

ONTARIO ENERGY BOARD
BY-LAW #2
MARKET SURVEILLANCE PANEL

BE IT ENACTED as a By-law of the Board as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

1.1.1 In this By-law, unless the context otherwise requires:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**Board**” means the Ontario Energy Board continued under the Act as a corporation without share capital under the name Ontario Energy Board in English and Commission de l'énergie de l'Ontario in French;

“**Board Chair**” means the Director appointed by the Lieutenant Governor in Council as Chair of the Board of Directors under section 4.1(8) of the Act;

“**Board of Directors**” means the board of directors of the Board under section 4.1 of the Act;

“**CEO**” means the chief executive officer under section 4.2 of the Act, whether appointed by the Lieutenant Governor in Council or the Board of Directors;

“**confidential information**” means information that is not public and that is in its nature confidential, proprietary or commercially sensitive;

“**Director**” means a member of the Board of Directors;

“**Electricity Act**” means the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A;

“**employee**” means any person employed by another person, whether on a permanent basis, on a fixed term contract or on secondment, and

includes (a) a probationary employee, (b) a temporary employee, and (c) in the case of the Board, a Crown employee providing services to the Board under an agreement contemplated in section 4.16(4) of the Act, but does not include a Member of the Board or a member of the Panel;

“**IESO**” has the meaning given to it in the Electricity Act;

“**market manual**” has the meaning given to it in the market rules;

“**market rules**” means the rules made under section 32 of the Electricity Act;

“**MAU**” means the market assessment unit established by the IESO;

“**Member of the Board**” means the individuals who compose the Board under section 4(5) of the Act;

“**Monitoring Document**” has the meaning given to it in section 4.2.1;

“**Panel**” means the Market Surveillance Panel continued as the Market Surveillance Panel of the Board under the Act;

“**Panel Chair**” means the person appointed under section 2.4 as the chair of the Panel; and

“**Protocol**” means a protocol or agreement between the Board and the IESO relating to the use by the Panel of the services of employees of the IESO, including employees forming part of the MAU, and to such other matters as may be required to give effect to this By-law.

1.2 Interpretation and Severability

1.2.1 Except as provided in section 1.1.1, words and expressions that are defined in the Act or the Electricity Act have the same meanings when used in this By-law.

1.2.2 In this By-law:

- (a) words importing the singular number include the plural and vice versa;
- (b) words importing a gender include the masculine, feminine and neuter genders;
- (c) words importing a person include an individual, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, a

body corporate and a natural person in their capacity as trustee, executor, administrator or other legal representative;

- (d) except where the context otherwise requires, a reference to an Article, section or paragraph is to an Article, section or paragraph of this By-law;
- (e) a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws, resolutions, rules, orders or directives varying, consolidating, re-enacting, extending or replacing it;
- (f) a reference to a document, including a statute, includes an amendment or supplement to, or replacement of, that document, as well as any schedule, appendix or other annexure thereto;
- (g) a reference to a statute includes any regulation made under that statute;
- (h) the expression “including” means including without limitation, and the expression “include”, “includes” and “included” shall be interpreted accordingly; and
- (i) a list of elements preceded by the word “includes”, “including”, “such as” or similar language shall not be interpreted as excluding any other element, whether of the same or a different nature or scope.

1.2.3 Headings are included in this By-law for reference purposes only and are not to be considered or taken into account in construing the terms of provisions of this By-law.

1.2.4 The invalidity or unenforceability of any provision of this By-law shall not affect the validity or enforceability of the remaining provisions of this By-law.

ARTICLE 2 COMPOSITION, APPOINTMENT, REAPPOINTMENT, REMOVAL, REMUNERATION AND INDEMNIFICATION

2.1 Composition, Appointment and Qualification

2.1.1 The Panel shall consist of at least three qualified persons. The quorum for the transaction of business at any meeting of the Panel consists of a majority of members. At all meetings of the Panel every question shall be

decided by a majority of the votes cast on the question. In the case of an equality of votes, the Panel Chair will be entitled to a second or casting vote. Where there is a vacancy or vacancies in the Panel, the remaining members may exercise all the powers of the Panel so long as a quorum of the Panel remains in office.

2.1.2 Subject to section 2.1.3, the Board of Directors shall from time to time appoint the members of the Panel.

2.1.3 No person shall be appointed to the Panel if that person is disqualified under section 4.3.1(3) of the Act or under section 2.1.4.

2.1.4 The following persons are disqualified from being a member of the Panel:

- (a) a person who is less than eighteen years of age;
- (b) a person who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual;
- (d) a person who has the status of a bankrupt;
- (e) a person who is an employee of the Government of Ontario; or
- (f) a Member of the Board.

2.1.5 No person shall be appointed to the Panel unless such person has:

- (a) provided to the Board of Directors such certification as the Board of Directors may require attesting to the fact that the person is not disqualified under section 2.1.3 or 2.1.4; and
- (b) entered into such agreement with the Board as the Board of Directors, on the advice of the CEO, determines appropriate in order to give effect to the provisions of this By-law.

2.1.6 The Board of Directors may from time to time require a member of the Panel to provide to the Board of Directors such certification as the Board of Directors may require attesting to the fact that the person has not become disqualified under section 2.1.3 or 2.1.4.

2.2 Term and Reappointment

2.2.1 Subject to section 2.2.2, a member of the Panel shall serve for a term of three years.

- 2.2.2 A person may be appointed under this By-law to serve for an initial term of more or less than three years or may be reappointed under this By-law to serve for a term of less than three years as the Board of Directors considers appropriate to ensure that the terms of two or more members of the Panel do not expire at or about the same time.
- 2.2.3 Subject to section 2.2.4, a member of the Panel may be reappointed by the Board of Directors for a further term of up to three years, provided that no person may serve on the Panel for more than ten consecutive years.
- 2.2.4 The term of a member of the Panel appointed to replace a predecessor member whose term had not yet expired shall be for the balance of the predecessor's term and shall not, provided such term is no greater than two years, be counted for purposes of determining the member's eligibility for reappointment.

2.3 Ceasing to Hold Office

- 2.3.1 The Board of Directors may remove any member of the Panel from office at any time, with or without cause, as the Board of Directors determines appropriate.
- 2.3.2 A member of the Panel ceases to hold office when the member:
- (a) dies or resigns;
 - (b) is removed in accordance with section 2.3.1; or
 - (c) becomes disqualified under section 2.1.3 or 2.1.4.

2.4 Panel Chair

- 2.4.1 The Board of Directors, on the advice of the CEO, shall from time to time appoint a member of the Panel as Panel Chair. Where the office of Panel Chair is vacant, the Board of Directors, on the advice of the CEO, may appoint a member of the Panel as Acting Panel Chair pending appointment of a Panel Chair. Except as otherwise determined by the Board of Directors, on the advice of the CEO, the Acting Panel Chair shall have the same powers and perform the same duties as the Panel Chair.
- 2.4.2 The Panel Chair shall act as the designated representative of the Panel in relation to the Panel's relationship with the Board in such manner as the Board of Directors, on the advice of the CEO, determines appropriate.

2.5 Remuneration

- 2.5.1 Members of the Panel shall be paid such remuneration for their services as shall be fixed from time to time by the Board of Directors.
- 2.5.2 Members of the Panel shall be entitled to be reimbursed for expenses properly and actually incurred by them in connection with the performance of their duties.

2.6 Code of Conduct/Conflict of Interest

- 2.6.1 The Board of Directors, on the advice of the CEO, may adopt a code of conduct and conflict of interest guidelines applicable to members of the Panel. Members of the Panel shall comply with such code of conduct and conflict of interest guidelines.

2.7 Indemnification

- 2.7.1 Subject to any limitations contained in the Act or any other statute, the Board shall indemnify a member of the Panel, a former member of the Panel and the heirs and legal representatives of a member or former member of the Panel, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by them in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved by reason of being a member or former member of the Panel.
- 2.7.2 The Board shall advance moneys to any member or former member of the Panel for the costs, charges and expenses of a proceeding referred to in that section. The member or former member of the Panel shall repay the moneys if they do not fulfil the conditions of section 2.7.3.
- 2.7.3 The Board shall not indemnify a member or former member of the Panel under section 2.7.1 or 2.7.2 unless the individual:
 - (a) acted honestly and in good faith with a view to the best interests of the Board; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.
- 2.7.4 The Board shall also indemnify a member or former member of the Panel in such other circumstances as the Act or other law permits or requires. Nothing in this By-law shall limit the right of any individual entitled to indemnity to claim indemnity apart from the provisions of this By-law.

- 2.7.5 Subject to the Act and any other statute, the Board may execute agreements evidencing its indemnity in favour of a member or former member of the Panel against such liabilities as the Board of Directors may from time to time determine.

ARTICLE 3
PANEL DUTIES, ASSISTANCE, PROTOCOL, AUDIT AND PANEL WEB PAGE

3.1 Duties

- 3.1.1 The Panel shall have the duties and perform the activities assigned to it in the Electricity Act and under sections 3.1.2 to 3.1.7.
- 3.1.2 The Panel shall direct the work of and supervise the MAU in accordance with and to the extent provided in the Protocol.
- 3.1.3 The Panel shall monitor activities related to the IESO-administered markets and the conduct of market participants in accordance with Article 4.
- 3.1.4 The Panel shall conduct investigations into activities related to the IESO-administered markets or the conduct of a market participant in accordance with Article 5.
- 3.1.5 The Panel shall conduct reviews of the IESO-administered markets in accordance with Article 6.
- 3.1.6 The Panel may provide such advice or assistance to the IESO as the IESO may request on matters that arise under the market rules, as more specifically set out in, and in accordance with the provisions of, the Protocol.
- 3.1.7 The Panel shall perform such other activities or functions as the CEO may assign to it in relation to the surveillance of electricity markets.

3.2 Assistance to the Panel

- 3.2.1 The Panel may, with the prior concurrence of the CEO, use the services of employees of the Board.
- 3.2.2 The Panel may, with the prior concurrence of the CEO, use the services of other persons having technical or professional expertise that the Panel considers necessary for the fulfillment of its duties.

3.2.3 The Panel shall comply with such restrictions and conditions as may be imposed by the CEO in relation to the use of the services referred to in sections 3.2.1 and 3.2.2.

3.3 Protocol

3.3.1 A member of the Panel shall comply with all provisions of the Protocol that apply to members of the Panel.

3.3.2 A member of the Panel shall promptly notify the CEO of:

- (a) any violation of the Protocol by any person; and
- (b) any perceived inefficiencies or difficulties in relation to the application of the Protocol.

3.4 Audit

3.4.1 The activities of the Panel shall be audited in accordance with such procedures as may be adopted from time to time by the CEO.

3.5 Panel Web Page

3.5.1 The Board shall maintain a page on its website for the purpose of posting:

- (a) written reports and other documents required by this By-law to be posted on the Board's website;
- (b) the manner in which persons may contact a member of the Panel; and
- (c) such other information as the CEO considers appropriate in relation to the Panel and the duties of the Panel.

ARTICLE 4 MONITORING

4.1 Monitoring

4.1.1 The Panel shall monitor, evaluate and analyse activities related to the IESO-administered markets and the conduct of market participants with a view to:

- (a) identifying inappropriate or anomalous market conduct by a market participant, including unilateral or interdependent behaviour

resulting in gaming or in abuses or possible abuses of market power;

- (b) identifying activities of the IESO that may have an impact on market efficiencies or effective competition;
- (c) identifying actual or potential design or other flaws and inefficiencies in the market rules and in the rules and procedures of the IESO;
- (d) identifying actual or potential design or other flaws in the overall structure of the IESO-administered markets and assessing whether any one or more specific aspects of the underlying structure of the IESO-administered markets is consistent with the efficient and fair operation of a competitive market; and
- (e) recommending remedial actions to mitigate the conduct, flaws and inefficiencies referred to in paragraphs (a) to (d).

4.1.2 For the purpose of carrying out the monitoring, evaluation and analysis activities referred to in section 4.1.1, the Panel has the power to compel the production of information from a market participant and to enter upon the premises of a market participant as authorized by the Electricity Act.

4.1.3 The Panel shall prepare and deliver reports in relation to its activities under this section 4.1 in accordance with sections 7.1 and 7.5.

4.2 Monitoring Documents

4.2.1 The Panel shall adopt and from time to time amend as required the following documents (each a "Monitoring Document"):

- (a) a detailed catalogue of all of the data and/or categories of data that the Panel or the MAU will have the need or means of acquiring directly from market participants;
- (b) a catalogue of the monitoring indices that the Panel or the MAU will use to analyze the data so required; and
- (c) such other information requirements and evaluation criteria as the Panel considers appropriate for the purpose of enabling it to effectively carry out the monitoring function referred to in section 4.1.1.

4.2.2 Prior to adopting or amending a Monitoring Document under section 4.2.1, the Panel shall provide a copy of the Monitoring Document or amendment

- to the CEO. Subject to section 4.2.3, the CEO shall cause such Monitoring Document or amendment to be posted on the Board's website. Such posting shall be accompanied by a notice inviting the IESO and market participants to comment on the Monitoring Document or amendment within the time indicated in the notice.
- 4.2.3 No Monitoring Document referred to in paragraph 4.2.1(b) or 4.2.1(c) nor any amendment to such Monitoring Document shall be posted on the Board's website for comment under section 4.2.2 if the CEO, on the advice of the Panel, determines that such posting is reasonably likely to compromise the work of the MAU or the Panel.
- 4.2.4 The Panel retains the discretion to adopt a Monitoring Document or an amendment to a Monitoring Document notwithstanding any comments received in opposition thereto.
- 4.2.5 Where the Panel adopts or amends a Monitoring Document, the Panel shall provide a copy of the Monitoring Document or amendment to the CEO. Subject to section 4.2.6, the CEO shall cause such Monitoring Document or amendment to be posted on the Board's website.
- 4.2.6 No Monitoring Document referred to in paragraph 4.2.1(b) or 4.2.1(c) nor any amendment to such Monitoring Document adopted by the Panel under this section 4.2 shall be posted on the Board's website if the CEO, on the advice of the Panel, determines that such posting is reasonably likely to compromise the work of the MAU or the Panel.
- 4.2.7 Nothing in this section 4.2 shall be interpreted as precluding the Panel from undertaking such monitoring, evaluation or analysis as the Panel determines appropriate for the purposes of carrying out the monitoring activities referred to in section 4.1.1.
- 4.2.8 A Monitoring Document or an amendment to a Monitoring Document adopted by the Market Surveillance Panel of the Independent Electricity Market Operator prior to the date of coming into force of section 4.3.1(1) of the Act and included in a market manual prior to that date shall be deemed to have been adopted by the Panel under this By-law. Such Monitoring Document or amendment shall be posted on the Board's website.

ARTICLE 5 INVESTIGATIONS

5.1 Investigations

- 5.1.1 The Panel may conduct an investigation into any activities related to the IESO-administered markets or the conduct of a market participant:
- (a) where the Panel considers such investigation to be warranted as a result of the monitoring activities referred to in section 4.1.1 or as a result of a review referred to in Article 6;
 - (b) upon receipt of a complaint or referral under section 5.1.3; or
 - (c) upon being requested to do so by the CEO.
- 5.1.2 Where the Panel intends to commence an investigation under paragraph 5.1.1(a) or 5.1.1(b), the Panel shall so notify the CEO.
- 5.1.3 Any person other than the CEO acting under paragraph 5.1.1(c) that wishes the Panel to conduct an investigation into any matter referred to in section 5.1.1, or any board, agency or tribunal that wishes to refer any such matter to the Panel for investigation, shall make a complaint or referral in writing setting out:
- (a) the name and address of the complainant or person referring the matter;
 - (b) the particulars of the complaint or referral;
 - (c) any information or facts supporting the complaint or referral; and
 - (d) the signature of the person making the complaint or referral or, where that person is not an individual, the signature of a duly authorized representative of the person.
- 5.1.4 The Panel may refuse to commence an investigation into any complaint or matter referred to it under section 5.1.3 where the Panel determines that:
- (a) the complaint or referral is frivolous, vexatious or otherwise not material; or
 - (b) the subject matter of the complaint or referral is within the jurisdiction of another person, board, agency or tribunal.

- 5.1.5 The Panel may, once it has commenced an investigation into any complaint or matter referred to it under section 5.1.3, terminate that investigation where the Panel determines that:
- (a) the complaint or referral is frivolous, vexatious or otherwise not material; or
 - (b) the subject matter of the complaint or referral is within the jurisdiction of another person, board, agency or tribunal.
- 5.1.6 The Panel may, prior to making a determination under section 5.1.4 or 5.1.5, request that the person making the complaint or referral provide additional information relating to the complaint or referral.
- 5.1.7 Where the Panel makes a determination under section 5.1.4 or 5.1.5, the Panel shall notify the CEO in writing of the determination and of the reasons for the determination. The CEO shall, unless the CEO gives a direction to the Panel under section 5.1.8, notify the following of the Panel's determination:
- (a) the person that filed the complaint or referral; and
 - (b) where the investigation relates to the conduct of a person, the person that is the subject matter of the investigation.
- 5.1.8 The Panel shall, upon being directed to do so by the CEO:
- (a) commence an investigation that the Panel had previously determined not to commence under section 5.1.4; or
 - (b) resume an investigation that the Panel had terminated under section 5.1.5.
- 5.1.9 Where the Panel has commenced an investigation, the Panel shall upon determining that there is a *prima facie* case in respect of the conduct of a person that is the subject matter of the investigation, notify that person of the commencement of the investigation. The Panel shall not be required to so notify the person if the Panel reasonably determines, and the CEO confirms, that such notification will jeopardize the investigation.
- 5.1.10 Where the Panel has commenced an investigation, the Panel shall:
- (a) periodically advise the CEO of the progress of the investigation; and

- (b) where the investigation was commenced under section 5.1.1(b), inform the person that filed the complaint or referral of the outcome of the investigation upon being requested in writing to do so by that person.

5.1.11 For the purposes of carrying out an investigation, the Panel has the power to examine and compel the production of any documents or other things, to summon and compel testimony and to enter upon premises and search and seize as authorized by the Electricity Act.

5.1.12 The Panel shall notify the CEO prior to exercising any of the powers referred to in section 5.1.11.

5.1.13 The Panel shall prepare and deliver reports in relation to an investigation in accordance with sections 7.2 and 7.5.

ARTICLE 6 REVIEWS

6.1 Reviews

6.1.1 The Panel may, with the prior concurrence of the CEO, undertake a review of any actual or potential flaws or inefficiencies referred to in section 4.1.1(c) or 4.1.1(d).

6.1.2 The Panel shall prepare and deliver reports in relation to a review in accordance with sections 7.3 and 7.5.

ARTICLE 7 REPORTING

7.1 General Reporting

7.1.1 The Panel shall, not less than semi-annually and more frequently if so requested by the CEO, submit to the CEO written reports on matters pertaining to its responsibilities under this By-law including:

- (a) a summary of reports provided to the Panel by the MAU;
- (b) a summary of all complaints or referrals filed with the Panel; and
- (c) a summary of all investigations or reviews commenced by the Panel.

Once annually, such report shall contain the Panel's general assessment of the state of the IESO-administered markets, including their efficiency and competitiveness.

- 7.1.2 Where the Panel, in carrying out its responsibilities, identifies that a market participant may be acting contrary to or in non-compliance with statutory authority falling within the jurisdiction of a person, board, agency or tribunal, the Panel shall prepare and submit a written report to that effect to the CEO. The CEO shall thereafter forward the relevant information to the head of the relevant authority.
- 7.1.3 The Panel shall provide to the CEO such briefings and updates regarding the performance by the Panel of its duties and activities as the CEO may request.

7.2 Report During or Following Investigation

- 7.2.1 Upon completion of an investigation under Article 5, the Panel shall prepare a written report that sets out, among other information:
- (a) the matter that was investigated;
 - (b) the paragraph of section 5.1.1 under which the investigation was commenced;
 - (c) the findings of the Panel;
 - (d) the response of a person under section 7.2.2, if applicable; and
 - (e) the recommendations of the Panel, if any, and the reasons for such recommendations.
- 7.2.2 Where the Panel intends to include in a report referred to in section 7.2.1 findings to the effect that a person has engaged in inappropriate or anomalous conduct, the Panel must discuss its findings with the person prior to including such findings in the report. The Panel must also give the person a reasonable opportunity to respond in writing to the allegations. Where the person has not made any response within such reasonable time, the person shall be deemed to have elected to make no response.
- 7.2.3 A report referred to in section 7.2.1 shall be provided to the CEO, the IESO and any other person that the Panel considers appropriate. Where the Panel intends to provide the report to any such other person, the Panel shall so notify the CEO. The CEO may also provide the report to such persons as the CEO considers appropriate.

- 7.2.4 A report referred to in section 7.2.1 in respect of an investigation relating to the conduct of a person shall be provided by the CEO to that person unless the CEO, on the advice of the Panel, determines that such disclosure is reasonably likely to compromise the work of the MAU or the Panel. In such a case, the CEO shall provide the person with a redacted version of the report from which any portions that could reasonably compromise the work of the MAU or the Panel have been deleted.
- 7.2.5 Where the Panel determines that action is urgently required in respect of a matter that is revealed during an investigation, the Panel shall promptly make an interim written report to that effect to the CEO containing the applicable recommendation. Where the urgent action or recommendation that is the subject of the interim report is a matter within the authority or control of the IESO, the Panel shall also provide a copy of the report to the Chief Executive Officer of the IESO. The CEO may provide the report to such persons as the CEO considers appropriate.

7.3 Report Following Review

- 7.3.1 Upon completion of a review under Article 6, the Panel shall prepare a written report that sets out, among other information:
- (a) the matter that was reviewed;
 - (b) the manner in which the matter came to the attention of the Panel;
 - (c) the findings of the Panel; and
 - (d) the recommendations of the Panel, if any, and the reasons for such recommendations.
- 7.3.2 A report referred to in section 7.3.1 shall be provided to the CEO. The CEO shall provide such report to the IESO and to such other person as the CEO considers appropriate.

7.4 Publication

- 7.4.1 Subject to section 7.5, all written reports of the Panel shall be posted on the Board's website.

7.5 Confidentiality

- 7.5.1 Where a written report referred to in this Article contains confidential information obtained by the Panel by compulsory procedures in the course of its duties under this By-law, the Panel shall prepare one or more redacted versions of the report from which the confidential information has

been deleted as may be required to enable the dissemination and publication of the report in accordance with this Article.

7.5.2 Where a written report referred to in this Article contains confidential information obtained by the Panel other than by compulsory procedures in the course of its duties, the Panel shall prepare one or more redacted versions of the report from which the confidential information has been deleted as may be required to enable the dissemination and publication of the report in accordance with this Article.

7.5.3 Sections 7.5.1 and 7.5.2 do not apply in relation to any confidential information that is the subject of an order of the Panel under section 8.2.3.

7.6 Provision of Data

7.6.1 Where the Panel receives a request from a market participant for the provision of data collected or created by the Panel during the course of the monitoring activities referred to in section 4.1.1, the Panel shall so notify the CEO.

7.6.2 The CEO may, provided that the data is not confidential information, authorize the provision of such data unless the CEO, on the advice of the Panel, determines that such provision is reasonably likely to compromise the work of the MAU or the Panel.

7.6.3 A reasonable fee may be charged for the provision of data under section 7.6.2.

ARTICLE 8 CONFIDENTIALITY

8.1 Panel Members

8.1.1 A member of the Panel shall enter into such confidentiality agreement with the Board as the Board of Directors, on the advice of the CEO, determines appropriate.

8.1.2 A member of the Panel shall comply with such protocols as the CEO, considers appropriate regarding the confidentiality and security of records, data handling and communications with Members of the Board and employees of the Board.

8.2 Confidential Information Obtained by Panel

8.2.1 Subject to section 8.2.2, no Member of the Board, employee of the Board or member of the Panel shall communicate or allow access to or

inspection of confidential information that is obtained by the Panel in the course of its duties under this By-law except in the ordinary course of that person's duties.

- 8.2.2 Except to the extent prohibited by law, confidential information that is obtained by the Panel in the course of its duties may be disclosed:
- (a) to the CEO in a report referred to in Article 7 and to the IESO in a report referred to in section 7.2.1, 7.2.5 or 7.3.1;
 - (b) to the MAU where such disclosure is required to enable the MAU to conduct activities in support of the Panel as described in the Protocol;
 - (c) to a police force or other investigatory agency or to a regulatory agency;
 - (d) where required by a summons or direction of the Board;
 - (e) where the Panel has made an order under section 8.2.3; or
 - (f) where required by law, judicial order or order of a regulatory body having authority over the matter.
- 8.2.3 In accordance with section 37.3(3) of the Electricity Act, the Panel shall make an order permitting the disclosure of confidential information obtained by the Panel by compulsory procedures in the course of its duties if, after giving the person from whom the confidential information was obtained and any other person who, in the opinion of the Panel, is an interested party an opportunity to be heard, the Panel is of the opinion that disclosure is in the public interest.
- 8.2.4 Where the Panel intends to make an order under section 8.2.3, the Panel shall so advise the CEO prior to giving any notice referred to in that section.

8.3 Designated Confidential Information

- 8.3.1 For the purposes of section 4.3.1(8) of the Act, a record of information that:
- (a) relates to a market participant and that was classified as "confidential" by the Independent Electricity Market Operator prior to the date of coming into force of section 4.3.1(1) of the Act and included in a market manual prior to that date shall be deemed to

have been designated by the Panel as “confidential” under this By-law; and

- (b) relates to a market participant and that was classified as “highly confidential” by the Independent Electricity Market Operator prior to the date of coming into force of section 4.3.1(1) of the Act and included in a market manual prior to that date shall be deemed to have been designated by the Panel as “highly confidential” under this By-law.

8.3.2 The Panel may from time to time designate other records of information relating to a market participant as “confidential” or “highly confidential” for the purposes of section 4.3.1(8) of the Act. Prior to so designating records of information, the Panel shall so notify the CEO.

ARTICLE 9 COMING INTO FORCE

9.1.1 This By-law shall come into force on October 2, 2020. It supersedes and replaces By-law #3 made by the Board effective January 5, 2005.

9.1.2 This By-law shall cease to have effect on the date on which a regulation made under section 4.3.1(9) of the Act comes into force.