

# Member Vote and Rationale – Options to Address Uninsured Liability Risk

## IESO Technical Panel, March 23, 2021

The vote to recommend the proposed market rule amendments (MR-0448-R00) for consideration to the IESO Board of Directors passed unanimously at the March 23, 2021 Technical Panel meeting.

### MR-00446 – Options to Address Uninsured Liability Risk

TP Member	Vote and/or Rationale
Ron Collins (Energy Related Businesses and Services)	<p>I recommend MR-00448-R00 Uninsured Liability Risk to the IESO Board for consideration based on the following rationale:</p> <p>The insurance in question is a specialized insurance product that is tailored for the unique risks related to the IESO's operations that is currently unavailable to the IESO due to a harden insurance market. It is reasonable for the IESO to amend the market rules to limit the losses caused by gross negligence by the IESO, subject to the current limitations on recoverable damages. Additionally, the majority of the ISOs in the United States limit their liability to gross negligence, and other international systems operators further limit their liability in this area.</p> <p>The IESO should continue to monitor the insurance market to determine if changes in the market would allow the IESO to acquire such insurance coverage in the future, while weighting the value of aligning its policies with what is offered by the majority of North American ISOs to ensure the interests of the ratepayers of Ontario are maintained.</p>

TP Member	Vote and/or Rationale
Robert Reinmuller (Transmitters)	After reviewing the material and subsequent discussions regarding the insurance products available to IESO to cover liability, it became clear that errors and omissions insurance is not currently available in the market and alignment with other jurisdictions may be a reasonable path forward. Considering the facts in front of us, I believe that it is reasonable to proceed and to amend the MR's and accept limitations to losses caused by gross negligence as proposed by IESO.

Emma Coyle  
(Generator)

Further to the Technical Panel's approval of Market Rule Amendment Proposal MR-0448-R00, this email is provided to summarize for the IESO Board of Directors the reasons and rationale relied upon when I voted in favour of MR-04480-R00 on March, 23, 2021 in my capacity as Generator Representative on the Technical Panel.

Based on the details set out in MR-04480-R00, I understand the following:

- Up until September 2020, the IESO had been able to procure insurance for errors and omissions ("E&O insurance") for the purpose of insuring against the risk it may be found liable for losses arising from its negligence in accordance with the existing Market Rules. (Chapter 1, section 13.)
- In September 2020 the IESO learned from its insurance broker that it would not be able to procure E&O insurance when its pre-existing policy expired. I understand this was due to the unwillingness of insurance providers to offer an E&O insurance product.
- Upon becoming aware it could not procure E&O insurance or an equivalent insurance product going forward, the IESO proposed to amend the Market Rules to align its potential liability with the insurance products it understood to be available. The IESO proposed to achieve this alignment by amending the Market Rules so as to eliminate its existing liability for acts of negligence, and limit its future liability to acts of gross negligence.

Based on these facts, I consider MR-04480-R00 to be narrowly about addressing the IESO's "Uninsured Liability Risk", and more broadly about the re-allocation of risk between the IESO and market participants. MR-04480-R00 resolves a mismatch between the (i) IESO's liability for losses caused by its negligence and (ii) insurance products available to the IESO, but it does so by shifting risk to market participants.

In support of its proposed amendment, the IESO identified that FERC-jurisdictional markets limit ISO liability to acts of gross negligence. Because Ontario is not a FERC-jurisdictional market and has several features that distinguish it from FERC-jurisdictional markets, I did not consider FERC's treatment of liability to be directly supportive of the proposed amendment. The IESO's acknowledgment that the rules and enabling legislation in non-FERC markets continue to include

**TP Member****Vote and/or Rationale**

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the ISO liability for negligence also led me to view FERC's liability practices as an important and relevant fact, but not determinative of the issue.

In my view, the factors supporting the proposed amendment were the following:

- The lack of broad stakeholder opposition to the IESO's proposed amendment.
- The IESO's undertaking to regularly inquire whether E&O insurance products may be made available to the IESO in the future.
- The IESO's commitment to revisit this amendment in the event that E&O insurance becomes available and can be purchased at a cost similar to that of previous policies.

Based on these factors, I voted in support of the MR-04480-R00.

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Joe Saunders  
(Distributor)

I voted "In Favour", to recommend to the IESO Board for consideration, to amend the Market Rule MR-00448-R00, Uninsured Liability Risk. The IESO previously had insurance coverage that protected the Corporation against liability for negligence. This specialized type of insurance, covering claims alleging errors and omissions, is no longer available, which places potential risk to IESO operations.

The IESO educated the Technical Panel (TP) on this issue at the January 19, 2021 meeting. At the February 16, 2021 meeting, the TP voted to post MR-00448-R00 for broader stakeholder comment. The IESO received one written response to the call for stakeholder comment, it was reviewed at the March 23, 2021 meeting. It was agreed by IESO staff and TP that periodic reviews would occur to see if this specialized insurance comes available in the future.

Following the stakeholder process and TP discussion, I voted in favour to recommend MR-00448-R00 to the IESO Board for consideration.

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TP Member	Vote and/or Rationale
Vlad Urukov (Generator)	<p>I recommend Market Rule Amendment MR-0448-R00: Uninsured Liability Risk, which changes the IESO’s obligation to indemnify market participants for acts of “negligence” to only acts of “gross negligence” and thereby addresses the IESO’s inability to procure appropriate Errors and Omissions insurance applicable to “gross negligence” for the current coverage period.</p> <p>While I understand the IESO’s rationale in putting forth this market rule and its specific language, I also note that Chapter 1 Section 13.2.2 of the Market Rules protects the IESO in the event of Market Participant acts of “negligence”, not limited to “gross negligence”, and this rule is notably not changing under MR-0448-R00. I believe the implementation of the proposed Market Rule Amendment MR-0448-R00 creates an imbalanced state between the IESO and Market Participants, which is a departure from the reciprocal treatment afforded to all parties since market opening.</p> <p>In order to remedy the imbalance at the earliest opportunity, the IESO should perform regular annual assessments of the insurance market to determine whether Errors and Omissions insurance covering “negligence” has become available, evaluate its cost effectiveness, and share findings with the Technical Panel. In my understanding, this item will be recorded and tracked as a standing Action Item in materials provided to the TP.</p>