



January 10, 2014

VIA ELECTRONIC FILING

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: ISO New England Inc., Docket No. ER14-___-000
Pipeline Information-Sharing Changes**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”),¹ ISO New England Inc. (the “ISO”), joined by the New England Power Pool (“NEPOOL”) Participants Committee,² (together, the “Filing Parties”), hereby submits this transmittal letter and revised Tariff provisions to amend the ISO New England Information Policy (“Information Policy”)³ to allow the ISO to share confidential information concerning gas-fuel generation with the operating personnel of the interstate natural gas pipeline companies, consistent with the Federal Energy Regulatory Commission’s (“Commission”) regulations under Order No. 787⁴ (the “Pipeline Information-Sharing Changes”).

¹ 16 U.S.C. § 824d (2006).

² Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the ISO New England Inc. Transmission, Markets and Services Tariff (the “Tariff”), the Second Restated New England Power Pool Agreement, and the Participants Agreement.

³ The Information Policy is Attachment D to the Tariff.

⁴ *Communication of Operational Information Between Natural Gas Pipelines and Electric Transmission Operators*, 145 FERC ¶ 61,134 (2013) (“Order No. 787”).

I. DESCRIPTION OF THE FILING PARTIES; COMMUNICATIONS

The ISO is the private, non-profit entity that serves as the regional transmission organization (“RTO”) for New England. The ISO operates the New England bulk power system, plans the New England transmission system, and administers New England’s organized wholesale electricity market pursuant to the Tariff and the Transmission Operating Agreement with the New England Participating Transmission Owners. In its capacity as an RTO, the ISO has the responsibility to protect the short-term reliability of the New England Control Area and to plan and operate the system according to reliability standards established by the Northeast Power Coordinating Council, Inc. and the North American Electric Reliability Corporation.

NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and has grown to include more than 430 members. The Participants include all of the electric utilities rendering or receiving service under the Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, demand resource providers, developers and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Commission,⁵ the Participants act through the NEPOOL Participants Committee. The Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. Pursuant to Section 2.2 of the Participants Agreement, “NEPOOL provide[s] the sole Participant Processes for advisory voting on ISO matters and the selection of ISO Board members, except for input from state regulatory authorities and as otherwise may be provided in the Tariff, TOA and the Market Participant Services Agreement included in the Tariff.”

All correspondence and communications in this proceeding should be addressed to the undersigned for the ISO as follows:

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⁵ *ISO New England Inc. et al.*, 109 FERC ¶ 61,147 (2004).

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II. STANDARD OF REVIEW

The instant Tariff revisions are submitted pursuant to Section 205 of the Federal Power Act, which “gives a utility the right to file rates and terms for services rendered with its assets.”⁶ Under Section 205, the Commission “plays ‘an essentially passive and reactive’ role”⁷ whereby it “can reject [a filing] only if it finds that the changes proposed by the public utility are not ‘just and reasonable.’”⁸ The Commission limits this inquiry “into whether the rates proposed by a utility are reasonable -- and [this inquiry does not] extend to determining whether a proposed rate schedule is more or less reasonable than alternative rate designs.”⁹ The revision “need not be the only reasonable methodology, or even the most accurate.”¹⁰ As a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept this Section 205 filing if it is just and reasonable.¹¹

III. DESCRIPTION OF THE PIPELINE INFORMATION-SHARING CHANGES

On November, 15, 2013, the Commission issued a final rule in Docket No. RM13-17-000 (“Order No. 787”) adopting regulations to provide explicit authority to interstate natural gas pipelines and public utilities that own, operate or control facilities used for the transmission of electric energy in interstate commerce to share non-public, operational information with each other to promote reliable service or operational planning on either the public utility’s or pipeline’s system. In Order No. 787, the Commission found that the regulations will “help

⁶ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

⁷ *Id.* at 10 (quoting *City of Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

⁸ *Id.* at 9.

⁹ *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

¹⁰ *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

¹¹ *Cf. Southern California Edison Co., et al.*, 73 FERC ¶ 61,219 at 61,608 n.73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.” (citing *City of Bethany*, 727 F.2d at 1136)).

maintain the reliability of the pipeline and public utility transmission service by permitting transmission operators to share information with each other that they deem necessary to promote the reliability and integrity of their systems.”¹² The Commission also stated that it is “intentionally permitting the communication of a broad range of non-public, operational information to provide flexibility to individual transmission operators, who have the most insight and knowledge of their systems, to share that information which they deem necessary to promote reliable service on their system.”¹³

Currently, the Information Policy does not permit the broad range of communications authorized under Order No. 787. In Order No. 787, the Commission stated that to the extent existing tariff provisions prevent the type of information sharing permitted under Order No. 787, the transmission provider must make a filing with the Commission to allow the sharing of such information.¹⁴ Accordingly, the Filing Parties submit the Pipeline Information-Sharing Changes to allow the ISO to share certain confidential information concerning natural gas-fired resources with interstate natural pipelines as authorized under the Commission’s regulations in Order No. 787.

Specifically, the Pipeline Information-Sharing Changes add new language to Section 2.2 of the Information Policy to permit the ISO to share confidential information concerning natural gas-fueled generation located in New England with the operating personnel of interstate pipeline companies provided that: (a) the confidential information will be shared only with the pipeline directly serving that generator and (b) the ISO has determined that it is operationally necessary to share the information. The Pipeline Information-Sharing Changes also delete language from the Information Policy relating to the sharing of confidential information with the interstate natural gas pipelines that was in effect for the period from January 24, 2013 through April 30, 2013 and has since expired.¹⁵ These deletions are in Section 2.2 of the Information Policy and the removal of the Form of Pipeline Non-Disclosure Agreement included as Appendix D to the Information Policy. Additionally, the Pipeline Information-Sharing Changes remove the reference to the Form of Pipeline Non-Disclosure Agreement in the table of contents in the Information Policy.

