

IESO Report & Recommendations

RE Consultations with the Advisory Group on Market Rule Governance & Decision-Making Processes

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1.0 Introduction

1.1 BACKGROUND

The recommendations described in this Report are informed by successive stakeholder engagements, originating with the Market Renewal Working Group (MRWG), expanding to the Stakeholder Advisory Group (SAC), Technical Panel and open public consultations, and concluding with the Board-appointed Advisory Group on market rule governance and decision-making processes.

The MRWG first identified market rule governance and decision-making processes as a concern, in light of the scope of market evolution contemplated by the Market Renewal Program and the concern that these reforms would result in more risk-taking by market participants. Consultations with the MRWG led to the classification of stakeholder issues into three categories: (1) market rule processes, (2) market manual processes, and (3) dispute resolution processes.

Recognizing that changes to processes for amending and administering the market rules would have implications beyond the scope of the Market Renewal Program, the IESO engaged external facilitator Karla Reesor of MovingForward Ltd., and conducted consultations sessions in August with the MRWG, the Stakeholder Advisory Committee, the Technical Panel, and an open public forum. The IESO also requested stakeholders to submit nominations for a Board-appointed Advisory Group to consider the issues and feedback more closely.

At its August meeting, the Board appointed a nine member Advisory Group from the list of nominees and approved the Terms of Reference. The Advisory Group met three times from September to November 2018, and reviewed and commented on a draft of this Report.

This Report details the recommendations of IESO management, following the conclusion of the Advisory Group consultation. The non-IESO members of the Advisory Group generally endorse the recommendations, and will have the opportunity to directly communicate any independent feedback at the December meeting of the IESO Board.

1.2 SCOPE

The scope of the Advisory Group mandate is set out in the Terms of Reference, attached as Appendix A to this Report.

By design, the Advisory Group mandate reflects the scope of the August engagement sessions, signifying the next step in an iterative consultation on market rule governance and decision-making processes. The Advisory Group was informed by feedback from the preceding stakeholder consultations, with the objective of finding alignment on potential options for procedural enhancements. The processes identified as in scope are as follows:

- market rule amendment process – stakeholdering and decision-making processes to amend the market rules;
- market manual amendment process – stakeholdering and decision-making processes to amend the market manuals, including the distinction between a market manual and a market rule; and
- dispute resolution process – processes and remedies for market participant redress.

The IESO confirmed the scope of recommendations to the IESO Board would be limited to processes within the IESO's decision-making authority and would not consider any delegation of authority to stakeholders or otherwise. This limitation served to exclude stakeholder requests for changes to procedural rights falling within the jurisdiction of the Ontario Energy Board (OEB), i.e. market rule processes involving the exercise of OEB decision-making authority (such as appeal rights). As the limitation was specific to the recommendations, the IESO agreed to submit stakeholder feedback on changes to OEB regulatory oversight to the Board, on the understanding that there was no expectation the Board would respond to the feedback. This feedback is included in the Board presentation slide deck, supporting this Report. Stakeholders were encouraged to submit comments on procedural rights within the OEB's jurisdiction to the OEB Modernization Panel.¹

1.4 RECOMMENDATIONS

The recommendations reflect three forms of procedural enhancements, namely, transparency, inclusiveness and remedies. Recommendations for enhanced transparency include publicly posting market rule amendment proposal submissions to the Board, written reasons for Board decisions on market rule amendments, and introducing greater clarity to the distinction between a market rule and market manual. Recommendations for inclusiveness include enhanced stakeholder consultation for market rule amendment proposals and market manual changes, introducing a stakeholder Markets Committee, funding low volume consumer representation, and stakeholder consultation on recruitment for Technical Panel and Dispute Resolution Panel members. Finally, recommendations for enhanced market participant remedies include broadened mediation/arbitrator selection rights for market participants and a commitment to exploring new opportunities for market participant redress in the Market Renewal design engagements. The recommendations are set out in Section 3 of this Report.

2.0 Advisory Group Consultations

This Section 2, Advisory Group Consultations, was drafted by the external facilitator retained by IESO, Karla Reesor of MovingForward Ltd., and is included to demonstrate the objective analysis of the facilitator on the Advisory Group process. Karla was selected as the facilitator following a Request for Qualifications process, based in part on her previous facilitation work with the Alberta Electricity System Operator and the National Energy Board.

2.1 ADVISORY GROUP MEMBERS

The Advisory Group is comprised of the following IESO and stakeholder representatives:

- Colin Anderson, AMPCO

¹ The Ontario Ministry of Energy, Northern Development and Mines, established the OEB Modernization Review Panel to provide recommendations on how the OEB's governance and operations can deliver better outcomes for consumers. Refer to Ontario Energy Board website: <https://www.ontario.ca/page/consultation-modernizing-ontario-energy-board-ueb>

- David Butters, APPrO
- Jason Chee-Aloy, Power Advisory
- Brandy Giannetta, CanWEA
- Sarah Griffiths, EnerNOC
- Margaret Kuntz, TransCanada
- Michael Lyle, IESO
- Alex Palimaka, Bluewater Power
- Jessica Savage, IESO

There was a high level of engagement and participation by all Advisory Group members.

