

SENT BY RESS & COURIER

June 13, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Independent Electricity
System Operator
Station A, Box 4474
Toronto, Ontario M5W 4E5
t 905 855 6100
www.ieso.ca

Dear Ms. Walli:

**Re: Application by the Independent Electricity System Operator to Amend its Licence
EI-2013-0066**

Please find attached the Independent Electricity System Operator's application to amend its licence, EI-2013-0066, pursuant to section 74(1)(b) of the *Ontario Energy Board Act, 1998*. Two (2) hard copies of this application will follow shortly to your attention.

Should you have any questions about this application, please do not hesitate to contact me.

Yours truly,

Original signed by

Tam Wagner, P. Eng.
Senior Regulatory Analyst
Independent Electricity System Operator

cc (email only): Martine Band, Ontario Energy Board
Viive Sawler, Ontario Energy Board

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**Re: Application by the Independent Electricity System Operator to Amend its Licence
EI-2013-0066**

PART I – OVERVIEW

1. The Independent Electricity System Operator (“IESO”) is applying to the Ontario Energy Board (the “Board”) to amend its licence, EI-2013-0066, in accordance with section 74(1)(b) of the *Ontario Energy Board Act, 1998* (the “Act”).¹
2. On June 12, 2014, the IESO Board approved amendments to its market rules (the “Market Rules”) to include a general conduct rule at section 10A of Chapter 1 of the Market Rules (the “GCR”) and an alternative dispute resolution mechanism for potential breaches of the GCR at section 6.2B of Chapter 3 of the Market Rules (the “GCR DR Process”). These market rule amendments were published on June 12, 2014, pursuant to section 33.(1) of the *Electricity Act, 1998*² (the “*Electricity Act*”). The effective date of both the GCR and the GCR DR Process

¹ *Ontario Energy Board Act, 1998*, SO 1998, c 15, Sch B, ss. 70(1) and 74 [“Act”]

² *Electricity Act, 1998*, SO 1998, c 15, Sch A [“*Electricity Act*”]

market rule amendments will be the date on which this licence amendment is approved by the Board.

3. Under the licence amendment proposed herein (the “Licence Amendment”), the IESO is seeking a new licence provision to enable the GCR DR Process, as approved by the IESO’s Board of Directors. The Licence Amendment will allow the IESO, if its investigation concludes that a market participant has breached the GCR and if so requested by the market participant, to apply to the Board: (i) for an adjudication as to whether the GCR was breached; and (ii) to make findings of fact relevant to an order under section 6.2.7 of Chapter 3 of the Market Rules. The proposed Licence Amendment and the associated adjudication of potential breaches of the GCR by the Board is in the public interest, and is consistent with the Board’s objectives and the purposes of the *Electricity Act*. Accordingly, the proposed Licence Amendment should be granted.

PART II – BACKGROUND FACTS

A. Introduction of a General Conduct Rule in Ontario

4. On June 12, 2014, the IESO Board approved an amendment to the Market Rules to include the GCR. Until the introduction of the GCR, Ontario stood alone from its North American counterparts by not having a general conduct rule.

5. The GCR promotes the purposes of the *Electricity Act*, the objectives of the Board and the public interest by obligating market participants to refrain from engaging in conduct that exploits, circumvents, manipulates, undermines or interferes with the IESO-administered markets or the Market Rules. The GCR states:

Chapter 1

10A. General Conduct

10A.1 Market participants and the IESO shall not directly or indirectly engage or attempt to engage in conduct, alone or with another person, that they know, or ought reasonably to know:

10A.1.1 exploits the IESO-administered markets, including by, without limitation, exploiting any gap or defect in the Market Rules;

10A.1.2 circumvents any of the Market Rules;

10A.1.3 manipulates any of the IESO-administered markets, including by, without limitation, manipulating the determination of a settlement amount;

10A.1.4 undermines through any means the ability of the IESO to carry out its powers, duties or functions under the Electricity Act, 1998 or the Market Rules; or

10A.1.5 interferes with the determination of a market price or dispatch outcome by competitive market forces.

10A.2 Without limiting the availability of any defences that a market participant may have with respect to conduct set out in section 10A.1, a market participant will not have violated section 10A.1 where it establishes that its conduct was entirely or predominantly caused by:

10A.2.1 a procurement contract as defined in the Electricity Act, 1998; or;

10A.2.2 an order of the Ontario Energy Board made in accordance with s. 78.1 of the Ontario Energy Board Act, 1998.

10A.3 For the purposes of this section 10A, “conduct” includes acts and omissions, but with respect to the OPA and OEFC only includes acts or omissions in their capacity as market participants, and with respect to the IESO does not include activities pertaining to market design, rulemaking, implementing government policy, market manuals or policies, guidelines and other documents referenced in Chapter 1, section 7.7 of the Market Rules.

6. Stakeholder consultation took place from July 18, 2013 to May 14, 2014 in respect of the amendment introducing the GCR. The initial stakeholder consultation, SE-112³, provided many opportunities for comment on the purpose and need of the GCR, the proposed market rule framework and the draft market rule language. The IESO received more than forty written

³ <http://www.ieso.ca/Pages/Participate/Stakeholder-Engagement/SE-112.aspx>

submissions throughout the entire stakeholder consultation process, including the market rule amendment process which followed SE-112. Based on that feedback, the IESO provided for an alternative dispute resolution process for potential breaches of the GCR (the “GCR DR Process”). On May 14, 2014, the IESO Technical Panel⁴ recommended⁵ both the GCR and the GCR DR Process to the IESO Board of Directors. The secretary of the IESO dispute resolution panel endorsed the GCR DR Process on May 23, 2014. The IESO Board of Directors approved the GCR and GCR DR Process on June 12, 2014.

B. The Existing Dispute Resolution Process for Breaches of All Market Rules

7. The existing dispute resolution process for a potential breach of the Market Rules is set out in Chapter 3 of the Market Rules at sections 2 and 6, attached at Tab A. Upon completion of its investigation of a potential breach of the Market Rules, the IESO may: (i) find that the market participant has breached the Market Rules; and (ii) issue a binding order on sanction, including a financial penalty. If the market participant disputes the IESO’s order, it may initiate the dispute resolution process. There are three stages of dispute resolution: negotiation, mediation and arbitration.

