator* shall file the record of the arbitration proceedings with the *secretary*. Where such record contains *confidential information* in respect of which a claim for confidentiality has been confirmed by the *arbitrator* pursuant to section 2.8.1, the *confidential information*, together with the stenographic record of any in camera hearings relating thereto, shall be sealed in an envelope clearly marked "CONFIDENTIAL" or otherwise identified as confidential and protected from disclosure prior to filing with the *secretary*.

2.7.38 Upon completion of the arbitration, the *arbitrator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the arbitration*, together with copies of all bills and other supporting documentation relating thereto.

2.7.39 Upon receipt of the invoice referred to in section 2.7.38, the *secretary* shall submit a copy of the invoice to the *IESO* and the *IESO* shall submit an invoice to each of the parties to the arbitration and, where applicable, each intervenor, in respect of their respective shares of the *costs of the arbitration*. Each such person shall, within ten *business days* of receipt of such invoice, pay to the *IESO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.

2.7.40 Where an *arbitrator* dies, resigns, is removed or otherwise becomes incapable of acting as an *arbitrator* in respect of a dispute prior to completion of the arbitration, a replacement shall, with the consent of all of the parties to the arbitration, be selected by the *secretary* from among the remaining members of the *dispute resolution panel* in accordance with the *Governance and Structure By-law*. In the absence of such consent, subject to section 2.7.1A, the *secretary* shall forthwith provide the parties with a revised list of at least three names of members of the *dispute resolution panel* available to fill the vacancy and the parties shall make good faith efforts to agree on the appointment of one of the members named in the list as the replacement *arbitrator*. Where the parties so agree, they shall so advise the *secretary*.

2.7.41 [Intentionally left blank]

2.7.42 Where the parties have failed to select a replacement *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.40, subject to section 2.7.1A, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the replacement *arbitrator* and shall by written notice so advise the parties.

2.7.43 With the consent of the parties to the arbitration, once the *arbitrator* has been replaced, the *arbitrator* may continue the arbitration. In the absence of such consent, the replacement *arbitrator* shall commence the arbitration anew.

2.8 Confidentiality

2.8.1 Any party may claim that a document, or information contained in a document, to be produced in the context of the arbitration of a dispute is *confidential information*. The party making such a claim shall provide to the *arbitrator* in writing the basis for its assertion. If the claim of confidentiality is confirmed by the *arbitrator*, having regard, where applicable, to the provisions of section 5, the *arbitrator* shall establish requirements for the protection of such document or information as may be

necessary to protect the confidentiality and commercial value of such document or information, including requirements for disclosure of same only to counsel and/or other independent advisor who has filed an undertaking as to confidentiality satisfactory to the *arbitrator* and for in camera hearings at which only representatives of the disclosing party and such counsel and/or other independent advisor may be present.

2.8.2 Members of the *dispute resolution panel* shall enter into such confidentiality agreement as may be required by the *IESO Board*.

2.9 Record-Keeping and Publication

2.9.1 Subject to section 2.9.1A, the *secretary* shall maintain a record of all dispute resolution proceedings conducted under this section 2. Upon the completion of a given dispute resolution proceeding, the *secretary* shall transfer the record to the *IESO*, addressed to the Chair of the Board of Directors of the *IESO* for archiving. The Chair shall be responsible for ensuring that all measures are taken to prohibit access by any other person to any portion of such record which may be sealed and marked "CONFIDENTIAL" or otherwise identified as being confidential, except as may be required by *applicable law* or permitted by the provisions of section 5.

2.9.1A For the purposes of section 2.9.1, the record referred to therein shall not include any record pertaining to or arising from the mediation of a dispute other than:

2.9.1A.1 the name and address for service of the person appointed to act as the *mediator* in respect of the dispute;

2.9.1A.2 the agreement referred to in section 2.6.5;

2.9.1A.3 the settlement agreement referred to in section 2.6.12;

2.9.1A.4 the notice of termination of mediation referred to in section 2.6.13 or 2.6.16;

2.9.1A.5 the agreed statement of fact and/or issues referred to in section 2.6.13 or 2.6.16; and

2.9.1A.6 information and documentation pertaining to the *costs of the mediation*, including the invoice referred to in section 2.6.18.

2.9.2 The *secretary* shall arrange for *publication* by the *IESO* of the following:

2.9.2.1 the summaries referred to in sections 2.5.3C, 2.5.6 and 2.5.6C as may be applicable upon the appointment of the *arbitrator*;

2.9.2.2 notice of the appointment of an *arbitrator* and the address for service of the *arbitrator*;

2.9.2.3 notice of the date, time and place fixed for hearing pursuant to section 2.7.11; and

2.9.2.4 a summary of the award of an *arbitrator* filed pursuant to section 2.7.23, which may include the information required by section 2.7.25.

2.9.3 The *IESO* shall *publish* the fees payable to members of the *dispute resolution panel* involved in the resolution or the attempted resolution of a dispute pursuant to this section 2, as such fees may from time to time be fixed in accordance with the provisions of the *Governance and Structure By-law*.

2.10 Audit

2.10.1 The activities of the *dispute resolution panel* shall be audited in accordance with procedures adopted from time to time by the *IESO*.

3. Market Surveillance

3.1 [Intentionally left blank – section deleted]

3.2 Establishment and Staffing of Market Assessment Unit

3.2.1 A *market assessment unit* shall be established by the *IESO* to perform the functions given to it under the *market rules* and to support, in the manner agreed to by the *IESO* and the *OEB*, the *market surveillance panel.*

3.3 Market Monitoring Functions

3.3.1 The *market assessment unit* shall conduct such monitoring, evaluation, analysis and reporting activities in support of the work of the *market surveillance panel* as may be agreed between the *IESO* and the *OEB*.

3.3.1A Notwithstanding any other provision of MR Ch.3, the *IESO* shall provide the *market surveillance panel* with such information as it may require from time to time.

3.3.2 [Intentionally left blank – section deleted]

3.3.3 [Intentionally left blank – section deleted]

3.3.4 [Intentionally left blank – section deleted]

3.3.5 [Intentionally left blank – section deleted]

3.3.5A *Market participants* shall provide the *market assessment unit* with the data identified in the detailed catalogue adopted and published by the *market surveillance panel* in accordance with the *OEB* by-laws.

3.4 [Intentionally left blank – section deleted]

3.5 [Intentionally left blank – section deleted]

3.6 [Intentionally left blank – section deleted]

3.7 [Intentionally left blank – section deleted]

3.8 Dispute Resolution and Other Relief

3.8.1 The dispute resolution procedures under section 2 shall not apply to the activities of the *market assessment unit* under this section 3.

3.8.2 Nothing in this section 3 shall prevent the *IESO* or any other person from asserting any rights they may have under any *applicable law* or under the *market rules*.

4. Rule Amendments

4.1 Introduction and Interpretation

4.1.1 This section 4 sets forth the procedures pursuant to which *amendments* to the *market rules* may be made by the *IESO* and embodies the mechanism for review of the *market rules* for purposes of the application of subsection 35(4) of the *Electricity Act, 1998*.

4.1.2 This section 4 must be read and construed subject to the *Governance and Structure By-law.*

4.2 Amendment Process Generally

4.2.1 Under section 32 of the *Electricity Act, 1998*, the *IESO Board* has the authority and responsibility to *amend* these *market rules*. The *technical panel* is authorized, through the *Governance and Structure By-law*, to support the *IESO Board* in the development and consideration of *amendments* to the *market rules*. The *urgent rule amendment committee* is authorized, through the *Governance and Structure By-law*,

to support the *IESO Board* in the development, consideration and making of *urgent rule amendments*.

4.2.2 In formulating *amendments* to the *market rules*, the *IESO Board*, the *technical panel* and the *urgent rule amendment committee* shall take into consideration the objects of the *IESO* as set forth in the *Electricity Act*, *1998*.

4.2.3 The *IESO Board* may review, from time to time, the work and proceedings of the *technical panel* and issue to the *technical panel* such directions as the *IESO Board* from time to time determines appropriate. Such directions may relate to one or more proceedings respecting particular proposed *amendments* to or reviews of the *market rules* or may be of more general application. For certainty, such directions may include termination of the consideration of a particular proposed *amendment* to, or review of, the *market rules.* The *technical panel* shall comply with such directions. In addition, nothing in this section 4 shall prohibit the *technical panel* from consulting with the *IESO Board* regarding the role the *technical panel* will play in reviewing a request for an *amendment* or review of the *market rules*.

4.2.4 A *market participant* or any other interested person may file a written submission (the "*amendment submission*") with the *IESO*, at such address as may be *published* by the *IESO* from time to time, to propose one or more *amendments* to the *market rules* or to identify any provision of the *market rules* in respect of which the *market participant* or the other interested person considers that an *amendment* or review may be necessary or desirable. The *amendment submission* shall include a statement of the reasons for which an *amendment* to or review of the *market rules* may be necessary or desirable.