The Pipeline Information-Sharing Changes will improve communication and coordination between the control room operators of the gas and electric networks in New England, thereby ensuring that operators have better information upon which to base operating decisions. Specifically, the changes will allow the ISO to share confidential information concerning natural gas-fired generation resources in New England with the operating personnel

¹² Order No. 787 at P 1.

¹³ *Id.* at P 41.

¹⁴ Order No. 787 at P 135.

¹⁵ These provisions were approved by the Commission on an interim basis in *ISO New England Inc.*, 142 FERC ¶ 61,058 (2013) and in a letter order issued on Mar. 29, 2013 in Docket No. ER13-356-002.

of the interstate natural gas pipeline companies. For example, the proposed Pipeline Information-Sharing Changes allow the ISO to provide the gas pipeline operators with output schedules for individual generators and discuss Real-Time information concerning specific resources for the purpose of maintaining reliability. By sharing this information, the ISO and the pipeline operators will have a better picture of their combined systems, will be able to discuss specific conditions instead of generalities, and may be able to take actions, under their existing authorities, to avoid reliability problems. Additionally, by sharing this information with the pipeline operators, the pipeline operators may be able to provide information on gas availability that will allow the ISO to better anticipate and address potential reliability problems in the event that there is insufficient fuel for all gas-fired generators to meet their schedules.

IV. STAKEHOLDER PROCESS

The NEPOOL Markets Committee voted unanimously, at its December 11, 2013 meeting, to recommend NEPOOL Participants Committee support for changes to the Information Policy that would permit the sharing of confidential information with the interstate natural gas pipelines serving New England. Subsequently, representatives of affected generators proposed additional changes to the Information Policy. Those changes were acceptable to the ISO and were included as part of the changes presented to the Participants Committee at its January 10, 2014 meeting. The Participants Committee voted unanimously to support the Pipeline Information-Sharing Changes included herein at that meeting.

V. REQUESTED EFFECTIVE DATE AND REQUEST FOR WAIVER

Pursuant to 18 C.F.R. § 35.11, the Filing Parties request waiver of the 60-day notice requirement so that the Pipeline Information-Sharing Changes may become effective on January 11, 2014, one day after the date of this filing. Good cause exists to grant the requested waiver of the 60-day notice requirement for the Pipeline Information-Sharing Changes. A January 11, 2014 effective date will allow the ISO to utilize the Pipeline Information-Sharing Changes during the remainder of the winter season. Winter temperatures often result in the natural gas pipelines operating at maximum capacity and present the greatest potential for gas generator curtailments. Further, there is broad stakeholder support for the Pipeline Information-Sharing Changes as demonstrated by the unanimous support the changes received in the stakeholder process.

VI. ADDITIONAL SUPPORTING INFORMATION

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates.¹⁶ However, the Pipeline Information-Sharing Changes are not traditional "rates," and the ISO is not a traditional investor-owned utility. In light of these circumstances, the ISO submits the

¹⁶ 18 C.F.R. § 35.13.

following additional information in substantial compliance with relevant provisions of Section 35.13, and requests a waiver of Section 35.13 of the Commission's regulations to the extent the content or form deviates from the specific technical requirements of the regulations.

35.13(b)(1) - Materials included herewith are as follows:

- ◆ This transmittal letter;
- ◆ Redlined Tariff sheets reflecting the Pipeline Information-Sharing Changes;
- ◆ Clean Tariff sheets reflecting the Pipeline Information-Sharing Changes; and
- ◆ List of governors, utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, the gas pipelines serving New England, and other entities to which a copy of this filing has been sent.

35.13(b)(2) – As set forth in Section V above, the Filing Parties request that the Pipeline Information-Sharing Changes become effective on January 11, 2014.

35.13(b)(3) - Pursuant to Section 17.11(e) of the Participants Agreement, Governance Participants are being served electronically rather than by paper copy. The names and addresses of the Governance Participants are posted on the ISO's website at http://www.iso-ne.com/regulatory/ferc/nepool/gov_ptcpts_eserved.pdf. A copy of this transmittal letter and the accompanying materials have also been sent to the governors and electric utility regulatory agencies for the six New England states that comprise the New England Control Area, the New England Conference of Public Utility Commissioners, Inc., and to the New England States Committee on Electricity. Their names and addresses are shown in the attached listing. In accordance with Commission rules and practice, there is no need for the Governance Participants or the entities identified in the listing to be included on the Commission's official service list in the captioned proceeding unless such entities become intervenors in this proceeding.

35.13(b)(4) - A description of the materials submitted pursuant to this filing is contained in this Section VI.

35.13(b)(5) - The reasons for this filing are discussed in Section III of this transmittal letter.

35.13(b)(6) - The ISO's approval of the revisions is evidenced by this filing. The Pipeline Information-Sharing Changes reflect the results of the Participant Processes required by the Participants Agreement and the unanimous support of the Participants Committee.

35.13(b)(7) - Neither the ISO nor NEPOOL has knowledge of any relevant expenses or costs of service that have been alleged or judged in any administrative or judicial proceeding to be illegal, duplicative, or unnecessary costs that are demonstrably the product of discriminatory employment practices.

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35.13(c)(1) – The change herein does not modify a traditional “rate,” and the statement required under this Commission regulation is not applicable to the instant filing.

35.13(c)(2) – The ISO does not provide services under other rate schedules that are similar to the wholesale, resale and transmission services it provides under the Tariff.

35.13(c)(3) - No specifically assignable facilities have been or will be installed or modified in connection with the revision filed herein.

