



Market Rule Amendment Proposal

PART 1 – MARKET RULE INFORMATION

Identification No.:	MR-00378		
Subject:	Sharing confidential information with Market Monitoring Units		
Title:	Market Monitors Sharing Confidential Information		
Nature of Proposal:	☒ Alteration	☐ Deletion	☒ Addition
Chapter:	3, 11	Appendix:	
Sections:	Chapter 3, sections 5.3.1.12 (new), 5.3.2, 5.3.7 (new), 5.3.8 (new), 5.3.9 (new), Chapter 11, definitions		
Sub-sections proposed for amending:			

PART 2 – PROPOSAL HISTORY

Version	Reason for Issuing	Version Date
1.0	Draft for Technical Panel review	February 8, 2011
2.0	Draft for Technical Panel review	March 16, 2011
3.0	Publish for Stakeholder Review and Comment	March 24, 2011
4.0	Submitted for Technical Panel Vote	May 10, 2011
5.0	Recommended by Technical Panel; Submitted for IESO Board Approval	May 17, 2011
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

It is proposed to amend the market rules to allow the IESO to share confidential information with the market monitoring units (“MMUs”) in other independent system operators (“ISOs”) and regional transmission organizations (“RTOs”).

Background

The Federal Energy Regulatory Commission (“FERC”) has recommended that the NYISO work with neighboring grid operators to develop data sharing rules allowing ISOs/RTOs or their MMUs to share confidential information with another ISO/RTO or their MMU. The recommendation to permit data sharing was first addressed in the Lake Erie loop flow FERC docket.¹

NYISO’s proposed framework allows an ISO/RTO/MMU to disclose confidential information to another ISO/RTO/MMU if the requesting entity submits a request stating that the requested confidential information is necessary to an investigation or evaluation that the ISO/RTO or MMU is undertaking. In addition, the requesting ISO/RTO/MMU must demonstrate their ability to protect the information from further disclosure by demonstrating that its tariffs/market rules or other governing documents limit further disclosure, or alternatively, via the execution of a non-disclosure agreement.

The NYISO has submitted their proposed tariff changes² to FERC in early April of this year, and the intent is to have other ISOs/RTOs/MMUs in the US and Canada place reciprocal provisions in their tariffs/market rules.

Discussion

Chapter 3, section 5 provides the market rules and framework regarding confidential information. Section 5.3 lists exceptions and conditions where otherwise confidential information may be disclosed by market participants and/or the IESO.

¹ In 2008, FERC investigated claims that some market participants had increased congestion around Lake Erie by creating circuitous power schedules and benefitted from the differences in locational marginal prices, resulting in millions of dollars of additional charges to market participants.

² NYISO – Attachment O – Market Monitoring Plan, Section 6.6: Sharing Information With Other ISOs/RTOs and Market Monitoring Units:
http://www.nyiso.com/public/webdocs/committees/bic/meeting_materials/2010-11-03/Agenda_11_Attachment_O_Data_Sharing_Provisions_11032010.pdf

PART 3 – EXPLANATION FOR PROPOSED AMENDMENTChapter 3Section 5.3.1.12 (new):

It is proposed to amend section 5.3, by adding another ISO's/RTO's MMU to the list of exceptions whereby the IESO may disclose confidential information. Subject to the conditions specified below, the IESO will have the discretion to disclose confidential information to an MMU, solely for the purposes of an investigation regarding conduct or activities which have an adverse impact on market efficiency or effective competition.

Section 5.3.7 (new):

In order to address concerns of inappropriate disclosure of confidential information provided by the IESO to an MMU, the IESO will require the MMU to demonstrate that their governing documents limit further disclosure, or alternatively, execute a non-disclosure agreement. The MMU's governing documents or non-disclosure agreement must:

- Establish a legally enforceable obligation to treat confidential information provided by the IESO as confidential, and provide continuing protection from disclosure;
- Require the MMU to whom the disclosure is made to promptly notify the IESO of any third party requests for additional disclosure of the confidential information. In addition, the receiving MMU must seek appropriate relief to prevent or, if it is not possible to prevent, to limit the disclosure in the event that a subpoena or other compulsory process seeks disclosure of the confidential information provided by the IESO;
- Require the MMU to whom the disclosure is made to use the confidential information solely for the purposes of an investigation regarding conduct/activities having an adverse impact on market efficiency/effective competition, and to use all reasonable endeavors to protect the confidentiality of any information as reasonably practicable in the circumstances;
- Require the MMU to whom the disclosure is made to destroy or return confidential information provided by the IESO at the conclusion or resolution of the investigation, or five business days after a request to destroy or return the confidential information from the IESO is received by the MMU.

Section 5.3.8 (new):

Prior to making any disclosure of confidential information to an MMU, the IESO will advise the market participant affected by the request as soon as reasonably practicable, in order to permit the affected market participant to challenge such request or seek terms and conditions in respect of any such disclosure.

However, the IESO will not be required to advise the affected market participant if the IESO determines that such notification will jeopardize the investigation. This principle is similar to section 5.1.9 of the OEB's By-Law #3 – Market Surveillance Panel (MSP) whereby the MSP has the discretion

PART 3 – EXPLANATION FOR PROPOSED AMENDMENT

to not inform a person that is the subject matter of an investigation if the MSP determines that such notification will jeopardize the investigation.³

Section 5.3.9 (new):

Confidential information provided by an MMU to the IESO will be destroyed or returned to the MMU that provided the confidential information at the conclusion or resolution of the investigation, or five business days after a request to destroy or return confidential information from the MMU is received by the IESO.

Section 5.3.2:

As a matter of clean-up, it is proposed to remove the italics from the term “confidential agreement” in section 5.3.2 which is not a defined term, and to replace with it “confidentiality agreement” (change highlighted).

Chapter 11

For clarity, it is proposed to:

- Amend the definition of “control area operator” to include independent system operators and regional transmission organizations in other jurisdictions;
- Add a new definition for “market monitoring unit,” meaning the entity that monitors the markets administered by a control area operator or security coordinator.

³ Ontario Energy Board By-Law #3 Market Surveillance Panel, section 5.1.9:
http://www.ontarioenergyboard.ca/OEB/_Documents/About%20the%20OEB/OEB_bylaw_3.pdf

PART 4 – PROPOSED AMENDMENT

Chapter 3

5. Accessibility and Confidentiality of Information

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5.3 Exceptions

5.3.1 Unless prohibited by *applicable law* or by the provisions of these *market rules* other than this section 5, nothing in sections 5.2, 5.4 or section 5.5.1A of chapter 5 shall prevent:

5.3.1.1 the disclosure, use or reproduction of information if the information is, at the time of disclosure, generally and publicly available other than as a result of a breach of confidence by the *market participant* or the *IESO* who wishes to disclose, use or reproduce the information or by any person to whom the *market participant* or the *IESO* has disclosed the information;

5.3.1.2 the disclosure of *confidential information* by a *market participant* or the *IESO* to:

- a. a director, officer or employee of the *market participant* or of the *IESO* where such person requires the *confidential information* for the due performance of that person's duties and responsibilities and, in the case of the *IESO* for information that is classified highly confidential pursuant to section 5.4.2.6, where the person has the required security clearance assigned by the *IESO*; or
- b. a legal or other professional advisor, auditor or other consultant of the *market participant* or of the *IESO* where such persons require the information for purposes of the *market rules* or of an agreement entered into pursuant to the *market rules* or for the purpose of advising the *market participant* or the *IESO* in relation thereto;

5.3.1.3 the disclosure, use or reproduction of *confidential information*:

- a. by the *market participant* or person that provided the *confidential information* pursuant to the *market rules*;
- b. with the consent of the *market participant* or person that provided the *confidential information* pursuant to the *market rules*; or

- c. in the case of *settlement data*, *metering data* or data contained in the *metering registry*, by or with the consent of the *market participant* to whom such data relates;
- 5.3.1.4 the disclosure, use or reproduction of *confidential information* to the extent required by *applicable law* or by a lawful requirement of:
 - a. any government or governmental body, regulatory body, authority or agency having jurisdiction over a *market participant* or the *IESO* or an *affiliate* of a *market participant* or of the *IESO*; or
 - b. any stock exchange having jurisdiction over a *market participant*, the *IESO* or an *affiliate* of a *market participant* or the *IESO*;
- 5.3.1.5 except as otherwise provided in section 2, the disclosure, use or reproduction of *confidential information* if required in connection with legal proceedings, mediation, arbitration, expert determination or other dispute resolution mechanism relating to the *market rules* or to an agreement entered into pursuant to the *market rules* or for the purpose of advising a person in relation thereto;
- 5.3.1.5A if required by the *IESO Board* or a committee established by the *IESO Board*, the disclosure, use or reproduction of *confidential information* if required in connection with the issuance of *suspension*, *termination* or *disconnection orders* in respect of one or more *market participants* the revocation of the registration in respect of one or more *metering service providers* and any show cause hearings in respect thereof under section 5.3 of chapter 6 or section 6.2A;
- 5.3.1.6 the disclosure of *confidential information* if required to protect the health or safety of personnel, equipment or the environment or to maintain the *reliability* of the *IESO-controlled grid*;
- 5.3.1.7 the disclosure, use or reproduction of *confidential information* as an unidentifiable component of an aggregate sum;
- 5.3.1.8 the disclosure by the *IESO* of *confidential information* to a *transmitter* for the purposes of:
 - a. the safe and reliable management, operation and maintenance of its *transmission system* to the extent that *confidential information* is required pursuant to the terms of the *operating agreement*; or
 - b. the verification or reconciliation of the collection and administration of any applicable *transmission services charges*;
- 5.3.1.9 the disclosure by the *IESO* of *confidential information* to a *market participant*:
 - a. during an *emergency* or where the *IESO-controlled grid* is in an *emergency operating state* or a *high-risk operating state*; or

b. where an *emergency*, an *emergency operating state* or a *high-risk operating state* is anticipated by the *IESO*;

to the extent that such disclosure would, in the *IESO*'s opinion:

c. assist the *market participant* in responding to the conditions referred to in sections 5.3.1.9(a) and 5.3.1.9(b); or

d. assist the *IESO* in restoring the *IESO-controlled grid* to a *normal operating state*;

5.3.1.10 disclosure by the *IESO* of *confidential information* to a *standards authority*, a *control area operator*, a *security coordinator* or an *interconnected transmitter*; ~~or~~

5.3.1.11 disclosure by the *IESO* of *confidential information* to the *market surveillance panel*; ~~or~~

5.3.1.12 subject to sections 5.3.7 and 5.3.8, disclosure by the *IESO* of *confidential information* to the *market monitoring unit* of a *control area operator* or *security coordinator* relating to an investigation regarding conduct or activities which may have an adverse impact on market efficiency or effective competition.

5.3.2 Prior to making any disclosure pursuant to section 5.3.1.2(b), the person wishing to disclose the information shall inform the proposed recipient of the confidential nature of the *confidential information* to be disclosed and shall use all reasonable endeavours, including but not limited to the execution of an appropriate *confidentiality* agreement, to ensure that the recipient keeps the *confidential information* confidential in accordance with the provisions of section 5.2 and does not use the *confidential information* for any purpose other than that permitted under section 5.3.1.2(b).

5.3.3 Prior to making any disclosure pursuant to section 5.3.1.4, 5.3.1.5 or 5.1.3.5A, a person being requested or demanded to disclose the *confidential information* shall advise the person affected by the request or demand as soon as reasonably practicable so as where possible to permit the affected person to challenge such request or demand or seek terms and conditions in respect of any such disclosure.

5.3.4 In making any disclosure pursuant to section 5.3.1.6, the disclosing person shall advise the person affected by the disclosure as soon as is reasonably practicable and shall use all reasonable endeavours to protect the confidentiality of the *confidential information* insofar as may be reasonably practicable in the circumstances.

5.3.5 Where the *IESO* makes any disclosure pursuant to section 5.3.1.8:

5.3.5.1 the *IESO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and

5.3.5.2 the *transmitter* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.8 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information*.

5.3.6 Where the *IESO* makes any disclosure pursuant to section 5.3.1.9:

5.3.6.1 the *IESO* shall advise the *market participant* affected by the disclosure as soon as is reasonably practicable in the circumstances; and

5.3.6.2 the *market participant* to whom the disclosure is made shall use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.9 and shall use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances.

5.3.7 Where the *IESO* proposes to disclose any *confidential information* pursuant to section 5.3.1.12, the *IESO* shall either require the *market monitoring unit* to demonstrate that their governing documents limit further disclosure, or enter into a non-disclosure agreement with the *market monitoring unit*. The *market monitoring unit*'s governing documents or non-disclosure agreement shall:

5.3.7.1 establish a legally enforceable obligation to treat *confidential information* provided by the *IESO* as confidential. Such obligation shall be of a continuing nature and survive the termination of any investigation for which the *confidential information* has been requested;

5.3.7.2 require the *market monitoring unit* to whom the disclosure is made to promptly notify the *IESO* of any third party requests for additional disclosure of the *confidential information* and seek appropriate relief to prevent or, if it is not possible to prevent, to limit disclosure in the event that a subpoena or other compulsory process seeks to require disclosure of *confidential information* provided by the *IESO*;

5.3.7.3 require the *market monitoring unit* to whom the disclosure is made to use the *confidential information* so disclosed solely for the purposes referred to in section 5.3.1.12, and to use all reasonable endeavours to protect the confidentiality of such *confidential information* as may be reasonably practicable in the circumstances; and

5.3.7.4 require the *market monitoring unit* to whom the disclosure is made to destroy or return *confidential information* provided by the *IESO* at the conclusion or resolution of the investigation or five *business days* after a request to destroy or return *confidential information* from the *IESO* is received by the *market monitoring unit*.

- 5.3.8 Prior to making any disclosure pursuant to section 5.3.1.12, the IESO shall advise the *market participant* affected by the request as soon as reasonably practicable so as where possible to permit the affected *market participant* to challenge such request or seek terms and conditions in respect of any such disclosure. The IESO shall not be required to advise the affected *market participant* if the IESO reasonably determines that such notification will jeopardize the investigation.
- 5.3.9 Confidential information provided by a *market monitoring unit* to the IESO shall be destroyed or returned to the *market monitoring unit* that provided the *confidential information* at the conclusion or resolution of the investigation or five business days after a request to destroy or return *confidential information* from the *market monitoring unit* is received by the IESO.
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Chapter 11

1. Definitions

control area operator means the person responsible for the *secure* operation of a *control area*, and includes independent system operators and regional transmission organizations in other jurisdictions;

market monitoring unit means the entity that monitors the markets administered by a *control area operator* or *security coordinator*;

PART 5 – IESO BOARD DECISION RATIONALE

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