

Final Minutes of Meeting

Date held: March 25, 2014	Time held: 9:00 am	Location held: Minto Boardroom
Invited/Attended:	Constituency Represented or Company Name:	Attendance Status: (A)ttended; (R)egrets
Panel Members		
Edith Chin	Natural Gas Industry Rep.	A
Shelley Cunningham	Distributor Representative	A
David Curtis	Transmitter Representative	A (via teleconference)
Paul Huebener	Financial Services Representative	A
Brian Kelly	Generator Representative	A
Robert Lake	Residential Consumers Rep.	A
Martin Longlade	Industrial Consumers Rep.	A
Kazi Marouf	Distributor Representative	A
Brian Rivard	IESO Representative	A
Peter Rowles	Commercial Consumers Rep.	A
Yannick Venes	Retailers and Wholesalers Rep.	A
Bill Wilbur	Generator Representative	A
Mark Wilson	Chair	A
Stakeholder Observers		
Martine Band	Ontario Energy Board	A
Jeanette Briggs	IESO	A
Dave Brown	Ontario Energy Board	A
Raj Chintapalli	Customized Energy Solutions	A
Chris Ciaravino	OPA	A
Joe Ferhervari	Ontario Power Generation	A
Susan Harrison	IESO	A
Martin Hastings	IESO	A
Mehran Hydary	Hydro One	A
Margaret Kuntz	TransCanada	A
Emanuel Movchovitch	Ontario Power Authority	A
Nick Shkordoff	IESO	A
Candice Trickey	IESO	A
Vlad Urukov	Ontario Power Generation	A
George Vegh	Representing APPRO	A

Gabriel Villegas	Bruce Power	A
Samira Viswanathan	Bruce Power	A
Secretariat		
John Rattray	IESO	A

All meeting material will be posted on the IESO web site at:

http://www.ieso.ca/imoweb/amendments/tp_meetings.asp

Agenda Item 1 – Administration

Agenda: The agenda was approved.

Minutes and Action Items: The Chair asked the Panel for any comments on the draft meeting minutes of the TP 276 meeting.

A generator representative stated that in the 3rd paragraph of page 5, he recollected that the IESO would invite observers to the Demand Response working group sessions and not limit participation to the Demand Response community. The IESO representative responded that the intention is to engage generators when the market rules are being developed and to invite all interested market participants to the public session being held the morning of April 3rd, 2014. The Chair responded that the IESO will note this point in the updated draft of the minutes.

The retailer and wholesaler representative stated that in the 5th paragraph of page 5 that he stated there was the option for a market based approach in which anybody could participate, while the minutes noted only the procurement based approach. Additionally the representative stated that the most substantial comment was his assertion that the IESO should look to the end state of the project and work backwards to define the process. The representative indicated proposed edits would be sent to the secretariat.

The residential consumer representative stated that in the 3rd paragraph of page 9, the comment, “outstanding concerns expressed by the Panel,” should be changed to, “outstanding concerns expressed by some members of the Panel.” The Chair responded that the IESO would include the edit.

A generator representative noted that paragraph 2 of page 6 indicates that APPrO may bring forward their submission for “warrants consideration,” but it was his belief that the warrants consideration vote for MR-00407-Q00 in January covered the “warrants consideration” for the general concept or need for the GCR. The Chair responded that the IESO would remove reference to warrants consideration.

The retailers and wholesalers representative noted that on the 4th paragraph of page 8, where it states “the preference would be to refer such a case to the MSP or OEB,” that his comment did not indicate his preference and would suggest striking the comment from the minutes. The Chair responded that the IESO would remove the comment.

The Chair informed the Panel that the IESO would update the draft minutes of the TP 276 meeting and bring them back for review and approval at the May meeting.

The Chair provided an update on the IESO action items indicating that:

- AI-274-4 was closed during IESOTP 276.

- AI-274-2 related to the IESO updating the Panel on the ongoing discussions of the governance issues surrounding the General Conduct Rule (GCR), which will remain open.
- AI-274-3 regarding determinations made by the IESO on the overlap between a GCR and the definition of Good Utility Practice. The transmitter representative agreed that the item could be closed.
- A generator representative requested that a new action item be created for the IESO to follow up with the Panel regarding the generators participation in the Demand Response Working Group. The Chair agreed that the IESO would create the action item and follow up with the generators.

Chair Remarks: The Chair welcomed Paul Huebener, the new financial services representative to the Technical Panel.

Agenda Item 2: Stakeholder Engagement Update

The purpose of this discussion was to inform the Panel of any status updates to the current stakeholder engagements within the IESO.

The IESO representative provided the following updates:

- SE-108: Online Registration Working Group will launch the revenue meter installation phase in April to seek input on proposed on-line meter registration activities. Implementation is scheduled for July of 2014.
- SE-111: Review of Generation Cost Guarantees has a webinar scheduled for March 31st to discuss the results of analysis which looked for evidence of over-commitments in the real-time generation cost guarantee program.
- SE-117: Dispatch Service Working Group held the first meeting on February 28th to seek feedback on the Dispatch Service refresh, formerly called message exchange. During the next meeting the IESO will present how stakeholder feedback relating to the redesign, transition and implementation schedule will be considered in the tool refresh.
- IESO Demand Response Meeting – the IESO will be hosting the first stakeholder and working group meeting on April 3rd. This will include an open information session for all interested stakeholders in the morning and a working group session in the afternoon with more details provided on Demand Response capabilities.
- Capacity Market Information Day – there will be an information session with guest speakers from the demand side of the market, generator community and other system operators who have experience working with a capacity market on April 8th.
- Market Operations Awareness Meeting – the IESO will be holding a session to provide greater transparency and awareness into IESO operations on April 9th.