4.2A Rule Amendments Initiated by the IESO Board

4.2A.1 The *IESO Board* may at any time determine on its own initiative or at the request of any person that an *amendment*, including a *minor amendment*, to or a review of a *market rule* may be necessary or desirable and shall *publish* and give notice of its intention to consider such *amendment* or review, together with a statement of the reason for which such *amendment* or review may be necessary or desirable:

4.2A.1.1 to all *market participants*;

4.2A.1.2 to the *technical panel*;

4.2A.1.3 where such *amendment* or review relates to or may affect any provision of section 2, to the *secretary* of the *dispute resolution panel*; and

4.2A.1.4 where such *amendment* or review relates to or may affect any provision of section 3, to the Chair of the *market surveillance panel*,

inviting such persons to make, within such reasonable period as shall be specified in the notice, written submissions to the *IESO Board* concerning the matter. The reasonable period shall not be less than 7 days.

4.2A.2 Sections 4.3.9 to 4.3.11 and 4.3.13 to 4.3.20 shall apply, with such modifications as the context may require, to consideration by the *IESO Board* of a proposed *amendment*, other than a *minor amendment* which shall be made in accordance with section 4.7, or review pursuant to this section 4.2A, it being understood that the references in those sections to the *technical panel* shall be considered references to the *IESO Board*, unless and to the extent that the *IESO Board* directs the *technical panel* to participate in the matter.

4.2A.3 Sections 4.7.1 to 4.7.6, other than sections 4.7.1.1 and 4.7.1.2, apply with such modifications as the context may require to consideration by the *IESO Board* of a *minor amendment* pursuant to this section 4.2A, it being understood that the references in those sections to the *technical panel* shall be considered references to the *IESO Board*, unless and to the extent that the *IESO Board* directs the *technical panel* to participate in the matter.

4.3 Requests for Review or Amendment of Market Rules

4.3.1 The provisions of this section 4.3 apply to requests made by the *IESO Board*, and *amendment submissions* made by a *market participant* or any other interested person for an *amendment* or review of the *market rules*, and do not apply:

4.3.1.1 except as expressly provided in section 4.4.3 or 4.2A.2, to proposed *amendments* to which sections 4.4 or 4.2A, respectively, apply;

4.3.1.2 to *urgent amendments* to the *market rules*, which shall be made in accordance with section 4.6; and

4.3.1.3 to *amendments* to the *market rules* which are required to be made or reconsidered further to an order of the *Ontario Energy Board* pursuant to the provisions of the *Electricity Act, 1998*, which shall be made in accordance with section 4.8.

4.3.2 Upon receipt of the *amendment submission,* the *technical panel* may request that the person submitting the *amendment submission* provide further particulars with respect to the *amendment submission*.

4.3.3 [Intentionally left blank]

4.3.4 [Intentionally left blank]

4.3.5 The *technical panel* shall report to the *IESO Board* and, where applicable, give notice to the *market participant* or other interested person who made an *amendment*

submission as to whether the proposed *amendment* or the request for consideration of an *amendment* or review is, in the opinion of the *technical panel*:

4.3.5.1 of such a nature that consideration of the *amendment submission* is warranted and the extent of the consultation that the *technical panel* intends to take with *market participants* and other interested persons in the consideration of the *amendment*;

4.3.5.1A of such a nature that it raises only a *minor amendment*, in which case the *amendment submission* shall be dealt with in accordance with the provisions of section 4.7;

4.3.5.1B of such a nature that a clarification or interpretation of the applicable *market rule* is warranted, in which case the *amendment submission* shall be dealt with in accordance with the provisions of MR Ch.1 s.12; or

4.3.5.2 with reasons specified in the report and notice, of such a nature that no consideration of the *amendment submission* is warranted,

provided that the *technical panel* shall not make the determination referred to in section 4.3.5.2 where the request was made by the *IESO Board* unless the *IESO Board*, in its request, so permits.

4.3.6 The *technical panel* shall nonetheless further consider or not consider the *amendment submission*, as the case may be, if it is directed to do so by the *IESO Board.*

4.3.7 Where the *technical panel* decides or is required to further consider an *amendment submission* pursuant to section 4.3.5 or 4.3.6, the *IESO* shall *publish* and give notice to all *market participants* and to any person who made the *amendment submission,* of the particulars of the *amendment submission* and of any comments which the *technical panel* may wish to make in respect of the *amendment submission*. The notice and *publication* may, at the request of *technical panel*, invite *market participants* and other interested persons to make written submissions to the *technical panel* concerning the *amendment submission*, within such reasonable period as shall be determined by the *technical panel*, and as specified in the *publication* and notice. This reasonable period shall not be less than 7 days.

4.3.8 The written submissions referred to in section 4.3.7 must be filed with the *technical panel* within the time specified in the notice and *publication* and may indicate whether the *market participant* or the other interested person considers that a meeting is necessary or desirable in connection with the *amendment submission* and, if so, the reasons why such meeting is necessary or desirable.

4.3.9 The *technical panel* may at any time give notice, and invite *market participants* or other interested persons, to make such additional written submissions within such reasonable time as the *technical panel* determines appropriate.

4.3.10 The *technical panel* shall consider all written submissions received within the prescribed time pursuant to section 4.3.8 or 4.3.9 and may, where the *technical panel* considers it necessary or desirable, schedule and hold meetings in accordance with section 4.3.11.

4.3.10A In its consideration of an *amendment submission*, the *technical panel* shall also consider any unsolicited written submissions that are received in time for the *technical panel* meeting at which the applicable *amendment submission* is being considered.

4.3.11 The *technical panel* shall advise the *IESO Board* of the date, time and place scheduled for any meeting referred to in section 4.3.10 and the *IESO* shall, no less than seven days prior to the date fixed for a meeting, *publish* and give notice of same to *market participants* and to any person who filed written submissions pursuant to section 4.3.8 or 4.3.9. Any *market participant* and any other interested person may attend and, at the discretion of the *technical panel,* participate in any such meetings.

4.3.12 Where the *amendment submission* relates to or may affect:

4.3.12.1 any provision of section 2, the *technical panel* shall, prior to conducting any meetings pursuant to section 4.3.11 or, in the absence of such meetings, prior to voting on the matter, consult with the *secretary* of the *dispute resolution panel* with respect to the matter; and

4.3.12.2 any provision of section 3, the *technical panel* shall, prior to conducting any meetings pursuant to section 4.3.11 or, in the absence of such meetings, prior to voting on the matter, consult with the Chair of the *market surveillance panel* with respect to the matter.

4.3.13 The *technical panel* shall, as soon as reasonably practicable following any meetings and consultations which may have been held pursuant to sections 4.3.11 and 4.3.12, or any other consultations that the *technical panel* decides are appropriate, convene on one or more occasions as may be necessary to consider and vote on the *amendment* resulting from an *amendment submission*. Prior to the *technical panel* voting on an *amendment*, the *IESO* shall, at the request of *technical panel*, *publish,* and give notice to all *market participants* and to any person who made the *amendment submission* or written submission to which the proposed *amendment* relates, of the proposed *amendment* that will be the subject of the *technical panel's* vote. The notice and *publication* shall, at the request of the *technical panel*, invite *market participants* and other interested persons to make written submission to the *technical panel* concerning the subject *amendment*, within such reasonable period as

shall be determined by the *technical panel* and specified in the notice and *publication*. This reasonable period shall not be less than 7 days.

4.3.14 Following the conclusion of the deliberations referred to in section 4.3.13, the *technical panel* shall submit a written report to the *IESO Board* setting out:

4.3.14.1 the recommendations of the *technical panel* and the reasons for its recommendations;

4.3.14.2 where the recommendations of the *technical panel* include a proposal to *amend* the *market rules*, a copy of the proposed text of the *amendment* and a summary of any objections to the *amendment submission* which may have been contained in the written submissions referred to in section 4.3.8, 4.3.9, 4.3.10A or 4.3.13 or brought to the attention of the *technical panel* during any meetings held pursuant to section 4.3.11 or otherwise;

4.3.14.3 a summary of the procedure followed by the *technical panel* in considering the matter;

4.3.14.4 a summary of the views of the *secretary* of the *dispute resolution panel* or the Chair of the *market surveillance panel*, as the case may be, provided during the consultations referred to in section 4.3.12;

4.3.14.5 a record of the vote of each member of the *technical panel* in respect of each of the recommendations made in the report;

4.3.14.6 a summary of any objections raised by any member of the *technical panel* to the recommendations, if such objecting member so requests; and

4.3.14.7 a statement of the objects of the *IESO* considered by the *technical panel* in formulating the *amendment* as required by section 4.2.2.

4.3.15 The *IESO* shall *publish* the recommendations contained in the report of the *technical panel* referred to in section 4.3.14 and give notice thereof to all *market participants* and to any person who made an *amendment submission* or written submission to which the recommendations relate. In this notice and *publication*, the *IESO* shall, at the request of the *technical panel*, invite *market participants* and other interested persons to make written submissions to the *IESO Board* concerning the subject *amendment*, within seven *business days* of the date of giving of notice, objecting to the *technical panel's* recommendation and setting forth the reasons for the objection. At the request of the *IESO Board*, the *technical panel* shall provide to the *IESO Board* copies of all written submissions received pursuant to section 4.3.8, 4.3.9, 4.3.10A or 4.3.13, together with particulars of any written submissions which were made before the *technical panel* during the course of any meetings that may have been held pursuant to section 4.3.11.

4.3.16 [Intentionally left blank]

4.3.17 As soon as reasonably practicable following receipt of the report of the *technical panel* referred to in section 4.3.14 or, where written submissions have been requested pursuant to section 4.3.15, following the expiry of the deadline for written submissions referred to in that section, the *IESO Board* shall convene on one or more occasions as may be necessary to consider the report of the *technical panel*, together with any written submissions received pursuant to section 4.3.15, and shall vote on the matter in accordance with the provisions of the *Governance and Structure By-law*.