8. Mediations and arbitrations are heard by members of the IESO dispute resolution panel who are appointed by the IESO. The dispute resolution panel is currently comprised of Dr. Richard Beifuss (secretary), Mel Matthias, Ken Selby and Paul Walters with new appointments including: the Honourable Robert P. Armstrong, Q.C., Mr. William Horton, Mr. Gordon Kaiser, the Honourable Dennis O’Connor, Q.C., and the Honourable Konrad Von Finckenstein, Q.C.

⁴ The Technical Panel proposes and reviews amendments to the Market Rules, and as requested, advises the Board of Directors on specific technical issues relating to the operation of the IESO-administrated market. The Technical Panel is made up of individuals representing the various stakeholders in Ontario’s electricity markets.

⁵ The Technical Panel recommended the GCR by a vote of 8-4 with one abstention, and the GCR DR Process by a vote of 12-0 with one abstention.

C. The Proposed Dispute Resolution Process for Potential Breaches of the GCR

9. Market Rule Chapter 3, section 6.2B (IESO Board-approved amendment MR-00407-R01) codifies the proposed GCR DR Process and is set out at Tab **B**. The GCR DR Process involves two primary changes to the existing process. First, instead of issuing a binding order on breach and sanction at the conclusion of an investigation, the IESO will issue a non-binding notice of intent under the proposed Market Rule Chapter 3, section 6.2B.2 setting out, among other things, the details of the breach and the orders the IESO proposes to impose under Market Rule Chapter 3, section 6.2.7.

10. Second, if mediation is unsuccessful in resolving the dispute, the market participant may elect to proceed to arbitration in the usual course or, in the alternative, may elect to have the IESO apply to the Board pursuant to the Licence Amendment:⁶ (i) for a determination as to whether the market participant breached the GCR; and (ii) to make findings of fact relevant to the imposition of an order under Market Rule Chapter 3, section 6.2.7.⁷

11. If the market participant elects for the IESO to apply to the Board for an adjudication as to whether the GCR was breached, the IESO will adopt the Board's determination on breach⁸ and, in issuing an order under Market Rule Chapter 3, section 6.2.7, will adopt any relevant findings of fact made by the Board and may also rely on relevant information from the record of the hearing before the Board.⁹

12. The differences between the existing dispute resolution process and the GCR DR Process are summarized in the chart and diagram attached at Tab **C**.

PART III – THE PROPOSED LICENCE AMENDMENT

⁶ Market Rules, Chapter 3, s. 6.2B.7

⁷ Market Rules, Chapter 3, s. 6.2B.11

⁸ Market Rules, Chapter 3, s. 6.2B.14

⁹ Market Rules, Chapter 3, s. 6.2B.15

13. The IESO seeks the Board's approval to amend its licence to give effect to the GCR DR Process. The IESO proposes that its licence be amended to include new definitions and a new provision under sections 1 and 7, respectively:

Section 1 - Definitions

GCR means the general conduct rule set out in Market Rule Chapter 1, section 10A (or any successor provision)

Sanction Order means an order issued under Market Rule Chapter 3, section 6.2.7 (or any successor provision)

Section 7 – Obligation to Comply with Market Rules

7.3 Where the Licensee is satisfied that the GCR has been breached, prior to making a Sanction Order and if the market participant under investigation so elects, the Licensee shall apply to the Board to:

- a) make a determination as to whether the GCR has been breached; and
- b) make findings of fact relevant to the imposition of one or more Sanction Orders by the Licensee.

Where the Board determines that the GCR has been breached, subject to any rights of appeal or review, the Board shall return the matter to the Licensee to determine a Sanction Order.

PART IV – LEGISLATIVE AUTHORITY FOR LICENCE AMENDMENT

14. The *Act* provides the Board with broad authority relating to licences for participation in Ontario's electricity sector. The Board is authorized to prescribe any licence condition that is appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act*:

70(1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.¹⁰

¹⁰ *Act*, s. 70(1).

15. Section 74 of the *Act* authorizes the Board, on the application of any person, to amend a licence if it considers it to be in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act*:

74.(1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*.¹¹

16. It is a term of every OEB licence that licensees comply with the Market Rules:

70 (4) Every licence shall be deemed to contain a condition that the licensee comply with the Market Rules that apply to that licensee.

17. Matters related to licences, including compliance with the Market Rules, are matters within the OEB's jurisdiction and the OEB may hear and determine matters relating to compliance with the Market Rules.¹²

18. Licence amendments must be consistent with the objectives of the Board and the purposes of the *Electricity Act*. The objectives of the Board include:

- 1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
- 2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.¹³

19. The purposes of the *Electricity Act* include:

- (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

¹¹ *Act*, s. 74

¹² *Act*, s. 19.

¹³ *Act*, s. 1(1), paras. 1, 2.

[...]

(e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

[...]

(i) to facilitate the maintenance of a financially viable electricity industry; [...] ¹⁴

20. The purpose of the proposed Licence Amendment is to enable the GCR DR Process, as recommended by the Technical Panel, endorsed by the secretary of the IESO dispute resolution panel, and approved by the IESO Board of Directors. The Board option provided by the GCR DR Process supports the enforcement of the GCR and allows for a fair, open and independent adjudication of alleged breaches of the GCR by the Board before the IESO makes a final determination of breach and issues an order under the Market Rules. The amendment is in the public interest and is consistent with the purposes of the *Electricity Act* and the objectives of the Board.

PART V – ORDER SOUGHT

21. The IESO submits that its application for the Licence Amendment should be granted.

PART VI – PROCEDURAL MATTERS

A. Request to Dispose of Application without a Hearing

22. Pursuant to section 21.(4)(b) of the *Act*, the IESO requests that this proceeding be disposed of without a hearing. No person will be adversely affected in any material way by the outcome of the proceeding.

¹⁴ *Electricity Act*, s. 1(a), (e), (f), (g), (i).

23. In the alternative, if there are any objections to the proposed Licence Amendment, the IESO requests that this matter be disposed of by way of a written hearing.

24. Stakeholders expressed support for the GCR DR Process. During the Market Rule amendment process, stakeholders were provided with an opportunity to submit comments on the language of the proposed Market Rule amendment. The GCR DR Process was posted for stakeholder comment for three weeks ending on April 17, 2014. Comments on the GCR DR Process were filed and considered,¹⁵ and the rule was recommended by the Technical Panel.