A generator representative asked if the IESO had a list of individuals who would be speaking at the Capacity Market Information Day. The IESO representative responded that the full list of speakers has not been finalized.

A generator representative asked if the Panel’s lunch with the IESO Board had been set. The Chair responded that the tentative date is still April 14th and that IESO staff will be seeking input from Panel members on potential discussion topics.

Agenda Item 3:

MR-00407: General Conduct Rule	
IESO Support Staff, Other Representatives	Jo Chung, Devon Huber, Glenn McDonald representing the IESO. George Vegh representing the Association of Power Producers of Ontario (APPrO)
Stakeholder Plan	SE-112

The purpose of this discussion was to review the draft amendment proposals, MR-00407-R00: General Conduct Rule (GCR) and MR-00407-R01: GCR Governance for stakeholder comment (refer to documents IESOTP 277-3a, b and c) and to request that the Panel hold a vote to decide whether the draft amendment proposals should be posted for stakeholder comment. Note: The presentations from APPrO and the IESO were posted under the March 25th materials subsequent to the meeting.

The Chair reviewed the status of the GCR since the February 25th meeting. At the meeting on the 25th, the Panel had originally agreed to hold a Technical Panel meeting on March 5th to discuss the draft GCR amendment proposals (R00 and R01) in advance of a vote to post the draft amendment proposals for stakeholder comment. After further discussions with APPrO, the IESO agreed to cancel the March 5th meeting and to delay the vote to post for stakeholder comment until the March 25th meeting. As a result of this delay, the target for IESO Board approval on the amendment proposals has moved from April to June, 2014.

Upon request from APPrO, the IESO agreed to allow George Vegh to speak on behalf of APPrO regarding its perspective on the IESO’s proposed GCR language. It was explained that following the APPrO presentation, Glenn McDonald would speak to the changes the IESO has made to the amendment proposals since the Panel meeting on February 25th.

APPrO Presentation:

The APPrO representative noted that APPrO had put forth its own rule submission in January. The representative noted that since that time, discussions had been held with the IESO and a number of changes had been made to the IESO’s proposed rule which represented improvements to the rule. Notably the changes to the GCR’s governance framework represented an improvement and he believed that that the IESO and APPrO were now in agreement on this area of the rule. The APPrO representative then stated that the current iteration of the IESO’s proposed rule also represented some major steps backward from APPrO’s perspective.

The APPrO representative indicated he planned to make assertions regarding the following three broad areas: (i) the Technical Panel’s Mandate, (ii) Areas of Difference between the IESO and APPrO; and (iii) APPrO’s proposed language.

The Technical Panel’s Mandate:

The APPrO representative stated that the Panel was in unchartered territory with the submission of alternative rules language, but noted that in his view, the Panel has considerable discretion/the same discretion as the IESO Board in the rules making process. He stated that the nature of this rule goes to broader policy areas and therefore it is understandable that there would be different points of view, and that the Technical Panel process is sufficiently flexible enough to take into account these areas with room for consideration. He added that the Panel process has led to constructive interactions between APPrO and the IESO, at least in the context of addressing the governance issue. The APPrO representative noted that the goal of the rule-making process is to come up with a better rule – a rule which is more clear, more effective, fair and is the easiest to implement, regardless of who has put forth the rule amendment.

The APPrO representative then proceeded to walk the Panel through his perception of the areas of divergence between the IESO amendment proposal and APPrO's alternative rule language.

Legitimate Business Purpose Defence:

The APPrO representative stated that legitimate business purpose has been an issue for APPrO since the beginning of this process. In APPrO's opinion, the current iteration of the IESO's proposed rule is a step backward, as it is no longer clear whether a legitimate business purpose defence exists. The representative indicated that stakeholders had previously been advised that such a defence would exist, and that this is no longer clear, creating uncertainty.

The industrial consumer representative asked why it was necessary to specifically take OPA contracts into account as opposed to other non-OPA contracts. The APPrO representative responded that generators respond to the economic models of their OPA contracts as opposed to the market price. For example, for renewables integration, the OPA contract design was a revenue model in which market participants receive revenue for being dispatched on, therefore incenting market participants to be dispatched on and not necessarily to respond to market prices. If one was not aware of the contract, offering to be dispatched on in times of negative pricing could be seen as 'odd' conduct.

The industrial consumer representative questioned why OPA contracts are being singled out, and noted his preference to have it removed as there could be a lot of other legitimate business purpose defences. He questioned whether APPrO's rule was indicating that OPA contracts would supersede the GCR and all other market rules and indicated that APPrO's proposed wording of a defence for conduct "connected to" a contract was extremely vague. The APPrO representative replied that there should be protection for other contracts as well and that defences based on OPA contracts were just examples of legitimate business purpose defences. The APPrO representative responded that a key discussion item today is whether legitimate business purpose is a general defence in the most recent version of the rules. The industrial consumer representative repeated his preference that he would rather see the legitimate business purpose provision referring to contracts removed altogether.

The financial services representative stated that he would like to see OPA contracts specifically provided for within the GCR, noting that without an explicit reference to OPA contracts in the legitimate business purpose section, it would be difficult to finance future projects.