4.3.18 Where the *IESO Board* decides against the adoption of an *amendment* to the *market rules*, the *IESO* shall *publish* such decision and shall give notice of the decision to all *market participants* and to any person who made an *amendment submission* or written submission to which the decision relates. Where the *IESO Board* decides in favour of the adoption of the *amendment* to the *market rules,* either as recommended by the *technical panel* or with changes made by the *IESO Board* in its consideration of the *amendment*, the *IESO* shall publish such decision, together with a copy of the *amendment*, in accordance with the provisions of the *Governance and Structure By-law* and the *Electricity Act, 1998*, and shall give notice of the decision to all *market participants* the *Ontario Energy Board* and to any person who made the *amendment submission* or written submission to which the decision relates.

4.3.19 Where, in accordance with the *Governance and Structure By-law*, the *IESO Board* refers a recommendation contained in a report of the *technical panel* either back to the *technical panel* for further consideration and vote, or to any other person that the *IESO Board* deems appropriate, the *IESO Board* shall so advise the *technical panel*, with reasons, and shall *publish* such decision and give notice of the decision to all *market participants* and to any person who filed an *amendment submission* or written submission to which the decision relates. The *technical panel* shall, as soon as reasonably practicable following receipt of the decision of the *IESO Board*, convene to reconsider its recommendation. The *technical panel* may enter into such further consultations with such persons, and conduct such meetings, as it determines appropriate for purposes of its reconsideration.

4.3.20 Sections 4.3.14 to 4.3.18 shall apply, with such modifications as may be required by the context, to the reconsideration of a recommendation pursuant to section 4.3.19.

4.4 Rule Amendments Initiated by the Technical Panel

4.4.1 The provisions of this section 4.4 do not apply to *minor amendments* proposed by the *technical panel*, which shall be made in accordance with section 4.7.

4.4.2 Where the *technical panel* on its own initiative determines at any time that an *amendment* to or a review of a *market rule* may be necessary or desirable, it shall

submit a report of its intention to consider such *amendment* or review to the *IESO Board*, together with the reasons for its determination (the "*review notice*").

4.4.3 Sections 4.3.7 to 4.3.20 shall apply, with such modifications as the context may require, to consideration of the matter raised in the *review notice*, it being understood that the reference in those sections to an *amendment submission* shall be a reference to the *review notice*.

4.5 [Intentionally left blank]

4.6 Urgent Amendments

4.6.1 *Urgent amendments* to the *market rules* shall be made by the *IESO Board* or the *urgent rule amendment committee*, if so authorized by the *IESO Board* pursuant to the *Governance and Structure By-law*, following such consultations with such persons as the *urgent rule amendment committee* or the *IESO Board*, as the case may be, considers appropriate.

4.6.2 Where an *urgent amendment* is made pursuant to section 4.6.1 by the *urgent rule amendment committee*, such *amendment* shall forthwith be reported to the *IESO Board*.

4.6.3 The *IESO Board* shall, in accordance with the provisions of the *Governance and Structure By-law*, convene on one or more occasions as may be necessary to consider the report and vote to either:

4.6.3.1 confirm the *urgent amendment*, in the form made by the *urgent rule amendment committee* or in such form as the *IESO Board* deems appropriate; or

4.6.3.2 reject the *urgent amendment* and stay the implementation thereof.

4.6.4 Where an *urgent amendment* is made by the *IESO Board* or the *urgent rule amendment committee* pursuant to section 4.6.1, the *IESO* shall forthwith *publish* and give notice, including the effective date and time, of such *urgent amendment* and shall give notice thereof to all *market participants*.

4.6.5 Where an *urgent amendment* is confirmed by the *IESO Board* pursuant to section 4.6.3.1 in a form other than that made by the *urgent rule amendment committee*, the *IESO* shall forthwith *publish* and give notice, including the effective date and time, of such *urgent amendment* and shall give notice thereof to all *market participants*.

4.6.6 Where the *IESO Board* rejects and stays the implementation of an *urgent amendment* pursuant to section 4.6.3.2, the *IESO* shall forthwith *publish* and give

notice, including the effective date and time, of its decision to all *market participants*.

4.7 Minor Amendments

4.7.1 If the *technical panel* considers that it is necessary or desirable to make a *minor amendment* to the *market rules*, either on its own initiative or upon receipt of an *amendment submission,* the *technical panel* shall hold such consultations with such persons, or ask for written submissions only from such *market participants*, if any, as the *technical panel* considers appropriate and shall:

4.7.1.1 where such *minor amendment* relates to or may affect any provision of section 2, consult with the *secretary* of the *dispute resolution panel*; or

4.7.1.2 where such *minor amendment* relates to or may affect any provision of section 3, consult with the Chair of the *market surveillance panel*,

and each of the *secretary* and the Chair shall consult such members of their respective panels as they determine appropriate prior to consulting with the *technical panel.*

4.7.2 After holding any consultations or receiving any written submissions pursuant to section 4.7.1, the *technical panel* shall convene on one or more occasions as may be necessary to consider and vote on the matter and shall thereafter submit a written report to the *IESO Board* containing the information set forth in section 4.3.14.

4.7.3 [Intentionally left blank]

4.7.4 [Intentionally left blank]

4.7.5 As soon as reasonably practicable following the receipt of the report of the *technical panel* referred to in section 4.7.2 the *IESO Board* shall convene on one or more occasions as may be necessary to consider and vote on the *minor amendment* in accordance with the *Governance and Structure By-law* and shall:

4.7.5.1 approve the *minor amendment* as submitted by the *technical panel* or with any changes that the *IESO Board* determines are appropriate; or

4.7.5.1A reject the *minor amendment*, or

4.7.5.2 refer the matter back to the *technical panel.*

4.7.5A The *IESO* shall *publish* the *IESO Board* decision made pursuant to section 4.7.5, together with a copy of the *amendment*, in accordance with the provisions of the *Governance and Structure By-law* and the *Electricity Act, 1998*, and shall give notice of the decision to all *market participants,* the *Ontario Energy Board* and to any

person who made the *amendment submission* or made a written submission to which the decision relates.

4.7.6 Sections 4.3.7 to 4.3.20 shall, unless and to the extent that the *IESO Board* directs otherwise, apply with such modifications as the context may require to the further consideration by the *technical panel* of a matter referred to it under section 4.7.5.2.

4.8 Amendments Subject to Order of the Ontario Energy Board

4.8.1 Upon receipt of an order of the *Ontario Energy Board* made pursuant to the provisions of the *Electricity Act, 1998* from which no appeal, review or petition to the Lieutenant Governor in Council can or has been taken, the *IESO Board* shall either:

4.8.1.1 refer the matter, including consideration of any consequential *amendments* arising from the matter, to the *technical panel*, and the provisions of sections 4.3.7 to 4.3.20 shall, unless and to the extent that the *IESO Board* directs otherwise, apply with such modifications as the context may require to the reconsideration of the *amendment* to the *market rules* which is the subject of the order; or

4.8.1.2 following such consultations as the *IESO Board* considers appropriate, make an *amendment* to the *market rules* including any consequential *amendments* arising from the matter. The *IESO* shall *publish* the *amendment* and shall give notice of the *amendment* to all *market participants* and the *Ontario Energy Board*.

4.8.2 Upon receipt of an order of the *Ontario Energy Board* made pursuant to subsection 35(6) or 38(4) of the *Electricity Act, 1998* from which no appeal, review or petition to the Lieutenant Governor in Council can or has been taken, the *IESO Board* shall make an *amendment* to the *market rules* in the manner and within the time specified by the *Ontario Energy Board* in its order, including any consequential *amendments* arising from the matter, following such consultations as the *IESO Board* considers appropriate. The *IESO* shall *publish* the *amendment* and shall give notice of the *amendment* to all *market participants* and the *Ontario Energy Board*.

4.9 Experts and Other Assistance

4.9.1 The *technical panel* may, subject to the *Governance and Structure By-law* of the *IESO* and to budgetary approval of the Chief Executive Officer of the *IESO,* hire such consulting assistance and seek such expert external advice as may be necessary or desirable for the purpose of the fulfillment of its responsibilities under this section 4. Where the Chief Executive Officer of the *IESO* does not approve such request, the *technical panel* may appeal such decision to the Chair of the *IESO Board.*

4.9.1A Consultants and expert external advisors hired pursuant to section 4.9.1 shall enter into such confidentiality agreement as may be required by the Chair of the *technical panel*.

4.9.2 In carrying out any of its responsibilities under this section 4, the *technical panel* may, through the Chief Executive Officer of the *IESO*, solicit the assistance of any director, officer or employee of the *IESO* and may use the facilities of the *IESO*.

4.9.3 Where the *technical panel* at any time considers it necessary or desirable to do so, it may establish working groups to assist it in the fulfillment of its responsibilities under this section 4, which working groups shall operate in accordance with such terms and conditions, including as to the scope of their work and as to participation in such working groups, as the *technical panel* may reasonably determine to be appropriate. The *technical panel* shall notify the *IESO Board* of its intention to establish a working group and the *IESO* shall *publish* and give notice to all *market participants,* the person who made the *amendment submission* and any other interested party that made written submissions in respect of the proposed *amendment* to which the working group relates of such intention.