B. Notice

25. Should the Board wish to provide notice of this application before determining the manner in which to proceed, the IESO suggests that notice be given by the following means:

- a. Posting this application, including all Appendices, on the IESO's website at the "IESO Licences and Permits" and "IESO News" pages; and
- b. Distributing by electronic mail to all market participants and interested parties who are registered to receive IESO news and other communiques that the amendment application has been posted.

C. Other Updates

26. The IESO's licence was renewed in September 2013. Since that time, there have been a number of changes to the officers and directors of the IESO. Rudy G. Riedl and John Wiersma have left the IESO's Board of Directors while Murray Elston and Margaret Kelch have since joined. Bill Limbrick (Vice-President, Information Technology and Chief Information Officer) and Roy Stewart (General Counsel and Secretary) have retired from the IESO with Doug Thomas and John Rattray assuming these positions, respectively. Information about the current officers and directors is set out at Tabs **D** and **E**, respectively.

¹⁵ <http://www.ieso.ca/Pages/Participate/Stakeholder-Engagement/Technical-Panel/Technical-Panel.aspx>

D. Contact Information

27. The IESO requests that a copy of all documents filed with the Board by each party to this proceeding be served on the IESO and the IESO's counsel in this proceeding as follows:

(a) The IESO: Ms. Tam Wagner
Senior Regulatory Analyst, Regulatory Affairs
Independent Electricity System Operator

Address for Service: Station A Box 4474
Toronto, On M5W 4E5

Telephone: (905) 403-4291
Fax: (905) 855-6259
Email address: tam.wagner@ieso.ca

(b) The IESO's counsel: Mr. John Rattray
General Counsel, Secretary and Chief Reliability Compliance
Officer
Independent Electricity System Operator

Address for Service: 655 Bay Street, Suite 410
P.O. Box 1
Toronto, ON M5G 4K2

Telephone: (416) 506-2856
Fax: (416) 506-2838
Email address: john.rattray@ieso.ca

DATED at Mississauga, Ontario, this 13th day of June, 2014.

Independent Electricity System Operator

Original Signed by

Tam Wagner, P. Eng.
Senior Regulatory Analyst
Independent Electricity System Operator

cc (email only): Martine Band, Ontario Energy Board
Viive Sawler, Ontario Energy Board

PART VII
LEGISLATION

Electricity Act, 1998, SO 1998, c 15, Sch A

Purposes

1. The purposes of this Act are,
 - (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;
 - [...]
 - (e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;
 - (f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;
 - (g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;
 - [...]
 - (i) to facilitate the maintenance of a financially viable electricity industry; and

Objects and character

5. (1) The objects of the IESO are,
 - (a) to exercise the powers and perform the duties assigned to the IESO under this Act, the market rules and its licence;
 - (b) to enter into agreements with transmitters giving the IESO authority to direct the operation of their transmission systems;
 - (c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;
 - (d) to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems;
 - (e) to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities;
 - (f) to collect and provide to the OPA and the public information relating to the current and short-term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
 - (g) to operate the IESO-administered markets to promote the purposes of this Act.
- 2004, c. 23, Sched. A, s. 5 (1).

Amendment of market rules

33. (1) The IESO shall, in accordance with the market rules, publish any amendment to the market rules at least 22 days before the amendment comes into force. 2004, c. 23, Sched. A, s. 42

Ontario Energy Board Act, 1998, SO 1998, c 15, Sch B

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.

Board's powers, general

Power to determine law and fact

19. (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).

Licence conditions

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in [section 57](#) and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the [Electricity Act, 1998](#). 1998, c. 15, Sched. B, s. 70 (1).

[...]

Market rules

(4) Every licence shall be deemed to contain a condition that the licensee comply with the market rules that apply to that licensee. 1998, c. 15, Sched. B, s. 70 (4).

Board's powers, general

Amendment of licence

74. (1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the Board and the purposes of the [*Electricity Act, 1998*](#). 2004, c. 23, Sched. B, s. 13.

TAB A

**EXISTING ENFORCEMENT PROCESS
MARKET RULE CHAPTER 3, SECTIONS 2 & 6**

Chapter 3

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 section 8.8.1 of Chapter 2, the dispute resolution regime provided for in this section 2 shall apply to:
 - 2.2.1.1 any dispute between the *IESO* and any *market participant* which arises under the *market rules*, *market manuals* or any standard, policy or procedure established by the *IESO* pursuant to these *market rules*, including with respect to any alleged violation or breach thereof, whether or not specifically identified in the *market rules* as a dispute to which this section 2 applies;
 - 2.2.1.2 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* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IESO*;
 - 2.2.1.4 a *reviewable decision*;
 - 2.2.1.5 a request by a *market participant* for a *settlement statement re-calculation* pursuant to section 6.8.2A or section 6.8.9 of Chapter 9;
 - 2.2.1.6 a dispute referred to in section 6.8.2B or section 6.8.9 of Chapter 9 with respect to which a *settlement statement re-calculation* is not requested;
 - 2.2.1.7 any dispute between the *IESO*, on the one hand, and any *market participant*, *commissioning 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 section 7.7 of Chapter 1 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 section 2.1A.6A of Chapter 9 in respect of the apportionment of *energy* associated with *connection station service* and with site specific losses; and
 - 2.2.1.9 the *IESO's* determination under sections 3.2.5, 3.2.6, and 3.2.7 of Chapter 5 regarding the applicability of *reliability standards*.
- 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 section 2.1A.6A of Chapter 9 and section 8.4.3 of Chapter 5; 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*, which shall be governed by sections 6.3.15 to 6.3.20, 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;
 - 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; and
 - 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 Chapter 1, section 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 Chapter 1, section 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*.
 - 2.2.3.13 [Intentionally left blank – section deleted]
- 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 section 8.8.1 of Chapter 2, 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 A *notice of dispute* shall be served:

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

2.5.1A.2 in the case of a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6, within 20 *business days* of the date of receipt by the *metering service provider* of notice of the revocation of its registration by the *IESO*;