The natural gas representative pointed out that in the context of the renewables dispatch rule changes, the IESO had said the new dispatch rule would supersede the contracts, but now she was hearing the contracts would supersede the rule.

The APPrO representative added that APPrO's proposed language for the legitimate business purpose defence in 10A.2 tries to use language that is simple and as clear as possible, and that the phrase "connected to" is meant to include behaviour that is incited or driven by contracts, not just mandatory requirements in a contract. One can ask whether "connected to" are the right words, noting that the IESO had used this phrase, or whether "driven by" may be better. The industrial consumer representative reiterated the language was vague from his standpoint.

The natural gas representative asked whether "contemplated" would be better than "connected to" since "connected to" is very broad.

The industrial consumer representative was of the view that the words "entirely or predominantly" in APPrO's proposed section 10A.2 already covers what is intended by the language, and that "connected to" is not needed. The APPrO representative responded that "connected to" is still qualified by "entirely or predominantly."

The industrial consumer representative responded that using the language "connected to," could be setting up a situation in which any behaviour related to procurement contracts would be "fair game" and therefore out of the scope of the GCR. The APPrO representative disagreed and stated he doubted MACD and the OEB would interpret the rule that way. He noted that it would be difficult to say how it would work in the "real world," as no examples of behaviour that would violate the GCR had been provided to date. He added that the burden on proving the relationship between OPA contract and the conduct in question was on the market participant, and that it was not the case that "anything goes."

A distributor representative supported the industrial consumer representative, and stated her belief that the words "connected to" are too loose. The APPrO representative responded that "contemplated" may be a better word.

The APPrO representative summarized the various iterations of the IESO's draft language related to the concept of the legitimate business purpose defence. He noted that the various drafts had variably included or not included a specific reference to "legitimate business purpose". The December 3, 2013 version of the rule had included reference to legitimate business purpose, but had lacked explicit references to OPA contracts or OEB regulation. The February 19th and 27th 2014 versions of the rules had included a reference to legitimate business purpose, but in APPrO's opinion, limited the legitimate business purpose defence to OPA contracts and OEB regulation, and had concurrently removed a general legitimate business purpose defence. The rule the IESO was presenting at today's meeting however, did not include any reference to legitimate business purpose and had instead introduced the "notwithstanding any other defence" language.

The APPrO representative concluded that APPrO's view is that there is a fundamental problem with the IESO's current version of the rules, as it is unclear if a legitimate business purpose defence exists. Since it is unclear whether a legitimate business purpose defence exists, APPrO is unable to support the rule as presently constructed. In contrast, he stated that the APPrO version of the rule is clear that a

general legitimate business purpose defence exists, with OPA contracts, regulation and government policy being specific examples of legitimate business purpose defences.

Applicability to the IESO:

The APPrO representative stated that the IESO's proposed rule indicates it applies to the IESO, but that in APPrO's opinion, the exclusions were so exhaustive that he could not see any way the rule could apply to the IESO in practice. He stated that the IESO should be bound by the rule and that this would be consistent with every other ISO in North America, which are all bound by conduct rules. With reference to Market Surveillance Panel reports, the APPrO representative noted that the IESO's conduct has the biggest distortive effect on prices and outcomes.

The industrial consumer representative asked how the "policing" of the GCR on the IESO would work, and asked how people could refer inappropriate IESO conduct. The APPrO representative responded that like all market participants, the IESO would want to comply with the GCR where possible and would therefore "self-police." In addition, MACD could investigate and take action against the IESO as required. He noted that MACD had brought actions against the IESO in the past. The APPrO representative advised that APPrO's proposed language in section 10A.3 (the applicability of the GCR to the IESO and the OEB) was similar to the legitimate business purpose section for market participants and created similar defences for actions required by or connected to an OPA procurement contract or a market rule. The industrial consumer representative stated that with respect to policing, it appeared that the IESO was in a conflict of interest. The APPrO representative acknowledged that the existing design, whereby MACD is part of the IESO, is awkward but that this was an issue that was larger than and outside the scope of the GCR.

Limitations Period:

The APPrO representative stated that the IESO is proposing a six year period from the date the IESO knew or ought to have known of a GCR violation. The representative stated that the standard limitation period for civil actions in Ontario was two years, which is also consistent with the two year limitation period in the Ontario Energy Board (OEB) Act. The representative indicated that the APPrO rule also includes a five-year absolute cap against bringing an action regardless of when the IESO had discovered the conduct. The APPrO representative argued that the IESO's proposed limitation period of six years to issue a notice of intention is too long, citing frequent staff turnover at market participants' operations would make crafting a defence more difficult many years after alleged misconduct.

Specific Prohibitions:

The APPrO representative stated that it was APPrO's goal to add clarity to what potential offences under the GCR could be and was not meant to remove offences. For example, the IESO's rule prohibited the exploitation of the IESO-administered markets. He stated he did not know what it meant to exploit the IESO-administered market. He stated that APPrO's proposed rule created more specificity, which would therefore allow market participants to better self-police. As an advisor to a market participant, he stated he could help his clients understand concepts such as not manipulating

settlement amounts or gaming dispatch outcomes, but he could not advise them on how not to manipulate the IESO-administered market.