4.9.4 The *IESO Board* may, at any time in fulfilling its responsibilities under this section 4, including but not limited to for the purposes of section 4.8.2, call upon the assistance of the *technical panel*.

4.10 [Intentionally left blank]

4.11 [Intentionally left blank]

4.12 Audit

4.12.1 The activities of the *technical panel* shall be audited in accordance with procedures adopted from time to time by the *IESO*.

5. Accessibility and Confidentiality of Information

5.1 Accessibility

5.1.1 Subject to section 5.7.1, all persons shall have an equal opportunity for open and non-discriminatory access to all information, other than *confidential information*, required by the *market rules* to be made available to *market participants*, the *IESO* or other persons.

5.1.2 Subject to section 5.7.1, all information, other than *confidential information*, required by the *market rules* to be made available to *market participants*, the *IESO* or other persons shall be *published* or otherwise made available in the manner and within the time prescribed in the *market rules*. Where no time is specified in respect of the provision of a particular piece of information, such information shall be made available within a reasonable time.

5.1.3 All *market participants* shall have an equal opportunity for access to information, other than *confidential information*, made available pursuant to the *market rules*.

5.1.3A Notwithstanding sections 5.1.1, 5.1.2, 5.1.3 or any other sections of the *market rules*, the *IESO* may withhold information that if disclosed may, in the reasonable opinion of the *IESO*, pose a security threat to the *reliable* operations of the *integrated power system*, the *IESO-administered markets*, or those of neighbouring jurisdictions.

5.1.4 In this section 5:

5.1.4.1 a reference to the *IESO* shall include a reference to a panel established by the *IESO;* and

5.1.4.2 a reference to information shall mean information however recorded, whether in printed form, on film, by electronic means or otherwise.

5.2 Confidentiality

5.2.1 Each *market participant* and the *IESO* shall keep confidential any *confidential information* which comes into the possession or control of that *market participant* or the *IESO* or of which the *market participant* or the *IESO* becomes aware.

5.2.2 No *market participant* or the *IESO* shall:

5.2.2.1 disclose *confidential information* to any person except as permitted by the *market rules*;

5.2.2.2 permit access to *confidential information* by any person not authorized to have such access pursuant to the *market rules*; or

5.2.2.3 use or reproduce *confidential information* for a purpose other than the purpose for which it was disclosed or another purpose contemplated by the *market rules*.

5.2.3 Each *market participant* and the *IESO* shall:

5.2.3.1 prevent access to *confidential information* which is in its possession or control by any person not authorized to have such access pursuant to the

market rules, including by appropriate means of destruction or disposal in cases where the *confidential information* is not required or is at the relevant time no longer required to be retained by it pursuant to the *market rules*; and

5.2.3.2 ensure that any person to whom it discloses *confidential information* observes the provisions of this section 5.2 in relation to that *confidential information*.

5.2.4 Each *market participant* and the *IESO* shall, promptly upon becoming aware of a breach or a threatened breach of the provisions of this section 5 with respect to an item of *confidential information*:

5.2.4.1 so notify any person to whom the *confidential information* relates or by whom it was provided;

5.2.4.1A if a *market participant*, so notify the *IESO*; and

5.2.4.2 take such reasonable steps as may be required to prevent or assist in the prevention of, as the case may be, the unauthorized disclosure, access to, use or reproduction of *confidential information* that may result from such breach or threatened breach.

5.2.5 Each *market participant* shall maintain internal measures relating to the protection of *confidential information* that enable the *market participant* to comply and monitor compliance with its obligations under this section 5.

5.2.6 The *IESO* shall maintain internal measures, including measures referred to in section 5.7.2, relating to the protection of *confidential information* that enable the *IESO* to comply and monitor compliance with its obligations under this section 5.

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 MR Ch.5 ss. 5.2, 5.4 or 5.5.1A 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 MR Ch.6 s.5.3 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*;

5.3.1.12 subject to sections 5.3.7 and 5.3.8, disclosure by the *IESO* of *confidential information* to a *market monitoring unit* 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* in the form of a *basecase,* 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 5.3.1.5A, 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 [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.

5.4 Classification of Information

5.4.1 The *IESO* shall establish the following three levels of *confidentiality classification* for information that may be in the possession or control of the *IESO*:

5.4.1.1 public;

5.4.1.2 [Intentionally left blank]

5.4.1.3 [Intentionally left blank]

5.4.1.4 [Intentionally left blank]

5.4.1.5 confidential; and

5.4.1.6 highly confidential.

5.4.2 Subject to section 5.4.3, information in the possession or control of the *IESO* that is listed in the *information confidentiality catalogue* and that is identified therein as:

5.4.2.1 public is information that is not *confidential information* including, but not limited to, information required by the *market rules* or the *licence* of the *IESO* to be *published*, and may be disclosed to, accessed by, reproduced or used by any person without restriction;

5.4.2.2 [Intentionally left blank]

5.4.2.3 [Intentionally left blank]

5.4.2.4 [Intentionally left blank]

5.4.2.5 confidential is *confidential information* that is provided to the *IESO* by a *market participant*, a *standards authority*, a *security coordinator*, a *control area operator*, an *interconnected transmitter*, or that is provided to the *IESO* by a person other than a *market participant* and that relates to a *market participant*; or that originates with or is created by the *IESO* and that relates to a *market participant*, and may only be disclosed by the *IESO* to or accessed by:

a. where the *confidential information* was provided to the *IESO* by a person, that person;

b. any person that the *IESO* has reasonable grounds to believe has been authorized by the person referred to in section 5.4.2.5(a) to access or receive such *confidential information*;

c. any authorized person within the *IESO*; and

d. the *market participant* to whom the *confidential information* relates.

5.4.2.6 highly confidential is *confidential information* that is provided to the *IESO* by a *market participant,* or by a person other than a *market participant,* or that originated within or is created by the *IESO*, and requires restricted access within the *IESO*, and may only be disclosed by the *IESO* to or accessed by:

a. where the *confidential information* was provided to the *IESO* by a person, that person;

b. any person that the *IESO* has reasonable grounds to believe has been authorized by the person referred to in section 5.4.2.6(a) to access or receive such *confidential information*; and

c. any person within the *IESO* that has the required security clearance assigned by the *IESO* and requires the *confidential information* for the purpose of the due performance of that person's duties and responsibilities.

5.4.3 Where:

5.4.3.1 the *information confidentiality catalogue* provides, in respect of any particular item of *confidential information*, that such *confidential information* is to be automatically re-classified within a different *confidentiality classification* following the expiry of the period of time identified in the *information confidentiality catalogue*, such *confidential information* shall be deemed for all purposes to be re-classified within such other *confidentiality classification* on and after the expiry of such period of time;

5.4.3.2 *confidential information* is re-classified by the *IESO* within a different *confidentiality classification* in accordance with any one of sections 5.5.3

to 5.5.6, such *confidential information* shall be deemed for all purposes to be re-classified within such other *confidentiality classification* on and after the date of such re-classification.

5.4.4 Where the *IESO* amends the *information confidentiality catalogue* to include an additional item of information, the *IESO* shall classify such information within the *confidentiality classification* that is, in the *IESO's* opinion, appropriate having regard to:

5.4.4.1 the adverse impact that disclosure of the information may reasonably be expected by the *IESO* to have on:

a. the person that provides the information;

b. the person to whom the information relates or such other person as the *IESO* has reasonable grounds to believe may be adversely affected by disclosure of the information;

c. the efficient operation of the *IESO-administered markets*;

d. the *reliable* operation of the *IESO-controlled grid*;

e. the *IESO*; and

f. the security of the *integrated power system*, the *IESO-administered markets* or those of neighbouring jurisdictions.

5.4.4.2 [Intentionally left blank]

5.4.4.3 [Intentionally left blank]

5.4.4.4 [Intentionally left blank]

5.4.4.5 [Intentionally left blank]

5.4.4.6 the proprietary nature and degree of confidentiality of the information, to the extent known by the *IESO*; and

5.4.4.7 the *IESO's* obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *IESO* is a party.

5.4.5 Where a *market participant* provides to the *IESO* information that is not listed in the *information confidentiality catalogue*, the *IESO* shall:

5.4.5.1 subject to sections 5.4.6, 5.4.7, 5.4.9.2 and 5.4.10, classify that information within the *confidentiality classification* designated by the *market participant* in accordance with section 5.4.11 at the time that it provides such information to the *IESO* or pursuant to section 5.4.9.2(b); and

5.4.5.2 respect any restrictions requested by the person to be imposed in respect of the disclosure, use, reproduction or provision of access to such information that are additional to the restrictions pertaining to that *confidentiality classification* as described in section 5.4.2 unless, in the *IESO's* opinion, such additional restrictions:

a. would interfere with the ability of the *IESO* to maintain the *reliability* of the *IESO-controlled grid* or to operate the *IESO-administered markets* in an efficient manner; or

b. are inconsistent with the *IESO's* obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *IESO* is a party.

5.4.6 Where the *IESO* disagrees with the *confidentiality classification* designated by a *market participant* pursuant to section 5.4.5.1, the *IESO* shall so notify the *market participant*, which notice shall specify:

5.4.6.1 the grounds upon which the *IESO* disagrees with the *confidentiality classification* designated by the *market participant*;

5.4.6.2 the *confidentiality classification* that the *IESO* considers to be appropriate for the information; and

5.4.6.3 the time within which the *market participant* may make representations to the *IESO* in support of the *confidentiality classification* designated by it.

