

Consolidated Version
Amendments made on
April 24, 2008 (section 3.1.2 and Appendix A),
April 25, 2012 (section 6.1.1), October 25, 2013 (sections 2.1.2A, 2.1.2B, 2.2.6 and
6.8.1) and May 1, 2017 (section 6.1.1A)

PROTOCOL
RELATING TO MARKET SURVEILLANCE PANEL

THIS PROTOCOL made as of the 25th day of April, 2005

BETWEEN:

Independent Electricity System Operator, a
corporation continued under the *Electricity Act, 1998*
(the “IESO”)

- and -

Ontario Energy Board, a corporation continued
under the *Ontario Energy Board Act, 1998*
(the “OEB”)

(each a “Party” and collectively the “Parties”)

WHEREAS the Independent Electricity Market Operator had established a Market Surveillance Panel in accordance with the requirements of the *Electricity Act, 1998*;

AND WHEREAS by amendments to the *Ontario Energy Board Act, 1998* the Market Surveillance Panel has been continued as a panel of the OEB effective as of January 1, 2005;

AND WHEREAS the functions, duties and procedures of the Market Surveillance Panel are described in the *Electricity Act, 1998*, the *Ontario Energy Board Act, 1998* and By-law No. 3 of the OEB;

AND WHEREAS the Parties acknowledge that, in order to duly perform its functions and duties, the Market Surveillance Panel will require the on-going support of employees of the IESO;

AND WHEREAS By-law No. 3 of the OEB contemplates that the IESO and the OEB will have a protocol relating to (a) the use by the Market Surveillance Panel of the services of employees of the IESO, including employees forming part of the IESO's market assessment unit, (b) the provision by the Market Surveillance Panel of advice or assistance to the IESO on matters that arise under the market rules, and (c) to such other matters as may be required to give effect to those provisions of the By-law that contemplate the need for a protocol;

AND WHEREAS the Parties wish to enter into this Protocol to give effect to the elements referred to in the preceding paragraph.

NOW THEREFORE this Protocol witnesses that in consideration of the mutual promises and covenants contained in it, the IESO and the OEB agree as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

1.1.1 In this Protocol, unless the context otherwise requires:

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

“By-Law” means By-law No. 3 of the OEB;

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

“*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 OEB, a Crown employee providing services to the OEB under an agreement contemplated in section 4.16(4) of the *Act*, but does not include a Member or a member of the Panel;

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

“Member” means a member appointed to the OEB by the Lieutenant Governor in Council under the *Act*, and includes the OEB Chair and the Vice-Chairs of the OEB;

“Monitoring Document” has the meaning given to it in section 4.2.1 of the By-law;

“OEB Chair” means the Member designated by the Lieutenant Governor in Council under the *Act* to be the Chair of the OEB;

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

“Panel Chair” means the person appointed by the OEB Chair as the chair of the Panel; and

“Representative” includes a director, officer, employee, partner, agent or independent contractor and includes, in the case of the IESO, a member of a panel established by the IESO.

1.2 Interpretation

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 Protocol.

1.2.2 In this Protocol, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words importing a person include (i) an individual, (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate;
- (d) a reference to a section or paragraph is to a section or paragraph of this Protocol;
- (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) the expression “including” means including without limitation, and the expression “include”, “includes” and “included” shall be interpreted accordingly; and

- (h) 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. Nothing in this Protocol shall be interpreted as imposing on the IESO an obligation to amend the market rules.

ARTICLE 2
MARKET ASSESSMENT UNIT

2.1 Establishment and Maintenance of Market Assessment Unit

- 2.1.1. The IESO shall establish and maintain a market assessment unit to, among such other responsibilities as may be assigned to the market assessment unit by the IESO, support the Panel in respect of the Panel’s functions, duties and activities as described in the *Electricity Act*, the *Act* and the By-law.
- 2.1.2. The market assessment unit shall be composed of staff of the IESO with the experience and qualifications necessary to conduct the activities referred to in this Protocol in the manner required and on a timely basis.
- 2.1.2A Once annually, and more frequently if agreed by the Panel Chair, the Panel Chair shall provide the applicable IESO Representative with an assessment of the performance of members of the market assessment unit in the previous year for the purposes of supporting the IESO’s performance management and professional development processes. Such assessment shall be provided at such time and in such manner as may be agreed between the Panel Chair and the IESO Representative.
- 2.1.2B Once annually, and more frequently if agreed by the Panel Chair, the Panel Chair shall provide the applicable IESO Representative with a 12-month projection of the activities that the Panel plans to undertake and an indication of the resource requirements associated with those activities. Such projection shall be provided in such manner as may be agreed between the Panel Chair and the IESO Representative, and at such time as will enable the projection to be considered as part of the IESO’s annual business planning process. The applicable IESO Representative shall provide such supporting information regarding resources as the Panel may reasonably require for planning purposes.
- 2.1.3. The IESO shall ensure that the market assessment unit has reasonable resources to enable the market assessment unit to conduct the activities referred to in this Protocol in the manner required and on a timely basis.
- 2.1.4. The IESO shall ensure that the market assessment unit has at all reasonable times the full cooperation of all Representatives of the IESO as may be required to

enable the market assessment unit to conduct the activities referred to in this Protocol in the manner required and on a timely basis.

2.1.5. The IESO shall ensure that the market assessment unit has full access to data in the power, possession or control of the IESO as may be required to enable the market assessment unit to conduct the activities referred to in this Protocol in the manner required and on a timely basis.

2.1.6. Where the OEB Chair considers that:

- (a) the level of staffing, resources, data access or IESO cooperation referred to in sections 2.1.2 to 2.1.5 is inadequate for the purposes of enabling the market assessment unit to conduct the activities referred to in this Protocol in the manner required or on a timely basis;
- (b) the arrangements made by the IESO to ensure the confidentiality of the market assessment unit's work in support of the Panel, including the protection of files, databases, applications and the establishment of segregated working space, are inadequate; or
- (c) the code of conduct or conflict of interest guidelines to which members of the market assessment unit are subject are inadequate having regard to the sensitive nature of the market assessment unit's activities referred to in this Protocol,

the OEB Chair may so notify the Chief Executive Officer of the IESO. The OEB Chair and the Chief Executive Officer of the IESO shall then attempt in good faith to remedy the situation.

2.1.7. The IESO shall provide the OEB Chair with details of the level of staffing, resources, data access, arrangements, code of conduct and conflict of interest guidelines referred to in section 2.1.6 that exist as of the effective date of this Protocol. The IESO shall thereafter notify the Chair of the OEB of any change made to any such matters.

2.1.8. The IESO shall cause each member of the market assessment unit to comply with all of the provisions of this Protocol that apply to the market assessment unit.

2.2 Functions of the Market Assessment Unit

2.2.1. The market assessment unit shall provide such assistance and support as the Panel may require in relation to matters described in Articles 4, 5, 6 and 7 inclusive of the By-law as such By-law read on the effective date of this Protocol. The market assessment unit shall, with the prior concurrence of the Chief Executive Officer of the IESO, provide such assistance and support as the Panel may require in relation

to any matters that may be included in the By-law from time to time after the effective date of this Protocol.

- 2.2.2. The market assessment unit shall provide reports and briefings to the Panel as may reasonably be required by the Panel.
- 2.2.3. The market assessment unit shall provide such assistance and support as the Panel may require in relation to activities conducted by the Panel under Article 3.
- 2.2.4. The market assessment unit shall, with the prior concurrence of the Chief Executive Officer of the IESO, provide such assistance and support as the Panel may require in relation to activities assigned to the Panel by the OEB Chair under section 3.1.7 of the By-law.
- 2.2.5. The market assessment unit shall, upon request by the Panel:
 - (a) provide general administrative and clerical support to the Panel as may be reasonably requested by the Panel;
 - (b) liaise with the IESO and market participants on behalf of the Panel;
 - (c) attend meetings of the Panel and such other meetings as the Panel may require; and
 - (d) keep the Panel informed on a timely basis of policy developments in Ontario and elsewhere that are relevant to the functions and duties of the Panel as set out in the By-law.
- 2.2.6. In relation to the activities referred to in this section 2.2, the market assessment unit shall:
 - (a) take direction exclusively from the Panel;
 - (b) be under the exclusive supervision of the Panel; and
 - (c) except as otherwise provided under section 2.3, report exclusively and directly to the Panel.

Such exclusive direction, supervision and reporting shall extend to all matters pertaining to the conduct of the activities referred to in this section 2.2, but shall not be construed as limiting the ability of the IESO to direct, supervise or receive reports in relation to other responsibilities assigned to the market assessment unit as contemplated in section 2.1.1 or to address administrative or human resource matters pertaining to the employment of the members of the market assessment unit.

2.3. Access to Information, Segregation and Confidentiality

2.3.1. The market assessment unit:

- (a) shall not, without the prior concurrence of the Panel, discuss its work in relation to investigations referred to in Article 5 of the By-law with any Representative of the IESO or of a market participant;
- (b) shall not, without the prior concurrence of the Panel, provide copies of any reports or other documents that it prepares in relation to the activities referred to in section 2.2 to any Representative of the IESO or of a market participant;
- (c) shall not, without the prior concurrence of the Panel, disclose any confidential information provided to it by the Panel to any person or use any such confidential information for any purpose other than the purpose for which it was so provided; and
- (d) shall, upon request by the Panel, return to the Panel any confidential information provided to the market assessment unit by the Panel, with no copy or portion kept by the market assessment unit.

2.3.2. The market assessment unit shall, at the request of the Panel but only to the extent required by the Panel, provide to such persons as may be designated by the Panel excerpts of a draft document for the purpose of enabling such persons to confirm the factual accuracy of, or to otherwise comment on, the draft document.

2.3.3. The market assessment unit shall comply with all provisions of the market rules pertaining to the protection and non-disclosure of confidential information in relation to confidential information obtained by it from or in respect of a market participant.

2.3.4. The IESO shall ensure that electronic and paper files pertaining to the activities of the market assessment unit referred to in section 2.2 are secure from access by anyone other than the members of the market assessment unit and the members of the Panel. Nothing in this section 2.3.4 shall be construed to prohibit designated staff of the IESO from providing technical IT support to the market assessment unit.

ARTICLE 3
PANEL ASSISTANCE TO THE IESO

3.1. Scope of Assistance

- 3.1.1. The IESO may request that the Panel provide it with assistance and advice on matters that arise under the market rules and that are within the Panel's area of expertise. The Panel shall, with the prior concurrence of the OEB Chair, provide such assistance and advice.
- 3.1.2. Subject to sections 3.1.3 and 3.1.4, the Panel is hereby authorized by the OEB Chair to provide, and shall upon request provide, assistance and advice to the IESO on the following matters:
- (a) the approval by the IESO of the aggregation of facilities as referred to in section 2.3.2.3 of Chapter 7 of the market rules as they read on December 1, 2004;
 - (b) changes or revisions to dispatch data by a market participant as referred to in section 3.3.6 of Chapter 7 of the market rules as they read on April 1, 2008;
 - (c) changes or revisions to dispatch data by a market participant as referred to in section 3.3.8 of Chapter 7 of the market rules as they read on December 1, 2004;
 - (d) the failure by a registered market participant to comply with dispatch instructions as referred to in section 7.5.7 of Chapter 7 of the market rules as they read on December 1, 2004;
 - (e) confirmation that the IESO has obtained contracted ancillary services or reliability must-run contracts in the presence of market power as referred to in section 9.8.1.4 of Chapter 7 of the market rules as they read on December 1, 2004; and
 - (f) the establishment of the methodology for determining elements of a reference price relating to local market power as referred to in section 1.3.5 of Appendix 7.6 of Chapter 7 of the market rules as they read on December 1, 2004.

For convenience of reference, the sections of the market rules referred to in this section 3.1.2 as they read on the relevant date referred to above are reproduced in Appendix A.

- 3.1.3. Where the IESO wishes the Panel to commence an investigation or a review in relation to any of the matters referred to in section 3.1.2, the IESO shall refer the

matter to the Panel and the matter shall be dealt with by the Panel in accordance with Article 5 or Article 6 of the By-law, as applicable.

- 3.1.4. The OEB Chair may, on sixty days' notice to the Chief Executive Officer of the IESO, revoke the authorization of the Panel to assist or advise the IESO on one or more of the matters referred to in section 3.1.2 where the OEB Chair, on the advice of the Panel, considers that:
- (a) the provision of such assistance or advice is having an adverse effect on the ability of the Panel to perform its other functions, duties and activities;
 - (b) the provision of such assistance or advice is no longer within the Panel's area of expertise; or
 - (c) the provision of such assistance or advice by the Panel is not adequately supported by the market assessment unit.
- 3.1.5. The Panel is authorized to, and shall upon request, brief the IESO Board on the periodic monitoring reports it has published in respect of the IESO-administered markets.

ARTICLE 4

ADDITIONAL RIGHTS AND OBLIGATIONS

4.1. Exchange of Information

- 4.1.1. The IESO shall provide or make available to the Panel such information as the Panel may require to enable the Panel to perform its functions, duties and activities as set out in the *Electricity Act*, the *Act* or the By-law. Without limiting the generality of the foregoing, the market assessment unit shall provide or make available to the Panel data that is identified in the Monitoring Documents and that is required to be provided to the market assessment unit under the market rules.
- 4.1.2. The IESO shall ensure that the Panel has access at all reasonable times to the electronic and paper files pertaining to the activities of the market assessment unit referred to in section 2.2.
- 4.1.3. A Party shall provide to the other Party any information that comes to its attention and that pertains to:
- (a) developments or events that are relevant to the functions, duties and activities of the Panel as set out in the *Electricity Act*, the *Act* or the By-law or to the activities of the market assessment unit as set out in section 2.2;

- (b) concerns expressed about the work of the market assessment unit or of the Panel; or
- (c) a request by a third party for access to or the disclosure of confidential information obtained or developed by:
 - i. the market assessment unit in conducting the activities referred to in section 2.2; or
 - ii. the Panel in performing the functions, duties and activities referred to in section 4.1.3(a).

4.1.4. Without limiting the generality of section 4.1.3, the IESO shall promptly notify the Panel of any proposed amendment to the IESO's information confidentiality catalogue referred to in the market rules.

4.2. Consultations

4.2.1. The OEB Chair and the Chief Executive Officer of the IESO shall consult with one another from time to time as may be required in relation to the matters referred to in this Protocol.

4.2.2. Without limiting the generality of section 4.2.1, the OEB Chair and the Chief Executive Officer of the IESO shall consult one another in the event that either person has concerns regarding this Protocol or its implementation by a Party. The OEB Chair and the Chief Executive Officer shall attempt in good faith to resolve any inadequacies, deficiencies or difficulties in relation to the terms of this Protocol or its implementation.

4.3. Costs and Expenses

4.3.1. Subject to section 4.3.2, each Party shall bear its own costs of implementing and complying with the provisions of this Protocol.

4.3.2. Where the IESO incurs out-of-pocket expenses in relation to the conduct of the activities referred to in section 2.2.5, these expenses shall be reimbursed by the OEB provided that they are reasonable and that the IESO provides the OEB with an invoice supported by receipts. For greater certainty, "out-of-pocket expenses" shall not include any salary or other remuneration paid to members of the market assessment unit by the IESO.

4.3.3. Unless otherwise instructed to do so by the OEB, the IESO shall not include federal Goods and Services Tax in any invoice submitted to the OEB under this Protocol.

4.3.4. Where the OEB incurs out-of-pocket expenses in relation to the conduct by the Panel of the activities referred to in Article 3, these expenses shall be reimbursed by the IESO provided that they are reasonable and that the OEB provides the IESO with an invoice supported by receipts. For greater certainty, “out-of-pocket expenses” shall not include any remuneration paid to members of the Panel by the OEB.

4.4. Intellectual Property

4.4.1. The OEB shall be the sole owner of any copyright associated with or contained in any reports or other documentation prepared by the market assessment unit in the conduct of the activities referred to in section 2.2, as well as all rights and interests ancillary thereto.

4.4.2. Subject to section 4.4.3, the IESO shall, in order to give effect to section 4.4.1:

- (a) obtain waivers of all rights of integrity and any other moral rights in relation to the reports or other documentation prepared by the market assessment unit in the conduct of the activities referred to in section 2.2 from any person in the position to assert such rights, which waivers may be invoked without restriction by any person authorized by the OEB to use such reports or other documentation;
- (b) ensure that nothing provided by the market assessment unit to the Panel infringes upon or violates any third party intellectual property rights;
- (c) from time to time at the request of the OEB, execute and cause to be executed by any applicable person a written assignment of copyright, a waiver of all moral rights and such other document as may be reasonably required by the OEB to in order to give effect to sections 4.4.1 and 4.4.2(a); and
- (d) from time to time assist the OEB in preparing any applicable Canadian intellectual property registration.

4.4.3. The IESO shall not be required to comply with its obligations under section 4.4.2(a) or 4.4.2(c) if and to the extent that such matters have been addressed directly between the OEB and the member of the market assessment unit or other applicable person.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1. Representations and Warranties of IESO

5.1.1. The IESO hereby represents and warrants as follows to the OEB and acknowledges and confirms that the OEB is relying on such representations and warranties without independent inquiry in entering into this Protocol:

- (a) it is a corporation duly continued and existing under the laws of the Province of Ontario;
- (b) it has all the necessary corporate power to enter into and perform its obligations under this Protocol;
- (c) the execution, delivery and performance of this Protocol by it has been authorized by all necessary corporate and/or governmental action and does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under, or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law instruments of the IESO; (ii) any contracts or instruments to which the IESO is bound; or (iii) any laws applicable to it;
- (d) each individual executing this Protocol, and any document in connection herewith, on behalf of the IESO, has been duly authorized to execute this Protocol and has the full power and authority to bind the IESO; and
- (e) this Protocol constitutes a legal and binding obligation on the IESO, enforceable against the IESO in accordance with its terms.

5.1.2. The IESO shall promptly notify the OEB of any circumstance that does or may result in any of the representations and warranties set forth in section 5.1.1 becoming untrue or inaccurate during the term of this Protocol.

5.2. Representations and Warranties of OEB

5.2.1. The OEB hereby represents and warrants as follows to the IESO and acknowledges and confirms that the IESO is relying on such representations and warranties without independent inquiry in entering into this Protocol:

- (a) it is a corporation duly continued and existing under the laws of the Province of Ontario;

- (b) it has all the necessary corporate power to enter into and perform its obligations under this Protocol;
 - (c) the execution, delivery and performance of this Protocol by it has been authorized by all necessary corporate and/or governmental action and does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under, or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law instruments of the OEB; (ii) any contracts or instruments to which the OEB is bound; or (iii) any laws applicable to it;
 - (d) each individual executing this Protocol, and any document in connection herewith, on behalf of the OEB, has been duly authorized to execute this Protocol and has the full power and authority to bind the OEB;
 - (e) this Protocol constitutes a legal and binding obligation on the OEB, enforceable against the OEB in accordance with its terms; and
 - (f) the OEB is exempt from the application of the federal Goods and Services Tax in relation to any services that may be provided by the IESO under this Protocol.
- 5.2.2. The OEB shall promptly notify the IESO of any circumstance that does or may result in any of the representations and warranties set forth in section 5.2.1 becoming untrue or inaccurate during the term of this Protocol.

ARTICLE 6 **GENERAL**

6.1. Term and Termination

- 6.1.1. This Protocol shall come into force on the date first written above and shall remain in effect for a period of one year from that date, and may thereafter be renewed by the parties for such additional terms of one year or more as the parties may agree. Despite the foregoing, the parties may from time to time agree to a renewal term of less than one year where special circumstances so warrant.
- 6.1.1A Despite section 6.1.1, as of May 1, 2017 this Protocol shall be automatically renewed for successive two-year terms unless either Party gives notice to the other at least 120 days prior to the expiration of any renewal term of the Party's intention not to renew.
- 6.1.2. This Protocol shall expire on the date on which a regulation made under section 4.3.1(9) of the *Act* comes into force.

6.2. Amendments

6.2.1. No amendment of this Protocol shall be effective unless made in writing and signed by the Parties.

6.3. Assignment

6.3.1. No Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Protocol without the prior written consent of the other Party.

6.4. Successors and Assigns

6.4.1. This Protocol shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

6.5. Further Assurances

6.5.1. Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Protocol that the other Party may reasonably require for the purposes of giving effect to this Protocol.

6.6. Waiver

6.6.1. A waiver of any default, breach or non-compliance under this Protocol is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Protocol shall not operate as a waiver of that Party's rights under this Protocol in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

6.7. Severability

6.7.1. Any provision of this Protocol that is determined by a court of competent jurisdiction to be invalid or unenforceable shall be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of this Protocol, all without affecting the validity or enforceability of the remaining provisions of this Protocol.

6.8. Notices

6.8.1. Any notice, demand, consent, request or other communication required or permitted to be given or made under this Protocol shall be validly and effectively made or given if made or given in writing and delivered by first class mail, postage prepaid, by facsimile transmission or by personal delivery, and addressed to the Party to whom it is intended at its address as set out below:

- (a) if to the OEB, addressed to the attention of the OEB Chair or the Panel Chair, as the case may be, at:

Ontario Energy Board
2300 Yonge Street, 27th Floor
P.O. Box 2319
Toronto, ON M4P 1E4

Facsimile No.: 416-440-7656

- (b) if to the IESO, addressed to the attention of the Director, Market Assessment and Compliance or the Chief Executive Officer of the IESO, as the case may be, at:

Chief Executive Officer
Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5

Facsimile No.: 416-506-2849

Director, Market Assessment and Compliance
Independent Electricity System Operator
Station A, Box 4474
Toronto, ON M5W 4E5

Facsimile No.: 905-855-6408

A Party may change its address by written notice to the other Party given as aforesaid. Such change shall not constitute an amendment to this Protocol for the purposes of the application of section 6.2.1.

6.8.2. A notice, demand, consent, request or other communication shall be treated as having been duly given or made to a person by the sender:

- (a) where given or made by first class mail, on the fourth business day after the date of mailing;
- (b) where given or made by facsimile transmission, on the day and at the time of transmission as indicated on the sender's facsimile transmission report, if a business day or, if the transmission is on a day which is not a business day or is after 5:00 pm, at 9:00 am on the following business day; or
- (c) where given or made by personal delivery, when the person actually receives the notice, demand, consent, request or other communication.

6.9. Governing Law

6.9.1 This Protocol shall be governed by and interpreted in all respects in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

6.10. Counterparts

6.10.1. This Protocol may be executed in one or more counterparts which, together, shall constitute one and the same Protocol. This Protocol shall not be binding until it has been executed by each of the Parties and delivered to each of the Parties.

IN WITNESS WHEREOF the Parties have, by their duly appointed and authorized representatives, executed this Protocol.

**Independent Electricity System
Operator**

Ontario Energy Board

By:

By:

Name: David Goulding

Name: Howard Wetston, Q.C.

Title: Chief Executive Officer

Title: Chair

Appendix A

Excerpt from Market Rules (section 3.1.2)

1. Section 2.3.2.3 of Chapter 7

2.3.2 The *IMO* shall approve an application for the aggregation of *facilities* into a single *registered facility* unless:

(...)

2.3.2.3 one or more of the facilities proposed to be aggregated is or includes *generating unit* or a *load facility*:

(...)

- c. whose *offer* or *bid* information or whose in service or out of service status is information required to be submitted to the *market assessment unit* or the *market surveillance panel* in furtherance of their respective functions and obligations under the *Electricity Act, 1998* and these *market rules*; or

(...)

2. Section 3.3.6 of Chapter 7

3.3.6 Where pursuant to section 3.3.5, the approval of the *IESO* is required for the submission of revised *dispatch data*, the *IESO* shall, unless the change in quantity poses risks in relation to the *reliability* or *security* of the *electricity system*, approve the submission of revised *dispatch data* where:

(...)

3.3.6.3 the *registered market participant* indicates, at the time of the submission of the revised *dispatch data*, that the revision is required in order to reflect a proposed change in the operational status of the *registered facility* designed solely to prevent the *registered facility* from operating in a manner that would violate any *applicable law*, endanger the safety of any person or damage property or the environment.

The *IESO* may refer such changes or revisions of *dispatch data* to the *market surveillance panel*.

3. Section 3.3.8 of Chapter 7

3.3.8 Notwithstanding any other provision of this section 3.3, a *registered market participant* shall as soon as practicable submit to the *IMO* revised *dispatch data* for any *registered facility* in respect of which it is the *registered market participant* if, for any *dispatch hour* in the current *pre-dispatch schedule*, the quantity of any *physical service* scheduled for that *registered facility* differs from the quantity the *registered market participant* reasonably expects to be delivered or withdrawn by more than the greater of (i) 2 percent (ii) such absolute amount as may be determined by the *IMO* based on considerations of *reliability* and *facility specific characteristics*, (iii) in the case of a *cogeneration facility* that is either a *dispatchable* or *self-scheduling generation facility*, such amount based on the impact that the production of the other forms of useful energy within the *facility* has on *energy* production based on the information outlined in section 2.2.6.10, and the *IMO*, and (iv) in the case of an *enhanced combined cycle facility* that is either a *dispatchable* or *self-scheduling generation facility*, such amount based on the impact that the recovery of waste heat from an industrial process/processes within the *facility* has on *energy* production based on the information outlined in section 2.2.6.10, and the *IMO*:

- a. shall, unless the change in quantity poses risks in relation to the *reliability* or *security* of the *electricity system*, include such change as an input in respect of any subsequent *market schedules* determined following receipt of the change; and
- b. may refer such changes or revision of *dispatch data* to the *market surveillance panel*.

4. Section 7.5.7 of Chapter 7

7.5.7 Until the *registered market participant* for a non-conforming *registered facility* responds to the requirements of this section 7.5 to the satisfaction of the *IMO*, such *registered facility* shall continue to be designated as non-conforming, and such failure to respond on the part of that *registered market participant* may be referred by the *IMO* to the *market surveillance panel* at any time.

5. Section 9.8.1.4 of Chapter 7

9.8.1 The *IMO* shall treat information relating to the procurement of *contracted ancillary services* and *reliability must-run contracts* as follows:

(...)

9.8.1.4 where the *IMO* obtains *contracted ancillary services* or *reliability must-run contracts* in the presence of market power, as confirmed by the *market surveillance panel*, the *IMO* shall *publish* the relevant terms and

conditions of the contracts, except for the price which shall not be disclosed, in order to encourage competition.

6. Section 1.3.5 of Appendix 7.6 of Chapter 6

1.3.5 The *market surveillance panel* shall, for the purposes of section 1.3.2 and in accordance with sections 1.3.6 and 1.3.7, establish the methodology for determining a pair of high end factors and a pair of low end factors for each type of *reference price* referred to in section 1.3.3, including the alternative *reference price* referred to in section 1.3.3.1B, if any. Such methodology shall:

1.3.5.1 be submitted to the *IMO Board* for approval; and

1.3.5.2 be *published* by the *IMO* in the form approved by the *IMO Board*.