The APPrO representative also stated that the GCR should only apply to situations where “unintended” gaps in the market rules were exploited and that APPrO’s proposed rule amendment made this clear. He stated that if the IESO’s market rules allow for something to happen, then the proper response is to change the market rules, not to prosecute the behaviour.

The financial services representative asked whether it mattered whether the gap was intended or not given the existence of a legitimate business purpose defence. The APPrO representative responded that the distinction was that the legitimate business purpose focused on the behaviour whereas the wording around an “unintended” gap focused on the intent of the rule and whether the gap was in fact, intended. The APPrO representative stated that a market participant should be allowed to argue that a gap in the market rules was an intended gap. The industrial consumer representative asked how it would be determined that a market rule gap was intended versus unintended. The APPrO representative responded that there would be significant amounts of relevant rule-making materials, such as recorded commentary, surrounding market rule amendments that go back to market opening that would help inform whether a gap in the market rules was intended or not.

The industrial consumer representative asked if there was a definition that could be used for the term ‘gaming.’ He was unclear as to what that term meant. The natural gas representative asked the APPrO representative whether someone should be allowed to exploit an intended gap in the market rules. The APPrO representative replied that there could be no exploitation if the gap was intended because in having an intended gap the behaviour was being permitted to occur. He stated that if a market participant developed a new innovative model and profited as a result of executing that model that this was how markets are supposed to work. The natural gas representative stated that while a gap in the rules may exist, that didn’t mean the gap was meant to be exploited. She stated that one would not create a set of rules, which included a gap, with the intention that people exploit that gap. The natural gas representative stated that allowing people to exploit intended gaps may result in unintended consequences.

General Discussion with APPrO representative:

A distributor representative asked for an example of IESO conduct that would be in breach of the GCR, as he was having difficulty understanding what such conduct might be. The APPrO representative noted examples in which the IESO could impact intended outcomes for actions that could be either reliability or price driven such as administrative interventions or voltage control. He also referenced a case in Alberta that dealt with Alberta’s equivalent of congestion management settlement credits.

A generator representative suggested that the calculation of the primary demand forecast could be conduct that may be in breach of the GCR. The other generator representative stated that he can’t think of anyone who has a greater opportunity to influence marketplace outcomes than the IESO and that this in turn begged the question as to why the IESO was not covered by the GCR. The same generator representative noted that APPrO’s proposed rule carves out the notion of government policy – beyond that, there is no reason the GCR should not be applicable to the IESO. The APPrO representative noted that a difference between the APPrO and IESO amendment is that the IESO has carved out market

design, policy and rulemaking as areas of IESO operation not subject to the GCR. He stated that the term “policy” was too broad and went beyond just government policy. For example, he stated the IESO could be exempted from the GCR based on the fact that a control room operator’s action was consistent with an IESO internal policy. The APPrO representative also criticized the IESO’s rule as not requiring the IESO to demonstrate that its behaviour was entirely or predominantly for a legitimate business purpose and in the same manner that market participants were required to raise a legitimate business purpose defence.

The residential consumer representative stated that if individuals are required by CRA (Canada Revenue Agency) to retain tax records for six years plus the current year, generators can do so as well. He stated that a two year limitation period seemed too short to him. The APPrO representative responded that APPrO was proposing two years from the date the IESO discovered the behaviour, with an absolute cap of five years. The APPrO representative also stated that he was not aware of any misconduct in the market and that he would like to understand from MACD what type of conduct MACD thought would be covered by the GCR.

IESO Presentation of Proposed GCR:

IESO staff advised the Panel that his intention was not to engage in a point-by-point rebuttal of APPrO’s proposed rule language or assertions made in respect of IESO’s proposed language, although there would be some instances where it would be difficult not to do so, in light of comments made by the APPrO representative. He advised that the purpose of his presentation was to highlight for the Panel the numerous changes to the IESO proposal since the GCR had first been conceived, to better appreciate the context of the language proposed to be circulated for public comment. IESO staff stated that considerable time had been expended on developing the GCR. He noted that many of the changes that had been made, including the most recent changes, were in response to stakeholder concerns. He noted that there were a wide range of stakeholders, not just APPrO and the generators, and that the changes that have been made have taken into account or are due to further consideration of the input from all stakeholders. IESO staff thought it would be worthwhile to remind the Panel of the changes that have taken place since the rule was first conceived as it would demonstrate how far the IESO has come in arriving at the rule language that is before the Panel today.

IESO staff noted that the most exceptional change was the creation of a completely unique and specialized governance framework that would apply only to the GCR. He stated that the decision to concede a unique governance structure for the GCR had not been an easy one, given the IESO’s continuing belief in the clarity of its authorities, but once the decision had been made he agreed with the APPrO representative that the process of developing the governance structure with APPrO was productive.

IESO staff explained that the outstanding APPrO concerns (legitimate business purpose, rule applicability to the IESO, limitations period) represent remaining issues that the IESO did not expect to have unanimity on. The IESO is of the belief that the latest version of the GCR is fair and appropriate to support the objectives of the *Electricity Act*, including the protection of the interests of consumers. Subject to further persuasive comments from APPrO and others during the comment period, any

further changes as proposed by APPrO are seen as creating overly broad defences and overly narrow prohibitions, and would render the GCR as having limited effect.

In reference to APPrO's comments on variable language put forth by the IESO, IESO staff indicated there should be some allowances for growth and evolution of an amendment, and that this was what the stakeholdering process was for, and that it may not be perfect from day one.