5.4.7 Following the time noted in section 5.4.6.3, and after consideration of any representations made by the *market participant* pursuant to that section, the *IESO* shall:

5.4.7.1 where it agrees with the *confidentiality classification* designated by the *market participant*, classify the information within such *confidentiality classification*; or

5.4.7.2 where it continues to disagree with the *confidentiality classification* designated by the *market participant*, classify the information within the *confidentiality classification* referred to in section 5.4.6.2 or, subject to section 5.4.8, such other *confidentiality classification* that the *IESO* considers to be appropriate for the information,

and shall so notify the *market participant*.

5.4.8 For the purposes of section 5.4.7.2, the *IESO* shall not classify the information within a *confidentiality classification* other than the *confidentiality classification* referred to in section 5.4.6.2 unless such other *confidentiality classification* has, pursuant to section 5.4.2, associated with it provisions relating to disclosure and access that are

more restrictive than those associated with the *confidentiality classification* referred to in section 5.4.6.2.

5.4.9 Where a *market participant* fails to designate a *confidentiality classification* for information submitted to the *IESO* pursuant to section 5.4.5.1 at the time at which it submits such information to the *IESO*, the *IESO* shall:

5.4.9.1 as soon as reasonably practicable following receipt of the information, notify the *market participant* that it must, within five *business days* of the date of receipt of the notice, designate a *confidentiality classification* for the information, failing which the *IESO* will classify the information within the confidential *confidentiality classification*; and

5.4.9.2 temporarily classify the information within the confidential *confidentiality classification* until:

a. the expiry of the period referred to in section 5.4.9.1 or within such longer period of time as may be agreed between the *IESO* and the *market participant*; or

b. the date on which the *market participant* designates a *confidentiality classification* for the information,

whichever is the earlier.

5.4.10 Where a *market participant* fails to designate a *confidentiality classification* for information submitted to the *IESO* pursuant to section 5.4.5.1 within the time referred to in section 5.4.9.2(a), the *IESO* shall classify the information within the confidential *confidentiality classification*.

5.4.11 For the purposes of sections 5.4.5.1 and 5.4.9.2(b), a *market participant* shall designate the *confidentiality classification* for information submitted pursuant to those sections having regard to:

5.4.11.1 the adverse impact that disclosure of the information may reasonably be expected by the *market participant* to have on itself;

5.4.11.2 the adverse impact that disclosure of the information may reasonably be expected by the *market participant* to have on any person to whom the information relates or on such other person as the *market participant* may have reasonable grounds to believe may be adversely affected by disclosure of the information;

5.4.11.3 the proprietary nature and degree of confidentiality of the information; and

5.4.11.4 the *market participant's* obligations relating to confidentiality of and access to information under the *market rules*, *applicable law* or any agreement to which the *market participant* is a party.

5.5 Reclassification of Information

5.5.1 The *confidentiality classification* of any *confidential information* that is referred to in the *information confidentiality catalogue*, that is in the possession or control of the *IESO* and that has not been automatically re-classified in accordance with section 5.4.3.1 shall be reviewed by the *IESO*:

5.5.1.1 in the case of *confidential information* other than *confidential information* classified as highly confidential, no less than once in every three calendar years; and

5.5.1.2 in the case of *confidential information* classified by the *IESO* as highly confidential, no less than once in every seven calendar years,

with a view to determining, in accordance with section 5.5.2, whether the *confidential information* can be re-classified within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than those associated with the existing *confidentiality classification*.

5.5.2 The *IESO* shall make the determination referred to in section 5.5.1 having regard to the factors noted in section 5.4.4.

5.5.3 Where the *IESO* determines, in accordance with the review conducted pursuant to section 5.5.1 that *confidential information* can be re-classified within another *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing *confidentiality classification*, the *IESO* shall:

5.5.3.1 [Intentionally left blank]

5.5.3.2 [Intentionally left blank]

5.5.3.3 where the *confidential information* was provided by a *market participant* or relates to a particular *market participant*, notify the *market participant* that provided the *confidential information* or to which the *confidential information* relates of its intention to re-classify the *confidential information*, which notice shall specify:

a. the grounds upon which the *IESO* has determined it appropriate to re-classify the *confidential information*;

b. the *confidentiality classification* that the *IESO* considers appropriate for purposes of the re-classification of the *confidential information*; and

c. the time within which the *market participant* may object to the re-classification of the *confidential information*.

5.5.4 Where:

5.5.4.1 a *market participant* fails, within the time referred to in section 5.5.3.3(c), to object to the re-classification of *confidential information* that relates to it but that was not provided by it to the *IESO*, the *IESO* may re-classify the information within the *confidentiality classification* referred to in section 5.5.3.3(b) or within such other *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are more restrictive than the *confidentiality classification* referred to in section 5.5.3.3(b), and shall notify the *market participant* accordingly;

5.5.4.2 a *market participant* fails, within the time referred to in section 5.5.3.3(c), to object to the re-classification of *confidential information* that was provided by it to the *IESO*, the *IESO* shall not re-classify the *confidential information*; or

5.5.4.3 a *market participant* objects to the re-classification of *confidential information* within the time referred to in section 5.5.3.3(c), the *IESO* shall not re-classify the *confidential information* except as may be agreed between the *IESO* and the *market participant*.

5.5.5 The *IESO* shall, at the request of a *market participant*, re-classify *confidential information* provided by that *market participant* within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing *confidentiality classification* provided that the *IESO* is satisfied that such re-classification would not be inconsistent with the factors referred to in section 5.4.4.

5.5.6 Where a *market participant* indicates, at the time at which it designates a *confidentiality classification* for *confidential information* pursuant to section 5.4.5.1, that the *confidential information* may be automatically re-classified within a *confidentiality classification* that has, pursuant to section 5.4.2, associated with it provisions relating to disclosure or access that are less restrictive than the existing *confidentiality classification*, the *IESO* shall re-classify such *confidential information* accordingly provided that the *IESO* is satisfied that such re-classification would not be inconsistent with the factors referred to in section 5.4.4.

5.5.7 Amendments to the *information confidentiality catalogue* shall be subject to review by the *technical panel* and approval by the *IESO Board* until the end of 2003.

5.6 Cost of Access and Electronic Data Sharing

5.6.1 Nothing in this section 5 shall prevent information which is made available by means of electronic communications from being provided on a read-only basis.

5.6.2 Each *market participant* and any other person accessing, retrieving or storing information *published* or otherwise made available by the *IESO* shall be responsible for its own costs of accessing, retrieving or storing such information.

5.7 Conditions of Access

5.7.1 Where a request for access to or disclosure of information in the possession or control of the *IESO* is made by a *market participant* pursuant to these *market rules*, the *IESO* shall only provide such access or disclosure if:

5.7.1.1 the *IESO* is satisfied that it is not precluded by these *market rules* from providing such access or disclosure to the *market participant;* and

5.7.1.2 the provision of such access or disclosure would not impose a significant burden on the *IESO*, having regard to the *IESO's* resources.

5.7.2 Where the *IESO* makes *confidential information* accessible by means of electronic communications, the *IESO* shall implement access control protocols that differentiate between *market participants* but that need not differentiate between individuals, whether within the same *market participant* or otherwise.

6. Enforcement

6.1 Introduction

6.1.1 This section sets forth the rules pursuant to which the *IESO* shall 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 these *market rules*.

6.1.2 The *IESO* shall undertake such monitoring as it considers necessary to determine whether *market participants* are complying with the *market rules*.

6.1A Compliance Programs

6.1A.1 Each *market participant* and the *IESO* shall develop and maintain a compliance program to ensure compliance with the *market rules*.

6.2 Procedures Concerning Alleged Breaches of the Market Rules

6.2.1 This section shall not apply to the issuance by the *IESO* of a *suspension order* or a *termination order*, which shall be governed by the provisions of section 6.3A or 6.4, respectively, or to the issuance by the *IESO* of an order referred to in section 6.2A.1, which shall be governed by the applicable provisions of section 6.2A and 6.5.

6.2.1A This section 6 shall not apply in respect of:

6.2.1A.1 a breach of any performance standard set forth in the *market rules*; or

6.2.1A.2 a failure to pass a test set forth in the *market rules* or, where applicable, the *Ontario power system restoration plan*,

by an *ancillary service provider* in the provision of *regulation* or *black start capability* under a *contracted ancillary service* contract, which shall be governed, by the provisions of section 7 and by MR Ch.5 ss. 4.10.2.1 and 4.10.2.2.

6.2.2 Where the *market rules* provide for consequences or sanctions in respect of a breach by a *market participant* of a particular *market rule* or *market rules*, those consequences or sanctions shall apply in the circumstances and in the manner provided for in the relevant sections of the *market rules* in addition to such sanctions as may be imposed pursuant to this section 6.2.