VII. CONCLUSION

For the reasons stated herein, the Filing Parties respectfully request that the Commission accept the Pipeline Information-Sharing Changes as filed, to be effective on January 11, 2014.

Respectfully submitted,

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By: /s/ Kevin Flynn

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ATTACHMENT D
ISO New England Information Policy

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Introduction

The ISO New England Information Policy establishes rules and guidelines regarding the appropriate disclosure of all information received, created and distributed in connection with the operation of and participation in the markets administered by ISO New England Inc. (the “ISO”). The Policy allows stakeholder committees, task forces and working groups (collectively, “Stakeholder Committees”), the ISO, and Governance Participants to share information with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained. This Policy document consists of three sections. Section 1 highlights the Policy's intent and objectives. Section 2 discusses confidentiality issues. Finally, Section 3 specifies what types of information are available to whom. This Section, in its entirety, is intended to replace the Information Classification Document appendix of the formerly adopted Policy (March 5, 1999 version). Changes to the Information Policy will be made in accordance with Section 11.3 of the Participants Agreement.

Section 1 -Policy Intent & Objectives

The intent of this Policy is twofold. First, to allow Governance Participants to provide certain *Confidential Information* to the ISO, Stakeholder Committees, and other Governance Participants with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained. Second, to provide the ISO, Stakeholder Committees and Governance Participants clear guidance regarding the appropriate disclosure of all information received, created or distributed in connection with the operation of and participation in the markets administered by the ISO. This Policy will pertain to all information held by Stakeholder Committees or the ISO, or furnished by or to a Governance Participant as a result of its participation in the markets administered by the ISO, whether it is publicly available or strictly confidential.

In order to meet the general obligations of the Transmission, Markets and Services Tariff, the Participants Agreement, the Transmission Operating Agreement, the Rates Design and Funds Disbursement Agreement, and other documents that affect the rates, terms, and conditions of service, including all exhibits and attachments to the listed documents (hereafter collectively referred to as the “Filed Documents”), each Governance Participant is required to furnish to and may be entitled to receive from Stakeholder Committees or the ISO certain information, some of which may be considered confidential, commercially sensitive, and/or strategic in nature. This information is used by the ISO, Stakeholder Committees or Governance Participants, as appropriate, for the following purposes, among others:

1. To operate the bulk power supply system on a day-to-day basis.
2. To administer the Open Access Transmission Tariff.
3. To administer the New England electricity markets, including the bidding process, billing system and settlement function.
4. To monitor the competitiveness and efficiency of the market and Governance Participants' compliance with relevant market rules and procedures.
5. To assess and plan for the long term reliability and adequacy of the New England bulk power supply system.
6. To provide reports and data as required or appropriate to the various user groups as described in Section 3 of this document.

It is recognized that the successful operation of the New England Control Area is highly dependent on access to certain types of information. The high degree of bulk power supply reliability and adequacy that customers of Governance Participants have become accustomed to expect is, to some degree, a result of Governance Participants' willingness to provide the necessary information. It is only with the ISO's continued access to the information necessary to perform its duties described above that the benefits obtained from bulk power supply pooling can continue.

This Information Policy will:

1. Recognize that protecting the confidentiality of certain information is important to the Governance Participants.
2. Recognize that the ISO and each Governance Participant have the responsibility to protect the confidentiality of such information.
3. Provide procedures and guidelines to the ISO, Stakeholder Committees and Governance Participants regarding the handling, publication and distribution of all information.

This Information Policy is intended to comport with the obligation of the ISO, Stakeholder Committees and the Governance Participants to comply fully with the antitrust laws and the information access and disclosure provisions of the standards of conduct promulgated by the Federal Energy Regulatory Commission in 18 C.F.R. § 37.4 (the “Codes of Conduct”). The Information Policy is expressly intended both: (1) to protect against the disclosure of *Confidential Information* that could facilitate anticompetitive conduct prohibited by the antitrust laws and (2) to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.

No modifications or additions shall be made to Section 3 of this document that result in limiting the disclosure of *Confidential Information* by Governance Participants that are municipalities, state or municipal agencies, or other public agencies unless such information contains trade secrets or commercial or financial information that has otherwise been kept confidential.

Section 2 -Confidentiality Issues

2.0 Confidentiality

Confidential Information furnished by a Governance Participant to Stakeholder Committees and/or the ISO shall, for the purposes of this Information Policy, be considered the sole and exclusive property of such Governance Participant (the “Furnishing Governance Participant”). To the extent that such *Confidential Information* is furnished to Stakeholder Committees and/or the ISO it shall be used solely to perform their obligations under the NEPOOL Agreement and the ISO Agreement. No Governance Participant shall be entitled to receive from the ISO and/or Stakeholder Committees any *Confidential Information* furnished by another Governance Participant under the NEPOOL Agreement unless the Furnishing Governance Participant has provided the relevant Stakeholder Committees and/or the ISO written authorization for such release. The disclosure of *Confidential Information* in accordance with this Information Policy shall not be used by any Governance Participant as a basis for a claim that the Governance Participant furnishing such *Confidential Information* has waived, relinquished, or reduced in any way the Furnishing Governance Participant’s rights to prevent further disclosure of such *Confidential Information*.

The Governance Participants recognize that one of the purposes of the ISO is to prepare analyses, forecasts and reports for the general public, reliability councils, regulators and other user groups.

Preparation of such analyses, forecasts and reports requires the use of Governance Participants' information, some of which may be *Confidential Information* of an individual Governance Participant.