IESO staff then summarized further changes made to the rule to date, in addition to the governance structure.

The IESO has removed the general obligation on market participants to conduct themselves in a manner consistent with the efficient, fair, competitive and reliable operation of the IESO-administered markets and of the IESO-controlled grid, which the IESO originally had in its design, patterned after the Alberta rule language.

With regards to legitimate business purpose, IESO staff stated that the fact that a specific clause speaking to possible defences explicitly drafted into the rule was itself an extraordinary measure that is not found in the majority of similar conduct rules. In addition, and in response to stakeholder feedback, the IESO has agreed to explicitly cite OPA contracts and OEB regulations as possible defences. IESO staff noted that the defence had originally been tethered to the concept of efficient, fair, competitive and reliable operation, so as to inform the nature of acceptable defences, but that stakeholders had argued that phrase was too confusing and vague. In response, the IESO has removed this tethering, an important consideration in any discussion of the question of rule language using the exact phrase of "legitimate business purpose."

With respect to limitation periods, IESO staff acknowledged there was some disagreement as to the duration of a limitation period. He stated that the inclusion of a limitation period was in and of itself a concession and that, as has been discussed in previous meetings, there was no limitation period for any of the other market rules.

IESO staff stated that the 10A.1 list of prohibitions had previously been non-exhaustive in its use of language which describes prohibited behaviour, but in response to stakeholder feedback, the list of such terms had been made exhaustive.

IESO staff observed that in response to stakeholder feedback, the IESO has been explicitly added as being subject to the rule. He stated he could not understand how APPrO does not believe that the IESO is covered by the GCR, and that this question had been directly asked and answered in at least one previous Panel meeting. He asserted that it was not the IESO intention to assert that it would include the IESO within the scope of the rule, but then to 'trick' the Panel by creating an overarching carve-out. He stated that he found useful the APPrO representative's explanation that the word "policy" caused some to believe that any IESO action could be excused on the basis of being part of "IESO policy." He stated that it was his understanding that the term "policy" had a well-defined meaning, which would not include such interpretations, and that the comment period would be useful to explore this concern.

IESO staff stated that in response to stakeholder feedback the rule no longer covered conduct related to reliability or the IESO-controlled grid and that it was focused only on conduct within and impacting the markets.

IESO staff stated that in the list of prohibitions the reference to “abuse of market power” had been removed after receiving feedback that the term may carry an overly pejorative tone, and out of recognition of its uncertain definition in the field of electricity market regulation.

Finally, IESO staff stated that in response to stakeholder requests the Panel materials were making it patently clear that the rule would not apply retroactively.

IESO staff stated that having addressed these many stakeholder concerns, he agreed that there now remained three residual issues with APPrO, where understandably, unanimity had not been achieved.

Legitimate Business Purpose:

IESO staff stated that the stakeholding process should allow for growth and evolution and acknowledged that the IESO did not have a perfect framing of the proposed market rule on the day the first position paper was published. Since the release of the first position paper, the IESO has been moved by what stakeholders have said as well as by its own further research. For example, while the IESO may have used the “connected to” or “legitimate business purpose” language in earlier iterations of the rule, this does not mean that the IESO cannot subsequently propose different language. As an example, IESO staff stated that there may be issues with the specific words “legitimate business purpose” and that when the legitimate business purpose language had been used in earlier discussions, position papers and drafts of the rules, he had not been aware of the possibility that the precise words “legitimate business purpose” may have a specific legal nuance. Nor was it expected that the term would be “untethered” from the specific objectives, or be allowed to exist as being only circumscribed by the legitimacy of business objectives. IESO staff reiterated that the IESO’s primary goal is to signal that not all conduct undertaken for a business purpose, will lead to a defence that allows a market participant to exploit or manipulate the IESO-administered markets.

IESO staff stated that he has found it difficult to understand why it is so important to APPrO that the three words “legitimate business purpose” need to be included in the rule as opposed to allowance for identifiable distinctive market characteristics like OPA contracts. IESO staff stated that the proposed IESO rule is being extremely clear in granting two defences that APPrO has consistently requested: conduct caused by OPA contracts and OEB Regulations. The proposed rule is also explicit in that other defences may be raised. IESO staff stated that the “notwithstanding other defences” was added to the rule in direct response to APPrO’s belief that the language proposed on February 25th had created an exhaustive list of defences. He stated that while the IESO never understood or intended the February 25th language to create an exhaustive list of defences, in the current rule the IESO has explicitly evolved the language to make it clear that there are other defences that participants can raise.

IESO staff acknowledged that the IESO has also moved away from the “connected to” language that was found in an earlier draft of the defence provision. He stated that, upon reflection and in light of feedback from lead commentators within his team that the IESO came to the view that the “connected to” language was overly broad, as has been reflected by others in earlier discussion in this meeting. IESO staff acknowledged there may be no perfect word to capture what is intended. He stated that his understanding of the contracts was that they were mostly about incentives as opposed to requirements. Where the IESO landed however, was that the existence of an OPA contract could not be used as a “get out of jail free card.” The rule must signal that while market participants are driven to do some things

as a result of contracts or regulation, there are limits to which that claim can be made. At a certain point, if you go beyond what is necessary, behaviour may become exploitative. IESO staff stated that conduct like exploitation is not something that, as a matter of public policy, the IESO wants to allow. He stated that while the IESO acknowledged it needed to loosen the rule to take into account OPA contracts and OEB regulations, the IESO believes that if the final rule were to adopt the “connected to” language that this would effectively limit the intended authority of the GCR.