- 2.5.1A.3 in the case of a request or dispute referred to in section 6.8.2A or 6.8.2B of Chapter 9, within the time specified in section 6.8.8 of Chapter 9;
 - 2.5.1A.4 in the case of a dispute referred to in section 6.8.9 of Chapter 9, within the time specified in section 6.8.10 of Chapter 9;
 - 2.5.1A.4A in the case of a dispute referred to in section 2.1A.6A of Chapter 9, within 20 *business days* of the date of receipt of the first *invoice* that reflects the apportionment that is the subject-matter of the dispute;
 - 2.5.1A.4B in the case of a dispute involving an order, direction, instruction or decision of the *IESO* issued prior to January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within six years of the date of receipt of the order, direction, instruction or decision;
 - 2.5.1A.4C in the case of a dispute involving an order, direction, instruction or decision of the *IESO* issued on or after January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within two years of the date of receipt of the order, direction, instruction or decision; and
 - 2.5.1A.5 in all other cases, within the applicable limitation period set out in the Limitations Act, 2002.
- 2.5.1B [Intentionally left blank – section deleted]
- 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. 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.

2.5.7.1 [Intentionally left blank – section deleted]

2.5.7.2 [Intentionally left blank – section deleted]

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* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IESO*;

2.6.1A.2 a request by a *market participant* for a *settlement statement re-calculation* or other dispute referred to in section 6.8.2A, 6.8.2B or 6.8.9 of Chapter 9;

2.6.1A.3 a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6; or

2.6.1A.4 a dispute referred to in section 2.5.9.2.

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 2.6.2A, 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 2.7.1B, as the case may be; or

2.6.2.2 in any other case, 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 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:

2.6.2A.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

2.6.2A.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 him or her 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 him or her 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 he or she 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 Board of Directors of the *IESO*, 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*.
- 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, 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 2.7.1A, within five *business days* of:

- 2.7.1.1 the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4, where the dispute is one to which section 2.6.1A.1, 2.6.1A.2 or 2.6.1A.3 applies;
- 2.7.1.1A the filing of the request referred to in section 2.5.9.2, where the dispute is one to which that section applies;
- 2.7.1.2 the filing of a notice of intent to dispense with mediation pursuant to section 2.6.1B, where the dispute is one to which that section applies; or
- 2.7.1.3 the filing of the notice of termination referred to in section 2.6.13 or 2.6.16, in any other case,

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

2.7.1A 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:

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

2.7.1B 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, 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, 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.

- 2.7.1C In the case of an application referred to in section 2.7.1B:
- 2.7.1C.1 sections 2.7.2, 2.7.8, 2.7.9, 2.7.10 and 2.7.32 shall not apply; and
- 2.7.1C.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, 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 2.7.1B 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 herein 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 In the case of a dispute referred to in section 6.8.9 of Chapter 9, the *arbitrator* shall dismiss the *notice of dispute* and take no further action with respect to the *notice of dispute* if the element of the *final settlement statement* that is the subject-matter of the *notice of dispute* is identical to the same element in the corresponding *preliminary settlement statement*

unless the *market participant* demonstrates that it could not, with the exercise of due diligence, have filed a *notice of disagreement* in respect of that *preliminary settlement statement*.

- 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 him or her 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 him or her 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, 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 section 13 of Chapter 1 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 section 13 of Chapter 1 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, confirm that no *settlement statement re-calculation* is required or order the *IESO* to effect a *settlement statement re-calculation*; or

2.7.27.3 in the case of a dispute referred to in section 2.2.1.6, 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*.

2.7.28 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 section 6.7.5 of Chapter 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 section 2.1.2 of Chapter 6, 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 section 5.3.9 of Chapter 6, 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 section 5.1.12 of Chapter 6, 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 section 4.4.3 or 6.1.5 of Chapter 6, 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 section 2.1A.6B of Chapter 9.
- 2.7.29B In the case of a dispute referred to in section 6.8.2A or section 6.8.9 of Chapter 9, the *arbitrator* may, in considering whether to approve a request for a *settlement statement re-calculation*, 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 a *settlement statement re-calculation*.
- 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 2.7.1B 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 section 6.7.5 of Chapter 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 2.7.1B and the award consists of a determination by the *arbitrator* that the *applicant* is entitled to compensation pursuant to section 6.7.5 of Chapter 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 section 6.7.5 of Chapter 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, 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, 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 Board of Directors of the *IESO*.

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*.

Chapter 3

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*.

6.2 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 *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 the provisions of sections 4.10.2.1 and 4.10.2.2 of Chapter 5.

- 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 Where the *IESO* determines that a *market participant* has breached the *market rules*, the *IESO* may by order do any one or more of the following:
- 6.2.7.1 direct the *market participant* to do, within a specified period, such things as may be necessary to comply with the *market rules*;
 - 6.2.7.2 direct the *market participant* to cease, within a specified period, the act, activity or practice constituting the breach;
 - 6.2.7.3 impose additional or more stringent record-keeping or reporting requirements on the *market participant*;
 - 6.2.7.4 issue a non-compliance letter in accordance with section 6.6;
 - 6.2.7.5 impose financial penalties in accordance with section 6.6 indicating the time within which payment of the financial penalty must be made to the *IESO*, provided that no such penalties shall be imposed unless the *IESO* is satisfied that the breach could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally; or
 - 6.2.7.6 take such other action as may be provided for in Appendix 3.1 in respect of the *market rule* that has been breached by the *market participant*.
 - 6.2.7.7 [Intentionally left blank – section deleted]
- 6.2.8 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*.

6.6 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.

Impact Level	Non-Compliance Level (Severity and Breach History)							
	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* which includes:

- The *IESO* shall determine the impact level by examining all the impacts of the breach under investigation and selecting an appropriate impact level.
- 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 Appendix 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 Appendix 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 section 7.5.8A of Chapter 7, 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 section 7.5.8A of Chapter 7.

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]

6.6.12.1 [Intentionally left blank]

6.6.12.2 [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*.

