

## Market Rule Amendment Proposal Form

### Part 1 - Market Rule Information

Identification No.:	MR-00448-R00
Subject:	Uninsured Liability Risk
Title:	Liability of IESO
Nature of Proposal:	<input checked="" type="checkbox"/> Alteration <input type="checkbox"/> Deletion <input type="checkbox"/> Addition
Chapter:	Chapter 1
Appendix:	N/A
Sections:	13
Sub-sections proposed for amending:	13.1

### Part 2 - Proposal History

Version	Reason for Issuing	Version Date
V1	Draft for Technical Panel Review and Comment	February 9, 2021
V2	Publish for Stakeholder Review and Comment	February 16, 2021
V3	Published for Technical Panel review and vote	March 16, 2021

Approved Amendment Publication Date:

Approved Amendment Effective Date:

## Part 3 - Explanation for Proposed Amendment

Provide a brief description of the following:

- The reason for the proposed amendment and the impact on the *IESO-administered markets* if the amendment is not made.
- Alternative solutions considered.
- The proposed amendment, how the amendment addresses the above reason and impact of the proposed amendment on the *IESO-administered markets*.

### Summary

The IESO is proposing to amend the market rules to limit the IESO to losses caused by gross negligence, subject to the current limitations on recoverable damages.

### Background

Under the market rules, the IESO may be liable for negligence, with some limitations, and as such requires a specialized form of errors and omissions (E&O) insurance. This is a specialized insurance product, which covers claims alleging negligent errors and omissions, but that is tailored for the unique risks related to the IESO's operations.

As a non-profit entity, absent insurance or mechanisms under the market rules, the IESO has limited sources of funding to address the risk of financial liability under the market rules. Market rules Section 13.1 of Chapter 1 contains an IESO indemnity for losses caused by IESO willful misconduct and negligence.

Until recently, the IESO obtained errors and omissions insurance to match this liability risk. Due to factors such as the hardened insurance market in 2020, the IESO was unable to renew or obtain alternate errors and omissions insurance that matches the IESO's liability risk under the market rules.

Earlier in the year the IESO initiated work with Marsh Canada to conduct an exhaustive search of Canadian and non-Canadian insurers for E&O insurance. However, the IESO was unable to renew or obtain alternate E&O insurance that matches the IESO's previous level of coverage. After a rigorous search, a limited number of insurers offered insurance limited to claims for gross negligence.

A scan of other Independent System Operators (ISOs), identified that a majority of ISOs in the United States limit their liability to gross negligence. Other international system operators limit their liability even further.

### Discussion

In order to address this issue, the IESO is proposing to amend Chapter 1, Section 13.1 of the market rules to limit the IESO to losses caused by gross negligence, subject to the current limitations on recoverable damages.

## Part 4 - Proposed Amendment

### Chapter 1

## 13. Liability and Indemnification

### 13.1 Liability of IESO

- 13.1.1 Except as required by section 13.1.2 or as otherwise provided in these *market rules*, the *IESO* shall not be liable for any claims, losses, costs, liabilities, obligations, actions, judgements, suits, expenses, disbursements or damages of a *market participant* whatsoever, howsoever arising and whether as claims in contract, claims in tort (including but not limited to negligence) or otherwise, arising out of any act or omission of the *IESO* in the exercise or performance or the intended exercise or performance of any power or obligation under these *market rules* or under any policy, guideline or other document referred to in section 7.7 or any *market manual*.
- 13.1.2 Subject to section 13.1.4, the *IESO* shall indemnify and hold harmless a *market participant* and the *market participant's* directors, officers and employees from any and all claims, losses, liabilities, obligations, actions, judgements, suits, costs, expenses, disbursements and damages incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, the *market participant* or its directors, officers or employees to the extent that such claims, losses, liabilities, actions, judgements, suits, costs, expenses, disbursements or damages arise out of any willful misconduct by or any act or omission that constitutes gross negligence ~~or any negligent act or omission~~ of the *IESO* in the exercise or performance or the intended exercise or performance of any power or obligation under these *market rules* or under any policy, guideline or other document referred to in section 7.7 or any *market manual*.
- 13.1.3 For the purposes of section 13.1.2, an act or omission of the *IESO* effected in compliance with these *market rules* or with the provisions of any policy, guideline or other document referred to in section 7.7 or any *market manual* shall be deemed not to constitute willful misconduct or ~~gross negligence~~ ~~negligent act or omission~~.
- 13.1.4 Except as otherwise provided in these *market rules* other than in this section 13, in no event shall the *IESO* be liable to indemnify and hold harmless a *market participant* or the *market participant's* directors, officers or employees from or in respect of:
- 13.1.4.1 any indirect or consequential loss or incidental or special damages including, but not limited to, punitive damages; or
- 13.1.4.2 any loss of profit, loss of contract, loss of opportunity or loss of goodwill,
- and no *market participant* shall assert or attempt to assert against the *IESO* any claim in respect of any of the losses or damages referred to in sections 13.1.4.1 and 13.1.4.2.

13.1.5 Each *market participant* shall have a duty to mitigate damages, losses, liabilities, expenses or costs relating to any claims for indemnification that may be made by the *market participant* pursuant to section 13.1.2.