6.2.3 If the *IESO* considers, on its own initiative or upon receipt of written information from any person, that a *market participant* may have breached or may be breaching the *market rules* and that, in the circumstances and if the breach is established, it would be appropriate that a sanction or sanctions be imposed on that *market participant*, the *IESO* shall notify the *market participant* of:

6.2.3.1 details of the alleged breach and of the time within which the breach must be remedied;

6.2.3.2 details of the evidence on the basis of which the *IESO* considers that the *market participant* may have breached or may be breaching the *market rules*;

6.2.3.3 details of the sanctions which may be imposed if the breach is established;

6.2.3.4 the time within which the *market participant* may make written representations in response to the allegations; and

6.2.3.5 the right of the *market participant* to request a meeting with the *IESO* to discuss the matter.

6.2.4 Following expiry of the time noted in section 6.2.3.4, and after consideration of any representations made by the *market participant* pursuant to that section, the *IESO* may:

6.2.4.1 determine that the *market participant* has not breached the *market rules*;

6.2.4.2 subject to section 6.2.5, determine that the *market participant* is in breach of the *market rules*;

6.2.4.3 request that the *market participant* provide further information in relation to the alleged breach; or

6.2.4.4 conduct such further investigation into the matter as the *IESO* determines appropriate.

6.2.5 Where a *market participant* has requested a meeting pursuant to section 6.2.3.5, the *IESO* shall provide the *market participant* with a reasonable opportunity to meet with the *IESO* to discuss the allegations. In such case, the *IESO* shall not make the determination noted in section 6.2.4.2 until such reasonable opportunity has been given.

6.2.6 A *market participant* shall comply with any request for information made by the *IESO* pursuant to section 6.2.4.3.

6.2.7 Subject to sections 6.2.7A, 6.2.7B and 6.2.7C, 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*.

6.2.7A If the *IESO* is satisfied that the *market participant* has breached MR Ch.1 s.10A, 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 MR Ch.1 s.10A, then the *IESO* may make one or more orders under section 6.2.7 respecting that alleged breach.

6.2.7B The *IESO* may elect to provide the *market participant* an opportunity to engage in good faith negotiations, within a time specified by the *IESO,* prior to the *IESO* making an order pursuant to section 6.2.7.

6.2.7C The good faith negotiation process set out in sections 2.5.3A and 2.5.3B shall not apply to any *notice of dispute* served in respect of an order issued pursuant to section 6.2.7.

6.2.8 An order imposing financial penalties on a *market participant* pursuant to section 6.6 shall, subject to section 2.3.3, be considered to create an obligation under the *market rules* to pay the amount stated in the order and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.

6.2.9 Failure to comply with an order of the *IESO* made pursuant to section 6.2.7 constitutes a breach of the *market rules*.

6.2.10 For greater certainty, the *IESO* may settle an enforcement matter under this section 6 at any time upon the written agreement of the *market participant* and the *IESO.*

6.2A Persistent Breaches of the Market Rules

6.2A.1 If a *market participant* has breached the *market rules* on a persistent basis, the *IESO* may:

6.2A.1.1 issue that *market participant* a *suspension order* under section 6.3A;

6.2A.1.2 issue that *market participant* a *termination order* under section 6.4; or

6.2A.1.3 deregister some or all of the *market participant's facilities* and any associated *resources* under section 6.5.

6.2A.2 Where the *IESO* intends to act pursuant to section 6.2A.1, the *IESO* shall provide the *market participant* with a notice stating:

6.2A.2.1 the nature of the action to be taken;

6.2A.2.2 the grounds and any evidence on which the *IESO* relies on in support of the intended action;

6.2A.2.3 the time within which the *market participant* may make written representations to the *IESO* as to why such action should not be taken; and

6.2A.2.4 the right of the *market participant* to request a hearing before the *IESO Board* or a committee of the *IESO Board* established for such purpose to show cause why such action should not be taken.

6.2A.3 The *IESO* shall provide a copy of any notice issued under section 6.2A.2 to the *OEB* and to the *transmitter, distributor* and/or other *market participant* to whose *facilities* the *market participant's facilities* who is the subject of the notice are connected.

6.2A.4 If the *market participant* has requested a hearing, the *IESO Board* or a committee of the *IESO Board* established for such purpose shall conduct a hearing providing the *market participant* with a reasonable opportunity to show cause as to why such action should not be taken against it. Following the hearing, the *IESO Board* or the committee of the *IESO Board* established for such purpose may:

6.2A.4.1 approve the action that the *IESO* intends to take; or

6.2A.4.2 make any other appropriate order, including an order referred to in section 6.2.7.

6.2A.5 If the *market participant* has not requested a hearing, the *IESO* shall consider any written representations received from the *market participant* and may take any action specified in the notice issued under section 6.2A.2 or make any other appropriate order, including an order referred to in section 6.2.7.

6.2A.6 The *IESO* shall *publish* a notice of any actions taken under section 6.2A.4 or 6.2A.5 and provide a copy to the *OEB* and the *transmitter*, *distributor* and/or other *market participant* to whose *facilities* the *market participant's facilities* who is the subject of the notice are connected.

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 MR Ch.1 s.10A 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 MR Ch.1 s.10A, 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 MR Ch.1 s.10A;

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 MR Ch.1 s.10A 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.~~[Intentionally left blank]

6.2B.7 If the parties are unable to resolve the matter ~~through the mediation process~~following the expiration of no less than a thirty day period for good faith negotiation starting from the date of service of the *response to the notice of intention*, either party may terminate negotiations by written notice to the other party and, ~~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, within 20 *business days* following the termination of good faith negotiations, 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 MR Ch.1 s.10A 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 MR Ch.1 s.10A; 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 MR Ch.1 s.10A, 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 MR Ch.1 s.10A, 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 2.6.1B, 2.6.13 or 2.6.16 terminating the mediation process.

6.2B.19 The *IESO* shall, pursuant to section 6.2B.2, serve a *notice of intention* no later than six years after the day on which the alleged breach of MR Ch.1 s.10A was discovered by the *IESO*. Where the *IESO* fails to serve a *notice of intention* within the time provided, no finding of breach of MR Ch.1 s.10A shall be made pursuant to the *market rules* in respect of that conduct.

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

6.3 Events of Default

6.3.1 An *event of default* occurs if a *market participant* or the person that has provided *prudential support* or *capacity prudential support* in relation to the *market participant*:

6.3.1.1 does not make a payment in full required under the *market rules* when due;

6.3.1.2 fails to provide payment in full of any amount claimed by the *IESO* under any *prudential support* or *capacity prudential support;*

6.3.1.3 fails to provide and maintain *prudential support* or *capacity prudential support* required to be supplied under the *market rules* within the time required;

6.3.1.4 has a licence (including a *licence*), permit or other authorization necessary to carry on its principal business suspended, revoked or otherwise cease to be in full force and effect, provided that where a *market participant* holds more than one *licence* and only one such *licence* has been suspended, revoked or otherwise ceases to be in full force and effect, the *event of default* and any action taken by the *IESO* with respect thereto shall relate only to such *licence*;

6.3.1.5 ceases or threatens to cease to carry on its business or a substantial part of its business;

6.3.1.6 becomes insolvent or is unable to pay all or some of its debts when they fall due for payment;

6.3.1.7 seeks to enter into an arrangement, composition or compromise with, or makes an assignment for the benefit of, all or any class of its creditors;

6.3.1.8 has a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction appointed in respect of any of its property that is used in or relevant to the performance of its obligations under the *market rules* or its *licence*;

6.3.1.9 is the subject of an order appointing an administrator, liquidator, trustee in bankruptcy or person having a similar or analogous function under the laws of any jurisdiction;

6.3.1.10 is wound up, dissolved, or otherwise has ceased to exist or is the subject of an application for winding up or dissolution, or any analogous procedure, under the laws of any jurisdiction, unless the notice of winding up or dissolution is discharged or withdrawn; or

6.3.1.11 ceases to satisfy any material requirement imposed upon it as a condition of its authorization to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*.

6.3.2 A *market participant* shall notify the *IESO* immediately upon:

6.3.2.1 the occurrence of an *event of default* or any circumstance that may give rise to an *event of default* referred to in sections 6.3.1.4 to 6.3.1.11; or

6.3.2.2 the appointment of a receiver or receiver and manager or person having a similar or analogous function under the laws of any relevant jurisdiction in respect of any property of the *market participant* or the *market participant's prudential support* provider, or *capacity prudential support* provider.

6.3.3 Where a *market participant* or a person providing *prudential support* or *capacity prudential support* on behalf of that *market participant* commits an *event of default,* the *IESO* may:

6.3.3.1 issue to the *market participant* a *notice of intent to suspend* stating that the *market participant* will be suspended unless it remedies the *event of default* within 2 *business days* or such longer period as specified in the notice;

6.3.3.2 immediately draw upon part or all of the *market participant's prudential support* or *capacity prudential support* for either the amount of any money owing to the *IESO* under the *market rules* or where the *market participant's prudential support* or *capacity prudential support* is due to expire or terminate and has not been replaced as required under MR Ch.2 s.5.2.5 or s.5B.2.4 the undrawn part of the *prudential support* or *capacity prudential support* notwithstanding the provisions of MR Ch.2 s.5.7.2.5 until such time as the *market participant* has replaced its *prudential support* or *capacity prudential support*; and

6.3.3.3 set-off any amounts due or credited to the *market participant* under the *market rules* and any program administered through the billing and *settlement* systems of the *IESO* against any amounts owed by the *market participant.*

6.3.4 Where the *IESO* issues a *notice of intent to suspend* under section 6.3.3.1 or a *suspension order* under sections 6.3A.1.1 and 6.3A.1.2 to a *market participant* that is a party to a *physical bilateral contract,* the *IESO* shall:

6.3.4.1 deem any *physical bilateral contract quantities* to be zero for the period from the date the *event of default* occurs until it is remedied if that *market participant* is the *selling market participant*; or

6.3.4.2 rescind or refuse to accept any initial or revised *physical bilateral contract data* relating to a *dispatch day* after the date of the *event of default* if that *market participant* is the *buying market participant*.