TAB B
IESO Board-Approved Amendment MR-00407-R01
PROPOSED GCR DR PROCESS
MARKET RULE CHAPTER 3, SECTION 6.2B

Chapter 3

6.2B Alleged Breaches of Section 10A of Chapter 1

- 6.2B.1 For the purposes of section 6.2B, excluding sections 6.2B.19 and 6.2B.20, a reference to section 10A of Chapter 1 shall be deemed to include all breaches described in the notice of intention.
- 6.2B.2 If the IESO is satisfied that the market participant has breached section 10A of Chapter 1, the IESO shall, prior to making any order under section 6.2.7, serve a written notice of intention on the market participant. The notice shall set out the following:
- 6.2B.2.1 the market rules that the IESO is satisfied that the market participant has breached;
 - 6.2B.2.2 the reasons the IESO intends to determine that the market participant has breached section 10A of Chapter 1;
 - 6.2B.2.3 the proposed order or orders under section 6.2.7;
 - 6.2B.2.4 the market participant's right to contest the notice of intention pursuant to section 6.2B.3; and
 - 6.2B.2.5 the time within which the market participant may contest the notice of intention.
- 6.2B.3 If the market participant wishes to contest the notice of intention, it shall serve a response to the notice of intention on the IESO within 20 business days of receipt of the notice of intention.
- 6.2B.4 If the market participant does not contest the notice of intention within 20 business days of the receipt of the notice of intention, the IESO may determine that the market participant has breached section 10A of Chapter 1 and impose one or more orders under section 6.2.7.
- 6.2B.5 If the market participant contests the notice of intention, the market participant and the IESO shall attempt to resolve the matter through good faith negotiations in accordance with sections 2.5.3A and 2.5.3B, except that the response to the

notice of intention shall replace the notice of dispute referred to in section 2.5.3A and shall be served in accordance with section 2.5.1A.4D.

- 6.2B.6 Notwithstanding sections 2.5.3C and 2.5.4, if the parties are unable to resolve the matter through good faith negotiations, the mediation process described in section 2.6 shall apply and either party may file with the secretary on written notice to each other party a copy of the notice of intention and response to the notice of intention together with proof of service. The secretary and mediator shall rely on the notice of intention and response to the notice of intention in lieu of the notice of dispute and response for the purposes of section 2.6. The IESO shall provide a summary of the matter for publication in accordance with section 2.9.2.1.
- 6.2B.7 If the parties are unable to resolve the matter through the mediation process, then within 5 business days of the filing of the written notice terminating the mediation process, as referred to in section 2.6.1B, 2.6.13 or 2.6.16, the market participant shall file with the secretary and serve on the IESO a notice to elect electing one of the following available options:
- 6.2B.7.1 that the matter be referred to an arbitrator pursuant to the process described in section 2.7;
 - 6.2B.7.2 that the IESO apply to the Ontario Energy Board to make a determination and findings of fact as described in section 6.2B.11; or
 - 6.2B.7.3 not to pursue the matter under either subsections 6.2B.7.1 or 6.2B.7.2.
- 6.2B.8 Where the market participant elects not to pursue the matter under section 6.2B.7.3 or does not make any election as described in section 6.2B.7, the IESO may determine that the market participant has breached section 10A of Chapter 1 and impose one or more orders under section 6.2.7.
- 6.2B.9 Where the market participant elects that the matter be referred to an arbitrator pursuant to section 6.2B.7.1, section 2.7 shall apply. For the purposes of section 2.7, the IESO shall be deemed to be the applicant and the market participant shall be deemed to be the respondent.
- 6.2B.10 Where the market participant elects that the IESO apply to the Ontario Energy Board pursuant to section 6.2B.7.2, the IESO shall bring the application to the Ontario Energy Board within 20 business days of the service of the notice to elect.
- 6.2B.11 In an application brought pursuant to section 6.2B.10, the IESO shall request that the Ontario Energy Board make the following:
- 6.2B.11.1 a determination of whether the market participant has breached section 10A of Chapter 1; and

- 6.2B.11.2 findings of fact relevant to the imposition of one or more orders by the IESO under section 6.2.7.
- 6.2B.12 Where the IESO applies for a hearing before the Ontario Energy Board pursuant to section 6.2B.10 and the Ontario Energy Board dismisses the proceeding without a hearing under subsection 4.6(1)(b) of the Statutory Powers Procedure Act, the notice to elect shall be deemed to be a request for arbitration under section 6.2B.7.1 and the IESO shall refer the matter to an arbitrator in accordance with section 6.2B.9.
- 6.2B.13 Where the Ontario Energy Board holds a hearing referred to in section 6.2B.11 and determines that the market participant has not breached section 10A of Chapter 1, subject to any rights of appeal or review, the IESO shall adopt the Ontario Energy Board's findings.
- 6.2B.14 Where the Ontario Energy Board holds a hearing referred to in section 6.2B.11 and determines that the market participant has breached section 10A of Chapter 1, subject to any rights of appeal or review, the matter shall return to the IESO and the IESO shall adopt the Ontario Energy Board's determination on breach.
- 6.2B.15 Where the matter returns to the IESO under section 6.2B.14, the IESO may issue one or more orders pursuant to section 6.2.7 and, in doing so:
- 6.2B.15.1 shall adopt and apply all findings of fact made by the Ontario Energy Board; and
- 6.2B.15.2 may adopt and apply any information from the record of the hearing before the Ontario Energy Board,
- that are relevant to the order or orders under section 6.2.7 but may not rely on any additional evidence.
- 6.2B.16 If the market participant wishes to dispute the IESO's order or orders issued pursuant to section 6.2B.15, it shall serve a notice of dispute on the IESO within 20 business days of receipt of the order or orders.
- 6.2B.17 Where the market participant disputes the order or orders issued by the IESO pursuant to section 6.2B.15, the market participant and the IESO shall attempt to resolve the matter in accordance with sections 2.5 and 2.6.
- 6.2B.18 The arbitration process set out in section 2.7 shall not apply to disputes as described in section 6.2B.16. An order issued under section 6.2B.15 may be appealed as provided for in section 36 of the Electricity Act, 1998 upon the filing of a notice under section 2.6.2B, 2.6.13 or 2.6.16 terminating the mediation process.
- 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 section 10A of Chapter 1 was discovered by the IESO. Where the IESO fails to serve a notice of intention