Governance Participants' obligations to provide information to the ISO or Stakeholder Committees arise under the Filed Documents. Nothing in this Information Policy is intended to expand or alter those obligations. Nothing in this Information Policy requires the ISO to release information to Stakeholder Committees, Governance Participants or any other person if the ISO in good faith believes that the release of such information would violate any applicable law or regulation, including the Codes of Conduct, or the terms of any valid confidentiality agreement or have a material adverse effect on the competitiveness or efficiency of the markets administered by the ISO.

2.1 Confidential Information

The following information will be considered *Confidential Information* for the purposes of this Policy:

- (a) Information that **(i)** is furnished by a Governance Participant (the "Furnishing Governance Participant") to the ISO, Stakeholder Committees or another Governance Participant, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England electricity markets, and **(iii)** has been designated in writing by the Furnishing Governance Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant seeks confidential treatment for such information.
- (b) Information that **(i)** is furnished by the ISO to a Governance Participant or a Stakeholder Committee, **(ii)** constitutes trade secrets or commercial or financial information the disclosure of which would have an adverse effect on the ability of the ISO to perform its responsibilities under the ISO Agreement, and **(iii)** has been designated in writing by the ISO as confidential or proprietary either in the document which provided such information, in transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the ISO seeks confidential treatment for such information. In addition, information that is furnished by the ISO to a Governance Participant or a Stakeholder Committee relating to the

job status or performance or terms of employment of any ISO employee (“ISO Employment Information”) shall be *Confidential Information*.

- (c) Information that **(i)** is furnished by a non-Governance Participant that takes part in a demand response program operated by the ISO (a “DR Information Provider”) to the ISO, Stakeholder Committees or any Governance Participant in connection with the demand response program, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the DR Information Provider or prejudice the position of the DR Information Provider in the demand response program, and **(iii)** has been designated in writing by the DR Information Provider as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the DR Information Provider seeks confidential treatment for such information.

- (d) Information that **(i)** is furnished by a non-Governance Participant acting as a Project Sponsor to the ISO, Stakeholder Committees or any Governance Participant in connection with the Forward Capacity Market, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Project Sponsor or prejudice the position of the Project Sponsor in the Forward Capacity Market, and **(iii)** has been designated in writing by the Project Sponsor as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Project Sponsor seeks confidential treatment for such information.

- (e) Information disclosed to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy that (i) is furnished by a Furnishing Governance Participant to the ISO, Stakeholder Committees or another Governance Participant or is furnished by the ISO to a Governance Participant or a Stakeholder Committee, (ii) constitutes sensitive or non-public information concerning the Participant or identifying or concerning the Principals of a Participant, the disclosure of which could harm the Furnishing Governance Participant or its Principals, and (iii) has been designated in writing by the Furnishing Governance Participant or by the ISO as confidential either in the document which

provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant or the ISO seeks confidential treatment for such information.

- (f) Any report, compilation or communication produced by the ISO or a Stakeholder Committee that contains information described in Clause (a), (b), (c), (d) or (e) above and allows for the specific identification of the Furnishing Governance Participant or the DR Information Provider.

Confidential Information shall exclude information if and to the extent such information (1) is or becomes generally available to the public without any party violating any obligation of secrecy relating to the information disclosed, or (2) is received by a Governance Participant in good faith from a third party who discloses such information on a non-confidential basis without violating any obligation of secrecy relating to the information disclosed, or (3) is defined as “Public Information,” in Section 3, or (4) can be shown by the recipient's prior records to have been already known to the recipient other than through disclosure by a third party which would not be subject to exclusion based on (2) above.

Confidential Information, as defined in this Section 2.1, may be provided to specific user groups entitled to information pursuant to Sections (a) through (i) of Section 3.0. Section 3.0 is not intended, however, to add to or vary the criteria specified above. Otherwise, except as specifically provided herein, no other distribution or disclosure of *Confidential Information* shall be permitted by the ISO, Stakeholder Committees or Governance Participants.

2.2 Treatment of Confidential Information

The Governance Participants shall take reasonable measures to assure that all of their employees, representatives, or agents who by virtue of their participation on, or as an alternate on, a Stakeholder Committee have access to *Confidential Information* of another entity that furnished the information, including, as appropriate, a Furnishing Governance Participant, a DR Information Provider or the ISO (the “Furnishing Entity”) (1) do not disclose such *Confidential Information* to any other employee, representative, or agent of the same Governance Participant or any other person except as permitted under this Section 2.2 and (2) use such information solely for the purpose of satisfying that person’s responsibilities on the Stakeholder Committee. Each Governance Participant shall, upon request by the Participants Committee, provide assurance that the terms of this Section 2.2 are complied with. Any Governance Participant that has furnished *Confidential Information* to Stakeholder Committees may

require each recipient to return all or any portion of the *Confidential Information* once it is no longer needed by such recipient to fulfill its responsibilities under the Filed Documents.

Notwithstanding the foregoing, the ISO, the Participants Committee or any Governance Participant may disclose *Confidential Information* of another Governance Participant or the ISO only: (1) if such disclosure is permitted in writing by the Furnishing Entity, DR Information Provider or the ISO, as the case may be, or (2) if disclosure is required by order of a court or regulatory agency of competent jurisdiction or dispute resolution pursuant to the Filed Documents, or (3) as otherwise specifically permitted by this Policy. Any entity subject to this Information Policy shall provide prompt written notice to the Furnishing Entity if that entity either is compelled by order of a court or regulatory agency of competent jurisdiction to disclose, or receives a request seeking to compel disclosure of, *Confidential Information* for which it is not the Furnishing Entity. Further, in recognition that certain Governance Participants are subject to public records and open meeting laws and that certain other demands may be placed on Governance Participants to disclose *Confidential Information*, a recipient of *Confidential Information* of another Governance Participant or the ISO may disclose such *Confidential Information* if and to the extent required by law or requested in writing pursuant to a public records demand or other legal discovery process, provided in either event that the disclosing Governance Participant gives the Furnishing Governance Participant or the ISO prompt written notice of the circumstances that may require such disclosure in time so that the Furnishing Governance Participant or the ISO has a reasonable opportunity to seek a protective order to prevent disclosure.

Notwithstanding anything to the contrary contained in this Section 2.2, the ISO, the Participants Committee, or any Governance Participant may disclose *Confidential Information* to an alternate dispute resolution (“ADR”) neutral in an ADR proceeding required or permitted by any New England market rule, including Appendix A, “Market Monitoring, Reporting and Market Power Mitigation,” and Appendix B, “Imposition of Sanctions,” to Market Rule 1, or to an arbitrator in an arbitration proceeding under the Filed Documents. In addition, the ISO or any Governance Participant may disclose *Confidential Information* to a Dispute Representative as defined in, and permitted by, Section 5 of the Billing Policy. Any such ADR neutral, arbitrator or Dispute Representative must agree to be bound by this Information Policy.

Notwithstanding anything to the contrary in this Information Policy, resource-specific information contained in the data fields of the Forward Capacity Tracking System, but not information provided to the

ISO as separate attachments via the Forward Capacity Tracking System, will be shared with subsequent Lead Market Participants or Project Sponsors for that resource.

Notwithstanding anything to the contrary in the ISO New England Information Policy, the ISO, the Participants Committee, or any Governance Participant may disclose *Confidential Information* as required or permitted to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy.

Notwithstanding anything to the contrary in the ISO New England Information Policy and consistent with FERC Order 787, the ISO may disclose *Confidential Information* concerning natural gas-fueled generation from resources located within the New England Control Area to the operating personnel of an interstate natural gas pipeline company that operates a pipeline provided that: (a) *Confidential Information* regarding specific generators will be shared only with the pipeline serving that generator directly and (b) the ISO has determined that it is operationally necessary to ensure reliability to disclose the *Confidential Information*.

2.3 Disclosure of Information Regarding Defaulting Governance Participants

Notwithstanding any provision herein to the contrary, the information for release to Governance Participants identified in this Section shall no longer be deemed “*Confidential Information*” pursuant to the Information Policy. For any Governance Participant that is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws, or that has otherwise defaulted under its arrangements with the ISO, which default is not, or the ISO reasonably concludes will not be, cured within five days of the date of the default, in the case of a Payment Default (as defined in the Billing Policy) or within ten days of the date of its default in the case of any other defaults, the following information with respect to that Governance Participant’s obligations shall be disclosed by the ISO to each member and alternate on the Participants Committee, each Governance Participant’s billing contacts, appropriate Stakeholder Committee(s) designated by the Participants Committee, and appropriate state regulatory or judiciary authority:

For the 60 calendar day period prior to the date of the bankruptcy, insolvency petition or other default (the “Default Date”) and from the Default Date forward until such time as the Governance Participant cures the default: **(i)** the type and available amount of financial assurance in place; **(ii)** any notification provided by such Governance Participant pursuant to the Financial Assurance Policy and/or Billing Policy to the ISO of a material change in its financial status; **(iii)** any change

in the type or available amount of financial assurance provided by such Governance Participant; (iv) whether such Governance Participant has defaulted on its payment obligations under the Billing Policy, the amount of any such default, the date of the default, and when or whether the default is cured; (v) whether such Governance Participant has defaulted on its obligations under the Financial Assurance Policy, the amount of any such default, the date of the default, and when or whether the default is cured; (vi) where the financial assurance provided by such Governance Participant is a bond, whether the ISO has provided notice of default to the surety and whether the surety has given notice of termination of the bond or otherwise disclaimed or refused to honor or delayed in honoring its obligations under the bond, and the response of the ISO to any such notice; (vii) whether such Governance Participant is a net seller or purchaser in the New England Markets; (viii) the amount of such Governance Participant's purchases in the New England Markets; and (ix) whether such Governance Participant owns a registered Load Asset.

If a Governance Participant is suspended from the New England Markets, the ISO immediately shall send notice of such suspension to each of the members and alternates on the Participants Committee, the energy regulatory agencies in each of the New England states and the Federal Energy Regulatory Commission. Said notice shall identify the specific date and time of the suspension.

2.4 Breach of Confidential Information Obligations

The Governance Participants and the ISO acknowledge that remedies at law for any breach of the obligations under this Section 2 would be inadequate and agree that, in enforcing this Section 2, in addition to any other remedies provided at law:

- (a) A Furnishing Governance Participant may, at its option, take one or both of the following actions: (i) apply to any court of equity having jurisdiction for an injunction restraining the ISO, any Stakeholder Committee or any Governance Participant from an actual or threatened violation of this Section 2 relating to *Confidential Information* provided by such Furnishing Governance Participant and (ii) submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.
- (b) The ISO may, at its option, take one or both of the following actions: (i) apply to any court of equity having jurisdiction for an injunction restraining a Governance Participant or any Stakeholder Committee from an actual or threatened violation of this Section 2 relating to

Confidential Information and **(ii)** submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.

- (c) The Participants Committee may, at its option, take one or both of the following actions: **(i)** apply to any court of equity having jurisdiction for an injunction restraining the ISO from an actual or threatened violation of this Section 2 relating to *Confidential Information* and **(ii)** submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.

