

Final Engagement Summary Report

Date: August 26, 2021

Options to Address Uninsured Liability Risk

Engagement Initiated: November 2021

Engagement Description

The IESO sought feedback from stakeholders on options to address its uninsured liability risk. The IESO was unable to replace its errors and omissions insurance coverage and proposed two options to address its uninsured risk: bring its liability risk under the Market Rules into alignment with available insurance and the liability risk of other independent system operators; or recover losses through the market.

Under the Market Rules, the IESO was liable for negligence, with some limitations. Previously, the IESO obtained errors and omissions insurance to match this liability risk. Due to factors such as the hardened insurance market in 2020, the IESO was unable to renew or obtain alternate errors and omissions insurance that matched the IESO's liability risk under the market rules.

The IESO addressed this uninsured liability risk for negligence through changes to the market rules and sought stakeholder feedback on the two options described below.

Option 1 (IESO preferred Option)

In order to align the Market Rules with available gross negligence insurance and align the IESO indemnity with that provided by most North American ISOs, the Market Rules would be amended to change the IESO indemnity from negligence to a gross negligence standard.

Option 2

Retain the existing IESO indemnity in the Market Rules for negligence, and establish a compensation mechanism under the Market Rules for losses by doing the following:

- Enable the recovery of amounts paid by the IESO under its indemnity pursuant to the Market Rules to the extent that insurance coverage is not available.
- Enable the recovery of compensation paid by the IESO pursuant to the market rules, relating to a dispatch scheduling error to the extent that insurance coverage is not available.

Compensation recovery mechanisms would apply to claims made before or following the amendment. Under this option, recovery of compensation paid could be from loads (similar to non-hourly settlement amounts) or broadly from all market participants (similar to default levy). Stakeholders were asked to comment on whether compensation should be recovered from loads or all market participants.

Engagement Objective

The objectives of this engagement were to ensure that stakeholders first understood the purpose and scope of the options to address the IESO uninsured liability and second, to inform and provide comment on the two options.

Engagement Approach

This stakeholder engagement was a public engagement process and was conducted in accordance with the IESO's approved [engagement principles](#). The approach for this engagement initiative included opportunities to provide input through webinars, and written feedback. All materials, public feedback and commentary from stakeholders, and IESO responses to feedback was posted on the dedicated IESO engagement webpage for this initiative.

Conclusion

Stakeholders participated and provided feedback throughout this engagement including AMPCO, Capital Power and Northland Power. Based on limited feedback regarding alternative approaches and general support for Option 1, which is IESO's preferred option, the IESO proposed Market Rule amendments to implement Option 1 which is to limit its liability to gross negligence.

The proposed Market Rule amendments went before the Technical Panel on February 16 for a vote to post for broader stakeholder comment. Technical Panel members generated additional discussions and posed clarifying questions. To keep stakeholders from the engagement aware of these discussions and questions, a supplementary document was posted on the engagement webpage and an email sent informing them of this. A final opportunity for comments was made available through the Market Rule Amendment Process. On March 23rd, the Technical Panel voted unanimously to recommend the Market Rule amendments to the IESO Board. Technical Panel members requested that the IESO periodically review the availability of errors and omissions insurance. This periodic review has been added as an action item for the Technical Panel going forward. In the event insurance does become available, the IESO would look at reverting the market rule language.

The IESO Board of Directors adopted the market rule amendment proposal to limit the IESO indemnity to losses caused by gross negligence, subject to the current limitations on recoverable damages. The amendment took effect on May 3, 2021. The amendment proposal (MR-00448-R00) and Board reasons for adopting the amendments are available on the [archived market rule amendment webpage](#). With the adoption of these market rule amendments, this engagement is now complete.

Thank you to all stakeholders for your participation. All materials will continue to be available on the IESO website under [Completed Engagements](#).