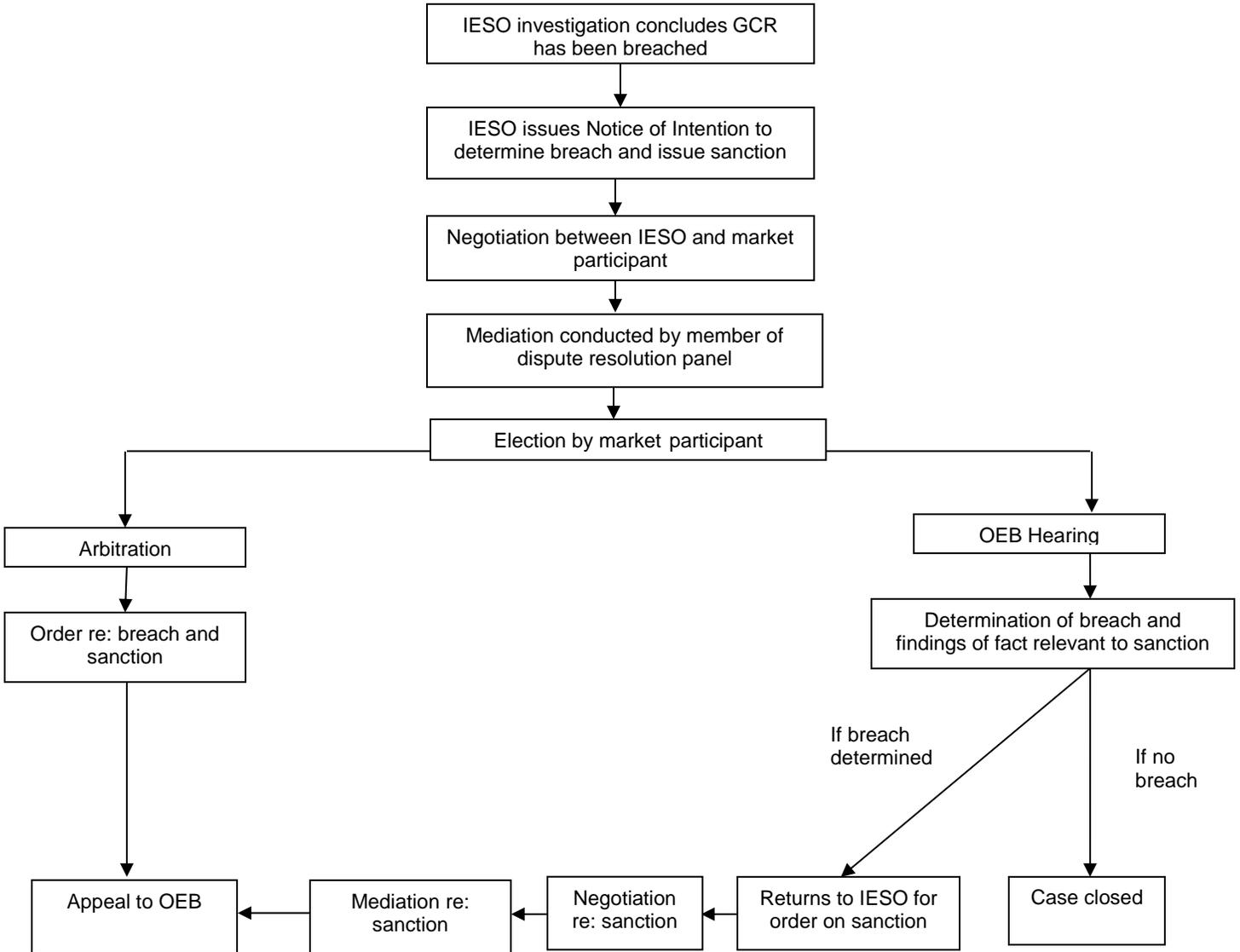
within the time provided, no finding of breach of section 10A of Chapter 1 shall be made pursuant to the market rules in respect of that conduct.

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.

TAB C
CURRENT AND PROPOSED ENFORCEMENT PROCESSES FOR BREACHES OF THE GCR
COMPARISON CHART: CURRENT VS. PROPOSED PROCESSES

Existing Process	Proposed GCR Process	Description of Change
Step 1 – Investigation	Step 1 – Investigation	No change.
Step 2 – IESO Issues Order on Breach and Sanction	Step 2 – Varied in part: IESO Issues Notice of Intent re: Breach and Sanction	Instead of issuing a binding order on breach and sanction, the IESO will issue a notice of intent under the proposed section 6.2B.2 of Chapter 3 setting out, among other things, the details of the breach and the orders the IESO proposes to impose under section 6.2.7 of Chapter 3.
Step 3 – Good Faith Negotiations	Step 3 – Good Faith Negotiations	No change.
Step 4 – Mediation	Step 4 – Mediation	No change.
Step 5 – Arbitration	Step 5 – Varied in part: Market participant elects between arbitration or OEB hearing.	The market participant may elect to proceed to arbitration or may elect to have the IESO apply to the OEB pursuant to the Licence Amendment: (i) for a determination as to whether the market participant breached the GCR; and (ii) to make findings of fact relevant to the imposition of an order under section 6.2.7 of Chapter 3.
	Step 5(a) - New. IESO Issues Order under section 6.2.7 of Chapter 3 based on OEB findings	The IESO will adopt the OEB's determination on breach and, in issuing an order under section 6.2.7 of Chapter 3, will adopt any relevant findings of fact made by the OEB and may also rely on relevant information from the record of the hearing before the OEB.
Step 6 – Appeal to OEB if a financial penalty of over \$10,000 is imposed	Step 6 – Appeal to OEB if a financial penalty of over \$10,000 is imposed	No change.

**FLOWCHART:
PROPOSED GCR ENFORCEMENT PROCESS**



TAB D

CURRENT IESO DIRECTORS

The IESO is governed by an independent board of directors that oversees its business and affairs. The IESO Board also approves the Market Rules, policies and guidelines that govern the IESO-administered markets.

The members of the IESO's Board bring diverse backgrounds in economics, finance, business, electricity, gas, academics and technology, and are prohibited from having a material interest in any market participant in Ontario's electricity sector. They are appointed by the Minister of Energy.

Tim O'Neill is Chair of the IESO Board of Directors. He is the President of O'Neill Strategic Economics and a Visiting Professor at Duke University; he is a member of the Canadian Employment Insurance Financing Board and a Director of the United Church of Canada Foundation.

