

Feedback Form

IESO Market Rule Amendments, Chapter 3

Feedback Provided by:

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To promote transparency, feedback submitted will be posted on the [Market Rule Amendments, Chapter 3 engagement webpage](#) unless otherwise requested by the sender.

Following the November 21, 2023, engagement webinar, the Independent Electricity System Operator (IESO) is seeking feedback from stakeholders on items discussed. The webinar presentation and recording can be accessed from the [engagement web page](#).

Please submit feedback to engagement@ieso.ca by December 5, 2023. If you wish to provide confidential feedback, please submit as a separate document, marked "Confidential". Otherwise, to promote transparency, feedback that is not marked "Confidential" will be posted on the engagement webpage.

Amendments

Item	Feedback
Do you have any feedback on the market rule amendments presented and posted for stakeholder review?	Please see below.

General Comments/Feedback:

The IESO is proposing changes to the Chapter 3 Market Rules in the following areas:

1. Minor clean-up (language/formatting/grammar)
2. Changes to the dispute resolution process
3. Changes to the confidentiality provision to support enforcement actions
4. Clarity around the IESO's broad right to gather information for its enforcement actions
5. Changes to the financial penalty provisions, including and increase to the lower penalties tables
6. Changes to role of the IESO Board of Directors in determining the applicable penalty table
7. Consequential amendments to Market Manual 2.6

Hydro One has no comments for items 1. and 7. For the remaining items, Hydro One has provided comments below.

2. Changes to the dispute resolution process¹

Further clarification is necessary to understand how the proposed changes fit into the procedural flows in the Market Manual Part 2.6, Sections 3.1 and 3.2.

Section 1.3.10 Public Reporting of Breaches of the Market Manual², states:

- i. once a market participant has been found to be in breach of the market rules [i.e., when a Notice of Non-Compliance (NNC) has been issued against a market participant], the name of the offending party and other information relating to the breach may be published by the IESO.
- ii. in cases where a market participant had been alleged to be in breach of the market rules but subsequently not found to be in breach by MACD, no public reporting of the alleged breach shall occur.

The proposed change to the Market Rules, s.2.5.1A.4AA, for the time the market participant (applicant) must serve a written notice of dispute, states:

¹ Market Rules Chapter 3: Administration, Supervision, Enforcement, red-line copy provided by the IESO for this engagement.

² Market Manual 2: Market Administration, Part 2.6: Treatment of Compliance Issues, Issue 11, September 11, 2023

- iii. in the case of a dispute involving a determination, an order or both issues by the IESO pursuant to section 6.2., within 20 business days of the date of receipt of the determination or order or both.

Hydro One seeks to further understand how the timing of the IESO's publication of the name of a market participant under 2, i) above correlates with the proposed change to the Market Rules in 2, iii) above.

For example, if a market participant is in receipt of a NNC and serves a written notice of dispute to the IESO within 20 business days, does the IESO publish the name of the market participant immediately upon issuing the NNC or does the IESO wait for the 20 business days to expire?

Once in dispute resolution, does the IESO publish the name of the market participant or is the publication of the market participant's name subject to the completion of the dispute resolution process?

How is the proposed change reflected in the procedural steps outlined in sections 3.1 and 3.2 of the Market Manual 2 and how is "a determination" defined for the purposes of the procedural steps in these sections?

3. Changes to the confidentiality provision to support enforcement actions

The proposed change to allow disclosure of confidential information is overly broad and it is unclear why the existing extensive provisions are insufficient for the enforcement of the market rules. The process for seeking permission from a market participant to disclose and to protect its confidential information needs to be documented and clarified.

The proposed changes to s.5.3 Exceptions to the confidentiality provision are to allow for:

- i. the disclosure of confidential information by the IESO for the purposes of enforcing the market rules.

Sections 5.3.1.1 to 5.3.1.13 of the current version of Market Rules on Exceptions to Accessibility and Confidentiality of Information, identify several provisions under which the disclosure of confidentiality information is permitted.

Hydro One seeks to further understand why the current provisions in s.5.3.1.1 to s.5.3.1.13 for disclosure are insufficient for the enforcement of the Market Rules and what permissions and agreements the IESO plans to seek and enter into prior to disclosing confidential information.

It is unclear what opportunities, if any, a market participant will have under the proposed change to challenge the disclosure of its confidential information.

Furthermore, the proposed language under s.5.3.1.5B seems overly broad, to the extent that it has the potential to render meaningless any of the existing provisions in s.5.3, and the provisions in s.5.3.1.1 to s.5.3.1.13 of the Market Rules.

4. Clarity around the IESO's broad right to gather information for its enforcement actions

Hydro One encourages the IESO to reconsider the proposed change to allow for the free flow of information between the IESO and MACD and rather to strengthen and ensure appropriate controls are in-place to maintain the ring-fenced or arm's length operation of MACD.

The IESO is proposing changes to s.1.3.1 Ring Fencing of Compliance Enforcement within the IESO³ to update the language for the purposes of allowing the IESO to have broader powers of information gathering and to remove the ring-fencing of information that currently exists between the IESO and MACD.

The current version states:

"[MACD] enforces compliance against both market participants and the IESO, operating in a ring-fenced structure within the IESO with **its files and investigative information accessible only to MACD staff members** [emphasis added]."

The proposed change states:

"[MACD] enforces compliance against both market participants and the IESO, operating independently within the IESO, reporting directly to the Board of Directors."