The industrial representative asked how the GCR might apply to the recent rule change related to the dispatch of renewable energy. IESO staff responded that he didn’t know specifically to what the industrial representative was referring. The IESO representative suggested that perhaps the industrial representative meant that the rule related to the dispatch of renewable energy provided generators with an incentive to offer at negative prices to ensure that they would be dispatched. IESO staff stated that he wanted to avoid getting into an on-the-spot “mini-trial”, but stated that the defence provision can’t be looked at in isolation from the other sections of the GCR. He stated that MACD would first have to show that a market participant knew or reasonably ought to have known that behavior violated one of the prohibitions. The relevance of raising a defence would only come into play if MACD had, in the first instance, established that the market participant had violated one of the prohibitions, including the intent element. The significant burden on proving intent is on MACD, and if the over-riding facts point to contract terms, there will be no case to move forward.

The financial services representative stated that IESO staff had previously asserted there were problems with the specific words “legitimate business purposes.” He asked what those problems were. IESO staff responded that based on his understanding, there have been cases where the phrase “legitimate business purpose” has been interpreted to include all forms of profit-making. It is for this reason that the defences are tied back to the prohibited behaviours listed in 10A.1, in the IESO’s proposed language. The construct of 10A.1 says you cannot exploit, manipulate, or undermine the IESO-administered markets. IESO staff stated that making-money by any means, for example through exploitation or manipulation, cannot be a permissible end goal in and of itself, and cannot be a permissible defence. What the IESO’s rule has done is to explicitly carve out defences where the behaviour was caused by OPA contracts or OEB regulation, while acknowledging that other defences may be raised.

The financial services representative asked “isn’t the goal to make money?” IESO staff agreed that the goal in a market is to make money, but there were boundaries to how you could make that money. It should not be the case that market participants are permitted to make money through manipulating, exploiting, circumventing or undermining the IESO-administered markets or market rules.

A generator representative stated that the inclusion of legitimate business purpose is a big issue for generators. He asked IESO staff whether a legitimate business purpose defence could be raised under the IESO’s version of the rule. He asked why the words “legitimate business purpose” had been removed. IESO staff stated that the words “legitimate business purpose” had been removed from the rule for the reasons he’d just discussed. IESO staff stated he was surprised as to why APPRO was so insistent on including the words “legitimate business purpose” and he asked the generator representative why they needed the words “legitimate business purpose.” The generator

representative responded, that in order to defend themselves, market participants would need to show their conduct was connected to a legitimate business purpose. IESO staff stated that the IESO used to have a defence provision that tethered the language of “legitimate business purpose” to efficient, fair, competitive and reliable operation but that stakeholders had argued such a tethering was too broad and would effectively eliminate any defence. In response, the IESO removed the efficient, fair, competitive and reliable operation tethering. IESO staff stated, however, that it since conducted a review of case law which suggested an untethered use of the words “legitimate business purpose” would dangerously widen the defence. Under APPrO’s version of the rule a market participant may now need only to show its conduct was related to a legitimate business purpose, such as making money in order to invoke a defence. IESO staff said that such a defence, if unintentionally provided for in the rule, was dangerously broad and not in line with the intent of the rule’s objectives.

The IESO representative asked if the words “notwithstanding any other defence a market participant may raise” in the defence section meant that a market participant could raise a legitimate business purpose defence. IESO staff responded that at this time he could not say one way or the other whether a legitimate business purpose defence could be raised but that he has been told that multiple defences could possibly be raised with the “notwithstanding” language. He stated that the main caution for the Panel to understand is that legitimate business purpose may have a particular meaning that must be understood.

The industrial consumer representative asked IESO staff to confirm his understanding of what had been said – that if the words “legitimate business purpose” were included in the defence section, that a market participant could simply argue that it was trying to make money for its shareholders and that could constitute a legitimate business purpose defence. IESO staff confirmed the industrial consumer representatives understanding that this was a concern of the IESO at this time.

Applicability to the IESO:

IESO staff indicated he was baffled by APPrO’s assertion that the IESO was not covered by the GCR. He indicated that the IESO rule was clearly meant to apply to conduct such as IESO manual actions and that the present draft of the rule was meant to convey that. He stated that he found APPrO’s interpretation that the draft rule would not apply to IESO manual actions to be confusing. He stated the inclusion of the IESO manual control actions was not particularly controversial and noted that IESO control actions that have negative market outcomes are already covered by another market rules, Chapter 5, s. 1.2.1 with an obligation to minimize its intervention in the market subject to the maintenance of reliability. IESO staff stated that what the draft rule was explicitly not meant to cover were the IESO’s market design functions and rule-making as well as policy actions carried out by the IESO.

IESO staff stated that he did recognize a perceived lack of clarity related to the term “policy”, indicating that the term policy would not extend to IESO policy such as control room decisions.

IESO staff raised the industrial consumer representative’s earlier stated concerns regarding a conflict of interest as it relates to MACD bringing an action against the IESO. He acknowledged, this was a bigger issue, but stated that MACD does and has investigated the IESO and that the largest penalty it has ever issued in recent years was against the IESO.