Section 3 -Information Access

3.0 Information Access

(a) Public Information

This information includes:

- Public record filings with regulatory agencies. (Some examples include, but are not limited to, ISO Budget Data required for ISO Tariff Filings; and data associated with the Open Access Transmission Tariff.)
- Data posted on the Open Access Same-Time Information System (“OASIS”). (Some examples include, but are not limited to, Transmission Facilities Information including System Inventory; New Applications; Scheduling Information, Real Time Tie Line Use and Surplus Availability; Aggregate MW of generation operating out of merit (for transmission, reliability, and VAR) by Reliability Region (these Regions will be defined by the ISO, such that no *Confidential* or Strategic Information is released), Real Time Operating Reserve Availability and curtailment or interruption of External Transactions.)
- Information and/or reports that are required to be filed with the Federal Energy Regulatory Commission (“FERC”) (unless specifically required to be filed on a confidential basis). (For example, the Filed Documents.)

- Public Generator Information including System Inventory and New Applications. (Some examples include, but are not limited to, Capacity, Energy, Loads & Transmission (CELT) Report; and 18.4 Applications.)
- Public Market Information includes any items required to be made public by **(i)** the Filed Documents; **(ii)** other relevant documents, including without limitation the ISO New England Manuals and any other system rules, procedures or criteria for the operation of the New England system and administration of the Market and the Filed Documents; and **(iii)** the items listed in Aggregate Market Results, as posted under “Market Information” on the ISO website pursuant to this Information Policy. (Some examples include, but are not limited to, aggregate Market requirements and settlements; Clearing Prices; Locational Marginal Prices; lists of load zones, nodes and hubs; Emergency Energy notices; market monitoring input assumptions and threshold values; Financial Transmission Rights modeling and auction results; Auction Revenue Rights modeling and auction results; information relating to the Load Response Program; ICAP Market Schedules and UCAP auction results.)
- In addition, the System Operator shall publish each month’s bid and offer information for all markets on its website on the first day of the fourth calendar month following the month during which the applicable demand bids and supply offers were in effect (e.g., bid and offer data for January would be released on May 1), provided that the information is presented in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity’s bids and offers over time.
- Market test information including any information equivalent to Public Market Information derived from test programs for new markets or market software or simulations of proposed market improvement (includes any and all information necessary for evaluation of the impacts of a proposed new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions).
- Long-term system planning and operations information consisting of load forecasts, transmission models (including power flow, short circuit and stability models and their related base cases and contingency files), transfer limits used for planning purposes, Installed Capacity Requirements and Governance Participants and non-Governance Participants proposed generation. This information does not include near-term transmission models or transfer limits within New England that are

developed as part of system operations or real-time information from the control room energy management system; provided that, notwithstanding the provisions of Sections 3.0(b) and (g)(ii), the ISO may publish, on a weekly basis, the following information associated with NERC's alert regarding "Consideration of Actual Field Conditions in Determination of Facility Ratings" for each transmission facility affected by the alert: (i) the identification of the facility subject to a rating change; (ii) the original rating of the facility; (iii) the new rating of the facility which reflects the de-rating due to the NERC alert, and; (iv) the non-binding expected date that the transmission facility de-rating will be remediated.

- Public Reports required by the Filed Documents (including, but not limited to, evaluation of procedures for determination of Locational Marginal Prices as well as the awarding Financial Transmission Rights and associated Congestion Costs and Transmission Congestion Credits).
- Public Market Monitoring Information including, but not limited to, public reports by the Independent Market Advisor required by the Market Rules (includes the ISO's time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of the Governance Participants by name or provide a manner for identifying such Governance Participants, except as otherwise provided in the Filed Documents).
- Any other information that is not *Confidential Information* that the ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the markets or public understanding of the New England system and the operations of the ISO.

This data may be made available to the public at large. (Fees may be applicable to cover process and handling expenses.) [This information corresponds to the MIS security rule "PB" Public.]

(b) Non-Public Transmission Information

This information includes:

- Information and/or reports that are filed with the North American Electric Reliability Council (NERC). (Some examples include, but are not limited to, all NPCC data, see examples below.)

- Information and/or reports that are filed with the Northeast Power Coordinating Council (NPCC).
- Real-time system operations information, which is not posted on the OASIS, including but not limited to detailed operations data. (Some examples include, but are not limited to, real-time transmission line flows, real-time transfer limits, and real-time voltages.)
- Information relating to specific Generating facilities, which is required by transmission personnel to ensure the reliable operation of the New England bulk power system. (Some examples include, but are not limited to, detailed Generator operating characteristics; and dynamic swing recorder plots.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- Information related to system restoration efforts. (Some examples include, but are not limited to, ISO and Governance Participants' detailed Power System Restoration Plans.)

This information may be made available to Reliability Councils and all Governance Participants' Transmission Personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation. There is no direct correlation to the MIS Security Rules and there is currently no specific transmission information distributed via the MIS.

(c) Governance Participant Specific Data

This information includes:

- Data not yet posted on the OASIS. (Some examples include, but are not limited to, Interface Transmission Service Schedules Lists.)
- *Confidential Information*, as defined in Section 2.1 of this Policy, for which this Governance participant, or an Agent thereof, has the right to receive the data. (Some examples include, but are not limited to, Product Obligation; and Load.)

- Invoice and Settlement Data. (Some examples include, but are not limited to, Governance Participant Phase I/II Hourly Transfer Capability Allocations; Electrical Load, Adjusted Net Interchange, Obligation, Entitlement, Charges, and Payments for each market.)

[This data may be made available to active users or agents of the specified Governance Participant. This information corresponds to the MIS security rule “SM” Settlement Rule.]

(d) Asset Specific Information – Near Real-Time

This information includes:

- Near real-time information related to the particular asset. (Some examples include, but are not limited to, Generation Levels (MW); Designations (MW); Automatic Generation Control Status, Operating Limits, Response Rates, unit forecast and operation information, and Real Time Status of External Contract Sales and/or Purchases for which a Governance Participant has a contract on file with the ISO.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules. As applicable, this data may also be made available to a Governance Participant who is a contractual party to external or internal bilateral contracts for the specified Asset, which corresponds to the MIS security rule “TH” Transaction Holder Rule.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

(e) Asset Specific Information – Forecast and post-Settlement

This information includes:

- Unit Forecast information relating to a particular Asset, which is necessary to determine the projected operation of particular Generators. (Some examples include, but are not limited to, Start Time; Generation; and Shut-Down Time.)