2.2 MEETING SCHEDULE, AGENDA & REFERENCE MATERIALS

The group met on September 17, October 11 and November 2. A proposed agenda and meeting materials were provided in advance of each meeting. Discussions progressed through the following topics:

- a review of the feedback and synthesis of the concerns received from stakeholders in the August meetings, and from letters of comment received by the IESO;
- identification of possible options to address the concerns; and
- review and refinement of IESO staff recommendations to the IESO Board.

Meeting agendas and materials are accessible on the IESO’s website:

<http://www.ieso.ca/Sector-Participants/Engagement-Initiatives/Engagements/IESO-Governance-and-Decision-Making>

2.3 STAKEHOLDER FEEDBACK

The following table summarizes the stakeholder feedback and concerns shared in the August facilitated discussions and in letters to the IESO, as synthesized by the Advisory Group:

Market Rule Amendments
<p>Key Concern: Transparency</p> <ul style="list-style-type: none"> • Stakeholders request greater transparency around the market rule decision-making process of the Technical Panel and the IESO Board of Directors • New mechanisms should be explored to provide stakeholders with greater visibility into the Technical Panel and Board’s consideration of market rule amendments <p>Key Concern: Inclusiveness and Consistency</p> <ul style="list-style-type: none"> • Stakeholders request greater opportunity to participate in and provide direct input to the market rule amendment process, recognizing that market participants will take on more market risk as the markets evolve • Consistent processes for stakeholder involvement are needed to provide certainty to market participants • Enhancements could include changes in the composition of the Technical Panel to better

<p>reflect market participants and a new stakeholder forum to provide strategic advice on markets</p> <p>Key Concern: Expertise of Technical Panel</p> <ul style="list-style-type: none"> Stakeholders seek a higher level of confidence in the demonstrated technical skills and market rules expertise of Technical Panel members, both in terms of the ability to perform existing duties and the ability to manage the demanding timelines and large volume of market rules related to the Market Renewal Program Revisions to competencies for demonstrated technical skills and market rules expertise in the Technical Panel <i>Terms of Reference</i> could be considered
<p>Market Manual Amendments</p>
<p>Key Concern: Transparency, Inclusiveness and Consistency</p> <ul style="list-style-type: none"> Stakeholders request greater transparency and opportunities to participate in the market manual process, and that opportunities to participate be applied consistently Stakeholders also request consistency in the information that is included in market rules versus market manuals Enhancements could include new guidelines to indicate when and how stakeholder involvement will be triggered for market manuals, and guidelines on content for market rules and market manuals
<p>Dispute Resolution Process</p>
<p>Key Concern: Expertise of Dispute Resolution Panel</p> <ul style="list-style-type: none"> Stakeholders seek a higher level of confidence in the electricity markets knowledge and expertise of Dispute Resolution (DR) Panel members Competencies for electricity markets knowledge and experience could be enhanced, and open nominations for DR Panel members could be initiated for qualified candidates within or outside of Ontario <p>Key Concern: New Mechanisms and Remedies</p> <ul style="list-style-type: none"> Stakeholders request greater opportunity to challenge certain IESO decisions or in-market actions by adopting new procedural mechanisms in the market design, intended to redress market participants taking on more market risk As part of current market design engagements, new procedural mechanisms could be explored for market participant challenges and redress that align with the specific risk

Members of the Advisory Group expressed their appreciation to the IESO for initiating the engagement on this important topic, and for responding to their request to provide an independent, third-party facilitator. The facilitator observed that members were focused on making proactive change to address evolving market conditions, and to understanding and addressing the interests of all stakeholders. In addition, each participant demonstrated a commitment to collaboration and openness to new approaches, and all members were engaged in the discussions.

The members of the group also appreciated the invitation to participate in a presentation to the IESO Board of Directors, and as opportunities arise, look forward to continued involvement in the implementation of the recommendations.

