

# Background Material

## Options to Address Uninsured Liability Risk Engagement

The IESO intends to address its uninsured liability risk through changes to the market rules and is seeking stakeholder feedback on the options presented below.

Regardless of the manner in which the IESO's liability is addressed under the Market Rules, the IESO remains obligated to comply with the Market Rules and is subject to compliance oversight by the Market Assessment and Compliance Division, and is committed to transparent reporting and disclosure of significant market events. The IESO will also continue to mitigate the risk of events and errors through the appropriate and robust application of internal checks and processes (e.g. monitoring for anomalous market events, internal audits, risk processes, DSO audits, settlements audits, etc.).

Stakeholder feedback is requested on the following options:

### **Option 1:**

IESO Preferred Option: Section 13.1 of Chapter 1 contains an IESO indemnity for losses caused by IESO willful misconduct and negligence. In order to align the market rules with available insurance and align the IESO indemnity with that provided by most North American ISOs, the market rules would be amended to limit the IESO indemnity to losses caused by gross negligence, subject to the current limitations on recoverable damages. [Amendments would be made to Chapter 1, Section 13.1]

The IESO prefers option 1 as it most closely aligns with available insurance and liability of other ISOs.

### **Option 2:**

Retain the existing IESO indemnity in Section 13.1 of Chapter 1, and establish a compensation mechanism under the market rules for losses

Under this option, recovery could be from loads (similar to Chapter 9, s. 4.8) or broadly from all market participants (similar to default levy).

Stakeholders are asked to comment on whether compensation should be recovered from loads or all market participants.

## Background:

Under the market rules, the IESO may be liable for negligence, with some limitations, and as such requires a specialized form of errors and omissions (E&O) insurance. This is a specialized insurance product, which covers claims alleging negligent errors and omissions, but that is tailored for the unique risks related to the IESO's operations.

Earlier in the year the IESO initiated work with Marsh Canada to conduct an exhaustive search of Canadian and non-Canadian insurers for E&O insurance. However, the IESO was unable to renew or obtain alternate E&O insurance that matches the IESO's previous level of coverage. After a rigorous search, a limited number of insurers offered insurance limited to claims for gross negligence.

A scan of other Independent System Operators (ISOs), identified that a majority of ISOs in the United States limit their liability to gross negligence. Other international system operators limit their liability even further. See the table below for additional details.

The IESO has not been aligned with a majority of other ISOs in North America in accepting liability for negligence and has until recently been able to obtain insurance to match this liability exposure.

## Jurisdictional Scan of Other Liability Regimes

Entity	Governing Document	Liability
Midcontinent Independent System Operator (MISO)	<a href="#">Tariff</a> – s 10.3	Limited to gross negligence or intentional misconduct for direct damages.
Pennsylvania-New Jersey-Maryland Interconnection (PJM)	<a href="#">Open Access Transmission Tariff</a> – s. 10.2	Limited to gross negligence or intentional misconduct for direct damages and claims limited to value of assets.
California Independent System Operator (CAISO)	<a href="#">Open Access Transmission Tariff</a> – s. 14.5	Limited to gross negligence or intentional wrongdoing for damages and consequential or indirect financial loss.
New York Independent System Operator, Inc. (NYISO)	<a href="#">Open Access Transmission Tariff</a> – s. 2.11.3	Limited to gross negligence or intentional misconduct for direct damages.
Southwest Power Pool (SPP)	<a href="#">SPP Tariff</a> – s. 10.2	Limited to gross negligence or intentional wrongdoing as well as further limitations.  Recovery mechanism.
ISO New England	<a href="#">The ISO Tariff</a> – Section I - General Terms and Conditions (I.5.2)	Limited to gross negligence or willful misconduct and claims limited to assets of the ISO.
National Grid ESO	<a href="#">Connection and Use of System Code (CCUSC)</a> , paragraph 6.12	Limited to loss directly resulting from breach, with degrees of reasonability.