The industrial consumer representative asked why rulemaking activities would be excluded within the scope of the GCR. IESO staff responded that there were several reasons. Foremost, the IESO's rule-making authority flows directly from the IESO's authorities and obligations granted to it by the government under the *Electricity Act*. In addition, IESO staff stated that to the extent an individual takes issue with a proposed market rule amendment there are already mechanisms in place to allow that individual to appeal the market rule before the OEB. Finally, he stated that the purpose of the GCR was to cover market conduct and that the GCR was never meant to tackle the super-structure of the market rules. IESO staff reiterated that the avenue to address concerns about prospective IESO market rules was through an appeal to the OEB. The industrial consumer representative responded that if the rule was only meant to cover conduct that there did not appear to be any need to carve-out activities related to market rule-making, as these activities would not be covered in the first place. IESO staff stated that the carve-out provides a greater degree of clarity and is therefore not harmful. He stated that the IESO exclusions related to design and rule-making were clean, but that he has heard APPrO's concern that the word "policy" may be interpreted in an overbroad manner and in a way the IESO had never meant for it to be interpreted and that this concern would be explored in the comment period.

Limitations Period:

IESO staff stated that through the stakeholdering process, the IESO had learned that stakeholders wanted a limitation period. He stated that at present there was no limitation period for any of the market rules. As part of the stakeholdering process the IESO observed that perhaps a limitation period should apply to all of the market rules, but until such time as a broader limitation period was introduced, that stakeholders had asked for a transitional limitation period applying to only the GCR. IESO staff stated that the proposed six year limitation period was consistent with other complex market regulatory environments. IESO staff informed the Panel that the IESO's rationale for the limitation period of six years was based on analogous examples that are similar to the complexity of electricity markets. The two year OEB period does not reflect these complexities, pertaining as it does to conduct in the retail sector. IESO staff noted that there are already record-retention requirements related to NERC obligations that extend to six/seven years.

IESO staff noted that it is important to understand the many variables impacting what is meant by a limitation period. The IESO's proposed limitation gives MACD six years to finish its case, whereas in the civil context one has two years to commence a case. He indicated that in the civil context, he understood the "hard-cap" limitation period for completing a case to be fifteen years, not the five years proposed by APPrO. IESO staff stated that APPrO's proposed rule, which would require MACD to finish its case within two years, could create an incentive for investigated parties to delay matters, thereby giving rise to issues of moral hazard. A distributor representative asked IESO staff if he could provide further context on the limitation periods used in other market contexts. IESO staff responded that this work had been done by his legal team and that he would need to confer with them, but that he'd expect the IESO to provide a rationale for its proposed limitation period through the posting for comment process.

Other:

Regarding the market rules language and the list of prohibitions, IESO staff stated that APPrO's proposed rule language did not add clarity, but instead narrowed the prohibitions and made them less clear, in some cases inappropriately mixing concepts.

IESO staff stated that there were no disagreements as it related to governance so he would not discuss the issue unless the Panel had any questions. No questions were asked.

IESO staff asked if there were any other questions.

The industrial consumer representative asked whether MACD has increased its resources in anticipation of the implementation of the GCR. IESO staff answered that increases in staff have not and are not planned to occur in anticipation of the implementation of the GCR.

A generator representative asked whether there had been an increase in MACD resources relative to several years ago. IESO staff advised that MACD resources had increased in recent years but that these were temporary staff and there had not been an increase in full-time equivalent staff. He indicated that the resourcing structure in the IESO allowed for the ability to respond to matters as they arise. He also indicated it was not standard practice for enforcement entities to discuss their resourcing with those parties they regulate.

With respect to the need for the GCR in Ontario, the industrial consumer representative asked if the IESO ever sought a formal legal opinion. IESO staff responded that the IESO had not explicitly sought a formal legal opinion. He stated however, that there was sufficient regulatory experience at the IESO to inform them that there was a gap in the rules and therefore a need for a GCR. He stated the rationale for a GCR was publicly articulated, and that the primary reason for a GCR-type rule is that such a rule is a centerpiece of every other North American electricity market, due to the complexity of such markets. He stated that Ontario's electricity market was alone in not having such a rule. In addition, IESO staff stated that while he did not seek a legal opinion per se, he does have legal experts on staff. These legal experts contributed to the development of this rule and share the IESO's view that a GCR is needed.

The Chair summarized the stakeholdering process. He noted that following extensive discussion, stakeholdering and some disagreement we were now at a point where he would recommend that a rule be posted for comment. He noted that to date the negotiations had largely been bilateral between the IESO and the APPrO and that it would be beneficial to get broader input. The Chair proposed that the IESO rule language be posted for comment, but that the IESO's posting will also refer explicitly to APPrO's rule language and APPrO's pre-submitted comments. He noted that through this process the IESO would have an obligation to respond to comments.

The industrial consumer representative asked what would happen if the vote to post for stakeholder comment was not passed by the Panel and stated that from his experience, once an amendment has been posted for comment, the IESO has veto power – if the IESO can't accommodate a comment, it puts it aside and goes with whatever is posted.

The Chair responded that if the Panel votes down the IESO proposal to post the amendments for stakeholder comment, the IESO would need to at a minimum have further discussions with APPrO,

but would likely need to inform the IESO Board of the vote not to post, and it would be up to the IESO Board to provide direction.