*Prepared by: Karla Reesor
Moving Forward Ltd.*

3.0 Recommendations

As informed by stakeholder feedback, IESO management makes the following recommendations to the Board for enhancements to governance and decision-making processes:

Recommendations for Enhanced Transparency

1. Publicly post all market rule amendment proposal materials for submission to the IESO Board prior to the meeting, subject to limited exceptions. Such limited exceptions may include redactions for legal privilege, commercial sensitivity, or security, to protect sensitive information. Materials will include a summary of stakeholder feedback from the stakeholder engagement and the Technical Panel, with links to individual stakeholder feedback posted to the IESO website, in addition to the following documents, listed in table of content format for each Board submission:
 - a. Agenda Item Summary
 - b. IESO Staff Presentation Materials
 - c. Market Rule Amendment Proposal form
 - d. Memo to Board of Directors from Technical Panel Chair
 - e. Technical Panel Materials
 - i. Memo to Technical Panel from IESO staff
 - ii. Market Rule Amendment Proposal form
 - iii. Stakeholder feedback
 - f. Stakeholder feedback summary, stakeholder engagement and Technical Panel
 - g. Consumer Impact Assessment
 - h. Draft Board Resolution

2. Publicly post written reasons for the IESO Board's decision in respect of a market rule amendment proposal, with the authorizing Board Resolution. The reasons would be in template form that:
 - a. confirms whether any conflict of interest was declared, and if so, that the Board member was recused;
 - b. acknowledges the stakeholder consultation and feedback record, particularly where there is a lack of consensus or clear dissent;
 - c. acknowledges the Technical Panel process and vote, particularly where there is a lack of consensus or clear dissent at the stakeholder level informing the vote, or where the Technical Panel vote is not unanimous; and
 - d. either approves or rejects the market rule amendment proposal, providing a rationale for the decision.

3. Publicly post all stakeholder feedback on draft market manual amendments, and the IESO's response to the feedback.
4. Publicly post historical market manual *baselines* to the IESO website, on a reasonable efforts basis. Going forward, update the publicly accessible chronology of market manual amendments with each *baseline*.
5. Introduce guidelines that clarify the distinction between market rule content and market manual content. Guidelines should be broad and flexible, but involve a clear assessment, where the primary distinction would be that: (a) rules of conduct that materially affect rights or obligations, (b) rules that materially affect money or property, or (c) rules enforceable by penalties.

Recommendations for Enhanced Inclusiveness

6. Where market manual changes are required to support a market rule amendment, determine whether draft market manual content should be provided to stakeholders for review as part of the engagement process (along with the draft market rule amendment language as described in #7 below). The IESO's determination would apply a new review threshold, informed by *timing/reliability* and *materiality/economic impact* considerations. The IESO would consult stakeholders market manual content they want to review at the same time as the market rule amendment proposal, which would include identifying the considerations that would inform the IESO's assessment of whether the threshold is met.
7. For each market rule amendment proposal, consult stakeholders and request feedback on the draft market rules as part of the engagement phase. Following the engagement, a summary of stakeholder feedback would be submitted to the Technical Panel and the IESO Board, to inform their respective reviews of the market rule amendment proposal. The record of stakeholder feedback would indicate whether there is consensus or dissent.
8. Review and potentially revise Technical Panel composition and process to avoid duplication with stakeholder review of the market rule amendment proposal and draft market manual content in a preceding engagement.
9. Introduce a new stakeholder Markets Committee that would be expected to contribute to the overall success of market initiatives by providing advice, guidance, and support for the development of electricity markets in Ontario. The proposed Terms of Reference for the Markets Committee are attached as an Appendix to these recommendations (draft pending stakeholder consultation on proposed Terms of Reference, not for Board approval at this time).
10. Fund low volume-consumer representation and participation in stakeholder engagements. Consult the Markets Committee on the recruitment of low volume consumer representatives. Low volume

consumer representation would be specific to *Regulated Price Plan* consumers, as defined by the OEB.

11. Consult the Markets Committee on the recruitment of new Technical Panel members, including the knowledge and expertise informing the desired candidate profile.
12. Consult the Markets Committee on the recruitment of new Dispute Resolution Panel members, including the knowledge and expertise informing the desired candidate profile.

Recommendations for Enhancements to Market Participant Remedies

13. Amend the dispute resolution provision in the market rules to provide the market participant/ applicant (in a dispute), with selection and veto rights as concerns the appointment of a mediator, arbitrator or panel of arbitrators from the list of Dispute Resolution Panel members (to the extent this right does not already exist).
14. Continue to be receptive to introducing new mechanisms for market participant redress in the market design. The market renewal design engagements are currently exploring new mechanisms as part of the High Level Design process and will continue to identify and refine potential new mechanisms in the Detailed Design process.

4.0 Conclusion

The conclusion of the Advisory Group process marks the end of a longer stakeholder dialogue and there is general consensus and stakeholder support for the recommendations set out in this Report. Throughout the consultation, all Advisory Group members were engaged, considerate of the input and sometimes conflicting positions of fellow Advisory Group members, and committed to finding solutions that benefitted the collective. The IESO thanks all participants for their contributions over the course of the governance and decision-making engagements.

Subject to the Board's approval of the recommendations set out in this Report, the IESO will begin implementing the procedural enhancements.

Appendices

A. Terms of Reference, Advisory Group on Market Rules Governance & Decision-Making Processes