Options to Address Uninsured Liability Risk

Summary of Key Information Posted

This summary is intended to provide stakeholders the opportunity to review reoccurring questions or requests for clarifications the IESO received over the course of the engagement. As this is not a summary of all the materials posted, please see the Options to Address Uninsured Liability Risk engagement web page.

1. When did the IESO become aware of its inability to procure insurance and for what period, if any, has it been uninsured?

The IESO E&O insurance policy expired September 30, 2020 and the IESO was attempting to procure replacement insurance in and around that time. The IESO has therefore been uninsured for new errors and omissions since October 1, 2020. Once it became clear insurance would not be available, the IESO assessed its options and determined the best course of action was to seek a market rule amendment and therefore started the stakeholder engagement process at the December engagement days and identified this upcoming engagement launch during the November Stakeholder Advisory Committee meeting and November Technical Panel meeting.

2. Is the IESO unable to procure E&O insurance because it no longer exists or because it is too expensive?

Errors and omissions insurance for negligence was not offered by any insurers to the IESO at any price and is therefore not available. Only insurance for gross negligence was offered, which was not sufficient to match the IESO's existing potential liability for negligence under the market rules.

3. Which of the two proposed options did stakeholders prefer?

Option 1 was to change the IESO indemnity and Option 2 was to develop a compensation mechanism. The IESO received support from one stakeholder group for Option 1 which is consistent with the IESO preffered option. Another stakeholder group suggested making the indemnity reciprocal similar to what was thought to be the case for liability providions in US ISOs. The IESO does not believe this is appropriate since the IESO is in a different position as a non-profit public entity that provides an essential public service to Ontario. The IESO also conducted a review of the liability provisions of US ISOs and found that they generally did not have reciprocal liability provisions.

4. Are there any existing claims against the IESO which could be impacted by the proposed market rule amendments for Option 1?

The proposed change of the IESO indemnity from negligence to gross negligence would not impact existing claims.

5. If neither of the proposed options are pursued, how would the losses be recovered? How would the losses be recovered in this current gap period of insurance coverage?

In either of these situations, the IESO would be required to recover uninsured losses through the IESO administrative fee. The IESO would also incur costs to borrow funds to cover these losses until they could be recovered through the IESO administrative fee. The costs to borrow these funds would come from ratepayers thereby increasing ratepayer costs. This would be the least efficient approach with added regulatory burden.

6. Were any claims made by the IESO under its previous E&O policy?

Claims under IESO's insurance policies are confidential and we are not aware of past claims under the E&O policy resulting in a payment of damages.

7. How do non-FERC markets address liability arising from negligence.

The IESO decided to focus on US ISO's as being most directly analogous to the IESO (see the posted background document). The IESO also provided additional general details in the IESO Response to Stakeholder Feedback document for the Alberta Electricity System Operator, which has a regime similar to the IESO, the England National Grid ESO that limits its liability to physical damage with a liability cap of 5 million pounds, and Australia, that is liable for negligence but excludes all liability for computer software used to operate the electricity market.

8. Is the IESO non-compliant with the market rules for not having insurance?

It is not a requirement of the market rules and therefore the IESO is not non-compliant.

9. Is the reason for the unavailability of insurance wholly tied to COVID-19 and changing insurance market conditions and that there are no other reasons stakeholders should be aware of?

The hard insurance market was an important factor for insurers no longer providing E&O insurance (which is a specialized product that only a limited number of insurance companies provide) for IESO negligence. We understand the insurance market is hard due to a number of global events over the past few years that have required insurers to cover substantial losses. The need for insurers to cover these losses causes the insurance industry to broadly pull various levers to offset the losses, such as increasing insurance premiums, increasing deductibles and reducing the availability of some types of insurance products offered. Insurers would have assessed insurance for IESO errors or omissions through this new global risk lens which would have included an assessment of the risks related to the nature of the IESO's operations (such as operating a large complex electricity system and administering a large electricity market) and would have looked at the IESO claims history and any disclosures of existing or potential claims in assessing whether to offer insurance to the IESO. A combination of all of these factors likely resulted in insurers no longer offering E&O insurance for negligence to the IESO.