After retiring from BMO Financial Group, where he served as Executive Vice President and Chief Economist, he was the first H. Ian MacDonald Visiting Economist with the Ontario government. He served as President of the Atlantic Provinces Economic Council after teaching in the Department of Economics at St. Mary's University in Halifax for 12 years. He has served as a consultant to several provincial governments, as well as the federal government.

Dr. O'Neill is the first Canadian economist to be elected to the Board of Governors of the Washington-based National Association for Business Economics (NABE) where he served as president from October 2002 until September 2003.

William J. Museler is Chair of the IESO Audit Committee. He was most recently President and CEO of the New York Independent System Operator (NYISO).

Prior to his service at NYISO, Mr. Museler held senior positions at the Tennessee Valley Authority (TVA), Long Island Lighting Company (LILCO), and Brookhaven National Laboratory. He has served as a federal representative for the North American Electric Reliability Council (NERC) and as chairman of the Southeastern Electric Reliability Council (SERC). He is currently a member of the Secretary of Energy's Energy Advisory Board (EAB).

A graduate of the Pratt Institute with a Bachelor of Science in Engineering Science, Mr. Museler also holds a Master of Science degree in Mechanical Engineering from Worcester Polytechnic Institute.

Bruce Campbell is President and Chief Executive Officer of the Independent Electricity System Operator. Under Mr. Campbell's leadership, the IESO oversees the safe and reliable operation of Ontario's bulk electrical system – one of the most diversified, reliable and efficient markets in the world.

Mr. Campbell has over 30 years of regulatory and executive experience in the energy sector. In his most recent position as Vice President of Resource Integration, Mr. Campbell oversaw preparations in power system operations for the integration of wind and solar generation in the province. Recruited from a successful legal career, where he regularly appeared before the Ontario Energy Board and other tribunals, Mr. Campbell joined the IESO as Vice President, Regulatory and Legal Affairs in 2000. Since that time Mr. Campbell has taken on an increasingly wide range of executive responsibilities.

In addition, Mr. Campbell serves on NERC's Member Representative Committee and on the ISO/RTO Council, which works to develop effective processes, tools, and standard methods for improving competitive electricity markets across North America.

Mr. Campbell also holds the Institute of Corporate Directors ICD.D (Certified Director) designation.

David Cassivi is a career educator having taught in the Windsor Board of Education for 33 years. He has also served the people of Windsor in municipal politics for over three decades, first as a Separate School Trustee and then as a city councillor from 1982 to 2006. He also has experience in the energy sector, having served first as a member and then Chair of ENWIN Utilities, Windsor's local distribution company.

Mr. Cassivi has been a member of numerous community boards, including Chair of the Windsor Separate School Board and Windsor's International Relations Committee, Vice-Chair of the Windsor Detroit Tunnel Commission and the Windsor Police Services Board and Member of the Windsor Canada Utilities Board, the Essex Region Conservation Authority and the Windsor Essex County Health Unit.

Mr. Cassivi holds a Bachelor of Arts from St. Mary's University, a Bachelor of Education from the University of Toronto and a Master of Education from the University of Virginia.

Murray Elston attended the University of Western Ontario where he received Law and BA Degrees. He practiced law in Wingham before being elected to the Ontario Legislature in 1981 (Huron Bruce) and was re-elected in 1985, 1987 (Bruce) and 1990 (Bruce). In the Legislature,

Mr. Elston served as Health Minister, Minister of Financial Institutions and Chair of Management Board.

Following his tenure in the Legislature, he served as President of the Canadian Nuclear Association and Canada's Research-Based Pharmaceutical Companies before joining Bruce Power in 2009.

After retiring from Bruce Power, Mr. Elston served as Chair of the Electricity Distribution Panel (2012-2013).

Angela Ferranti is an experienced Board Director and has held several senior executive positions, most recently as Chief Operating Officer of the Ontario Energy Board.

Prior to that, she was Senior Vice President, Corporate Communications at BMO Financial Group, Vice President, Public Affairs at Ontario Power Generation, and Executive Vice President and Chief Operating Officer of the C.D. Howe Institute.

Formerly a journalist, she has worked for a number of publications including Maclean's, where she served as Assistant Managing Editor.

Ms. Ferrante plays an active role in the community, and has served on a number of not-for-profit and crown corporation Boards, including among others Via Rail, the Social Sciences and Humanities Research Council, the Ontario Institute for Studies in Education, the Canadian Journalism Foundation and the Canadian Foundation for Governance Research.

Ms. Ferrante holds the Institute of Corporate Directors' ICD.D (Certified Director) designation.

She currently chairs the Toronto Central Local Health Integration Network and is on the Board of the Ombudsman for Banking Services and Investments.

Margaret Kelch currently serves on the Boards of the Nature Conservancy of Canada, where she is Chair of the Conservation Committee, and DST Consulting Engineers. She was on the Board of the Electrical Safety Authority for nine years (2004- 2013) and Guelph Hydro Electric Systems Incorporated for two years (2011-2013).

Ms. Kelch has held executive positions in the public, private and not-for-profit sectors, serving as President and CEO of the Technical Standards and Safety Authority, President of Canadian Highways Management Corporation and Chief Operating Officer of Canadian Highways International Corporation (builder of Hwy 407ETR) and several Assistant Deputy Minister positions in the Ontario Public Service, including Secretary of Policy and Priorities Board and Registrar of Motor Vehicles for Ontario.

Ms. Kelch is a graduate of the University of Western Ontario and holds the Institute of Corporate Directors ICD.D (Certified Director) designation.

Tricia O'Malley twice served as the Chair of the Canadian Accounting Standards Board (AcSB) from July 2009 to October 2010 and from 1999 to 2001. She was also a member of the AcSB's Emerging Issues Committee from its inception in 1988 until 1997 followed by a term as AcSB's Vice Chair where she represented Canada on international groups that developed accounting standards. She continues to act as a senior advisor to the AcSB.

In 2001 Ms. O'Malley became a founding member of the International Accounting Standards Board (IASB) in London, UK and later served as the Director of Implementation Activities. She

also worked as a partner in the National Assurance and Professional Practice Group of KPMG Canada, with particular emphasis on financial instruments and structured finance transactions.

While at KPMG she was Chair of the Ontario Securities Commission's Financial Disclosure Advisory Board and a member of the Independent Advisory Committee on Accounting and Auditing Matters of the Auditor General of Canada.

