



Market Rule Amendment Written Submission

This form is used to provide comment on a *market rule* amendment under consideration by the *IESO*. Please complete all four sections of this form and submit the completed form by email to the following:

Email Address: Rule.Amendments@ieso.ca
Attention: Market Rules Group
Subject: Market Rule Written Submission

All information submitted in this process will be used by the *IESO* solely in support of its obligations under the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998*, the *Market Rules* and associated policies, standards and procedures and its licence. All submitted information will be assigned the *confidentiality classification* of “Public” upon receipt. You should be aware that the *IESO* intends to *publish* this written submission.

Terms and acronyms used in this Form that are italicized have the meanings ascribed thereto in Chapter 11 of the *Market Rules*.

PART 1 – SUBMITTER’S INFORMATION

Please enter your organization and contact information in full.
Name: Ontario Power Generation – David Peterson
(if applicable) *Market Participant / Metering Service Provider* No.¹: _____ *Market Participant Class:* Generator
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PART 2 – MARKET RULE AMENDMENT REFERENCE

Type of Rule Amendment Being Commented on (please indicate with x):
 Amendment Submission Proposed Rule Amendment Recommended Rule Amendment
MR Number: MR-00407-R00 and MR-00407-R01
This *Market Rule* number is located on the “Current Market Rule Amendment” web page.
Date Relevant Amendment Submission, Proposed or Recommended Rule Amendment Posted for Comment: March 25, 2014

¹ This number is a maximum of 12 characters and does not include any spaces or underscore.

PART 3 – COMMENTS ON RULE AMENDMENT

Provide your comments.

OPG provides the following comments on the proposed market rule amendments MR-00407-R00 & R01: General Conduct Rule (“GCR”).

OPG’s comments are grouped into three categories:

1. the enforcement process and governance for the GCR described in Chapter 3, Section 6.2B of the *market rules*
2. the IESO proposed GCR and the prohibitions related to participant conduct in defining a GCR in Chapter 1, Section 10A of the *market rules*
3. the limitations period set forth in Chapter 3, Sections 6.2.B19 and 6.2B.20 of the *market rules*

With respect to the language of the GCR, OPG supports and adopts APPrO’s recommended language and its submissions on the remaining issues where the GCR is unbalanced and fundamentally flawed. OPG further emphasizes the need for several aspects of APPrO’s proposed language as discussed in section 2 below.

1. Governance (Chapter 3, Section 6.2B Alleged Breaches of Section 10A of Chapter 1)

OPG acknowledges the changes made to the proposed enforcement process relating to the GCR compared to what the IESO had initially proposed. However, certain changes are still necessary to achieve clarity and efficiency in the enforcement process.

OPG’s recommended changes are as follows:

A. Determination of Sanction by OEB

As written, the proposed governance rule requires the OEB to make a determination on whether the market participant is in breach of the GCR and to set out findings of fact relevant to the imposition of one or more orders by the IESO. The matter is then referred back to the IESO to determine any applicable sanctions. If sanctions are applicable, the market participant then has a right to appeal the determination of sanctions to the OEB.

The latter two stages of this process create unnecessary duplication and expense. The process can be improved and streamlined if the OEB is also required to decide the sanction associated with any findings of breach. The OEB will have all the relevant facts before it and the required expertise to determine the sanction. Given that as a matter of natural justice and due process the parties should be able to make submissions on sanctions relative to any finding of breach, the entire exercise will be more efficient if the OEB remains seized of the matter.

In aid of the foregoing, OPG presumes that the hearing before the OEB will be governed by the OEB’s Rules of Practice and that the OEB’s Settlement Conference Guidelines will apply, as appropriate, to the issues of both, breach and sanction. If this needs to be specified in the rule change then it should be drafted accordingly. Otherwise, OPG recommends only adding a third part to section 6.2B.11 that specifies the OEB’s obligation to also include a decision on applicable sanctions.

B. Burden of Proof

PART 3 – COMMENTS ON RULE AMENDMENT

As stated in the IESO’s description of the proposed GCR enforcement process, the IESO carries the burden of proof in prosecuting an alleged breach of the GCR and any proposed sanctions. The proposed rule in section 6.2B.10 should confirm this by the addition of the underlined sentence as follows:

“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*. For the purpose of section 6.2B.7.2, the *IESO* shall be deemed to be the *applicant* and the *market participant* shall be deemed to be the *respondent*.”

