

11. DISPUTE RESOLUTION

11.1 Introduction

11.1.1 Purpose

The purpose of **rule 11** is to prescribe the procedures by which the **ISO** and a **market participant** may resolve certain **disputes**.

11.1.2 Other Remedies Available

The procedures under **rule 11** are in addition to any other action or remedies that may be available to the **ISO** or a **market participant** elsewhere in **ISO rules** or under law, regulation or order. While such other action or remedies may preclude the application of **rule 11**, nothing in **rule 11** should be construed to limit the right of the **ISO** or a **market participant** to take action or seek remedies otherwise available to it, and such action or remedies may be pursued in lieu of or in addition to the procedures in **rule 11**.

11.1.3 Committees

11.1.3.1 ISO Review Committee

The **ISO** will establish, as required, a non-standing **review committee** which will be comprised of **ISO** executive representatives appointed by the **ISO** Chief Executive Officer.

The role of the **ISO review committee** is to review an **eligible dispute** that is proceeding through the **ISO determination** procedure, including reviewing any submissions made by the **market participant** in that regard, and thereafter confirm, vary or overturn such **ISO determination**.

11.1.3.2 ISO Mediation Oversight Committee

The **ISO** will establish, as required, a non-standing **mediation oversight committee** which will be comprised of **ISO** executive representatives appointed by the **ISO** Chief Executive Officer.

The role of the **mediation oversight committee** is to:

- a) examine each **eligible dispute** and, if appropriate, determine that the **eligible dispute** proceed through the mediation procedure;
- b) as required by **rule 11.5.3**, make suggestions regarding the appointment of a **mediator**;
- c) monitor the progress of each **eligible dispute** through the mediation procedure, report on such progress to the **ISO** Chief Executive Officer and, if necessary, recommend any other measures that may be taken to expedite the resolution of an **eligible dispute**; and
- d) ensure that **ISO** records are kept relating to the resolution of **eligible disputes**.

11.2 Disputes that are not considered to be Eligible Disputes

For purposes of this **rule 11**, the following **disputes** will not be considered to be **eligible disputes**:

- a) any **dispute** for which any **ISO FDM** is available, has commenced or been completed;
- b) any **dispute** the **ISO** determines is frivolous, vexatious, trivial or otherwise without merit;
- c) any **dispute** with respect to an **ISO rule**, a proposed **ISO rule** or the process followed by the **ISO** in approving an **ISO rule**;
- d) any **dispute** with respect to a matter that falls within, or would reasonably be expected to fall within, **rule 8**, unless a **dispute** under **rule 8** requires mediation, at which time the mediation provisions of **rule 11.5** would apply;
- e) any **dispute** with respect to a matter that falls within, or would reasonably be expected to fall within, **rule 12**;
- f) any **dispute** for which a **notice of eligible dispute** is received from a party that the **ISO** determines is not a **market participant** or is not a **market participant** directly and adversely affected by the **ISO determination**;
- g) any **dispute** that is the subject of a **notice of eligible dispute** that has not been submitted to the **ISO** in accordance with the requirements of **rule 11.3.1**;
- h) any **dispute** that is already the subject of complaint or the alternative dispute resolution mechanisms of the **Commission** or the **MSA**, or any **dispute** that has been or is otherwise before the **Commission**, the **MSA** or a Court of the Province of Alberta, whether completed or in progress; and
- i) any **dispute** with respect to which a **market participant** has not done either or both of the following:
 - i) made good faith, reasonable and timely efforts to contact and amicably resolve the **dispute** with the **ISO**, and such efforts did not resolve the **dispute**; or
 - ii) made reasonable efforts to engage in consultation procedures presented by the **ISO** with respect to the subject matter of the **dispute**, including making reasonable and demonstrated efforts to raise the **dispute** with the **ISO** during such consultation procedures.

11.3 Submission of Notice of Eligible Dispute

- 11.3.1 A **market participant** may proceed under this **rule 11** with respect to an **eligible dispute**, by submitting a **notice of eligible dispute** in accordance with the procedures and timelines set forth in **rule 11.3**.

- 11.3.2 A **market participant** wishing to submit a **notice of eligible dispute** must deliver such notice to the **ISO** at its head office, attention the **ISO** General Counsel, within the time period applicable as follows:
- a) in the case of an **eligible dispute** with respect to an **ISO determination** as part of the **BRP**, within thirty **business days** of the **ISO determination** at issue; or
 - b) in the case of any other **eligible dispute**, within six months of the **ISO determination** at issue.
- 11.3.3 Subject to **rule 11.3.9**, the **ISO** may agree to the consolidation of similar **eligible disputes** and permit these to be dealt with under a single **notice of eligible dispute** submitted by one **market participant** on behalf of such **market participant**, if requested to do so in the **notice of eligible dispute** and upon reasonable evidence of the concurrence of more than one **market participant**.
- 11.3.4 The **notice of eligible dispute** must include, in reasonable detail, the following:
- a) the full legal name of the **market participant** directly affected by the **eligible dispute** and the address, telephone number, facsimile number and email address of such **market participant** to be used for receipt of all notices and communication required or permitted to be given or delivered under this **rule 11**;
 - b) nature of and basis for the **eligible dispute**;
 - c) a concise summary of the facts underlying the **eligible dispute**;
 - d) any documentation, records or data upon which the **market participant** relies on in support of its assertion that its **dispute** is an **eligible dispute**;
 - e) the **market participant**'s recommended solution for the **eligible dispute** and a summary of the grounds for such recommendation;
 - f) the **market participant**'s election that the **eligible dispute** be addressed through one of the review of **ISO determination** procedure, the mediation procedure or the **ISO** determining the appropriate formal dispute resolution procedure; and
 - g) a statement that the **market participant** has complied with **rule 11.2 i) i)** and, if applicable, **rule 11.2 i) ii)**; and

The **notice of dispute** must be signed on behalf of the **market participant** by an officer of the **market participant**, if it is a corporation, one of its partners if a partnership, or by the **market participant** if an individual.

- 11.3.5 Subsequent to receipt by the **ISO** of the **notice of eligible dispute** from the **market participant**, the **ISO**:
- a) will provide to the **market participant** a written acknowledgement of receipt of the **notice of eligible dispute**;

- b) will review the **notice of eligible dispute** to determine whether the **ISO** requires further information from the **market participant**, and, if further information is required, provide the **market participant** with notice requesting the same;
 - c) following receipt and review of information requested in **rule 11.3.5 b)**, if required, will review the **notice of eligible dispute** to determine whether it meets the requirements established under **rule 11.3.4** and whether the **dispute** is an **eligible dispute** in accordance with the criteria established under **rule 11.2**;
 - d) if the **ISO** determines that the **notice of eligible dispute** from the **market participant** meets the requirements of **rule 11.3.4** and that the **dispute** is an **eligible dispute** in accordance with **rule 11.2**, will deliver notice to the **market participant** advising it of the foregoing; or
 - e) if the **ISO** determines that the **notice of eligible dispute** from the **market participant** does not meet the requirements of **rule 11.3.4** or that the **dispute** is not an **eligible dispute** in accordance with **rule 11.2**, will deliver notice to the **market participant** advising it of the foregoing and that it has dismissed the **notice of eligible dispute**.
- 11.3.6 If the **ISO** has delivered a notice to the **market participant** under **rule 11.3.5 c)**, the parties will work together to determine which procedures under this **rule 11** would be most appropriate to follow to attempt to resolve the **eligible dispute** and any other mutually agreeable provisions to follow.
- 11.3.7 If at any time the **ISO** determines that the information in the notice of **eligible dispute** is not true and correct and, as a result, the **dispute** would not meet the requirements of an **eligible dispute**, it may provide the **market participant** with a notice in that regard, and shall include in such notice the basis for that determination. Subsequent to delivery of such notice, the **ISO** may, in its sole discretion, on notice to the **market participant**, dismiss the **notice of eligible dispute**.
- 11.3.8 Notwithstanding **rule 11.2 g)**, the **ISO** may waive non-compliance of a **notice of eligible dispute** that does not comply with **rule 11.3**.
- 11.3.9 The **ISO** may advise either or both the **MSA** or the **Commission** upon receiving a **notice of dispute** from the **market participant** to ensure that the **dispute** is not simultaneously the subject of complaint or other proceeding before either of the foregoing.

11.4 Review of ISO Determination

- 11.4.1 The **ISO** and the **market participant** may agree, as contemplated in **rule 11.4**, that an **eligible dispute** may proceed through the review of **ISO determination** procedure where the **eligible dispute** relates to one or more of the following:
- a) alleged specific and measurable errors by the **ISO**;
 - b) alleged **ISO** consideration of incomplete information with regard to an **ISO determination**; or

- c) alleged unfairness of process used by **ISO** in reaching the **ISO determination**.

Notwithstanding the above **rule 11.4.1**, the **ISO** retains the discretion to agree that **eligible disputes** that relate to other matters may proceed through the review of **ISO determination** procedure.

- 11.4.2 Within ten **business days** of the **ISO** providing notice under **rule 11.3.5 c)**, **ISO** will
 - a) in the case of an **eligible dispute** registered with respect to an **ISO determination** as part of the **ISO BRP**, refer the **eligible dispute** to the **ISO board** for review of the **ISO determination** in order to confirm, vary or overturn the same; or
 - b) in the case of any other **eligible dispute** refer the **eligible dispute** to the **review committee** for review of the **ISO determination** in order to confirm, vary or overturn the same.
- 11.4.3 Within thirty **business days** of the **eligible dispute** being referred to the **ISO board** for review of the **ISO determination** in respect of an **eligible dispute** to which **rule 11.4.2 a)** applies, the **ISO** will provide written notice to the **market participant** of the **ISO board's** determination.
- 11.4.4 Within thirty **business days** of the **eligible dispute** being referred to the **review committee** for review of the **ISO determination** in respect of an **eligible dispute** to which **rule 11.4.2 b)** applies, the **ISO** will provide written notice to the **market participant** of the **review committee's** determination.
- 11.4.5 Subject **rule 11.6**, in the event that an **eligible dispute** is not resolved to the **market participant's** satisfaction as a result of the determination made pursuant to **rule 11.4.3** or **11.4.4**, as the case may be, the **market participant** may proceed to resolve the **dispute** through the mediation procedure specified in **rule 11** by providing the **ISO** with notice at its head office, attention the **ISO General Counsel**, requesting that the **eligible dispute** described in the **notice of eligible dispute** proceed through the mediation procedure.
- 11.4.6 In the event that an **eligible dispute** is not resolved to the **market participant's** satisfaction as a result of the determination made pursuant to **rule 11.4.3** or **11.4.4**, as the case may be and the **market participant** has not within 30 days of delivery of notice under **rule 11.4.4** given **ISO** notice under **rule 11.4.5**, the **ISO** may deliver notice to the **market participant** advising it that it has dismissed the **notice of eligible dispute**.
- 11.4.7 The **market participant** may at any time, deliver notice to the **ISO** at its head office, attention the **ISO General Counsel** that it would like to terminate all proceedings under this **rule 11**.

11.5 Mediation

- 11.5.1 Within 15 **business days** of receipt of a **notice of eligible dispute** in accordance with **rules 11.3 or 11.4.6**, the **mediation oversight committee** shall examine the **eligible dispute** and do one of the following:
- a) determine that it is appropriate for the **eligible dispute** to proceed through the mediation procedure, provide the **market participant** with notice in that regard, and, if required, request the **market participant** to provide information concerning the **eligible dispute**; or
 - b) determine that it is not appropriate for the **eligible dispute** to proceed through the mediation procedure and should be dismissed and ensure that the **market participant** is provided with notice that the **notice of eligible dispute** is dismissed.
- 11.5.2 In addition to the foregoing **rule 11.5.1**, the **ISO** may require the **market participant** to:
- a) confirm direction of the **eligible dispute** to the mediation procedure for resolution of the **eligible dispute**;
 - b) executed the **ISO**'s form of mutual confidentiality agreement;
 - c) agree to the form of cost sharing agreement to be signed by the **ISO** and **market participant**; and
 - d) agree to the next steps with regard to the selection of a **mediator**.
- 11.5.3 Subject to the execution of the confidentiality agreement and the mediation cost sharing agreement under **rule 11.5.2**, the **mediation oversight committee** will, within ten business days, provide the **market participant** with a written suggestion of a **mediator**. Within ten **business days** of receiving such suggestion, the **market participant** must either confirm that the **mediator** suggested is acceptable or suggest another **mediator**. The **ISO** and the **market participant** must agree on the **mediator** within thirty **business days** from the date of the **mediation oversight committee**'s suggestion; otherwise the **ISO** may make a determination that the **notice of dispute** be dismissed and provide notice to the **market participant** in this regard.
- 11.5.4 No person shall serve as a **mediator** in an **eligible dispute** in which that mediator has an official, financial or personal interest. In the event that either party subsequently complains about the selection of a **mediator** because of such interest, which was not known at the time of selection, the **mediation oversight committee** will endeavor to appoint another **mediator** acceptable to both the **ISO** and the **market participant**.
- 11.5.5 Subject to the procedures prescribed in **rule 11.5**, a **mediator** may do whatever is reasonably necessary and permitted by law to enable an effective mediation of any matter before the **mediator**.
- 11.5.6 Both the **market participant** and the **ISO** will designate an individual that has the authority to bind each party and to participate in such mediation procedure.

- 11.5.7 The **mediator** will, in consultation with the **ISO** and the **market participant**, fix the date(s) and time(s) of each mediation session.
- 11.5.8 Unless otherwise agreed to by the **ISO** and the **market participant**, mediation sessions must be confidential and there will be no stenographic or other record made of any mediation session. The **ISO** and the **market participant** and their representatives may attend mediation sessions. Other persons may attend only with the consent of the **ISO**, the **market participant** and the **mediator** and upon certain conditions including, but not limited to, conditions relating to confidentiality, as the **mediator** determines appropriate.
- 11.5.9 Unless dispensed with by the **mediator**, each of the **ISO** and the **market participant** will, at least five **business days** prior to the first scheduled mediation session, provide the **mediator** and each of the **ISO** and **market participant**, as appropriate, with a written brief setting out its views as to the issues that need to be resolved and its position with respect to the **eligible dispute**. Each of the **ISO** and the **market participant** will also provide the **mediator** with all documentation and information necessary to understand the **eligible dispute**.
- 11.5.10 The **mediator** may conduct joint and separate mediation sessions with the **ISO** and the **market participant**, as the **mediator** may see fit, and may make oral and written recommendations to the **ISO** and the **market participant** for settlement. The **mediator** has no authority to impose a settlement upon the parties but will assist the parties to reach a settlement of the **eligible dispute**.
- 11.5.11 The **mediator** will report to the **mediation oversight committee** from time to time, as requested by the **mediation oversight committee**, on the progress of the mediation procedure.
- 11.5.12 The **mediator** may obtain expert advice concerning technical aspects of the **dispute** provided that the **ISO** and the **market participant** agree and assume any expenses of obtaining such advice.
- 11.5.13 Within twenty **business days** following completion of the mediation sessions or such later date as may be agreed to by **ISO** and the **market participant**, the **mediator** will issue a written report to the **mediation oversight committee** and the parties confirming the outcome of the mediation procedure.
- 11.5.14 If an agreement to resolve the **eligible dispute** is reached through the mediation procedure, it shall be reduced to writing, signed by the **ISO** and the **market participant** and filed with the **mediation oversight committee**.
- 11.5.15 In the event that the **eligible dispute** is not resolved, then within fifteen **business days** of receiving the **mediator**'s report the **mediation oversight committee** may recommend additional solutions to the **mediator** to resolve the **eligible dispute**.
- 11.5.16 In the event that the **market participant** rejects the **mediator**'s report and the additional solutions of the **mediation oversight committee**, the **ISO** may make a determination that the **notice of dispute** be dismissed and will provide notice to the **market participant** in that regard.

- 11.5.17 In the event that the **ISO** rejects the **mediator**'s report, the **ISO** may make a determination that the **notice of dispute** be dismissed and will provide notice to the **market participant** in that regard.
- 11.5.18 The **mediator** may terminate the mediation procedure by written notice of termination whenever, in the judgment of the **mediator**, further efforts at the mediation procedure would not contribute to a resolution of the **eligible dispute** between the parties. The **mediator** shall provide each party with a copy of the written notice of termination and shall also file a copy with the **mediation oversight committee**.
- 11.5.19 The mediation procedure in respect of an **eligible dispute** may be terminated on the written agreement of both the **ISO** and the **market participant**. In such case, the **ISO** and the **market participant** will file with the **mediation oversight committee** a written notice to terminate the mediation procedure.
- 11.5.20 The mediation procedure will be terminated on the earlier of:
- a) the date of execution by the **ISO** and the **market participant** of the agreement referred to in **rule** 11.5.14;
 - b) the date notice of dismissal is issued by the **ISO** as referred to in rule 11.5.3, 11.5.16 and 11.5.17;
 - b) the date of the notice of termination made pursuant to **rule** 11.5.18 or **rule** 1.5.19; or
 - c) the date that is sixty **business days**, or such longer period as may be agreed to by **ISO** and the **market participant**, from the receipt of the **notice of dispute**.
- 11.5.21 Unless otherwise agreed in any cost sharing agreement signed by the **ISO** and the **market participant** in accordance with rule 11.5.2, the **ISO** and the **market participant** must each bear their own costs of and in connection with the mediation procedure and will share equally the costs and expenses of the **mediator**, any expert advice and any facilities or services utilized for the mediation procedure. The costs of participation by the **ISO** will be collected under **ISO fees**.
- 11.5.22 Upon termination of the mediation procedure, the **mediator** shall file with the **mediation oversight committee** an invoice containing an itemized statement of the costs of the mediation, together with all bills and other supporting documentation relating thereto.
- 11.5.23 All information disclosed to the **mediator** by the parties or others in the course of the mediation procedure and identified as confidential will not be divulged by the **mediator**. All documents received or exchanged shall be treated as confidential by the **mediator** and the **mediator** shall not be compelled by any party to divulge such records or to act as a witness in regard to the mediation in any subsequent proceedings of any nature.
- 11.5.24 Unless otherwise agreed, the **ISO** and the **market participant** will maintain the confidentiality of the mediation procedure. The **ISO** and the **market participant** must not rely upon or introduce as evidence in any proceeding of any nature:

- a) views expressed or suggestions made by another party with respect to a possible settlement of the **eligible dispute** in the course of the mediation procedure;
- b) admissions made by another party in the course of the mediation procedure;
- c) proposals made or views expressed by the **mediator** in the course of the mediation procedure.

Unless otherwise agree, all communications relating to the mediation procedure are "without prejudice".

11.6 External Determination

Nothing in this **rule 11** restricts the right of a **market participant** to make a complaint to the **Commission** or **MSA** pursuant to the **EUA** or to commence an action through the Courts in Alberta.

11.7 Continuing Obligations and Stay of ISO Determination

11.7.1 Payment or Recovery of Monetary Amounts

Subject to **rule 11.7.2**, where a **dispute** involves the payment or recovery of monetary amounts due and owing to the **ISO** in accordance with the **ISO rules**, such amount shall be due and payable at the time specified for payment under the **ISO rules** notwithstanding the initiation of the dispute resolution process pursuant to **rule 11**.

11.7.2 Stays of ISO Determinations

Initiation of dispute resolution procedures in accordance with **rule 11** will not stay implementation of an **ISO determination** pending resolution of the **dispute**.

11.8 Record Keeping

ISO will maintain written records of correspondence received or given under this **rule 11**