The Memorandum of Understanding (MOU) between the IESO, NERC, and NPCC⁴ sets forth the mutual understandings of each of the signatories in relation to NERC's status as the Electric Reliability Organization (ERO) in Ontario and acknowledges the status of each of the parties to the MOU in Ontario, including the role and independence of MACD.

The MOU states:

"Responsibility for enforcing compliance is carried out by the Market Assessment and Compliance Division ("MACD") **that operates at arm's length from the other IESO business units and independently exercises the discretion** [emphasis added] accorded the IESO in the market rules to investigate and sanction both market and reliability based breaches."

And:

"Each of MACD, NERC, and NPCC in exercising its respective authority regarding compliance, may investigate alleged violations in Ontario of reliability standards or regional reliability criteria as appropriate.

In order to promote effective and efficient enforcement of the reliability standards and the regional reliability criteria, the signatories will collaborate on, and coordinate their **investigations while preserving each signatory's independent determination of the outcome of an investigation** [emphasis added]."

³ Market Manual 2:Market Administration, Part 2.6: Treatment of Compliance Issues, Issue 11, September 11, 2023

⁴ Amended and Restated Memorandum of Understanding Between the Independent Electricity System Operator and the North American Electric Reliability Corporation and The Northeast Power Coordinating Council Inc., November 29, 2006

Hydro One strongly believes that the proposed change to allow for the free flow of investigative files and information between the IESO and MACD is inappropriate. The proposed changes effectively merge the two entities and eliminates the ability of MACD to operate independently of the IESO as outlined in the MOU.

The need for this change is also unclear to Hydro One. MACD has operated successfully as the Compliance Enforcement Authority (CEA) in Ontario under the current structure, while maintaining independence from the IESO and having a positive impact on NERC and NPCC compliance and enforcement in Ontario. Notwithstanding the position that this proposed change is in Hydro One’s opinion, inappropriate, it is unclear what benefits will follow from effectively merging the IESO and MACD and furthermore, how MACD will retain independence under these proposed changes when it engages in compliance audits with the IESO. The purpose of “ring-fenced structure” or otherwise, an information barrier, is to protect the functions and discretion provided to MACD to ensure that there is transparency in the enforcement of procedures and practices as against market participants, and also, the IESO. The removal of this information barrier, removes or seriously diminishes the perception of procedural fairness, the confidence in the transparency of the enforcement arm, and the concepts of neutrality and trust in the investigation and enforcement of compliance issues.

5. Changes to the financial penalty provisions, including an increase to the lower penalties tables

Benchmarking and econometric studies should be undertaken to identify the appropriate ranges of penalties and to ensure that the fees are commensurate with the breach, as well as to assess if higher fees are a more effective deterrent and if they encourage and improve appropriate compliance behaviours.

The IESO is proposing the following changes to the Levels of Non-Compliance & Penalty Ranges for levels L1 to L4, (Table 1):

Table 1 – Current and Proposed Changes to the Range of Sanctions under s.6.6.6

Level of non-compliance	Range of Sanctions		
	Current	Proposed	Var. (%) at max.
L1	Non-compliance letter or up to \$2,000	Up to \$25,000	1150%
L2	Non-compliance letter or up to \$4,000	Up to \$50,000	1150%
L3	Non-compliance letter or up to \$6,000	Up to \$75,000	1150%
L4	\$1,000 to \$10,000	\$1,000 to \$100,000	900%

From the IESO Engagement Day session on November 21, 2023, Hydro One understands that the IESO is seeking to implement a regime which is unique to Ontario, that the IESO believe the current levels are not effective deterrents, and that the IESO considers the proposed levels to be appropriate for the Ontario market.

Hydro One seeks further understanding on how the IESO arrived at the proposed maximum values for each of the levels of L1 to L4, including what benchmarking or econometric studies were undertaken to support the proposed increases, as well as what supporting information it has that the existing fees are not effective deterrents.

The issue of deterrence seems to be one of the main drivers of the proposed changes. How will the IESO consider extenuating circumstances which prevent or delay a market participant from implementing corrective actions and what impact or effect are these higher sanctions expected to have on deterrence where a market participant is demonstrating and exercising due diligence to avoid or correct a potential breach?

The proposed ranges are much wider than the current ranges. What variables or processes will be used in fixing the appropriate amount of the financial penalty across these much-wider ranges? Is the IESO considering additional changes to s.6.6 Non-Compliance Letters and Financial Penalties⁵ to better define how the proposed penalties will be fixed across these new ranges?

Are the proposed changes applicable on a go-forward basis for any non-compliance events that are discovered or self-reported once the changes come into effect? If so, what range of sanctions will be applicable to existing open self-reports up to the effective date of the proposed changes?

Hydro One understands that the Expedited Resolution Program (ERP) is currently being piloted. How do these proposed ranges factor into the ERP, if at all? If they are considered in the ERP, how is the appropriate amount of a sanction identified across these wide ranges? Hydro One would like to better understand the ERP, the roadmap for its implementation, and the how the various proposed changes interact with the ERP.

Hydro One would like to thank the IESO for the opportunity to comment on the proposed Chapter 3 Market Amendments. We look forward to continuing to work with the IESO and MACD to improve the overall regulatory dispute resolution process, adding greater clarity to the rules and processes to support and drive the appropriate compliance behaviours across market participants, and for the ultimate benefit of the market as a whole.

⁵ Market Rules Chapter 3: Administration, Supervision, Enforcement, May 1, 2023