- Information relating to a particular Asset, which is necessary to determine the accuracy of Settlement. (Some examples include, but are not limited to, High Operating Limit; Generation; Ownership Share; and Duration on Automatic Generation Control.)
- Governance Participant input data. (Some examples include, but are not limited to, generation input data; and records of deficient performance.)
- Capability Responsibility (CR) data and calculations, for those specific Generating facilities for which a Governance Participant(s) has an ownership interest. (Some examples include, but are not limited to, Unit Capability Demonstrations and Audits; and Seasonal Claimed Capability.)
- All information, with the exception of bids, offers and meter data, necessary to verify Settlement data. (Some examples include, but are not limited to, Response Rate data; and Minimum Run-Time data.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

(f) Meter, Bid and Offer Data

This information includes:

- *Confidential Information* submitted as input to the Market System. Bid and offer data may be made available to any Governance Participant with a Generation Ownership Share, or Agent thereof, for a specified Asset. [This information corresponds to the MIS security rules “RS” Responsible Party Rule.]
- A minimum power value derived by the ISO from a resource’s Economic Minimum Limit may be included in the transmission models that are treated as public information pursuant to Section 3.0(a).

- Meter data may be made available to the Assigned Meter Reader for a specified Asset. There is no direct correlation to the MIS Security Rules and there is currently no specific MIS distribution of meter data. However, meter data may be manually distributed to the Host Participant whose unmetered load is calculated based on said meter data.

(g) Reliability, Operations and Area Control Information

(i) External Control Center Information

This information includes:

- All System Operations or Planning Information that relates to the particular external Control Center. (Some examples include, but are not limited to, transmission interface transfers and limits within the external control center area; and Inter-Area Emergency Assistance available, used for Planning purposes, under OP-4 conditions.)
- Information that is required to assure the reliable operation of the interconnected bulk power system. (Some examples include, but are not limited to, all information deemed necessary in the event of OP 4 implementation; and, under non-OP-4 system conditions, information related to Inter-Area flow control.)
- Inter-area Transmission Operating Guides that relate to the particular external control area. (Some examples include, but are not limited to, PV-20 Cross Trip SPS – available to New York; and Phase I Runback SPS – available to Hydro Quebec.)
- Confidential Information (under signature of confidentiality agreements that provide rights to Governance Participants equivalent to those granted in this Information Policy to notice of and opportunity to defend against any release of their Confidential Information) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system. (Some examples include, but are not limited to, ISO operations and markets information, including market monitoring information, provided that market monitoring information shall only be shared with independent market operators or independent market monitors and only in connection with particular investigations affecting regional markets.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of External Control Center Information. This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) or Planning Department directly to External Control Center personnel.

(ii) Internal (Satellites) Control Center Information

This information includes:

- All System Operations or Planning Information. (Some examples include, but are not limited to, detailed system models; and transmission element data as detailed on the NX-9 forms.)
- Information relating to specific Generating facilities that is needed to assure the reliable operation of the New England Control Area. (Some examples include, but are not limited to, Generator constraints, including the reason for such constraint; and detailed Generator unit commitment.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- New England and Satellite System Restoration Plans. (Some examples include, but are not limited to, the ISO, Satellite and Governance Participants' detailed Power System Restoration Plans.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of Internal (Satellite) Control Center Information. This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Satellite personnel.

(h) Load Response Provider Information

This information is asset-specific Confidential Information, including:

- Retail customer information;
- Customer data;
- Load profiles, and;
- Demand response information provided at the request of the Internal Market Monitor pursuant to Section III.A.17.

Information relating to retail customers, customer data and load profiles is subject to certain state law restrictions and is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Load Response Provider personnel.

(i) ISO New England Information

This information includes:

- Any Governance Participant or Asset specific information as requested by the ISO, which will be maintained in accordance with this Policy. (Some examples include, but are not limited to, all Governance Participant and Asset specific information, which is available to the ISO.)
- Any ISO Employment Information and ISO Administrative Information not specifically listed in other categories.

ISO personnel, Consultants, Counsel, and Board Members may have access to any information defined in the categories listed above. This information corresponds to the MIS security rule “ISO” ISO New England.

All *Confidential Information*, as defined in Section 2.1 of this Policy, will only be distributed in accordance with this Policy.

All other data, which is not specifically defined and is not *Confidential Information*, may be released at the discretion of the ISO in accordance with the procedures set forth in Sections 3.1, 3.2 and 3.3 hereto.

(j) Critical Energy Infrastructure Information (“CEII”)

This information includes:

- Information designated by a Governance Participant or the ISO as CEII, which is defined by FERC as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.”

- Reports, summaries, compilations, analyses, notes or other information which contain such information.

Access to CEII shall be granted by the ISO in accordance with the CEII disclosure processes posted on its website and, in the event that the CEII also falls within a category of information (including *Confidential Information*) described herein, in accordance with this Information Policy. Governance Participants shall treat CEII as if it were *Confidential Information*, notwithstanding any other provision of this Information Policy, and additionally shall maintain CEII in a secure place.

3.1 Information Requests

(a) Requesting Entities

As used in this Section 3.1, the term “Requesting Entity” shall mean any entity (other than the FERC, or the Commodity Futures Trading Commission (“CFTC”)), or an Authorized Person, as defined in Section 3.3 of this Information Policy) that requests information from the ISO.

