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## Market Rule Amendment Proposal

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### PART 1 – MARKET RULE INFORMATION

Identification No.:	MR-00337-R00		
Subject:	Market Administration		
Title:	Improving Dispute Resolution Process Efficiency and Flexibility		
Nature of Proposal:	<input checked="" type="checkbox"/> Alteration	<input type="checkbox"/> Deletion	<input type="checkbox"/> Addition
Chapter:	3	Appendix:	
Sections:	2		
Sub-sections proposed for amending:	2.1, 2.4, 2.5, 2.9		

### PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
1.0	Draft for Technical Panel Review	October 31, 2007
2.0	Published for Stakeholder Review and Comment	November 6, 2007
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

This amendment proposes changes to the dispute resolution market rules (Chapter 3, section 2) to encourage and facilitate resolution of disputes through good faith negotiation and improve administrative efficiency and flexibility of the process. The need for these proposed changes was identified through experience gained in resolving disputes using the existing provisions.

The substantive changes include:

- Requiring the applicant to serve a notice of dispute prior to the applicant and respondent engaging in good faith negotiations;
- Requiring good faith negotiations in all disputes;
- Allowing the parties to conduct good faith negotiations in any manner they so agree;
- Allowing the parties to dispense with, supplement or vary the application of the dispute resolution provisions on mutual consent; and
- Granting the secretary of the dispute resolution panel the explicit authority to dispense with, supplement or vary the application of all or any part of the dispute resolution process for a specific dispute once a notice of dispute has been filed with the secretary. This authority would lapse once a mediator or arbitrator is appointed in respect of that dispute.

#### Background

The market rule dispute resolution provisions apply to disputes between a market participant and the IESO and may also be used in disputes between market participants where agreed to by the parties. The existing provisions prescribe a sequence of good faith negotiations, exchange of a notice of dispute, response and any cross claim, mediation, and arbitration.

Since market opening, there have been 25 notices of disputes filed, all regarding disputes between the IESO and market participants. To the knowledge of the IESO, the dispute resolution provisions have not been used for any disputes between market participants. None of the disputes involving the IESO have proceeded to mediation or arbitration.

While the existing process has proven to be successful in resolving disputes without the need for mediation or arbitration, experience has demonstrated that the process should be modified to further encourage and facilitate settlement through good faith negotiation and to improve administrative efficiency and flexibility.

## PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

### Discussion

The IESO has identified the following areas in which improvements can be made.

#### *1. Improving the Effectiveness of Good Faith Negotiations*

##### *a) Timing*

Under the existing market rules (section 2.4.1), good faith negotiations must take place before the applicant files a notice of dispute. In the IESO's experience, many applicants have not fully developed their position before the notice of dispute is prepared and a respondent may not understand the true nature of a dispute without receiving a notice of dispute outlining the applicant's case. In addition, the rigid timelines for the exchange of documents once a notice of dispute has been served and filed can effectively preclude the parties from engaging in negotiations once the proceeding has commenced.

It is proposed to delete sections 2.4.1 and add new section 2.5.3A that would require parties to engage in good faith negotiations after a notice of dispute has been served. Consistent with section 2.4.1, new section 2.5.3A would require each person who is a party to a dispute to designate an individual with the authority to negotiate the matter in dispute.

New section 2.5.3A would also require parties to participate in good faith negotiations for a minimum of 30 days. Requiring a minimum time for negotiations serves as a "cooling off" period and provides the parties with ample time to engage in negotiation. The intent is to encourage the parties to make a good faith attempt to resolve the dispute through negotiations before expending the money and resources needed for mediation or arbitration.

The effectiveness of negotiations can also be improved by clarifying that communications made in the course of negotiations are confidential and not subject to voluntary disclosure in any subsequent proceeding – see proposed new section 2.5.3B. This means that parties are not allowed to disclose any communications unless ordered to do so by a court or tribunal, etc.

Where applicable, the summaries of the notice of dispute, the response, and response to a cross claim would only be published once a mediator or an arbitrator was appointed. This would eliminate any concerns about public disclosure during the period of good faith negotiation thereby enabling parties to negotiate the matter in any way they see fit.

##### *b) Expanding the Requirement*

Currently, section 2.4.3 exempts certain types of disputes from the requirement to negotiate in good faith. Since market opening, approximately 80% of the disputes filed with the IESO have fallen into one of the categories listed in section 2.4.3. To facilitate good faith negotiations, a practice has developed whereby the applicant serves the IESO with a notice of dispute and files such notice with the secretary of the dispute resolution panel. With the consent of the parties, the secretary delays the appointment of a mediator or arbitrator so as to extend the timelines for the parties to engage in good faith negotiations. Using this practice, all of the disputes filed have been settled without resorting to mediation or arbitration.

Therefore, it is proposed to delete section 2.4.3 so that good faith negotiations are required in all disputes.

Section 2.6.1A currently exempts certain types of disputes from the requirement to conduct mediation before proceeding to arbitration. It is proposed to amend section 2.6.1A to clarify that the parties involved in such disputes may engage in mediation if they so agree. This amendment is consistent with

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the overall goal of facilitating resolution of all types of disputes through negotiation.

### *2. Improving Administrative Efficiency*

To facilitate good faith negotiations, a practice has developed whereby the applicant serves the IESO with a notice of dispute and files such notice with the secretary of the dispute resolution panel. With the consent of the parties, the secretary delays the appointment of a mediator or arbitrator so as to extend the timelines for the parties to engage in good faith negotiations.

As a result of this practice, the secretary is currently involved prematurely because under section 2.5.1A, the notice of dispute must be filed with the secretary to preserve the limitation periods in certain cases. A limitation period sets the last date on which an applicant can commence a proceeding that relates to a particular dispute. It is proposed to amend section 2.5.1A such that the limitation periods are fulfilled by the service of the notice of dispute on the respondent. The applicant would only be required to file the notice of dispute with the secretary in the event that a dispute is not settled through good faith negotiations – see 2.5.1 and new section 2.5.3C. This change would also have the effect of eliminating the need for a notice of termination of negotiation so it is proposed to delete section 2.4.2.

The following amendments would be required to allow good faith negotiations to take place after the filing of a notice of dispute:

- Move sections 2.4.1A.1 and 2.4.1A.2 to new sections 2.5.1A.4B and 2.5.1A.4C, respectively;
- Incorporate section 2.4.1A3 into section 2.5.1A.5; and
- Delete section 2.5.1B since it is inconsistent with the proposed changes to section 2.5.1A.

### *3. Improving Flexibility*

To provide parties with greater flexibility in resolving their disputes, the following amendments are proposed:

- Allow the parties to conduct good faith negotiations in any manner they so agree – see section 2.5.3B, and
- Allow the parties to dispense with, supplement or vary certain aspects of the dispute resolution provisions on mutual consent – see section 2.1.3.

Under the existing market rules, only the mediator or arbitrator has the explicit and specific authority to dispense with, supplement or vary the application of the dispute resolution provisions. As stated above, a practice has evolved whereby the secretary, with the consent of the parties, delays the appointment of a mediator or arbitrator so as to extend the timelines for the parties to engage in good faith negotiations.

The explicit power to vary the dispute resolution process should be extended to the secretary of the dispute resolution panel to ensure that the secretary has the authority to make an extension order before a mediator or arbitrator is appointed. This authority will be limited to the process for a particular dispute and will lapse once a mediator or arbitrator is appointed in respect of that dispute – see section 2.1.3. When a mediator or arbitrator is appointed, they alone should have the authority to dispense

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with, supplement or vary the application of the dispute resolution provisions because it is their responsibility to manage the process once appointed.

4. Other Administrative Amendments

- Amend section 2.1.2 to specify that procedures for dispute resolution may also be contained in the applicable market manual.
- Amend section 2.1.4 and 2.5.4 to clarify that notice of disputes are “filed” with the secretary (rather than “served”). Legal documents are served on parties to the dispute but filed with the secretary as an administrative matter.
- Delete section 2.4.4 because it is no longer necessary as a result of the proposal to move section 2.4.1A to new section 2.5.1A.
- Amend section 2.5.7 by removing sections that reference section 2.4.1 since it is proposed that section 2.4.1 be deleted.
- Delete section 2.5.8 because proposed changes to section 2.1.3 would allow the secretary to vary the process with respect to a particular dispute, which could include rejecting the notice of dispute if special circumstances or the public interest require, or with the consent of the parties to the dispute.
- Amend section 2.9.2 to clarify that the any summaries of the notice of dispute, the response, and response to a crossclaim would only be published once an arbitrator is appointed.

**PART 4 – PROPOSED AMENDMENT**

## 2. Dispute Resolution

### 2.1 Interpretation and General Procedural Provisions

2.1.1 The provisions of this section 2 shall be liberally construed to secure the most expeditious, just and least expensive determination on its merits of every proceeding conducted hereunder.

2.1.2 Where no procedures are provided for in this section 2, or the applicable market manual, a mediator or an arbitrator may do whatever is reasonably necessary and permitted by law to enable the effective mediation or adjudication of any matter before the mediator or the arbitrator.

- 2.1.3 [The parties to a dispute may agree to dispense with, supplement or vary the application of all or any part of the provisions of sections 2.5.3A to 2.7.](#) A ~~mediator, or~~ an *arbitrator* [or the secretary](#) may, in the context of the resolution or the attempted resolution of a [specific](#) dispute pursuant to this section 2, dispense with, supplement or vary the application of all or any part of the provisions of sections ~~2.4~~[2.5.3A](#) to 2.7, including as to any prescribed time periods, if special circumstances or the public interest require, or with the consent of the parties to the dispute. [The secretary's authority to dispense with, supplement or vary the application of all or any part of the provisions of sections 2.5.3A to 2.7 lapses with respect to a particular dispute once a mediator or arbitrator is appointed in respect of that dispute.](#)
- 2.1.4 The *IESO* shall from time to time *publish* and notify *market participants* of the address ~~for service~~ of the *secretary* [for filing purposes](#).
- 2.1.5 Unless otherwise specified in this section 2 or otherwise directed by the *secretary*, a *mediator* or an *arbitrator*, only one copy of any document is required to be served or filed.
- 2.1.6 The following provisions of the *Arbitration Act, 1991* do not apply to any proceeding conducted under this section:
- 2.1.6.1 subsection 10(1)(b);
  - 2.1.6.2 subsection 13(1)2;
  - 2.1.6.3 subsection 23(1);
  - 2.1.6.4 section 24;
  - 2.1.6.5 subsections 25(3) to 25(5);
  - 2.1.6.6 sections 34, 37, 39, 45, 48 and 53;
  - 2.1.6.7 subsections 54(5) and 54(6); and
  - 2.1.6.8 sections 55 and 56, insofar as they may be applicable to the fees payable to an arbitrator and to the extent that such fees have been approved by the *Ontario Energy Board*.

## 2.2 Application

- 2.2.1 Subject to sections 2.2.3 and 3.8 and to section 8.8.1 of Chapter 2, the dispute resolution regime provided for in this section 2 shall apply to:
- 2.2.1.1 any dispute between the *IESO* and any *market participant* which arises under the *market rules*, including with respect to any alleged violation

or breach thereof, whether or not specifically identified in the *market rules* as a dispute to which this section 2 applies;

- 2.2.1.2 any denial by the *IESO* of authorization to any person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, out of or through the *IESO-controlled grid*, as to the denial of such authorization;
- 2.2.1.3 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IESO*;
- 2.2.1.4 a *reviewable decision*;
- 2.2.1.5 a request by a *market participant* for a *settlement statement re-calculation* pursuant to section 6.8.2A or section 6.8.9 of Chapter 9;
- 2.2.1.6 a dispute referred to in section 6.8.2B or section 6.8.9 of Chapter 9 with respect to which a *settlement statement re-calculation* is not requested;
- 2.2.1.7 any dispute between the *IESO*, on the one hand, and any *market participant, commissioning participant, connection applicant* or *metering service provider*, on the other hand, pursuant to the terms of any agreement or contract referred to in these *market rules* or in any policy, guideline or other document referred to in section 7.7 of Chapter 1 or any *market manual*, unless in respect of a given dispute the agreement or contract or the *licence* of a party to the dispute either provides for an alternative dispute resolution mechanism or provides that the dispute resolution regime provided in this section 2 shall not be applicable;
- 2.2.1.8 a dispute between *market participants* referred to in section 2.1A.6A of Chapter 9 in respect of the apportionment of *energy* associated with *connection station service* and with site specific losses; and
- 2.2.1.9 the *IESO's* determination under sections 3.2.5, 3.2.6, and 3.2.7 of Chapter 5 regarding the applicability of *reliability standards*.

2.2.2 The dispute resolution regime provided for in this section 2:

- 2.2.2.1 shall apply to a dispute between *market participants* referred to in section 2.1A.6A of Chapter 9 and section 8.4.3 of Chapter 5; and
- 2.2.2.2 may also apply to any other disputes between *market participants* where all of the *market participants* which are party to the dispute consent in writing to the application thereof.

- 2.2.2A A *market participant* that has, pursuant to section 2.2.2.2, consented to the application of the dispute resolution regime provided for in this section 2 may, prior to the date on which the *secretary* takes the action referred to in section 2.6.2.1 or 2.6.2.2, as the case may be, withdraw its consent in the event that a *respondent* to a crossclaim objects to the application of such regime.
- 2.2.3 The dispute resolution process provided for in this section 2 shall not apply to the following:
- 2.2.3.1 applications by any person to review a *market rule*, which applications shall be governed by section 4;
  - 2.2.3.2 disputes with respect to a proposal to *amend* or not to *amend* any provision of the *market rules*;
  - 2.2.3.3 disputes between the *IESO* and a *market participant* relating to the quantum of the fees chargeable by the *IESO* to the *market participant* to the extent that such fees have been approved by the *Ontario Energy Board*, unless the dispute relates to the manner of calculation of the fees payable by the *market participant* in any given case;
  - 2.2.3.4 [Intentionally left blank]
  - 2.2.3.5 disputes between the *IESO* and a *market participant* relating to a *suspension order* issued by the *IESO*, which shall be governed by sections 6.3.15 to 6.3.20, or to a *termination order* issued by the *IESO*, in respect of which an appeal may be filed with the *Ontario Energy Board* pursuant to section 36 of the *Electricity Act, 1998*;
  - 2.2.3.6 disputes between the *IESO* and a *market participant* to the extent that the *licence* of the *IESO* or of the relevant *market participant* provides for an alternative dispute resolution mechanism;
  - 2.2.3.7 disputes between the *IESO* and a *market participant* relating to the standards, criteria or requirements established by a *standards authority* to the extent that an agreement with the relevant *standards authority* provides for an alternative dispute resolution mechanism;
  - 2.2.3.8 an award of an *arbitrator* made pursuant to this section 2;
  - 2.2.3.9 any dispute with respect to which these *market rules*, other than this section 2, provide for an alternative dispute resolution mechanism;
  - 2.2.3.10 any dispute with respect to which these *market rules*, other than this section 2, provide for the non-application of the dispute resolution process provided for in this section 2; and
  - 2.2.3.11 a decision of a panel of the *IESO Board*:



- (a) granting or rejecting an *exemption application*;
- (b) respecting the terms and conditions of an *exemption*, other than with respect to the quantum of the costs payable by the *exemption applicant* or one or more *market participants* pursuant to Chapter 1, section 14.5;
- (c) removing or amending an *exemption* or the terms and conditions thereof, other than with respect to the quantum of the costs referred to in Chapter 1, section 14.5;
- (d) approving or denying the transfer of an *exemption*; or
- (e) respecting *confidential information* provided to the *IESO* as part of or in respect of an *exemption application* including, without limitation the disclosure thereof; and

2.2.3.12 when considering an *exemption application*, including for certainty a reconsideration or transfer of an *exemption*, a determination or decision by a panel of the *IESO Board* regarding the interpretation of the provisions of any *market rule* or any standard, policy or procedure established by the *IESO* pursuant to the *market rules*; and

2.2.3.13 any dispute relating to the *IESO* making estimates and assumptions and limiting participation in the *IESO-administered market* pursuant to the transitional arrangements of Chapter 3, section 3A.1.5.

2.2.4 Subject to such rights of appeal or review as may be prescribed by *applicable law*, an award of an *arbitrator* made pursuant to this section 2 is final and binding on the parties. Without limiting the generality of the foregoing, but subject to sections 2.2.5 and 3.8 and to section 8.8.1 of Chapter 2, where any dispute of a kind described in section 2.2.1 or 2.2.2 arises, the parties concerned shall comply with the procedures set forth in this section 2 before commencing a civil or other proceeding in relation to the dispute, including but not limited to the filing of an appeal pursuant to subsection 36(1) of the *Electricity Act, 1998*.

2.2.5 Nothing in this section 2 shall prevent a party to a dispute from making application to a court of competent jurisdiction in the Province of Ontario for urgent interlocutory or interim injunctive relief.

## 2.3 Continuing Obligations and Stay of Orders

2.3.1 Subject to section 2.3.3, where a dispute involves the payment or recovery of monetary amounts due under the *market rules*, the amount shall be due and payable at the time specified for payment under the *market rules* notwithstanding initiation of the dispute resolution process.

2.3.2 Subject to section 2.3.3, initiation of the dispute resolution process referred to in this section 2 does not stay implementation of an order made or a direction given to a *market participant* by the *IESO* pursuant to the *market rules*.

- 2.3.3 Where a dispute in respect of which the dispute resolution process has been initiated involves the payment of a financial penalty imposed upon a *market participant* by the *IESO* under section 6.2, the obligation of the *market participant* to pay the financial penalty shall be stayed pending the outcome of the dispute resolution process.

## 2.4 Negotiation[Intentionally Left Blank]

- ~~2.4.1 Subject to section 2.4.3, parties to a dispute shall, within the time specified in section 2.4.1A, make good faith efforts to negotiate and amicably resolve any dispute between them arising pursuant to the market rules prior to filing a notice of dispute under section 2.5.1. Each person who is a party to a dispute shall, to this end, designate an individual with authority to negotiate the matter in dispute and to participate in such negotiations.~~
- ~~2.4.1A Parties to a dispute shall commence the negotiation referred to in section 2.4.1:~~
- ~~2.4.1A.1 where the dispute involves an order, direction, instruction or other decision of the *IESO* issued prior to January 1, 2004, within six years of the date of receipt of the order, direction, instruction or decision;~~
- ~~2.4.1A.2 where the dispute involves an order, direction, instruction or other decision of the *IESO* issued on or after January 1, 2004, within two years of the date of receipt of the order, direction, instruction or decision; and~~
- ~~2.4.1A.3 in all other cases, including, without limitation, claims for compensation, where such claims are not the subject matter of the dispute referred to in section 2.4.1A.1, 2.4.1A.2 or 2.4.3, within the limitation periods set out in the Limitations Act, 2002.~~
- ~~2.4.2 In the event that a dispute, other than one to which section 2.4.3 applies, is not settled amicably through good faith negotiations, one of the parties shall file with the other a notice of termination of negotiation in such form as may be established by the *IESO*. Proceedings to resolve the dispute may thereafter be initiated by any party to the dispute by filing a *notice of dispute* in accordance with the procedures set forth in section 2.5.1 within the time set forth in section 2.5.1A.~~
- ~~2.4.3 Section 2.4.1 shall not apply to:~~
- ~~2.4.3.1 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IESO*;~~
- ~~2.4.3.2 a dispute relating to a *reviewable decision* referred to in section 5.3.9 of Chapter 6;~~

~~2.4.3.3 a request by a market participant for a settlement statement re-calculation pursuant to section 6.8.2A or section 6.8.9 of Chapter 9;~~

~~2.4.3.4 a dispute referred to in section 6.8.2B or section 6.8.9 of Chapter 9 with respect to which a settlement statement re-calculation is not requested; or~~

~~2.4.3.5 a dispute between market participants referred to in section 2.1A.6A of Chapter 9 in respect of the apportionment of energy associated with connection station service and with site specific losses.~~

~~and in each such case the parties to the dispute shall dispense with the negotiation referred to in section 2.4.1 and proceedings may be initiated by any party to the dispute by filing a notice of dispute in accordance with the procedures set forth in section 2.5.1 within the applicable time set forth in section 2.5.1A.~~

~~2.4.4 The time period for the commencement of the negotiation specified in section 2.4.1A shall, with respect to claims for compensation, commence on the date on which the event that gave rise to the claim for compensation occurred, and not from the date of the submission of the claim for compensation. Such time period shall exclude the time between the submission of the claim for compensation to the IESO and when the IESO first notifies the claimant that some or all of the claim will not be allowed.~~

## **2.5 Notice of Dispute and Response**

~~2.5.1 Subject to section 2.5.1B, ¶~~ The complaining person (the “applicant”) shall, within the time specified in section 2.5.1A, serve a written notice of the dispute (the “notice of dispute”) on any respondent ~~and shall file with the secretary a copy of the notice of dispute, together with proof of service of the notice of dispute on each respondent.~~

2.5.1A A notice of dispute shall be filed/served:

2.5.1A.1 in the case of an application referred to in section 2.2.1.3, within 20 business days of the date of receipt of notice by the generator of rejection by the IESO of the outage in respect of which compensation is claimed pursuant to section 6.7.5 of Chapter 5;

2.5.1A.2 in the case of a dispute that involves a reviewable decision referred to in section 5.3.9 of Chapter 6, within 20 business days of the date of receipt by the metering service provider of notice of the revocation of its registration by the IESO;

- 2.5.1A.3 in the case of a request or dispute referred to in section 6.8.2A or 6.8.2B of Chapter 9, within the time specified in section 6.8.8 of Chapter 9;
- 2.5.1A.4 in the case of a dispute referred to in section 6.8.9 of Chapter 9, within the time specified in section 6.8.10 of Chapter 9;
- 2.5.1A.4A in the case of a dispute referred to in section 2.1A.6A of Chapter 9, within *20 business days* of the date of receipt of the first *invoice* that reflects the apportionment that is the subject-matter of the dispute; ~~and~~
- 2.5.1A.4B in the case of a dispute involving an order, direction, instruction or decision of the IESO issued prior to January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within six years of the date of receipt of the order, direction, instruction or decision;
- 2.5.1A.4C in the case of a dispute involving an order, direction, instruction or decision of the IESO issued on or after January 1, 2004 not otherwise addressed by subsections 2.5.1A.1 to 2.5.1A.4A, within two years of the date of receipt of the order, direction, instruction or decision; and
- 2.5.1A.5 in any all other cases, within ~~20 business days of the date of receipt of the notice of termination of negotiation referred to in section 2.4.2 to which the dispute relates~~ the applicable limitation period set out in the Limitations Act, 2002.
- 2.5.1B ~~An applicant in respect of an application referred to in section 2.5.1A.1 shall not be required to serve the notice of dispute on any person and sections 2.5.4 to 2.5.6C and section 2.5.9 shall not apply to such an application.~~[Intentionally left blank]
- 2.5.2 The *notice of dispute* shall be in such form as may be established by the *IESO*, shall be signed by a person with authority to bind the *applicant* and shall specify, in reasonable detail and to the best of the *applicant's* knowledge:
- 2.5.2.1 the nature of and basis for the complaint;
- 2.5.2.2 the *market rules* in issue;
- 2.5.2.3 the parties to the dispute and the name of any person having knowledge of or who may be directly affected by the dispute;
- 2.5.2.4 a concise summary of the facts underlying the dispute;
- 2.5.2.5 the relief sought and a summary of the grounds for such relief; and
- 2.5.2.6 any documentation upon which the *applicant* intends to rely in support of its complaint.

- 2.5.3 The *notice of dispute* shall be accompanied by a summary of the *notice of dispute* for *publication* in accordance with section 2.9.2.1.
- 2.5.3A Upon service of a *notice of dispute*, the *applicant* and the *respondent* to a *notice of dispute* shall make good faith efforts to negotiate for a minimum period of thirty days to resolve the dispute between them. Each person who is a party to a dispute shall, to this end, designate an individual with authority to negotiate the matter in dispute and to participate in such negotiations. The parties to the dispute may conduct the good faith negotiations in any manner they so agree.
- 2.5.3B Communications made in the course of negotiations are confidential, are made without prejudice and are not subject to voluntary disclosure in any subsequent proceeding or to be voluntarily produced into evidence for any purpose other than as reflected in a settlement agreement.
- 2.5.3C In the event that a dispute is not settled through good faith negotiations, a party may file with the *secretary*, on written notice served on each other party, a copy of the *notice of dispute*, together with proof of service of the *notice of dispute* on each other party.
- 2.5.4 A *respondent* shall, within ten *business days* of ~~service~~ the filing of a *notice of dispute* with the *secretary* under section 2.5.3C, serve a written response (the “*response*”) on the *applicant* and on any *respondent* to a crossclaim identified in the *response*, and shall file with the *secretary* a copy of the *response*, together with proof of service of the *response* on the *applicant* and on any such *respondent*.
- 2.5.5 The *response* shall be in such form as may be established by the *IESO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent’s* knowledge:
- 2.5.5.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *notice of dispute*;
- 2.5.5.2 a concise *response* to the allegations made against the *respondent* in the *notice of dispute*;
- 2.5.5.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or crossclaim against the *applicant* or against any other *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and
- 2.5.5.4 any documentation upon which the *respondent* intends to rely in support of its *response*, including as to any counterclaim or crossclaim, and which was not identified by the *applicant*.

- 2.5.6 The *response* shall be accompanied by a summary of the *response* for *publication* in accordance with section 2.9.2.1.
- 2.5.6A A *respondent* to a crossclaim shall, within ten *business days* of service of a *response* or of a response to a crossclaim, serve a written response to the crossclaim on the *applicant* and on any other *respondent* and shall file with the *secretary* a copy of the response to the crossclaim, together with proof of service of the response to the crossclaim on the *applicant* and on any other *respondent*, including a *respondent* to a crossclaim identified in the response to the crossclaim.
- 2.5.6B The response to the crossclaim shall be in such form as may be established by the *IESO*, shall be signed by a person with authority to bind the *respondent* and shall specify, in reasonable detail and to the best of the *respondent's* knowledge:
- 2.5.6B.1 the information referred to in sections 2.5.2.1 to 2.5.2.4, to the extent that the *respondent* disagrees with the information relating thereto set forth in the *response* containing the crossclaim;
- 2.5.6B.2 a concise response to the allegations made against the *respondent* in the *response* containing the crossclaim;
- 2.5.6B.3 the relief sought, a summary of the grounds for such relief and, where the relief sought includes a counterclaim or a crossclaim against the *applicant* or another *respondent*, the information referred to in sections 2.5.2.1 to 2.5.2.4 as it pertains specifically to such counterclaim or crossclaim; and
- 2.5.6B.4 any documentation upon which the *respondent* intends to rely in support of its response to the crossclaim, including as to any counterclaim or crossclaim, and which was not identified by the *applicant* or by the *respondent* whose *response* contains the crossclaim.
- 2.5.6C The response to a crossclaim shall be accompanied by a summary of the response for *publication* in accordance with section 2.9.2.1.
- 2.5.7 Subject to sections ~~2.5.8~~2.1.3 and 2.5.9, the *secretary* shall reject and shall not take any further action: with respect to a notice of dispute, a response, or a response to a crossclaim that does not comply with the provisions of this section 2.5.
- 2.5.7.1 ~~with respect to a notice of dispute, a response or a response to a crossclaim that does not comply with the provision of this section 2.5;~~  
[Intentionally left blank]

2.5.7.2 ~~with respect to a notice of dispute in respect of which the negotiation referred to in section 2.4.1 was not commenced within the applicable time specified in section 2.4.1A. [Intentionally left blank]~~

Where the *secretary* rejects a *notice of dispute*, a *response* or a response to a crossclaim pursuant to this section 2.5.7, the *secretary* shall so notify the *applicant* and the *respondent* filing the *response* or the response to the crossclaim, as the case may be, and shall provide written reasons for the rejection.

2.5.8 ~~The *secretary* may accept a notice of dispute, a response or a response to a crossclaim that does not comply with section 2.5.7 if special circumstances or the public interest require, or with the consent of the parties to the dispute. [Intentionally left blank]~~

2.5.9 Where the *secretary* rejects a *response* or a response to a crossclaim pursuant to section 2.5.7:

2.5.9.1 such rejection shall be without prejudice to the right of the *applicant* or the *respondent* whose *response* includes the crossclaim, as the case may be, to proceed with the resolution of the dispute in accordance with section 2; and

2.5.9.2 where such rejection relates to a *response*, section 2.6.1 shall not apply to the dispute and the *applicant* may following receipt of the notice referred to in section 2.5.7 request that the *secretary* take the action referred to in section 2.7.1.

## 2.6 Mediation

2.6.1 Subject to sections 2.6.1A and 2.6.1B, no party to a dispute may proceed to arbitration of the dispute until such time as the mediation process described in this section 2.6 has been terminated in accordance with section 2.6.14.

2.6.1A ~~Absent agreement of the parties, Section section~~ 2.6.1 shall not apply to:

2.6.1A.1 an application by a *generator* for compensation pursuant to section 6.7.5 of Chapter 5 in respect of an *outage* rejected by the *IESO*;

2.6.1A.2 a request by a *market participant* for a *settlement statement re-calculation* or other dispute referred to in section 6.8.2A, 6.8.2B or 6.8.9 of Chapter 9;

2.6.1A.3 a dispute that involves a *reviewable decision* referred to in section 5.3.9 of Chapter 6; or

2.6.1A.4 a dispute referred to in section 2.5.9.2.

- 2.6.1B Where all of the parties to a dispute so agree, the parties may dispense with mediation in respect of the dispute. In such a case, the parties shall file with the *secretary* a notice of intent to dispense with mediation in such form as may be established by the *IESO*.
- 2.6.2 Subject to section 2.6.2A, within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies or of the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4 in all other cases, the *secretary* shall, provided that the *secretary* is satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies and that the dispute has not been resolved:
- 2.6.2.1 in the case of a dispute referred to in section 2.6.1A, upon receipt of the notice referred to in section 2.6.1B or upon receipt of the request referred to in section 2.5.9.2, take the action referred to in section 2.7.1 or 2.7.1B, as the case may be; or
- 2.6.2.2 in any other case, assign one member of the *dispute resolution panel* who is independent of the parties to inquire into and act as *mediator* in respect of the dispute and shall advise the parties to the dispute as to the identity and address for service of the *mediator*.
- Where the *secretary* is not satisfied that the dispute is one to which section 2.2.1 or 2.2.2 applies, the *secretary* shall so advise the parties.
- 2.6.2A Where a *response* or a response to a crossclaim contains a crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.6.2.1 or 2.6.2.2 until five *business days* following:
- 2.6.2A.1 the filing of the response to a crossclaim in respect of the last crossclaim filed in the same dispute; or
- 2.6.2A.2 the expiry of the time for filing a response to a crossclaim pursuant to section 2.5.6A in respect of the last crossclaim filed in the same dispute,
- whichever is the earlier.
- 2.6.3 The *mediator* shall fix a date, time and place for the mediation session, which date shall be no more than seven *business days* from the date of notice of his or her appointment or such later date as may be agreed by each party to the dispute, and shall attempt to assist the parties to resolve their dispute. The *mediator* may continue the mediation session at such times and places as the *mediator* determines in an effort to assist the parties in resolving their dispute.
- 2.6.4 Each party shall send to the mediation session a representative who has the authority to bind the party.



- 2.6.5 Prior to participating in a mediation session, the parties must sign and file with the *secretary* an agreement that statements made at a mediation session are confidential, are made without prejudice and are not subject to voluntary disclosure in any subsequent proceeding or to be voluntarily produced into evidence for any purpose.
- 2.6.6 Mediation sessions shall be private and there shall be no stenographic record of any mediation session. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of all of the parties, with the consent of the *mediator* and upon such conditions including, but not limited to, conditions relating to confidentiality, as the *mediator* determines appropriate.
- 2.6.7 *Confidential information* disclosed to a *mediator* by the parties or by other persons in the course of the mediation shall not be divulged by the *mediator*. All records, reports or other documents prepared for the mediation and received by a *mediator* while serving in that capacity shall be treated as confidential unless all of the parties to the dispute otherwise agree.
- 2.6.8 The *mediator* may conduct joint and separate meetings with the parties and make oral and written recommendations for settlement. Recommendations for settlement made, and views expressed by, the *mediator* at such meetings or at a mediation session are confidential and are not subject to voluntary disclosure in any subsequent proceeding and are not voluntarily to be produced into evidence for any purpose.
- 2.6.9 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide him or her with any information or documentation which is not *confidential information* and which the *mediator* considers relevant to the conduct of the mediation, and the *mediator* shall provide any such information or documentation to the parties in advance of the mediation session at which such information or documentation is to be considered.
- 2.6.10 The *mediator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide him or her with any information or documentation pertaining to a party to the dispute which is *confidential information* and which the *mediator* considers relevant to the conduct of the mediation. Such *confidential information* shall not, without the consent of the party to whom the *confidential information* relates, be disclosed by the *mediator* to the other parties to the dispute.
- 2.6.11 Whenever he or she considers necessary, the *mediator* may, with the consent of the parties and upon such conditions relating to confidentiality as the *mediator* determines appropriate, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *mediator* or a party, as the *mediator* shall determine.

- 2.6.12 If an agreement to resolve the dispute is reached through mediation, it shall be reduced to writing, signed by the parties and filed with the *secretary*. The terms of the agreement shall be confidential, provided that if, in the case of a dispute referred to in section 2.2.1, the agreement consists of, embodies or reflects an element which, in the opinion of the Board of Directors of the *IESO*, is an important matter of public policy or interest having regard to the provisions of the *Electricity Act, 1998*, the *IESO* shall *publish* a statement describing such important matter of public policy or interest.
- 2.6.13 The *mediator* may terminate the mediation by written notice of termination whenever, in the judgement of the *mediator*, further efforts at mediation would not contribute to a resolution of the dispute between the parties. The *mediator* shall provide each party with a copy of the written notice of termination and shall file a copy of the notice of termination with the *secretary*, in each case together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15.
- 2.6.14 The mediation shall be terminated on the earlier of:
- 2.6.14.1 the date of execution by the parties of the agreement referred to in section 2.6.12;
  - 2.6.14.2 the date of the notice of termination referred to in section 2.6.13; or
  - 2.6.14.3 the date that is ten *business days*, or such longer period as may be agreed by each party to the dispute, from the date of the first mediation session.
- 2.6.15 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.2 or 2.6.14.3 they shall nonetheless make good faith efforts to arrive at an agreed statement of fact and/or of issues relating to the dispute.
- 2.6.16 If the parties are unable to reach any agreement to resolve the dispute on or prior to the date referred to in section 2.6.14.3, the *mediator* shall issue a written notice of termination unless the *mediator* has, prior to that date, issued the written notice of termination referred to in section 2.6.13. The *mediator* shall provide each party with a copy of the notice of termination issued pursuant to this section 2.6.16, together with a copy of any agreed statement of fact and/or of issues referred to in section 2.6.15, and file a copy of the foregoing with the *secretary*.
- 2.6.17 The parties are responsible for their own costs and legal expenses incurred in respect of the mediation. The parties must bear equally the *costs of the mediation*.
- 2.6.18 Upon termination of the mediation, the *mediator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the mediation*, together with all bills and other supporting documentation relating thereto.

- 2.6.19 Upon receipt of the invoice referred to in section 2.6.18, the *secretary* shall provide a copy of the invoice to the *IESO* and the *IESO* shall submit an invoice to each of the parties to the mediation in respect of their respective shares of the *costs of the mediation*. Each party shall, within *ten business days* of the date of receipt of such invoice, pay to the *IESO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.
- 2.6.20 Where a *mediator* dies, resigns or otherwise becomes incapable of acting as *mediator* in respect of a dispute prior to termination of the mediation, the *secretary* shall assign another member of the *dispute resolution panel* to inquire into and act as *mediator* in respect of the dispute. With the consent of the parties to the mediation, the new *mediator* may continue the mediation. In the absence of such consent, the *mediator* shall commence the mediation anew and the time period prescribed in section 2.6.14.3 shall be extended accordingly.

## 2.7 Arbitration

- 2.7.1 Subject to section 2.7.1A, within five *business days* of:
- 2.7.1.1 the earlier of the filing of a *response* or of the expiry of the time for filing a *response* pursuant to section 2.5.4, where the dispute is one to which section 2.6.1A.1, 2.6.1A.2 or 2.6.1A.3 applies;
  - 2.7.1.1A the filing of the request referred to in section 2.5.9.2, where the dispute is one to which that section applies;
  - 2.7.1.2 the filing of a notice of intent to dispense with mediation pursuant to section 2.6.1B, where the dispute is one to which that section applies;  
or
  - 2.7.1.3 the filing of the notice of termination referred to in section 2.6.13 or 2.6.16, in any other case,

the *secretary* shall in accordance with the *Governance and Structure By-law* provide the parties with a list of five names of members of the *dispute resolution panel* available to arbitrate the dispute. No person who acted as a *mediator* in respect of a dispute may be included on the list of members available to arbitrate the same dispute.

- 2.7.1A Where a *response* or a response to a crossclaim filed in respect of a dispute to which section 2.6.1A applies contains a crossclaim against another *respondent*, the *secretary* shall not take the action referred to in section 2.7.1.1 until five *business days* following:

- 2.7.1A.1 the filing of the response to a crossclaim in respect of the last crossclaim filed in the dispute; or
- 2.7.1A.2 the expiry of the time for filing a response to a crossclaim pursuant to section 2.5.6A in respect of the last crossclaim filed in the dispute,
- whichever is the earlier.
- 2.7.1B Within five *business days* of the filing of a *notice of dispute* in respect of an application to which section 2.6.1A.1 applies, the *secretary* shall in accordance with the *Governance and Structure By-law* provide the *applicant* with a list of five names of members of the *dispute resolution panel* available to determine the amount of any compensation payable to the *applicant*. Where the *applicant* fails to select an *arbitrator* within ten *business days* of receipt of such list, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the application and shall by written notice so advise the *applicant*. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.
- 2.7.1C In the case of an application referred to in section 2.7.1B:
- 2.7.1C.1 sections 2.7.2, 2.7.8, 2.7.9, 2.7.10 and 2.7.32 shall not apply; and
- 2.7.1C.2 all other sections of this section 2.7 shall be read:
- a. without regard to references to a *respondent*; and
  - b. by replacing all references to the word “party” or “parties” with the word “*applicant*”.
- 2.7.2 The parties shall make good faith efforts to agree on the appointment of one of the members named on the list referred to in section 2.7.1 as the *arbitrator* to hear the dispute. Where the parties so agree, they shall by written notice so advise the *secretary*. Such member shall be the *arbitrator* for purposes of the resolution of the dispute and shall be deemed to have been appointed as of the date of such notice.
- 2.7.3 [Intentionally left blank]
- 2.7.4 [Intentionally left blank]
- 2.7.5 Where the parties to a dispute have failed to select an *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.1, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the *arbitrator* in respect of the dispute and shall by written notice so advise the parties. The *arbitrator* shall be deemed to have been appointed as of the date of such notice.

- 2.7.6 An *arbitrator* shall be independent of the parties and shall act impartially. An *arbitrator* who is or becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to the *secretary* and the parties.
- 2.7.7 An *applicant* shall, within thirty days of the appointment of the *arbitrator*, serve on any *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *applicant* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. The *applicant* must indicate if it will be represented by legal counsel or some other representative and provide such person's name and address for service.
- 2.7.8 A *respondent* shall, within thirty days of the date of receipt of the *applicant's* materials referred to in section 2.7.7, serve on an *applicant* and on any other *respondent*, and file with the *arbitrator*, a written statement containing its submissions on each issue in dispute. At the same time, the *respondent* shall serve and file a list of all documents which it intends to file at the arbitration, copies of all such documents, and a list of witnesses intended to be called or to provide written evidence-in-chief at the hearing of the arbitration together with a concise written summary of the anticipated evidence of each witness. A *respondent* must indicate if it will be represented by legal counsel or some other representative and provide such person's name and address for service.
- 2.7.9 The *applicant* may, within ten days of receipt of the *respondent's* materials referred to in section 2.7.8, serve and file written reply submissions.
- 2.7.10 Where a *respondent* has made a counterclaim or a crossclaim in his or her *response*, the *respondent* shall, for purposes of the application of sections 2.7.7 to 2.7.9 and, where appropriate, of section 2.7.19, be treated as an *applicant* and the person against whom the counterclaim or the crossclaim has been made shall be treated as a *respondent* in respect of the counterclaim or crossclaim.
- 2.7.11 The *arbitrator* shall fix a date, time and place for the hearing following:
- 2.7.11.1 in the case of an application referred to in section 2.7.1B, the filing of the *applicant's* materials referred to in section 2.7.7; and
- 2.7.11.2 in all other cases, the service and filing of the *respondent's* materials referred to in section 2.7.8 or, where applicable, the materials of a *respondent* to the counterclaim or crossclaim referred to in section 2.7.10, which date shall be no more than sixty days from the date of the service and filing referred to in section 2.7.8 or, where applicable, of the service and filing referred to in section 2.7.10, whichever is the later, or such later date as may be agreed by each

party to the arbitration. The *arbitrator* shall file with the *secretary* a notice of the date, time and place so fixed.

- 2.7.12 A *market participant* who might be directly affected by the award of the *arbitrator* in a dispute referred to in section 2.2.1 or 2.2.2.1 and, in the case of an application referred to in section 2.7.1B or of a dispute referred to in section 2.2.2.1, the *IESO*, may apply to the *arbitrator*, on notice to the parties, no less than five *business days* prior to the date of the hearing, for leave to intervene at the hearing. Parties may make submissions on the application for leave to intervene. The *arbitrator* may, in his or her sole discretion, grant leave to intervene to any *market participant* who demonstrates that it has an interest in the subject matter of the arbitration and may be directly affected by the decision in the arbitration, on such terms and subject to such rights of participation as the *arbitrator* considers reasonable.
- 2.7.13 The procedures governing the arbitration shall be determined by the *arbitrator*, except as provided for herein and by sections 19 to 22, 25 (other than 25(3) to 25(5)) to 33, 36, 36 and 40 to 44 of the *Arbitration Act, 1991*.
- 2.7.13.1 In the case of a dispute referred to in section 6.8.9 of Chapter 9, the *arbitrator* shall dismiss the *notice of dispute* and take no further action with respect to the *notice of dispute* if the element of the *final settlement statement* that is the subject-matter of the *notice of dispute* is identical to the same element in the corresponding *preliminary settlement statement* unless the *market participant* demonstrates that it could not, with the exercise of due diligence, have filed a *notice of disagreement* in respect of that *preliminary settlement statement*.
- 2.7.14 Nothing in writing shall be accepted in evidence at the hearing nor any witness be permitted to give evidence at the hearing, in both cases by or on behalf of an *applicant* or a *respondent*, except with leave of the *arbitrator*, unless the party has complied with the requirements set forth in section 2.7.7 or 2.7.8, as the case may be.
- 2.7.15 Any party to a dispute may apply to the *arbitrator* for, and the *arbitrator* may order, such further and other production as the *arbitrator* sees fit, provided that the *arbitrator* may not order the production by the *market surveillance panel* or the *market assessment unit* of *confidential information* which relates to a person who is not a party to the dispute. Evidence may be admitted by the *arbitrator* even if not admissible as evidence in a court of law.
- 2.7.16 The *arbitrator* may, with the consent of all parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide him or her with any information or documentation which is not *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration, and the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.

- 2.7.17 The *arbitrator* may, with the consent of the parties, request an agent, employee, officer or director of the *IESO*, or a member of a panel established by the *IESO*, to provide him or her with any information or documentation pertaining to a party which is *confidential information* and which the *arbitrator* considers relevant to the conduct of the arbitration. Subject to section 2.8.1, the *arbitrator* shall provide any such information or documentation to the parties in advance of the hearing at which such information or documentation is to be considered.
- 2.7.18 Whenever he or she considers necessary, the *arbitrator* may, upon such conditions as to confidentiality as the *arbitrator* determines appropriate and upon notice to the parties, obtain expert advice concerning technical aspects of the dispute. Arrangements for obtaining such advice shall be made by the *arbitrator* or a party, as the *arbitrator* shall determine, provided that where such arrangements are made by the *arbitrator*, the *arbitrator* shall provide to the parties advance notice of the identity of the expert advisor.
- 2.7.19 At the hearing, the *applicant* shall provide its case in chief, followed by the *respondent* in response, and then the *applicant* in reply.
- 2.7.20 Witnesses shall be examined under oath or affirmation and shall be made available for cross-examination. Nothing in this section 2.7.20 shall preclude the *arbitrator* from dispensing with the oral examination-in-chief of a witness provided that a written statement of the witness's evidence is provided in such form as the *arbitrator* determines appropriate.
- 2.7.21 Subject to section 2.8.1, the arbitration shall be open to the public and all documents filed will form part of the public record of the proceedings.
- 2.7.22 The *arbitrator* shall deliver his or her award in writing, with reasons, within 30 days of completion of the hearing or within such longer period as may be agreed by each party to the dispute.
- 2.7.23 The *arbitrator* shall file a copy of his or her award with the *secretary*.
- 2.7.24 Where, in the case of a dispute referred to in section 2.2.1.1, the *arbitrator* concludes that a *market participant* has violated a provision of the *market rules*, the *arbitrator* may in his or her award impose such financial penalties, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable, provided that:
- 2.7.24.1 no financial penalty shall be imposed on a *market participant* unless the *arbitrator* determines that the breach of the *market rules* could have been avoided by the exercise of due diligence by the *market participant* or that the *market participant* acted intentionally; and
- 2.7.24.2 in fixing the amount of the penalty, the *arbitrator* shall have regard to the criteria set forth in section 6.6.7.

An award of the *arbitrator* under this section shall be deemed to be a decision or order of the *IESO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.

- 2.7.25 Where, in the case of a dispute referred to in section 2.2.1.1 the *arbitrator* concludes that the *IESO* has violated, misinterpreted or misapplied a *market rule*, the *arbitrator* may, subject to section 13 of Chapter 1 and to any other provision of these *market rules* pertaining specifically to liability, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable. Without limiting the generality of the foregoing, where the *arbitrator* determines that the breach, misinterpretation or misapplication of a *market rule* by the *IESO* was intentional or could have been avoided by the exercise of due diligence by the *IESO*, the *arbitrator* shall direct the *IESO* to comply with the *market rules* or to interpret or apply the *market rules* in a particular manner. Any such direction may be included in the summary referred to in section 2.9.2.4.
- 2.7.25A Subject to section 13 of Chapter 1 and to any other provision of these *market rules* pertaining specifically to liability, the *arbitrator* may, in the case of a dispute referred to in section 2.2.1.2, 2.2.1.4 or 2.2.1.5, in addition to the orders referred to in section 2.7.26, 2.7.27 or 2.7.29, as the case may be, assess such damages or make such further and other orders or directions as the *arbitrator* considers just and reasonable.
- 2.7.26 Where a dispute referred to in section 2.2.1.1 relates to the terms and conditions upon which the *IESO* has authorized a person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*, the *arbitrator* may confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* on such other terms and conditions, if any, which the *arbitrator* determines are just and reasonable. An award of the *arbitrator* under this section 2.7.26 may include the direction to the *IESO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IESO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.
- 2.7.27 The *arbitrator* may:
- 2.7.27.1 in the case of a dispute referred to in section 2.2.1.2, confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid*, on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable;



- 2.7.27.2 in the case of a dispute referred to in section 2.2.1.5, confirm that no *settlement statement re-calculation* is required or order the *IESO* to effect a *settlement statement re-calculation*; or
- 2.7.27.3 in the case of a dispute referred to in section 2.2.1.6, make such orders or directions as the *arbitrator* considers just and reasonable,

and an award of the *arbitrator* under this section 2.7.27 may include the direction to the *IESO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IESO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*.

2.7.28 In the case of an application referred to in section 2.2.1.3, the *arbitrator* may determine that no compensation is payable to the *applicant* or may order the *IESO* to pay compensation to the *applicant* in such amount and within such time as may be fixed by the *arbitrator* in accordance with any applicable provisions of section 6.7.5 of Chapter 5.

2.7.29 In the case of a dispute referred to in section 2.2.1.4:

2.7.29.1 where the dispute relates to the *reviewable decision* referred to in section 2.1.2 of Chapter 6, the *arbitrator* may confirm the order of the *IESO* or set aside the order of the *IESO* and order the *IESO* to authorize the person to participate in the *IESO-administered markets* or to cause or permit electricity to be conveyed into, through or out of the *IESO-controlled grid* in respect of the relevant *connection point* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25 and shall be deemed to be a decision or order of the *IESO* for purposes of the *market rules* and the application of the appeal provisions of section 36 of the *Electricity Act, 1998*;

2.7.29.2 where the dispute relates to the *reviewable decision* referred to in section 5.3.9 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to reinstate the registration of the *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable and the award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25;

2.7.29.3 where the dispute relates to the *reviewable decision* referred to in section 5.1.12 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to register the person as a *metering service provider* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25; or

- 2.7.29.4 where the dispute relates to the *reviewable decision* referred to in section 4.4.3 or 6.1.5 of Chapter 6, the *arbitrator* may confirm the order or decision of the *IESO* or set aside the order or decision of the *IESO* and order the *IESO* to register the *metering installation* on such terms and conditions, if any, which the *arbitrator* determines are just and reasonable, and such award of the *arbitrator* may include the direction to the *IESO* referred to in section 2.7.25.
- 2.7.29A In the case of a dispute referred to in section 2.2.21, the *arbitrator* may:
- 2.7.29A.1 determine an alternative apportionment of the *energy* associated with *connection station service* and with site specific losses amongst all applicable *market participants*; and
- 2.7.29A.2 determine whether, and the extent to which, any such alternative apportionment should be applied, by means of payments amongst the applicable *market participants*, to any period prior to the date on which the *IESO* gives effect to the proportions filed pursuant to section 2.1A.6B of Chapter 9.
- 2.7.29B In the case of a dispute referred to in section 6.8.2A or section 6.8.9 of Chapter 9, the *arbitrator* may, in considering whether to approve a request for a *settlement statement re-calculation*, take into account:
- 2.7.29B.1 the dollar amount that is the subject-matter of the dispute;
- 2.7.29B.2 the time elapsed since the event that is the subject-matter of the dispute took place; and
- 2.7.29B.3 the *IESO's* ability to perform such a *settlement statement re-calculation*.
- 2.7.30 In the case of a dispute referred to in section 2.2.2.2, the *arbitrator* may make such award, including but not limited to an award of damages, as is just and reasonable in the circumstances.
- 2.7.31 [Intentionally left blank]
- 2.7.32 Subject to section 2.7.32A, the *arbitrator* may make such award as to costs as he or she determines just and reasonable provided that, except in exceptional cases:
- 2.7.32.1 where in the context of a dispute referred to in section 2.2.1 the award consists of damages for breach of the *market rules*, costs, including the *costs of the arbitration*, shall be awarded to the successful party;
- 2.7.32.2 where the award consists of the imposition of penalties on a *market participant*, costs, including the *costs of the arbitration*, shall be awarded to the *IESO*; and

- 2.7.32.3 where the award consists of the direction to the *IESO* to comply with the *market rules* or to interpret or apply a *market rule* in a particular manner pursuant to section 2.7.25, costs, including the *costs of the arbitration*, shall be awarded to the *market participant* seeking the direction.
- 2.7.32A Where an award relates to an application referred to in section 2.7.1B and:
- 2.7.32A.1 the award consists of a determination by the *arbitrator* that the *applicant* is not entitled to any compensation pursuant to section 6.7.5 of Chapter 5; or
- 2.7.32A.2 no award as to costs is made pursuant to section 2.7.32B,
- the *applicant* shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration and, subject to any determination of the *arbitrator* pursuant to section 2.7.33, shall bear the *costs of the arbitration*.
- 2.7.32B Where an award relates to an application referred to in section 2.7.1B and the award consists of a determination by the *arbitrator* that the *applicant* is entitled to compensation pursuant to section 6.7.5 of Chapter 5, the *arbitrator* may determine that some or all of:
- 2.7.32B.1 the *applicant's* costs and legal expenses associated with his or her participation in the arbitration; and
- 2.7.32B.2 the *applicant's* share of the *costs of the arbitration*,
- be recovered by the *applicant*. Where the *arbitrator* makes such an award as to costs, the amount of such recoverable costs shall be paid by the *IESO* and recovered by the *IESO* in the same manner as the compensation referred to in section 6.7.5 of Chapter 5.
- 2.7.33 A person who intervenes in an arbitration shall be responsible for his or her own costs and legal expenses associated with his or her participation in the arbitration. The *arbitrator* may, in appropriate circumstances, require that an intervenor bear a portion of the *costs of the arbitration*.
- 2.7.34 An award of the *arbitrator* shall be enforceable in the manner provided in the *Arbitration Act, 1991*.
- 2.7.35 Where, in the case of a dispute referred to in section 2.2.1, the award consists of the payment of monies to the *IESO* or to a *market participant*, such award shall be considered to create an obligation under the *market rules* to pay the amount stated in the award and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly. Except as may otherwise be provided in the award, any monies payable pursuant to an award shall be payable within 30 days of the date of the award.

- 2.7.36 Failure to comply with an award of an *arbitrator* in respect of a dispute referred to in section 2.2.1 constitutes a breach of the *market rules*.
- 2.7.37 Upon completion of an arbitration, the *arbitrator* shall file the record of the arbitration proceedings with the *secretary*. Where such record contains *confidential information* in respect of which a claim for confidentiality has been confirmed by the *arbitrator* pursuant to section 2.8.1, the *confidential information*, together with the stenographic record of any *in camera* hearings relating thereto, shall be sealed in an envelope clearly marked “CONFIDENTIAL” or otherwise identified as confidential and protected from disclosure prior to filing with the *secretary*.
- 2.7.38 Upon completion of the arbitration, the *arbitrator* shall file with the *secretary* an invoice containing an itemized statement of the *costs of the arbitration*, together with copies of all bills and other supporting documentation relating thereto.
- 2.7.39 Upon receipt of the invoice referred to in section 2.7.38, the *secretary* shall submit a copy of the invoice to the *IESO* and the *IESO* shall submit an invoice to each of the parties to the arbitration and, where applicable, each intervenor, in respect of their respective shares of the *costs of the arbitration*. Each such person shall, within ten *business days* of receipt of such invoice, pay to the *IESO* the amount owing thereunder. Such invoice shall be considered to create an obligation under the *market rules* to pay the amount specified in the invoice and such amount may, without prejudice to any other manner of recovery available at law, be recovered accordingly.
- 2.7.40 Where an *arbitrator* dies, resigns, is removed or otherwise becomes incapable of acting as an *arbitrator* in respect of a dispute prior to completion of the arbitration, a replacement shall, with the consent of all of the parties to the arbitration, be selected by the *secretary* from among the remaining members of the *dispute resolution panel* in accordance with the *Governance and Structure By-law*. In the absence of such consent, the *secretary* shall forthwith provide the parties with a further list of five names of members of the *dispute resolution panel* available to fill the vacancy and the parties shall make good faith efforts to agree on the appointment of one of the members named in the list as the replacement *arbitrator*. Where the parties so agree, they shall so advise the *secretary*.
- 2.7.41 [Intentionally left blank]
- 2.7.42 Where the parties have failed to select a replacement *arbitrator* within ten *business days* of receipt of the list referred to in section 2.7.40, the *secretary* shall, in accordance with the *Governance and Structure By-law*, appoint one member of the *dispute resolution panel* to be the replacement *arbitrator* and shall by written notice so advise the parties.
- 2.7.43 With the consent of the parties to the arbitration, once the *arbitrator* has been replaced, the *arbitrator* may continue the arbitration. In the absence of such consent, the replacement *arbitrator* shall commence the arbitration anew.

## 2.8 Confidentiality

- 2.8.1 Any party may claim that a document, or information contained in a document, to be produced in the context of the arbitration of a dispute is *confidential information*. The party making such a claim shall provide to the *arbitrator* in writing the basis for its assertion. If the claim of confidentiality is confirmed by the *arbitrator*, having regard, where applicable, to the provisions of section 5, the *arbitrator* shall establish requirements for the protection of such document or information as may be necessary to protect the confidentiality and commercial value of such document or information, including requirements for disclosure of same only to counsel and/or other independent advisor who has filed an undertaking as to confidentiality satisfactory to the *arbitrator* and for in camera hearings at which only representatives of the disclosing party and such counsel and/or other independent advisor may be present.
- 2.8.2 Members of the *dispute resolution panel* shall enter into such confidentiality agreement as may be required by the Board of Directors of the *IESO*.

## 2.9 Record-Keeping and Publication

- 2.9.1 Subject to section 2.9.1A, the *secretary* shall maintain a record of all dispute resolution proceedings conducted under this section 2. Upon the completion of a given dispute resolution proceeding, the *secretary* shall transfer the record to the *IESO*, addressed to the Chair of the Board of Directors of the *IESO* for archiving. The Chair shall be responsible for ensuring that all measures are taken to prohibit access by any other person to any portion of such record which may be sealed and marked “CONFIDENTIAL” or otherwise identified as being confidential, except as may be required by *applicable law* or permitted by the provisions of section 5.
- 2.9.1A For the purposes of section 2.9.1, the record referred to therein shall not include any record pertaining to or arising from the mediation of a dispute other than:
- 2.9.1A.1 the name and address for service of the person appointed to act as the *mediator* in respect of the dispute;
  - 2.9.1A.2 the agreement referred to in section 2.6.5;
  - 2.9.1A.3 the settlement agreement referred to in section 2.6.12;
  - 2.9.1A.4 the notice of termination of mediation referred to in section 2.6.13 or 2.6.16;
  - 2.9.1A.5 the agreed statement of fact and/or issues referred to in section 2.6.13 or 2.6.16; and

- 2.9.1A.6 information and documentation pertaining to the *costs of the mediation*, including the invoice referred to in section 2.6.18.
- 2.9.2 The *secretary* shall arrange for *publication* by the *IESO* of the following:
- 2.9.2.1 ~~the summaries referred to in sections 2.5.3, 2.5.6 and 2.5.6C as may be applicable upon: the appointment of the arbitrator;~~
- ~~a. receipt of notice of termination referred to in section 2.6.13 or 2.6.16;~~
- ~~b. receipt of a notice of intent to dispense with mediation pursuant to section 2.6.1B;~~
- ~~c. in the case of a dispute referred to in section 2.6.1A other than section 2.6.1A.1, receipt of the *response* or, where no *response* is filed within the time specified in section 2.5.4, upon the expiry of that time; or~~
- ~~d. in the case of an application referred to in section 2.6.1A.1, upon receipt of the *notice of dispute*,~~
- ~~as the case may be, the summaries referred to in sections 2.5.3, 2.5.6 and 2.5.6C as may be applicable;~~
- 2.9.2.2 notice of the appointment of an *arbitrator* and the address for service of the *arbitrator*;
- 2.9.2.3 notice of the date, time and place fixed for hearing pursuant to section 2.7.11; and
- 2.9.2.4 a summary of the award of an *arbitrator* filed pursuant to section 2.7.23, which may include the information required by section 2.7.25.
- 2.9.3 The *IESO* shall *publish* the fees payable to members of the *dispute resolution panel* involved in the resolution or the attempted resolution of a dispute pursuant to this section 2, as such fees may from time to time be fixed in accordance with the provisions of the *Governance and Structure By-law*.

## 2.10 Audit

- 2.10.1 The activities of the *dispute resolution panel* shall be audited in accordance with procedures adopted from time to time by the *IESO*.

**PART 5 – IESO BOARD DECISION RATIONALE**

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