Ms. O'Malley who started her career as an accountant after having graduated from the University of Manitoba is also a Past President of the Canadian Academic Accounting Association.

Helen Polatajko has over 35 years of experience in the technology services field. Ms. Polatajko was most recently Senior Vice President and Chief Information Officer (CIO) of CIBC Mellon for almost 15 years.

Prior to this, she served as CIO for Mellon Financial's subsidiary in Houston, Texas for five years. She was recognized as one of the Top 100 Women in Computing, acknowledging her achievements and contributions to information services and technology.

Ms. Polatajko has served on the judging panel of the Canadian Information Productivity Awards (CIPA), is a founding member and currently on the Canadian Advisory Board of the CIO Executive Council that was established in 2005, and is on the Advisory Board of The Conference Board of Canada Council of CIOs.

Ms. Polatajko is currently serving on the Board of Tafelmusik Baroque Orchestra and Chamber Choir.

Ms. Polatajko received her education from The University of Pittsburgh, in Pennsylvania, attaining a Bachelor in Science in Mathematics and Psychology degree, and graduated from The Stonier Graduate School of Banking at the University of Delaware.

TAB E

CURRENT IESO OFFICERS

The IESO President and CEO and Senior Management Team are responsible for implementing the strategic direction and initiatives for the organization in keeping with its statutory objectives. They also provide advice and recommendations to the IESO Board of Directors.

Bruce Campbell, President & Chief Executive Officer

Bruce Campbell is President and Chief Executive Officer of the Independent Electricity System Operator. Under Mr. Campbell's leadership, the IESO oversees the safe and reliable operation of Ontario's bulk electrical system – one of the most diversified, reliable and efficient markets in the world.

Mr. Campbell has over 30 years of regulatory and executive experience in the energy sector. In his most recent position as Vice President of Resource Integration, Mr. Campbell oversaw preparations in power system operations for the integration of wind and solar generation in the province. Recruited from a successful legal career, where he regularly appeared before the Ontario Energy Board and other tribunals, Mr. Campbell joined the IESO as Vice President, Regulatory and Legal Affairs in 2000. Since that time Mr. Campbell has taken on an increasingly wide range of executive responsibilities.

In addition, Mr. Campbell serves on NERC's Member Representative Committee and on the ISO/RTO Council, which works to develop effective processes, tools, and standard methods for improving competitive electricity markets across North America.

Mr. Campbell also holds the Institute of Corporate Directors ICD.D (Certified Director) designation.

Ted Leonard, Vice-President, Markets, CFO and Treasurer

Ted Leonard is Vice-President of Markets, Chief Financial Officer and Treasurer. In this capacity, he is responsible for market evolution and sector policy analysis, all financial management aspects of the organization, including corporate and market accounting, and the credit risk and settlement of the wholesale electricity markets. He also chairs the IESO's Pension Management Committee.

Mr. Leonard has been with the IESO from its formation in 1999. Previously he held the positions of Director of Finance, Corporate Controller and Manager of Financial Systems and Support.

Prior to his current role, he worked in progressively senior finance roles within the electricity sector starting in 1996. Before joining the IESO, Mr. Leonard was with Ernst & Young LLP.

Mr. Leonard is a native of Sudbury, Ontario and is a Chartered Accountant and graduate of Laurentian University (B. Com.).

John Rattray, General Counsel, Secretary and Chief Reliability Compliance Officer

John Rattray is General Counsel, Secretary and Chief Reliability Compliance Officer. Mr. Rattray has provided legal counsel on a wide range of issues relating to the operation of Ontario's bulk electrical system. He is also the IESO's Corporate Secretary, and in that capacity assists the IESO Board in fulfilling its governance mandate. As Chief Reliability Compliance Officer, Mr.

Ratray exercises an internal oversight role over the business units that have compliance responsibilities for reliability standards.

Prior to joining the IESO in 2004, Mr. Ratray practiced litigation and administrative law with Ontario Power Generation and the former Ontario Hydro.

He is a graduate of Queen's University, the University of Toronto Law School and Osgoode Hall Law School.

Doug Thomas, Vice-President, Information and Technology Services and CIO

Doug Thomas is Vice-President of Information and Technology Services, and Chief Information Officer. The Information and Technology Services business unit is responsible for information technology; organizational governance; support and facilities. He also has oversight of the Smart Metering Entity.

Since joining the IESO in 1998, Mr. Thomas has held various roles, including the position of Director-Settlements and Director-Finance, as well as past chair of the IESO Technical Panel.

Prior to joining the IESO, Mr. Thomas worked for ICI Canada Inc. in a number of different financial roles.

Mr. Thomas is a Chartered Professional Accountant and a graduate of the Honours Business Administration program from The Richard Ivey School of Business at Western Ontario.

Kim Warren, Vice-President, Operations and COO

Kim Warren was appointed Vice-President, Operations and Chief Operating Officer in May 2011. In this role, Mr. Warren is responsible for the planning and assessment function, managing

the operation of Ontario's competitive wholesale electricity market, and directing the operation of the IESO-controlled grid.

With over 34 years of experience in the Ontario electricity industry, Mr. Warren recently served as Director of Planning and Assessments where he directed the development of operating policies, reliability standards, system operating limits and grid connections associated with interconnected power system operations. Mr. Warren has also served as Manager of Regulatory Affairs and Manager of System Operations, during which time he was directly responsible for real-time operations in the control room leading to the successful restoration of the province's power system following the 2003 blackout.

Terry Young, Vice-President, Corporate and Employee Relations

Terry Young is Vice-President of Corporate and Employee Relations, responsible for managing the IESO's many external and internal relationships. His responsibilities include human resources, corporate strategy, government and regulatory affairs, customer relations, communications and marketplace training. He is responsible for the IESO's stakeholding processes, including the Stakeholder Advisory Committee, which provides advice and recommendations on market development and planning decisions. Mr. Young also acts as the IESO's representative on the Ontario Smart Grid Forum.

A well-known spokesperson with 30 years of experience in the electricity industry, Mr. Young started his career as a journalist with Canadian Press-Broadcast News. He also serves as President, Ontario Branch of the Kidney Foundation of Canada.

Mr. Young has been with the IESO since 2002.