6.3.5 [Intentionally left blank – section deleted]

6.3.6 A *market participant* may remedy an *event of default* by:

6.3.6.1 satisfying any outstanding financial or other obligations that gave rise to the *event of default,* including any applicable *default interest* and any costs and expenses incurred by the *IESO* as a result of the *event of default*; and

6.3.6.2 proving to the reasonable satisfaction of the *IESO* that the facts or circumstances which constituted the *event of default* no longer exist.

6.3.7 Notwithstanding that the *event of default* has been remedied, the *IESO* may impose any condition on the right of a *market participant* to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* that the *IESO* determines are appropriate, including:

6.3.7.1 establishing a lower *trading limit* in respect of the *market participant* than would otherwise be the case under MR Ch.2 ss.5.3, 5C.1 and 5D.2, as applicable;

6.3.7.2 establishing a more frequent continuing schedule of payments than would otherwise be the case under MR Ch.9; or

6.3.7.3 imposing a more stringent *prudential support obligation* than would otherwise be the case under MR Ch.2 ss.5, 5B, 5C and 5D as applicable.

6.3A Suspension of a Market Participant

6.3A.1 The *IESO* may issue a *suspension order* to a *market participant* if:

6.3A.1.1 the *market participant* has not remedied an *event of default* within the time specified in the *notice of intent to suspend*;

6.3A.1.2 an *event of default* specified in sections 6.3.1.5 to 6.3.1.10 has occurred in relation to the *market participant*; or

6.3A.1.3 the *IESO* has determined under section 6.2A that a *suspension order* should be issued because the *market participant* has persistently breached the *market rules*.

6.3A.2 The *IESO* shall *publish* the details of the *suspension order* and provide a copy of the *suspension order* to the *OEB* and the *transmitter, distributor* and/or other *market participant* to whose *facilities* the *suspended market participant* is connected.

6.3A.3 To the extent specified in the *suspension order,* a *suspended market participant* is ineligible to trade or enter into any transaction in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*.

6.3A.4 The *IESO* may do one or more of the following to give effect to a *suspension order*:

6.3A.4.1 reject any *bid*, *offer* or *TR bid* submitted by the *suspended market participant*;

6.3A.4.2 set-off any amounts otherwise due to the *suspended market participant* against any amounts owed by the *suspended market participant* under the *market rules*;

6.3A.4.3 issue a *disconnection order* to the *transmitter*, *distributor* and/or other *market participant* to whose *facilities* the *suspended market participant's facilities* are connected and provide a copy to the *OEB*; or

6.3A.4.4 make such further order or issue such directions to the *suspended market participant* as the *IESO* determines appropriate.

6.3A.5 The *IESO* shall lift a *suspension order* if the *event of default* which triggered its issuance is remedied to the satisfaction of the *IESO* and there are no other *events of default* in existence with respect to the *suspended market participant*.

6.3A.6 Notwithstanding that the *suspension order* has been lifted, the *IESO* may impose any condition on the right of a *market participant* that has been subject of a *suspension order* to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* that the *IESO* determines are appropriate, including the conditions noted in sections 6.3.7.1 to 6.3.7.3.

6.4 Termination of a Market Participant

6.4.1 The *IESO* may issue a *termination order* to a *market participant* if:

6.4.1.1 the *market participant* is a *suspended market participant* and has not remedied the *event of default* that triggered the *suspension order* within 5 *business days* of the issuance of the *suspension order*;

6.4.1.2 the *market participant* is a *suspended market participant* and has notified the *IESO* that the *market participant* is not likely to remedy the *event of default* that triggered the issuance of the *suspension order*;

6.4.1.3 the *market participant* has been wound up, dissolved, or otherwise has ceased to exist; or

6.4.1.4 the *IESO* has determined under section 6.2A that a *termination order* should be issued because the *market participant* has persistently breached the *market rules*.

6.4.2 The *IESO* shall *publish* the details of the *termination order* and provide a copy of the *termination order* to the *OEB* and to the *transmitter, distributor* and/or other *market participant* to whose *facilities* the *terminated market participant's facilities* are connected.

6.4.3 When the *IESO* issues a *termination order*, it may at the same time, if it has not already done so, issue a *disconnection order* to the *transmitter, distributor* and/or other *market participant* to whose *facilities* the *terminated market participant's facilities* are connected and provide a copy to the *OEB*.

6.4.4 A *terminated market participant* that re-applies for authorization shall be required to comply with the provisions of MR Ch.2 s.3. The *IESO* may impose any conditions on the right of the *terminated market participant* to participate in *the IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of *the IESO-controlled grid* that the *IESO* determines are appropriate, including the conditions noted in sections 6.3.7.1 to 6.3.7.3.

6.5 De-Registration of a Market Participant's Facilities

6.5.1 The *IESO* may deregister some or all of a *market participant's facilities* and any associated *resources* if the *IESO* has determined under section 6.2A that the *market participant* has persistently breached the *market rules*.

6.5.2 Deregistering some or all of a *market participant's facilities* or *resources* terminates all of the rights of the *market participant* in respect of those *facilities* or *resources* to participate in the *IESO-administered markets* or in respect of those *facilities* or *resources* to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* in respect of those *facilities* or *resources*.

6.5.3 If the *IESO* deregisters some or all of a *market participant's facilities* or *resources*, it may at the same time issue a *disconnection order* to the relevant *transmitter,*

distributor and/or other *market participant* to whose *facilities* the *market participant's facilities* which is subject of the deregistration are connected and provide a copy to the *OEB*.

6.5.4 A *market participant* that wishes to re-register *facilities* or *resources* that have been deregistered shall comply with the provisions of section 2 of Chapter 7. The *IESO* may impose any conditions on right of the *market participant* to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* that the *IESO* determines are appropriate, including the conditions noted in sections 6.3.7.1 to 6.3.7.3.

6.5A Disconnection Order

6.5A.1 Each *transmitter, distributor* and other *market participant* to whom a *disconnection order* is issued pursuant to sections 6.3A.4.3, 6.4.3 or 6.5.3 shall, subject to this section 6.5A, on the date and at the time specified in the *disconnection order*, *disconnect* the *facilities* or equipment referred to in the *disconnection order*.

6.5A.2 Nothing in this section 6.5A is intended to prevent a *transmitter, distributor* or other *market participant* from taking action to ensure the safety of any person, prevent the damage of equipment, or prevent the violation of any *applicable law*; provided, however, that such *transmitter, distributor* or other *market participant* shall coordinate to the fullest extent practicable any such action with the *IESO*.

6.5A.3 Without limiting the generality of MR Ch.1 s.8.3, a *disconnection order* may be issued by the *IESO* to a *transmitter, distributor* or other *market participant* pursuant to sections 6.3A.4.3, 6.4.3 or 6.5.3 by voice communication.

6.6 Non-compliance Letters and Financial Penalties

6.6.1 This section 6.6 sets forth the manner in which the *IESO* will pursuant to section 6.2.7 issue non-compliance letters and fix financial penalties to be imposed on *market participants* for breaches of the *market rules*.

6.6.2 Where the *IESO* has determined that it is appropriate to issue a letter of non-compliance or impose a financial penalty upon a *market participant*, the *IESO* shall:

6.6.2.1 determine the level of non-compliance by the *market participant* in accordance with section 6.6.3;

6.6.2.2 determine the rate of recurrence of non-compliance by the *market participant* in accordance with section 6.6.4;

6.6.2.3 based on the determinations made in accordance with sections 6.6.2.1 and 6.6.2.2, issue a non-compliance letter or impose a financial penalty; and

6.6.2.4 where a determination is made to impose a financial penalty, fix the amount of the penalty in accordance with section 6.6.6.

6.6.2A When determining the particular level of non-compliance referred to in section 6.6.2.1, the *IESO* shall establish:

- whether all of the conditions for a level have been met; and
- that the manner and time, proposed by the *market participant*, within which the non-compliance event will be remedied are reasonable under the circumstances.

If a *market participant*

- meets some but not all of the conditions of any single level; or
- proposes a manner and time in which the non-compliance event will be remedied that are not reasonable under the circumstances in the opinion of the *IESO*,

then the *IESO* shall assign what it considers to be the appropriate non-compliance level.

6.6.3 The *IESO* shall determine the level of non-compliance referred to in section 6.6.2.1 as follows:

6.6.3.1 Level "L1" shall apply where the *market participant*:

i. failed to comply, in part, with the requirements of a *market rule*, and
ii. on its own initiative informed the *IESO* on a timely basis of:
   - the reasons for the non-compliance, and
   - the manner and time in which the non-compliance will be remedied.

6.6.3.2 Level "L2" shall apply where the *market participant*:

i. failed to comply in whole with the requirements of a *market rule*, and
ii. on its own initiative informed the *IESO* on a timely basis of:
   - the reasons for the non-compliance, and
   - the manner and time in which the non-compliance will be remedied.

