

# Feedback Form

## IESO Market Rule Amendments, Chapter 3

### Feedback Provided by:

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Date: Tuesday, February 27, 2024

To promote transparency, feedback submitted will be posted on the [Market Rule Amendments, Chapter 3 engagement webpage](#) unless otherwise requested by the sender. If you wish to provide confidential feedback, please mark as "Confidential".

Following the February 6, 2024, engagement webinar, the Independent Electricity System Operator (IESO) is seeking feedback from stakeholders on items discussed. The webinar presentation and recording can be accessed from the [engagement web page](#).

Please submit feedback to [engagement@ieso.ca](mailto:engagement@ieso.ca) by February 20, 2024.

### Amendments

Item	Feedback
Do you have any feedback on the market rule amendments presented and posted for stakeholder review?	<p data-bbox="743 163 1485 283">OPG would like to thank the IESO for providing OPG with an opportunity to submit comments on Stakeholder Engagement: Market Rule Amendments Chapter 3.</p> <p data-bbox="743 325 1510 445">OPG’s comments below are based on materials provided to date, including the content and comments provided during the February 6<sup>th</sup>, 2024 engagement webinar.</p>

Baseline 50.1, effective December 6, 2023 – Market Manual 2.6 - 1.3.10, Public Reporting

OPG continues to have significant concerns regarding the overall process of presenting the proposed Chapter 3 market rule amendments to the stakeholder community. Specifically, OPG is concerned by the unclear policy context that the IESO has given as an impetus for the proposed changes, and its decision to bring changes forward in parts rather than as a comprehensive package.

The IESO introduced an initial amendment to Market Manual 2.6 by publication in the August 24, 2023 Bulletin. This change deleted confidentiality protections for market participants, impacts the Dispute Resolution Process, and appears to create a interpretation gap. This change should have been escalated through the IESO’s stakeholder engagement process given its materiality, and could easily have been included in the scope of the proposed Chapter 3 amendments that the IESO has subsequently introduced.

By deleting the explicit confidentiality protection in MM2.6, the IESO (MACD) creates a new silent permission or discretion to publish, although the provision has not been redrafted to reflect this. This is an example of the IESO creating a gap in the Market Manual language, which introduces procedural uncertainty and diminishes fairness and transparency. Ultimately, OPG does not understand why the IESO elected to separate changes to the same Market Manual, one via the Baseline process and the rest as part of this proposed package.

As part of the IESO’s recent February 6, 2024 stakeholder engagement session, the IESO advised market participants for the first time during the meeting that it plans to issue a Compliance and Enforcement Guidance (CEG) document to inform the treatment of a market participant’s confidential information pursuant to Market Manual 2.6. In addition to a CEG, the IESO also advised market participants for the first time during the February 6 session that materials on a new expedited dispute resolution process (ERP) is forthcoming. The IESO did not provide any further scope or timeline for these additional changes.

Lastly, like other market participants, OPG is presently invested in stakeholder engagements and related market rule and market manual amendments as part of the IESO’s

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	<p data-bbox="743 170 1507 478">Market Renewal Program (“MRP”). Leading up to and following MRP implementation, market participants will be exposed to a period of greater uncertainty and increased risk as the electricity markets adapt. The proposed Chapter 3 and Market Manual 2.6 changes would reduce confidentiality protections for market participants and expose them to significantly higher penalty amounts at the same time MRP is being implemented.</p> <p data-bbox="743 527 1495 995">For these reasons, and the further reasons set out below related to the specific amendment language being proposed, OPG requests the IESO to withdraw the amendment proposal at this time and to reverse the changes to Market Manual 2.6 (introduced through the Baseline process), until such time as the IESO is prepared to present a comprehensive plan or package of amendments (including the CEG and ERP) that can be evaluated by market participants in their entirety. Presently, OPG does not believe stakeholders have a sufficiently complete understanding of the proposed changes and their potential impact.</p>

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<p>Market Rules Chapter 3, Section 2.5.1A.4AA and 8.</p> <p>Market Manual 2.6 - 1.3.10 Public Reporting</p>	<p>If the IESO (MACD) exercises the discretion to publish mere allegations of non-compliance prior to a breach finding, OPG is concerned this will undermine good faith negotiations as part of the dispute resolution process. OPG believes that MACD's unilateral ability to issue a public disclosure at a time of its choosing will frustrate the process and reduce its efficiency (one of the stated goals of the proposed changes) as participants will be less willing to engage in good faith negotiation or mediation.</p> <p>Publication or disclosure may also expose OPG to reputational harm that cannot be easily reversed, third party legal liability, and could undermine its competitiveness in the market.</p> <p>As stated above, OPG requests the IESO to withdraw the amendment proposal at this time and to reverse the changes to Market Manual 2.6 that have now taken effect through the Baseline process, until such time as these changes can be appropriately stakeholdered and market participants can better understand the potential impacts based on the examples provided by the IESO at the February 6 engagement.</p>

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Market Rules Chapter 3, Section 5.3.1.5B	<p data-bbox="743 174 1513 877">At the February 6, 2024 stakeholder engagement session the IESO suggested that as part of an investigation, MACD may contact third party market participants (not under investigation), the IESO, or third party suppliers in order to assess the potential market impact of an alleged breach, without disclosing this contact to the market participant under investigation. The IESO (MACD) suggested that it would enter into a non-disclosure agreement with this third party that permits MACD to disclose confidential information about the market participant under investigation. The IESO (MACD) confirmed that there is no explicit statutory, regulatory or market rule that extends its investigatory powers to third parties, or that would permit MACD to disclose confidential information of a market participant collected, as part of the investigatory process, to a third party that may be a direct competitor or contract counterparty. The IESO (MACD) suggested that this power does not need to be explicit to be exercised.</p> <p data-bbox="743 926 1513 1192">OPG is concerned the proposed Market Rule change (i.e., added language) is overly broad and creates undue risk to market participants. The examples presented during the February 6, 2024 engagement session were even further reaching than the draft language implies. OPG is concerned that this process change may result in contractual interference and anti-competitive behavior.</p> <p data-bbox="743 1241 1513 1591">OPG would like to highlight that even the existing process of disclosure of confidential information to a market monitoring unit is subject to additional protections as outlined in Chapter 3, Section 5.3.7 and 5.3.8. Specifically, the IESO must 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.</p> <p data-bbox="743 1640 1513 1833">For these reasons, OPG requests the IESO to withdraw the amendment proposal at this time. OPG believes the existing provisions related to exceptions for the disclosure of confidential information in Section 5.3 are sufficient for the IESO to enforce the market rules.</p>

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Market Rules Chapter 3, Section 6.6.6	<p>OPG believes that further effort is required to establish appropriate lower matrix penalty ranges. In OPG’s view the maximum penalties of other jurisdictions provided in MACD’s response are better compared to the existing higher penalty matrix in the Market Rules and have little relevance to the ones in the lower tier matrix subject to the proposed change as part of the Second Amendment.</p> <p>The proposed increases to the lower tier penalty matrix are 10-12 times the existing values, and are significantly higher than other cost increase indicators such as CPI. OPG recommends that the penalties are established using a robust and defensible methodology. OPG also recommends that the process and final values are validated by an independent third party.</p>
Market Manual Part 2.6, Section 1.3.1	<p>OPG does not believe the removal of the language “with its files and investigative information accessible only to MACD staff members.” follows the stated objective of “increased clarity”. Therefore, OPG requests the IESO to withdraw the amendment proposal and maintain the current language of the Market Manual.</p>

General Comments/Feedback: