

B.11.3.3 Independent Electricity System Operator (IESO) – Application for Exemption from Recognition as a Clearing Agency – OSC Staff Notice and Request for Comment

OSC STAFF NOTICE AND REQUEST FOR COMMENT

INDEPENDENT ELECTRICITY SYSTEM OPERATOR

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

The Independent Electricity System Operator (**IESO**) has applied to the Ontario Securities Commission (**Commission**) for an order pursuant to section 147 of the *Securities Act* (Ontario) (**OSA**) to exempt it from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA related to the new DAM Virtual Transactions as defined below and as discussed in more detail in IESO's Application (the **Application**).

The IESO is a non-profit corporation without share capital created pursuant to Part II of the *Electricity Act, 1998* (Ontario) (the **Electricity Act**). The IESO is regulated by the Ontario Energy Board (the **OEB**) and the Ontario government appoints its directors (other than the chief executive officer who is also a director). IESO operates pursuant to the licence granted to it by the OEB under the OEB Act.

To improve and modernize Ontario's electricity markets, the IESO is implementing a market renewal program, which is designed to enhance Ontario's current electricity market, including addressing certain inefficiencies in the electricity market, and facilitate Ontario's continued transition to new and diverse resources (the **Market Renewal Program**). The Market Rules required to implement the Market Renewal Program went into effect on November 8, 2024, and the IESO anticipates that the renewed market will begin operating on May 1, 2025.

As part of the Market Renewal Program, the IESO is developing a day-ahead market (the **DAM**) which will replace its current day-ahead commitment process under the Energy Market. The DAM will provide for both physical transactions (**DAM Physical Transactions**) and virtual transactions (**DAM Virtual Transactions**).

Among other factors set out in the Application, the IESO is seeking an exemption from the recognition requirement on the basis that it is subject to a comparable regulatory and oversight regime by the OEB.

B. Application and Draft Exemption Order

In the Application, IESO describes its requirements under the OEB regulatory framework that are generally comparable or that achieve similar outcomes to the requirements of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**). Subject to comments received, staff propose to recommend to the Commission that it grant IESO an exemption order in the form of the proposed draft order attached at Appendix A (**Draft Order**). We are prepared to recommend to the Commission that it exempt IESO because it does not currently pose significant financial risk to Ontario's capital markets and is subject to a comparable regulatory and oversight regime by the OEB. A copy of IESO's Application can be found on the Commission [website](#).

The Draft Order requires IESO to comply with terms and conditions set forth in Schedule "A" to the Draft Order, including relating to:

1. Regulation of IESO
2. Reporting requirements
3. Information sharing

The Draft Order also acknowledges that the scope of, and the terms and conditions imposed by the Commission, or the determination as to whether it is appropriate that IESO continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of domestic capital markets, IESO's activities or regulatory status, or any changes to the laws of Ontario affecting trading in or clearing and settlement of derivatives.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comments on all aspects of the Application and Draft Order.

B.11: CISO, Marketplaces, Clearing Agencies and Trade Repositories

You are asked to provide your comments in writing, via e-mail and delivered on or before April 17, 2025 addressed to the attention of the:

The Corporate Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario, M5H 3S8
Email: comments@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published. All comments received will be posted on the website of the OSC at <http://www.osc.gov.on.ca>. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Questions may be referred to:

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APPENDIX “A”

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED
(THE OSA)

AND

IN THE MATTER OF
INDEPENDENT ELECTRICITY SYSTEM OPERATOR
(THE IESO)

ORDER
(SECTION 147 OF THE OSA)

WHEREAS the Ontario Securities Commission (the **Commission**) has received an application (the **Application**) from the IESO pursuant to section 147 of the OSA for an order exempting the IESO from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA (**Order**).

AND WHEREAS the IESO having represented to the Commission that:

BACKGROUND

1. The IESO is a non-profit corporation without share capital created pursuant to Part II of the *Electricity Act, 1998* (Ontario) (the **Electricity Act**). The IESO is regulated by the Ontario Energy Board (the **OEB**) and the Ontario government appoints its directors (other than the chief executive officer who is also a director).
2. The IESO has been allocated the statutory mandate (the **Statutory Mandate**) of meeting the objects set out in subsection 6(1) of the *Electricity Act*.
3. Summarized, the Statutory Mandate creates three fundamental roles for the IESO: (i) ensuring the reliability of the integrated power system (the **Power System**); (ii) overseeing and running the IESO-administered markets (the **IESO-Administered Markets**); and (iii) planning the provincial electricity system and, as necessary, procuring electricity resources.
4. The IESO-Administered Markets include both physical markets, specifically, the real time energy market (the **Energy Market**), and financial markets, specifically, the transmission rights market (the **TR Market**), that together comprise the IESO-Administered Markets.
5. In carrying out the Statutory Mandate, the IESO has developed a codified set of rules to govern the provincial electricity grid and the IESO-Administered Markets in Ontario (collectively, the **Market Rules**). Section 32 of the *Electricity Act* authorizes the IESO to make the Market Rules.
6. To improve and modernize Ontario’s electricity markets, the IESO has designed and is implementing a market renewal program, which is designed to enhance Ontario’s current electricity market, including addressing certain inefficiencies in the electricity market, and facilitate Ontario’s continued transition to new and diverse resources (the **Market Renewal Program**). The Market Rules required to implement the Market Renewal Program went into effect on November 8, 2024, and the IESO anticipates that the renewed market will begin operating May 1, 2025.
7. As part of the Market Renewal Program, the IESO is developing a day-ahead market (the **DAM**) which will replace its current day-ahead commitment process under the Energy Market. The DAM will provide for both physical transactions (**DAM Physical Transactions**) and virtual transactions (**DAM Virtual Transactions**).
8. The IESO filed the Application for this Order as: (i) it is considered to be captured in the definition of “clearing agency – derivatives” pursuant to the OSA in that it will be (i) arranging or providing, on a multilateral basis, the settlement or netting of obligations resulting from DAM Virtual Transactions, (ii) providing a clearing service or arrangement that mutualises or transfers among participants the credit risk arising from DAM Virtual Transactions; and (iii) DAM Virtual Transactions are considered to be derivatives as defined under the OSA. While any entity that meets the registration and prudential security requirements may register to participate in DAM Virtual Transactions, the IESO anticipates virtual trader participation from existing participants in the energy market, energy traders that currently trade with neighbouring jurisdictions, and financial institutions.

REGULATORY OVERSIGHT AND FRAMEWORK

9. The IESO operates pursuant to the license granted to it by the OEB (the **OEB Licence**) under the OEB Act.
10. The OEB is the provincial regulatory authority of the natural gas and electricity sectors under the OEB Act and the Electricity Act. The OEB has the powers of oversight in connection with the business of the IESO, including its operation of the IESO-Administered Markets.
11. Specifically, the IESO and Authorized Market Participants (as defined herein) in the IESO-Administered Markets are subject to the following oversight, among other things, of the OEB: (i) all market design changes, which are implemented through amendments to the Market Rules, and are subject to review and approval by the OEB; (ii) the IESO orders and decisions, which are subject to appeal to the OEB, including compliance and enforcement decisions by the IESO's Market Assessment and Compliance Division and arbitration decisions pursuant to the Market Rules dispute resolution process for addressing disputes between the IESO and Authorized Market Participants; (iii) market participants, which are subject to compliance and enforcement authority by the OEB; (iv) the IESO-Administered Markets, including the TR Market, are subject to monitoring and oversight by the OEB's Market Surveillance Panel (the **MSP**); and (v) licensing, whereby certain market participants and the IESO must be licenced by the OEB and any failure to abide by licence conditions, the OEB Act or the Electricity Act can result in compliance and enforcement action by the OEB, including the imposition of a fine by the OEB, or the suspension or the revocation of the licence.
12. The IESO and market participants' licences contain conditions that require them to comply with applicable provisions of the Electricity Act, regulations made thereunder, and the Market Rules, including Chapter 9 of the Market Rules which prescribes the monthly settlement process governing the IESO-Administered Markets.
13. The IESO is also bound to make certain reports to the Minister of Energy and Electrification (the **Minister**) pursuant to the Electricity Act and to the OEB pursuant to the OEB Licence, and from time to time, the Minister issues directives and letters to the IESO articulating government policy.
14. Pursuant to the Electricity Reporting and Record Keeping Requirements of the OEB, the IESO is required to provide the OEB with quarterly financial statements for all market accounts showing quarter end financial position and quarterly and year to date results of operations. In addition, pursuant to Section 25.3(1) of the Electricity Act, the IESO is required, within 90 days after the end of every fiscal year, to submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the IESO Board. This report must also be submitted to the OEB pursuant to the OEB Licence.
15. The MSP monitors, investigates and reports on activities and behaviour in the IESO-Administered Markets and Ontario's electricity sector, and is specifically enabled to carry out investigations and inspections, including by compelling the production of documents and testimony, and to report to and make recommendations to the OEB. The IESO and the OEB have entered into a protocol pursuant to which the IESO's market assessment unit provides assistance and support to the MSP in relation to matters involving monitoring, analysing, evaluating, investigating, reviewing and reporting on the IESO-Administered Markets (the **Protocol**). The Protocol is currently in force.
16. The IESO's board of directors (the **IESO Board**) consists of the IESO chief executive officer and between 8-10 independent directors. The IESO Board oversees the IESO's business and affairs, and approves amendments to the Market Rules. The IESO Board has established three committees: (i) Audit Committee; (ii) Human Resources and Governance Committee; and (iii) Markets Committee.
17. Pursuant Chapter 7, Section 13 of the Market Rules, the IESO must notify the IESO Board, the OEB and the relevant government authorities of any suspension of the IESO-Administered Markets. As set forth in Chapter 7, Section 13.2.4 of the Market Rules, the IESO may suspend market operations in the event of the following: (i) market operations cannot be continued in a normal manner due to a failure in the software, hardware or communication systems that support market operations; (ii) a major blackout; (iii) the IESO-controlled grid breaks up into two or more electrical islands; (iv) an emergency situation requiring the IESO to evacuate its principal control centre and move to a backup control centre, under conditions and subject to the requirements of Chapter 5 of the Market Rules; or (v) declaration of an emergency by the Premier of Ontario or a direction from the Minister to the IESO or to an Authorized Market Participant to implement an emergency preparedness plan.
18. Pursuant to the OEB Licence, the IESO is required notify the OEB of any material change in circumstances that adversely affects or is likely to adversely affect the IESO's ability to comply with the OEB Licence, its financial integrity, or its ability to carry out its responsibilities under the Electricity Act, as soon as practicable after the occurrence of any such change, but in any event within 15 days of the date upon which such change becomes known to the IESO.
19. Section 32 of the Electricity Act permits the IESO to make rules establishing and governing markets related to electricity and ancillary services. Therefore, the IESO, through the IESO Board, has authority to make the Market Rules, and the IESO and Authorized Market Participants are required to comply with the Market Rules.

20. Section 32(6) of the Electricity Act provides that before making the Market Rules, the IESO is required to give the OEB an assessment of the impact of the proposed rule amendment on the interests of consumers with respect to prices and the reliability and quality of electricity service, and the OEB may revoke the rule amendment.
21. Sections 33 to 35 of the Electricity Act authorize applications to the OEB to review the Market Rules and gives the OEB authority to set aside the Market Rules that are inconsistent with the purposes of the Electricity Act or that are unjustly discriminatory against an Authorized Market Participant or a class of Authorized Market Participants. Specifically, Section 33(2) of the Electricity Act requires the IESO to publish any amendment to the Market Rules at least 22 days before the amendment comes into force. The OEB may, not later than 15 days after the amendment is published and without holding a hearing, revoke the amendment on a date specified by the OEB and refer the amendment back to the IESO for further consideration in accordance with Section 33(3) of the Electricity Act. As well, pursuant to Section 33(4) of the Electricity Act, any person may apply to the OEB for review of an amendment to the Market Rules by filing an application with the OEB within 21 days after the amendment is published.
22. Section 36 of the Electricity Act authorizes appeals to the OEB by persons who are subject to orders under the Market Rules that: (i) require them to pay a financial penalty or amount of money that exceeds \$10,000; (ii) suspends or terminates their participation in the IESO-Administered Markets; or (iii) refuse their authorization to participate in the IESO-Administered Markets.
23. All transactions concluded within the IESO-Administered Markets must conform to the Market Rules, and all Authorized Market Participants must receive transaction confirmations from the IESO in accordance with the provisions thereof.
24. The IESO is exempt from the requirement to be recognized as an exchange under section 21 of the OSA by the Commission order issued pursuant to Section 147 of the OSA and is exempt from the operation of National Instrument 21-101 by Director order issued under Section 15.1 of NI 21-101, each dated March 6, 2002 (the **Exchange Order**).
25. The IESO is exempt from the requirements to file forms and fees in connection with trades which are exempt from prospectus and registration requirements with the Commission pursuant to Part 7 of Commission Rule 45-501 by Commission order issued pursuant to Section 147 of the OSA, dated March 28, 2002 (the **Exempt Distribution Order**).
26. The IESO and market participants are exempt from the reporting requirements in connection with executing transactions in Transmission Rights Contracts (as defined in the order) and the transactions in the TR Market are exempt from the reporting requirements under Part 3 of OSC Rule 91-507 by Director order issued pursuant to section 42 of OSC Rule 91-507 dated October 30, 2014 (the **Exempt Reporting Decision**, and collectively with the Exchange Order and the Exempt Distribution Order, the **Previous Orders**).

THE IESO-ADMINISTERED MARKETS

27. The Energy Market serves as a platform for matching the supply and demand of electricity in Ontario. It facilitates the real-time scheduling and dispatch of the Power System, to ensure load and generation are balanced, flows on the transmission system are within appropriate limits and voltage and frequency are maintained.
28. Dispatchable generators (i.e., power plants that can adjust their output) and dispatchable loads (i.e., consumers of electricity that can adjust their usage) submit their offers to sell electricity and bids to buy electricity to the Energy Market. Based on these offers and bids (and forecast information for non-dispatchable generators (i.e., electricity from power sources that cannot easily adjust their output)) and loads (i.e., consumers who cannot easily adjust their usage), the IESO determines the quantity of energy and operating reserve to be transacted and the market clearing price for each interval, which determines the actual delivery, use, and market clearing price of electricity. The IESO schedules and dispatches resources accordingly.
29. The IESO settles the Energy Market monthly by invoicing and collecting payments from loads for their monthly electricity withdrawals and remitting payment to generators for their monthly injections.

Market Rules

30. The Market Rules govern the IESO and all Authorized Market Participants participating in the IESO-Administered Markets. The provisions of the Market Rules are complete codes, covering the form and content of all the transactions in the IESO-Administered Markets.
31. Participation in the IESO-Administered Markets is limited to those participants who have, among other things, been approved in advance by the IESO, satisfy the requisite prudential support requirements, meet the financial thresholds that are equivalent, where applicable, to those to be applied under OSC Rule 93-101 *Derivatives: Business Conduct* dealing with “eligible derivatives parties” in the context of the DAM Virtual Transactions, and have been issued a licence by the OEB pursuant to Part V of the OEB Act (other than transmission rights participants, virtual traders, capacity auction participants or capacity market participants using solely demand response resources who do not require a licence by the

OEB pursuant to Part V of the OEB Act, for that class of participation), subject in all respects to the Market Rules (**Authorized Market Participants**).

Market Renewal Initiative – The DAM

32. A day-ahead market for electricity is a standard component of many electricity markets in North America. It allows Authorized Market Participants to submit bids and offers a day in advance of operations in order to secure schedules and prices for the following day. In these markets, most of the supply is scheduled in the day-ahead market and the real-time market is used to balance any deviations that occur between day-ahead and real-time.
33. The DAM is one of the key features of the IESO's future energy market.
34. Following the introduction of the DAM, the Energy Market, together with the TR Market and the DAM, will constitute an enhanced wholesale electricity market.
35. The Market Renewal Program and the DAM will not materially impact the TR Market. The TR Market will continue to operate as it has since it opened in 2002 (continuing to rely on the above noted Previous Orders issued by the Commission).

DAM Physical Transactions

36. Authorized Market Participants will offer or bid price-quantity pairs into the DAM and, if economic, will receive a schedule in the DAM. Authorized Market Participants whose physical offers/bids are scheduled in the DAM must deliver/consume electricity in real-time, or “buy/sell-back” (i.e. pay or be paid the applicable real-time price for deviations from day ahead schedules) in the Energy Market. Authorized Market Participants are incentivized to meet their DAM schedules as long as it remains economic to do so in real-time based on real-time prices.

DAM Virtual Transactions

37. DAM Virtual Transactions will be energy offers and bids in the DAM that are not backed by physical supply or demand. They will be evaluated just like physical offers and bids in that they can receive a DAM schedule and are subject to the two-settlement process; however, because they do not represent a physical resource, their actual real-time quantity is zero, which means their balancing settlement will always be for the full megawatt quantity of the DAM schedule. DAM Virtual Transactions, which will have no delivery or consumption obligations in real-time, are scheduled based on their DAM schedule and prices.
38. Including virtual transactions in the DAM increases the pool of DAM participants, which increases price convergence between day-ahead and real-time. Price convergence encourages day-ahead participation by physical generators and loads. DAM Virtual Transactions will also provide physical generators and loads with an ability to hedge their exposure to real-time prices.
39. Authorized Market Participants who are residents in Ontario may participate in DAM Virtual Transactions by satisfying eligibility requirements and signing a participant agreement. While any entity that meets the registration and prudential security requirements may register to participate in DAM Virtual Transactions and become an Authorized Market Participant, the IESO anticipates virtual trader participation from existing participants in the Energy Market, energy traders that currently trade with neighbouring jurisdictions, and financial institutions. In the event that a defaulting Authorized Market Participant's prudential support is insufficient to satisfy its outstanding payment obligations, the IESO will continue to be authorized to socialize any payment deficiency by issuing a default levy to other Authorized Market Participants.

AND WHEREAS IESO has agreed to the terms and conditions attached hereto as Schedule A;

AND WHEREAS based on the Application and the representations that the IESO has made to the Commission, in the Commission's opinion the granting of the Order to exempt the IESO from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS, IESO is required to comply with NI 24-102 *Clearing Agency Requirements (NI 24-102)*, as applicable;

AND WHEREAS IESO has acknowledged to the Commission that the scope of, and the terms and conditions imposed by, the Commission attached hereto as Schedule A, or the determination whether it is appropriate that IESO continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of domestic capital markets, IESO's activities or regulatory status, or any changes to the laws of the Ontario affecting trading in or clearing and settlement of derivatives;

B.11: CIRO, Marketplaces, Clearing Agencies and Trade Repositories

AND WHEREAS a director of the Commission issued a decision varying the Exempt Reporting Decision to include additional relief from the requirements in OSC Rule 91-507 *Trade Repositories and Derivatives Data Reporting* and National Instrument 93-101 *Business Conduct subject to terms and conditions*;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the OSA, the IESO is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA.

PROVIDED THAT the IESO complies with the terms and conditions attached hereto as Schedule A.

DATED _____ effective on May 1, 2025.

●
Ontario Securities Commission

SCHEDULE A

Terms and Conditions

Definitions:

For the purposes of this Schedule A:

Unless the context requires otherwise, terms used in this Schedule A have the meanings ascribed to them elsewhere in this Order and in Ontario securities law (as defined in the OSA).

COMPLIANCE WITH ONTARIO LAW

1. IESO must comply with applicable Ontario securities law.

DAM VIRTUAL TRANSACTIONS

2. IESO will provide the DAM Virtual Transactions pursuant to this Order as described in paragraphs 37 to 39 of the IESO's representations as set out above in this Order to Authorized Market Participants who are resident in Ontario.

REGULATION OF IESO

3. IESO must continue to be regulated and supervised by the OEB or any successors.
4. IESO must continue to comply with its ongoing regulatory requirements under the Electricity Act, OEB Act or successor legislation, and with the ongoing regulatory requirements of the OEB, as applicable.

REPORTING REQUIREMENTS

Prompt Notice

5. IESO must promptly notify staff of the Commission of any of the following:
 - (i) any material change or proposed material change in IESO's regulatory status under the Electricity Act or the OEB Act or to the regulatory oversight of IESO by the OEB or any successor;
 - (ii) any material system failure in the DAM Virtual Transactions including cybersecurity breaches that could affect the safety and soundness of IESO; and
 - (iii) any material change to the prudential support framework, as defined in the Market Rules, relating to the DAM Virtual Transactions.

INFORMATION SHARING

6. IESO must promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws that would prevent the sharing of such information and subject to the application of solicitor-client privilege.