6.6.3.3 Level "L3" shall apply where the *market participant*:

i. failed to comply, in whole or in part, with the requirements of a *market rule*,

ii. did not on its own initiative inform the *IESO* on a timely basis of the non-compliance; but

iii. did inform, at the *IESO*'s request and within the time specified in the request, the *IESO* of:

- the reasons for the non-compliance, and
- the manner and time in which the non-compliance will be remedied.

6.6.3.4 Level "L4" shall apply where the *market participant*:

i. failed to comply, in whole or in part, with the requirements of a *market rule*,

ii. did not on its own initiative inform the *IESO* on a timely basis of the non-compliance; and

iii. did not inform, at the *IESO*'s request and within the time specified in the request, the *IESO* of:

- the reasons for the non-compliance, and
- the manner and time in which the non-compliance will be remedied.

6.6.4 The *IESO* shall determine the rate of recurrence of non-compliance referred to in section 6.6.2.2 based on the frequency and duration with which the *market participant* has been found by the *IESO* to be in breach of the *market rules*.

6.6.5 [Intentionally left blank – section deleted]

6.6.6 Where the *IESO* has determined, based on the determinations made under section 6.6.2, that the applicable sanction is the imposition of a financial penalty, the *IESO* shall, subject to section 6.6.6A, consider the factors listed in section 6.6.7 and impose a financial penalty on the *market participant* within the ranges set out in the following table.

Level of Non-Compliance	Range of Sanctions
L1	Non-compliance letter or up to $2,000.00
L2	Non-compliance letter or up to $4,000.00
L3	Non-compliance letter or up to $6,000.00
L4	$1,000.00 to $10,000.00

6.6.6A The *IESO* may impose on a *market participant* a financial penalty in excess of the amount otherwise provided for in section 6.6.6 and no greater than $1,000,000 per occurrence, where:

6.6.6A.1 the *market participant* has breached a *market rule* while a declaration that the *IESO controlled grid* is in an *emergency operating state* or a *high-risk operating state* was in effect;

6.6.6A.2 the *market participant* breached a *market rule* while a declaration that *market operations* have been suspended was in effect;

6.6.6A.3 the *IESO Board* determines that the impact of the *market participant*'s breach of a *market rule* on either the *IESO-administered markets* or the *reliability* of the *integrated power system* is particularly severe; or

6.6.6A.4 the rate of recurrence of non-compliance by the *market participant* with the *market rules* is of such frequency or duration as to warrant the imposition of a higher financial penalty.

6.6.6B Where at least one of the conditions of 6.6.6A are met and the *IESO* has determined that the applicable sanction is the imposition of a financial penalty, the *IESO* shall, consider the factors listed in section 6.6.7 and impose a financial penalty on the *market participant* within the ranges set out in the following table.

	Non-Compliance Level (Severity and Breach History)							
Impact Level	**Low**		**Moderate**		**High**		**Severe**	
	Range Limit		Range Limit		Range Limit		Range Limit	
	Min	Max	Min	Max	Min	Max	Min	Max
Low Little or None	$2,000	$25,000	$2,000	$50,000	$3,000	$75,000	$5,000	$100,000
Medium Material	$2,000	$100,000	$4,000	$250,000	$6,000	$450,000	$10,000	$600,000
High Severe	$4,000	$250,000	$8,000	$500,000	$12,000	$750,000	$20,000	$1,000,000

The *IESO* shall establish the penalty range at the intersection of the determined impact level and non-compliance level in accordance with the applicable *market manual* as follows:

6.6.6B.1 The *IESO* shall determine the impact level by examining all the impacts of the breach under investigation and selecting an appropriate impact level; and

6.6.6B.2 The *IESO* shall determine the non-compliance level by examining breach history contributions, severity, and any aggravating or mitigating adjustments.

6.6.7 In fixing the amount of the financial penalty within the ranges described in the tables set forth in sections 6.6.6 and 6.6.6B, the *IESO* shall have regard to:

6.6.7.1 the circumstances in which the breach occurred;

6.6.7.2 the severity of the breach;

6.6.7.3 the extent to which the breach was inadvertent, negligent, deliberate or otherwise;

6.6.7.4 the length of time the breach remained unresolved;

6.6.7.5 the actions of the *market participant* on becoming aware of the breach;

6.6.7.6 whether the *market participant* disclosed the matter to the *IESO* on its own or whether it was prompted to do so;

6.6.7.7 any benefit that the *market participant* obtained or may have obtained as a result of the breach;

6.6.7.8 any previous breach by the *market participant* of the *market rules* or of the conditions of its *licence*;

6.6.7.9 the actual or potential impact of the breach on other *market participants*;

6.6.7.10 the actual or potential impact of the breach on the *IESO-administered markets* as a whole;

6.6.7.10A the actual or potential impact of the breach on the *reliability* of the *integrated power system*;

6.6.7.11 any sanctions that may be imposed on the *IESO* by a *standards authority* as a result of the breach;

6.6.7.12 the immediacy of the threat that the breach poses to the *reliability* of the *integrated power system* or the *IESO-administered market*;

6.6.7.13 presence and quality of the *market participant*'s compliance program ;

6.6.7.14 whether on its own initiative, a *market participant* has undertaken to reasonably compensate the *IESO-administered market* for the value of any benefit it obtained as a result of the breach; and

6.6.7.15 such other matters as the *IESO* considers appropriate.

6.6.8 Where MR Ch.3 App. 3.1 provides for the imposition of a formula-based penalty in respect of the breach of a *market rule*, the *IESO* may issue a letter of non-compliance pursuant to section 6.6.2.3 or impose a financial penalty upon the *market participant*, the amount of which shall be determined by the application of the following formula:

$$P = D \times T \times C$$

Where:

P = the amount of the financial penalty, in dollars

D = the deviation from the applicable obligation in the *market rules*, expressed in terms of MW, MVAR, kV, power factor or other determinant, as specified in Appendix 3.1 in respect of the particular *market rule*

T = the duration of the breach, expressed in hours or fractions of hours

C = the amount determined in accordance with section 6.6.9 in respect of the particular *market rule*

6.6.9 The amount C referred to in section 6.6.8 shall be determined, in respect of the breach of a particular *market rule*, by multiplying the *market price* prevailing at the time of the breach by an amount determined by the *IESO* having regard to the criteria set forth in section 6.6.7 and to the factors noted in sections 6.6.6A.1 to 6.6.6A.4, where applicable.

6.6.10 Where MR Ch.3 App.3.1 specifies more than one sanction in respect of the breach of a particular *market rule*, the *IESO* may impose all of the sanctions so specified on the *market participant* provided that no financial penalty may be imposed in respect of a breach for which the *IESO* has issued a letter of non-compliance pursuant to section 6.6.2.3. Nothing in this section 6.6.10 shall prevent the *IESO* from imposing a financial penalty for failure by a *market participant* to remedy a breach in respect of which a letter of non-compliance has been issued or if there is any repetition or continuation of such breach.

6.6.10A In respect of a breach of MR Ch.7 s.7.5.8A, the *IESO* may:

6.6.10A.1 issue a letter of non-compliance or impose a financial penalty upon the *market participant* pursuant to sections 6.6.2.3, and 6.6.6; and

6.6.10A.2 adjust *settlement amounts* paid or payable to a *registered market participant* such as *transmission rights* payments, congestion

management *settlement* credits or other *settlement amounts* that the *registered market participant* received or avoided due to an act or omission or a course of conduct of either the *registered market participant* alone or the *registered market participant* by agreement or arrangement with one or more other *market participants* that led to the breach of MR Ch.7 s.7.5.8A.

6.6.11 Nothing in this section 6.6 shall preclude the *IESO* from making an order under one or more of sections 6.2.7.1, 6.2.7.2, 6.2.7.3 or 6.2.7.6 in respect of a breach of the *market rules* with respect to which a sanction has been imposed pursuant to this section 6.6.

6.6.12 [Intentionally left blank]

6.6.13 [Intentionally left blank – section deleted]

6.6.14 No additional financial penalty may be imposed in respect of a breach of the *market rules* for which a financial penalty has already been imposed pursuant to this section 6.6 provided that nothing in this section 6.6.14 shall prevent the *IESO* from imposing a financial penalty for failure by a *market participant* to remedy a breach in respect of which a financial penalty has been imposed or if there is any repetition or continuation of such breach.

6.7 Officers and Agents

6.7.1 If any director, officer, employee partner or agent of a *market participant* does any act or refrains from doing any act which if done or omitted to be done, as the case may be, by a *market participant* would constitute a breach of the *market rules*, such act or omission shall be deemed for the purposes of this section 6 to be the act or omission of the *market participant*.

7. Financial Penalties for Certain Contracted Ancillary Service Providers

7.1 Penalties Specified in Contracts

7.1.1 An *ancillary service provider* providing *regulation* or *black start capability* under a *contracted ancillary service* contract that:

7.1.1.1 breaches any performance standard set forth in the *market rules*; or

7.1.1.2 fails to pass a test set forth in the *market rules*, the *contracted ancillary service* contract or, where applicable, the *Ontario power system restoration plan*,

in respect of such *contracted ancillary service* shall be subject to such financial penalties and other *sanctions* as may be specified in the applicable *contracted ancillary service* contract and to the provisions of MR Ch.5 s.4.10.2.1.