C. Deemed Abandonment of Claim

Section 6.2B.10 should also specify that if the IESO fails to bring the application within the established 20 business day timeframe, the IESO shall be deemed to have abandoned the claim and the matter is closed without finding of breach. This proposal is consistent with sections 6.2B.4 and 6.2B.8, which outline the manner in which a case will be treated if a participant fails to act within a prescribed timeframe.

2. Language of General Conduct Rule (Chapter 1, Section 10A)

As OPG has stated in the stakeholdering process for SE-112, OPG supports APPrO’s proposed GCR language and rejects the IESO GCR language for the reasons that APPrO has given in its submissions. OPG has worked with APPrO in respect of the APPrO proposed language. OPG emphasizes the following in respect of the superior benefits that flow from APPrO’s proposed rule:

A. Clarity in Language

OPG supports a GCR that provides maximum clarity on the application of the GCR. APPrO’s proposed language is more direct and prescriptive than the one proposed by the IESO. The APPrO rule provides a less ambiguous list of prohibitions in section 10A.1, affording all parties a clearer understanding of what conduct is not allowed. To the contrary, the IESO rule language is overly vague in describing the subset of market participant activities that could violate the GCR. If adopted as proposed by the IESO, the ambiguity in the language would substantially hinder a market participant’s ability to proactively evaluate its intended conduct. This in turn may negatively impact the competitive nature of its behaviour in the marketplace. Overly conservative market behaviour resulting from risk mitigating measures in response to an unclear rule would ultimately have negative effects on the market. This would result in less efficient outcomes and higher total costs.

Specifically, OPG is concerned with the IESO’s use of the phrase “*exploits the IESO-administered markets*” in section 10A.1.1. The use of this overly broad phrase in defining prohibitive conduct creates undue ambiguity and uncertainty for market participants. An unreasonably wide array of legitimate market activities can be construed, for example, to attempt to “*exploit the IESO-administered markets*”. This phrase captures virtually all facets of the operation of the market, which at times are not transparent to market participants. OPG emphasizes its support for APPrO’s proposal to remove the reference to “*IESO-administered markets*” and throughout section 10A.1, focus conduct prohibitions on the specific and definable set of “*market rules*”, “*market price*”, “*settlement amount*” or “*dispatch outcome*”.

PART 3 – COMMENTS ON RULE AMENDMENT**B. Exception to the GCR – Implementing Policy**

Section 10A.3 of the GCR proposed by the IESO excludes activities pertaining to “policy” from being investigated under the GCR. This term should be intended to capture only “government policy” and should say so specifically. Besides the IESO, other market participants may be in positions where they are required to implement government policy. These market participants should be afforded the same treatment under the GCR as the IESO. Therefore, OPG supports and emphasizes APPrO’s proposal to include in section 10A.2 “*the purpose of implementing government policy*” as an exemption to the prohibitive activities set out in section 10A.1.

3. Limitation Period

IESO’s proposed rule defines a limitations period related to the issuance of a “*notice of intention*” as six years after the breach was discovered by the IESO, with the meaning of the term “discovered” prescribed in section 5(1) of the Limitations Act, 2002.

The IESO proposed limitation period establishes a timeline that could exceed any reasonable retention period for historical records related to all aspects of market participants’ conduct. With the passage of time, OPG sees a significant degradation in market participants’ ability to establish and present a complete set of facts in its defence of an alleged GCR breach.

As a result, OPG emphasizes the reasonableness of APPrO’s proposal of a limitation period of 2 years after the day of discovery of any alleged breach, along with an overall five year fixed time limit for prosecuting an alleged breach of the GCR. With the IESO’s sophisticated technical and market surveillance capability, along with its extensive powers of investigation and audit under the market rules, the APPrO limitation periods strike a balance between the IESO’s need to investigate and prosecute, and market participants’ needs for eventual regulatory certainty and reasonable information retention processes.

OPG appreciates the opportunity to provide these further submissions on the GCR and applicable enforcement process.

Regards,

David Peterson
Senior Manager, Market Affairs

PART 4 – EXTERNAL CONSULTATION MEETING

If you believe that a special meeting of stakeholders would be necessary/desirable to discuss the issues raised by the rule amendment, please complete the following information:

External Stakeholdering meeting necessary/desirable (please indicate with x):

Reason(s) why you believe a meeting is necessary/desirable: