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Rules of Procedure Governing Hearings Before the IESO Board

(The "Rules")

Issue 1.0

This document sets out the rules of procedure established by the *IESO Board* for proceedings before the *IESO Board* where the *market rules* afford *market participants* an opportunity for a hearing.

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This document may contain a summary of a particular *market rule*. Where provided, the summary has been used because of the length of the *market rule* itself. The reader should be aware, however, that where a *market rule* is applicable, the obligation that needs to be met is as stated in the “market rules”. To the extent of any discrepancy or inconsistency between the provisions of a particular *market rule* and the summary, the provision of the *market rule* shall govern.

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Introduction

Purpose

This document sets out the rules of procedure for proceedings before the *IESO Board* or a committee of the *IESO Board* where the *market rules* require that a *market participant* be afforded the opportunity for a hearing.

Scope

These Rules apply to *market participants*, the *IESO*, the *IESO Board* or a committee of the *IESO Board*, and other parties in relation to proceedings before the *IESO Board* or a committee of the *IESO Board* where the *market rules* require that a *market participant* be afforded the opportunity for a hearing prior to the *IESO Board* or a committee of the *IESO Board* issuing an order or taking action.

Overview

These Rules provide the originating process to be followed by the *IESO* where it is required to provide notice to a *market participant* of a proposed order or action and advise the *market participant* of the opportunity to request a hearing prior to such order being issued or action taken. These Rules also describe the process by which a *market participant* may request a hearing. Where a hearing is requested these Rules provide the process for pre-hearing and settlement conferences, disclosure, written and oral hearings, procedural and interim orders, and review of panel discussions.

– End of Section –

1. Rule 1 - General

1.1 Application of Rules

These Rules apply to proceedings before the *IESO Board* or a committee of the *IESO Board* where the *IESO* is required by the *market rules* to afford *market participants* an opportunity for a hearing before the *IESO Board* or a committee of the *IESO Board* before issuing an order or taking any action.

1.2 The Panel and Decisions of the Panel

- 1 The *IESO Board* or a committee of the *IESO Board* that presides over a proceeding to which these Rules apply shall be referred to herein as the “Panel” (“Panel” shall also include a member or members of the Panel that decide interlocutory matters under subrule 1.2(3)).
- 2 The members of a Panel shall be appointed by the Chair of the *IESO Board* or the Chair’s designee (the “Chair”), and shall, subject to subrule 1.2(3), be composed of not less than two (2) members of the *IESO Board*. The Chair may appoint stakeholder directors to the Panel provided the Chair reasonably determines that such stakeholder directors do not have any conflict of interest which ought to disqualify them from acting.
- 3 The Panel may delegate authority to one or more members of the Panel to hear and decide interlocutory procedural matters, including hearing and deciding matters arising at pre-hearing conferences. All other matters must be heard by the full Panel.
- 4 All decisions of the Panel must be made by a majority of the Panel, and in the case of a two-member Panel, must be made unanimously.

1.3 Defined Terms

- 1 Terms italicized herein have the meaning ascribed to them in the *market rules*.
- 2 “Parties” to a proceeding shall include *IESO* staff, the applicable *market participant(s)* and any other person(s) who the Panel may in its discretion decide to add and designate as a party.
- 3 “Final decision” means a decision by the Panel that finally disposes of the proceeding on its merits.

1.4 Time

- 1 Computation of time shall be in accordance with the *market rules*.
- 2 The Panel may, before or after expiration of a prescribed time period and on such conditions, if any, as it considers appropriate, extend or abridge any time limit prescribed under these Rules.

1.5 Service and Filing

- 1 Where these Rules require a document to be served or filed, it shall be served and filed in accordance with the *market rules*.
- 2 Where these Rules require a document to be served on the *IESO*, the document shall be addressed to the attention of “General Counsel of the *IESO*”.
- 3 Where these Rules require a document to be filed with the Panel, it shall be addressed to the attention of “Secretary to Panel (Show-Cause Hearings)” and filed with the *IESO*.

1.6 Purpose of Rules

- 1 These Rules shall be liberally construed to secure the most just, expeditious and least expensive determination of every proceeding before the Panel on its merits.
- 2 The Panel may at any stage of a proceeding waive compliance with or vary any part of these Rules, or make any procedural orders, it deems necessary to fulfill the purpose of these Rules or the statutory objects of the *IESO*.

1.7 Effect of Non-Compliance

Where a party to a proceeding does not comply with these Rules or a procedural order, the Panel may make any order it considers just, including making a final determination.

1.8 Determination Without Hearing

If the parties consent, the Panel may by order dispose of the proceeding without conducting a written or oral hearing.

1.9 Confidential Information

- 1 Notwithstanding any other provision of these Rules, no person may serve or file any document, or enter any document into evidence, that contains *confidential information* without first obtaining the approval of the Panel.
- 2 The Panel may impose or establish any measures it deems necessary to protect the confidentiality and commercial value of *confidential information*, including but not limited to, obtaining confidentiality undertakings and restricting public access to hearings and to documents.

– End of Section –

2. Rule 2 - Commencement of Proceedings

2.1 Originating Process

- 1 Where the *market rules* provide that before issuing an order or taking any action, the *IESO* must first give notice to the *market participant* of the proposed order or action and advise the *market participant* of the opportunity to request a hearing before the Panel to show cause why the order should not be issued or the proposed action taken, the notice shall be in writing and shall include or attach written submissions by *IESO* staff specifying the following information:
 - a. the section in the *market rules* under which the notice is issued;
 - b. the basis upon which *IESO* staff intends to issue the order or take the proposed action (*IESO* staff shall, subject to subrule 1.9(1) attach to the written notice any documents upon which *IESO* staff is relying as evidence);
 - c. the *market participant's* right to request a hearing before the Panel to show cause why the order should not be issued or the proposed action taken;
 - d. that if the *market participant* requests a hearing, the Panel shall conduct the hearing as a written hearing unless the *market participant* satisfies the Panel, or the Panel otherwise decides, that there is good reason for not holding a written hearing in which case the Panel shall conduct the hearing as an oral hearing; and
 - e. that if the *market participant* intends to request a hearing before the Panel, it must notify the *IESO* in writing within five (5) days or two (2) *business days* of receipt of the *IESO's* written notice, whichever is longer, and if the *market participant* does not request a hearing as prescribed, the *IESO* may issue the order or take the proposed action without further notice to the *market participant*.
- 2 Following *IESO* staff's issuance of written submissions to a *market participant* under subrule 2.1(1), *IESO* staff shall forthwith file a copy of its written submissions with the Panel.

2.2 Market Participant's Response

- 1 A *market participant* that requests a hearing as prescribed, may respond to the *IESO* in writing by setting out the basis upon which the *market participant* says the order should not be issued or the proposed action taken. Any such written response shall be served on the *IESO* and filed with the Panel on the same day the *market participant* notifies the *IESO* of its request for a hearing.

- 2 If the *market participant* wishes to object to the hearing being held as a written hearing, the *market participant* shall include in its written response the basis upon which the *market participant* says there is good reason not to conduct the hearing as a written hearing.
- 3 The *market participant* shall, subject to subrule 1.9(1), attach to its written response any relevant documents upon which it relies.

– End of Section –

3. Rule 3 – Pre-Hearing Conferences and Settlement Conferences (Oral Hearings)

3.1 Directing Pre-Hearing Conferences

The Panel may order the parties to participate in one or more pre-hearing conferences at any stage of a proceeding.

3.2 Issues at Pre-Hearing Conferences

At a pre-hearing conference consideration may be given to any issue that in the view of the Panel may assist in the just and most expeditious disposition of the proceeding, including:

- a. simplification or clarification of the issues in the proceeding;
- b. disclosure of documents;
- c. facts or evidence that may be agreed upon;
- d. identifying any issues as to admissibility of evidence;
- e. amendments to *IESO* staff's written submissions or the *market participant's* written response;
- f. identifying any preliminary objections;
- g. scheduling the hearing and establishing the procedures that will govern the hearing;
- h. the date by which any steps in the proceeding are to be taken or begun; and
- i. any other matter that may assist in the just and most expeditious disposition of the proceeding.

3.3 Directing a Settlement Conference

- 1 The Panel may order the parties to attend one or more settlement conferences for the purpose of trying to settle all or some of the issues in the proceeding, and the Panel may order the parties to exchange settlement briefs, disclose documents or do anything else which may promote settlement prior to the settlement conference being held.

- 2 The Chair shall appoint a member of the *IESO Board* who is not a member of the Panel, or with his or her consent, a member of the *dispute resolution panel*, to preside at the settlement conference to assist the parties in trying to settle. The person who presides at the settlement conference shall not communicate to the Panel about the settlement conference except with the consent of all parties.
- 3 All communications at a settlement conference shall be deemed to be without prejudice settlement discussions.

3.4 Closed to Public

Pre-hearing conferences and settlement conferences shall be held in the absence of the public.

– End of Section –

4. Rule 4 – Disclosure (Oral Hearings)

4.1 Documents and Particulars

- 1 At any stage of a proceeding, the Panel may order the parties to exchange documents or particulars or file documents or particulars with the Panel. The Panel may also order parties to make documents available for inspection or copying.
- 2 The Panel may attach any conditions it deems appropriate to an order made under subrule 4.1(1), including conditions it deems necessary to protect the confidentiality of any *confidential information*.

4.2 Document

“Document” includes,

- a. forms, correspondence, memoranda, files, books of account, agreements, reports, charts, drafts and any other written or pictorial communication;
- b. sound recordings, videotapes, photographs, maps, plans, surveys or like things; and
- c. information recorded or stored by means of any device, including computer files.

– End of Section –

5. Rule 5 – Written Hearings

5.1 Commence as Written Hearing

- 1 The Panel shall commence all hearings as written hearings and shall continue hearings as such unless, pursuant to subrule 5.1(2), the *market participant* satisfies the Panel, or the Panel otherwise decides, that there is good reason not to hold the hearing as a written hearing.
- 2 If a *market participant* satisfies the Panel, or the Panel otherwise decides, that there is good reason not to hold the hearing as a written hearing, the Panel shall continue the hearing as an oral hearing.
- 3 Where the Panel decides to continue the hearing as an oral hearing, the Panel shall cause to be issued to the parties a written notice stating:
 - a. the time, place and expected duration of the hearing;
 - b. that if a party notified does not attend at the hearing, the Panel may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding; andsubject to subrule 7.4, the Panel shall direct *IESO* staff to post notice of the hearing on the *IESO's* Web site.

5.2 Criteria for Written Hearing

In deciding whether to hold a hearing as a written hearing, the Panel may consider any relevant factors, including:

- a. the suitability of a written hearing format considering the subject matter of the hearing;
- b. whether the nature of evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
- c. the extent to which the matters in dispute are questions of law or interpretation of the *market rules*;
- d. the convenience of the parties, including any anticipated prejudice to a party;
- e. the cost, efficiency and timeliness of proceedings;
- f. avoidance of unnecessary length or delay;
- g. ensuring a fair and understandable process;
- h. the desirability or necessity of public participation or public access to the Panel's process; and
- i. the fulfillment of the *IESO's* statutory objects.

5.3 Conduct of Written Hearings

- 1 At a written hearing, the Panel shall consider and make its decision based on the written record of the parties filed pursuant to rule 2 and subrule 5.3(2), if any.
- 2 The Panel may, as it deems appropriate, direct any of the parties to further respond in writing to any of the matters raised in the proceeding and to file their written responses with the Panel by such dates as may be fixed by the Panel.
- 3 If a *market participant* does not file a written response as prescribed by subrule 2.2, or one of the parties does not respond in writing as directed under subrule 5.3(2), the Panel may make its decision based solely on the written record filed and the non-compliant party shall not be entitled to any further notice in the proceeding.

5.4 Public Access

The public shall have reasonable access to the documents filed by the parties with the Panel subject to the Panel's right to restrict access, in whole or in part, if the Panel is of the opinion that:

- a. matters involving public security may be disclosed; or
- b. *confidential information* or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

5.5 Decision and Reasons

The Panel shall render and issue its final decision and order, if any, with written reasons, to the parties as soon as practicable.

– End of Section –

6. Rule 6 – Procedural and Interim Orders

6.1 Making Procedural and Interim Orders

The Panel may at any stage of a proceeding, on its own initiative or on a motion by any of the parties, make such procedural or interim orders on such terms as the Panel deems appropriate, including but not limited to interim suspension orders.

6.2 Procedure

- 1 A party who wishes to bring a motion for a procedural or interim order shall do so by making arrangements with the Panel. The Panel shall direct the parties as to the procedure that will be followed in hearing and deciding the motion.
- 2 The Panel will ordinarily require that motions for procedural and interim orders be brought on proper notice, but may where the Panel determines appropriate grant such motions on an ex parte basis.
- 3 The Panel may at any stage of a proceeding vary, revoke or extend procedural or interim orders as it deems appropriate.
- 4 The Panel is not required to issue reasons for procedural or interim orders.

6.3 Criteria for Making Interim Orders

In deciding whether to make an interim order, the Panel may consider any relevant factors, including whether in the opinion of the Panel the length of time required to conclude a hearing could prejudice the *IESO's* ability to fulfill its statutory objects, in particular, the *IESO's* ability to direct the operations and maintain the *reliability* of the *IESO-administered grid* and operate the *IESO-administered markets* in order to:

- a. facilitate competition in the generation and sale of electricity;
- b. protect the interests of consumers with respect to prices and the *reliability* and quality of electricity; and
- c. facilitate the maintenance of a financially viable electricity industry.

– End of Section –

7. Rule 7 – Oral Hearings

7.1 Pre-Hearing Orders

The Panel may order the parties to do any or all of the following in advance of an oral hearing:

- a. attend a pre-hearing conference;
- b. file and exchange documents or make documents available for inspection;
- c. file and exchange particulars;
- d. file and exchange lists of witnesses;
- e. file and exchange witness statements;
- f. endeavor to agree upon and file an agreed statement of facts;
- g. exchange and file hearing briefs; and
- h. take any other action that will promote the purposes of these Rules.

7.2 Effect of Non-Attendance

Where notice of an oral hearing has been given to a party to a proceeding in accordance with these Rules and the party does not attend at the hearing, the Panel may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

7.3 Right to Counsel

A party to an oral hearing may be represented by counsel or an agent.

7.4 Hearing Open to Public

An oral hearing shall be open to the public except where the Panel is of the opinion that subrules 5.4(a) or (b) apply.

7.5 Administration of Oaths

A member of the Panel has the power to administer oaths and affirmations for the purpose of an oral hearing and the Panel may require evidence before it to be given under oath or affirmation.

7.6 Admissibility of Evidence

- 1 Subject to subrules 7.6(2) and (3), the Panel may admit as evidence at an oral hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
 - a. any oral testimony; and
 - b. any document or other thing,relevant to the subject-matter of the proceeding and may act on such evidence, but the Panel may exclude anything unduly repetitious.
- 2 Nothing is admissible in evidence at an oral hearing,
 - a. if it would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - b. that is inadmissible by the statute under which the proceeding arises or any other statute.
- 3 Nothing in subrule 7.6(1) overrides the provisions of any Act expressly limiting the extent to or purpose for which any oral testimony, documents or other things may be admitted or used in evidence in any proceeding.

7.7 Conduct of Hearing

- 1 Without limiting the generality of the foregoing, the Panel shall determine the manner and procedure by which oral hearings are conducted, including, but not limited to, the manner in which:
 - a. evidence is presented and received;
 - b. opening and closing arguments are made;
 - c. witnesses are examined and cross-examined;
 - d. witnesses are excluded;
 - e. objections and motions are made and decided; andthe Panel may impose any limitations or restrictions on the conduct of oral hearings, including the foregoing, that the Panel deems necessary to fulfil the provisions of these Rules and the *IESO's* statutory objects.

7.8 Decision and Reasons

The Panel shall render and issue its final decision and order, if any, with written reasons, to the parties as soon as practicable.

– End of Section –

8. Rule 8 – Review of Panel Discussions

8.1 Correcting Minor Errors

The Panel may at any time correct a typographical error, error of calculation, misstatement, ambiguity, technical error or other similar error made in its final decision without recourse to this Rule 8 and without prior notice to the parties.

8.2 Grounds for Review

The Panel shall only review a final decision if:

- a. there is new material evidence that was not available at the time the Panel rendered its final decision; or
- b. there have been material changes in circumstances since the Panel rendered its final decision.

8.3 Who May Request a Review

The parties or a person directly affected by the Panel's final decision may request a review of the Panel's final decision.

8.4 The Request for Review

A person requesting a review shall prepare and file with the Panel and serve on the parties a request for review which shall:

- a. identify the decision in respect of which the review is being sought;
- b. state the reasons for requesting the review, and if the requestor is not a party, the basis upon which the person is directly affected by the final decision;
- c. state the desired outcome;
- d. state in detail the facts in support of the request for review;
- e. attach any documents, subject to subrule 1.9(1), which support the request for review; and
- f. if a request is being made for an order staying the final decision pending determination of the review, state the basis upon which a stay is required.

8.5 Materials Considered on Review Request

- 1 The Panel may consider the record from the original hearing in addition to the materials filed by the requestor and any other parties.
- 2 The Panel may refuse a request for review without seeking submissions from any party other than the requestor.
- 3 If the Panel does not refuse the request for review under subrule 8.5(2), the Panel shall inform every other party that they have seven (7) *business days* to serve on the requestor and file with the Panel a response to the request for review. After receiving the responses, the requestor shall have three (3) *business days* to serve and file a reply.

8.6 Review Procedure and Decision

- 1 Unless otherwise ordered, a review shall be conducted in writing.
- 2 On a review, the Panel may confirm, vary, suspend or cancel its final decision.

– End of Section –

References

Document Name	Document ID
MDP_RUL_0002	Market Rules

– End of Document –