The industrial consumer representative added that if the Panel votes to post for stakeholder comment, his concern is that all negotiations would come to a halt, people would submit comments, the IESO would accommodate where they can and where it can't, there would be no movement. The Chair responded that communication and negotiations should not stop, and that the IESO has demonstrated it is open to discussions. He stated that the rule had already changed significantly from the first draft in response to stakeholder concerns, and the IESO will look for solutions and respond to written comments. The Chair stated that it was true that at some point in time a decision would have to be made as to the final wording of the rule. The Chair stated, that the Panel's role is not to approve market rules, but to provide the IESO Board all the information they need to be able to make a decision on a rule. The IESO will put all stakeholder comments in front of the Board so it clearly understands the issues. The Board has the option to accept, reject, amend, or send the rules back to the IESO and Panel for further work.

A generator representative stated that a GCR rule warranted consideration and that APPrO agreed with this. He stated that progress had been made, but that the Panel also needs to consider where the rule started from and he stated that he believed the rule started from a weak position and that there continues to be large differences of opinion between APPrO and the IESO on substantive issues. Specifically he noted that APPrO has concerns with the legitimate business purpose defence, the applicability of the GCR to the IESO and the proposed limitation period. The generator representative stated that the Panel has two choices. It can vote to put the rule forward in its current form or it can vote down the rule and direct the IESO to resolve its differences with APPrO.

The generator representative added that if the Panel votes not to post for stakeholder comment, it is directing the IESO to have further discussions with stakeholders on the outstanding issues. The generator representative did not know how these differences could be addressed through the stakeholder comment period.

The Chair stated that now was the time to see what other perspectives were out there and that the Panel should seek this broader input by posting the rule for comment. He stated that the IESO would have to respond in writing to APPrO's comments. The generator representative replied that he did not think the rule should be posted for comment and that the Panel should direct the IESO to go back to APPrO and to develop a rule that the Panel could be satisfied was a positive rule. The Chair responded that these discussions had already taken place and would not likely advance anything. He stated the most probable outcome would be to return to the Panel at some time in the future with the same differences that exist today.

The commercial consumers representative asked if there was a way to get an independent viewpoint from a third party on the amendment, noting his concern that if nobody else comments, that the Panel will be stuck between the legal opinions of the IESO and APPrO. The Chair responded that the IESO would hope to receive comments from interested third parties during the comment period.

A distributor representative stated that there was little to gain from further discussions between the IESO and APPrO and stated it would be helpful to get broader comments. He suggested the Panel initiate this process by posting the rule for comment.

The generator representative replied that while he understood the distributor representative's point of view, he believed there was little to gain from posting the rule now. He stated that posting the rule now would eliminate any further chances that APPrO's proposed amendments would be adopted. He stated that by voting "no" the Panel would be telling people that it had decided that a specific market participant requires to have its needs addressed. The generator representative stated that this rule was a special rule and that the Panel should seriously consider whether this rule should be posted now or whether it should direct the IESO to reengage APPrO as well as any other market participants, in the event they are interested.

The transmitter representative stated that the Panel had been led to believe that discussions between the IESO and APPrO would lead to a negotiated solution. He stated that the Panel had only learned of the APPrO proposal on Friday (March 21, 2014) and that the Panel was now being put in an awkward position by being asked to vote on the appropriateness of the IESO's proposed rule. He asked whether it was possible to post both rules for comment. The Chair responded that posting both rules for comment would be confusing and that there was a need to post a baseline document for stakeholder comment.

A distributor representative agreed that posting both rules for comment would be confusing, but she asked that in posting the IESO rule for comment, whether the request for comments could also reference APPrO's submission. She stated it would be interesting to hear other stakeholders views as to which side they are on (IESO's or APPrO's). The Chair responded that the IESO could reference APPrO's document in the weekly bulletin, encouraging stakeholders to review the posted rules in addition to the APPrO document when providing written comments.

The IESO representative asked what specifically would constitute APPrO's submission. The Chair responded that APPrO could submit its alternative language and any other materials that it wished to submit. The generator representative stated that the Panel would be sending the wrong message by voting to post the IESO rule for comment and that those inclined toward the APPrO proposed rule would be better served if the Panel voted not to post the rule for comment and instead directed the IESO to engage in further discussions with APPrO.

To conclude the Chair asked for the Panel's vote to post amendment proposals, MR-00407-R00 & R01, for stakeholder comment, including a reference to APPrO's document. Nine Panel members voted in favour and four Panel members voted against posting MR-00407-R00 & R01 for stakeholder comment. The financial services representative, the industrial consumer representative and the two generator representatives voted against posting the market rule amendments for comment.

Agenda Item 5: Technical Panel Review & Agenda Item 6: Other Business

Due to time constraints, agenda items 5 and 6 will be continued at a future Panel meeting.

Next Panel meeting: Monday, May 5, 2014

May 5, 2014

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Technical Panel

Committee Chair: Mark Wilson

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Action Items

Action Item Summary				
#	Date	Action	Status	Comments
AI 274-2	03-Dec-13	The IESO will provide an update of any ongoing discussions related to the governance concerns that surround the General Conduct Rule.	Open	
AI 274-3	03-Dec-13	The IESO will inform the Panel of any determination made by the IESO regarding the overlap between the General Conduct Rule and the definition of Good Utility Practice as it relates to the IESO-controlled grid.	Closed	
AI-277-1	03-Mar-25	The IESO will inform the Panel if observers will be allowed to attend the Demand Response working group sessions.	Open	The IESO will hold public sessions for all interested stakeholders and the DR working group will accept observers upon request.