(b) Public Information

If a Requesting Entity requests that the ISO publish Public Information (as defined in Section 3.0(a) of this Information Policy) that is not currently published by the ISO, the ISO may after consultation with the Participants Committee or its designated subcommittee or working group defer or deny such request if the ISO determines that publication of such data is not feasible at the time of such request due to resource limitations, including, without limitation, available software.

(c) Non-Public Information

(i) A Requesting Entity that desires to make a formal request for information that is not Public Information from the ISO, the resolution of which request shall be appealable under Section 3.1(e)(v) of this Information Policy, shall submit a formal written request to the ISO in the manner set forth in Section 3.1(d) below (a “Formal Information Request”) for such information.

(ii) Requests for information from Requesting Entities to the ISO other than Formal Information Requests need not be in writing.

(iii) Any request for information from the FERC, or the CFTC, or from an Authorized Person (as defined in Section 3.3 of this Information Policy) shall be addressed according to the procedures set forth in Section 3.2 and Section 3.3 of this Information Policy, as applicable.

(d) Form of Request; Tracking

(i) Any Formal Information Request shall be directed to the point of contact designated by the ISO to handle such requests (the “ISO Information Contact”). The ISO shall post contact information for the ISO Information Contact on the ISO website.

(ii) A Formal Information Request shall be in writing, which shall include electronic communications addressed to the ISO Information Contact, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the information request; (c) state the time period for which such information is requested; (d) specifically designate such request as a Formal Information Request and make reference to Section 3.1(d)(ii) of the Information Policy; and (e) provide contact information for the person to whom the response to such Formal Information Request is to be directed.

(iii) The ISO Information Contact shall track all Formal Information Requests and provide a report indicating the nature of each request and the response to such request to the Markets Committee on a monthly basis.

(e) Timing and Notice

(i) The ISO Information Contact normally shall notify all affected Furnishing Entities within five (5) business days after receiving a Formal Information Request.

(ii) The ISO Information Contact normally shall provide the Requesting Entity with a response (an “Initial Response”) within fifteen (15) business days after receiving the Formal Information Request (the “Request Date”). The Initial Response shall indicate either (A) that the ISO has made a decision on the Formal Information Request in accordance with Section 3.1(f)(i) below, in which case it shall describe such decision, or (B) that the ISO was unable to reach a decision, and will be consulting with the Participants Committee in accordance with Section 3.1(f)(ii) below.

(iii) If the Initial Response indicates that the ISO is further consulting with the Participants Committee, the ISO Information Contact normally shall provide the Requesting Entity with a follow-up response (a “Follow-Up Response”) the earlier of ten (10) business days after a recommendation by the Participants Committee as set forth in Section 3.1(f)(ii) below or sixty (60) days following the Request Date, which response shall indicate either (A) that the ISO has made a decision on the Formal Information Request in accordance with Section 3.1(f)(ii) below, in which case it shall describe such decision, or (B) that the ISO has failed to make a decision with respect to the Formal Information Request, in which case such request shall be deemed denied.

(iv) The ISO Information Contact shall provide the Furnishing Entity(ies) with copies of any Initial Response or Follow-Up Response provided in response to a Formal Information Request on the same day that such responses are provided to the Requesting Entity. In addition, the ISO Information Contact shall provide the Furnishing Entity(ies) with at least ten (10) business days prior written notice of any release of *Confidential Information* or Strategic Information relating to such Furnishing Entity (whether such release is on the ISO’s own initiative, in response to a Formal Information Request, or otherwise), which written notice shall inform such Furnishing Entity(ies) of its right to dispute such release under Section 3.1(e)(v) of the Information Policy.

(v) The Requesting Entity shall have the right to appeal any Initial Response that contains a decision with respect to a Formal Information Request and any Follow-Up Response. Any affected Furnishing Entity shall have the right to appeal any Initial Response or Follow-Up Response that contains a decision with respect to a Formal Information Request and any decision by the ISO to release *Confidential Information* or Strategic Information (whether such release is on the ISO’s own initiative, in response to a Formal Information Request, or otherwise). The Participants Committee shall have the right to appeal any Initial Response that contains a decision with respect to a Formal Information Request. Notice of any appeal shall be provided contemporaneously to the Participants Committee and the ISO Information Contact.

(vi) Any appeal of the ISO’s actions under this Section 3.1 with respect to a Formal Information Request shall be subject to binding arbitration with FERC’s Alternative Dispute Resolution Service, as further described in 18 C.F.R. §§ 385.604, 385.605. The ISO and the disputing entity(ies) shall use reasonable efforts to insure that an arbitrator is selected and a hearing is scheduled within thirty (30) days of the ISO receiving notice of an appeal. Unless

otherwise agreed by all parties, the duration of any arbitration hearing will be limited to one day. The arbitrator's decision shall be binding on the respective parties; provided, however, that any of the respective parties to the arbitrator's decision shall be entitled to appeal the arbitrator's decision directly to FERC.

(vii) Suitable forms of notice and/or communications pursuant to this subsection shall include, but not be limited to, electronic communications.

(f) Consideration of Requests

(i) After receiving a Formal Information Request, the ISO shall first determine whether (X) the information requested is information described in Sections (a) through (i) of Section 3.0 and (Y) the Requesting Entity is a member of a user group specifically entitled to receive such information pursuant to Sections (a) through (i) of Section 3.0. If the ISO determines that the Requesting Entity is not entitled to receive the requested information pursuant to Sections (a) through (i) of Section 3.0, the ISO shall then determine if the requested information is *Confidential Information* or Strategic Information. The ISO may consult with the Independent Market Advisor, NEPOOL Counsel, the Furnishing Entity(ies), and/or the Participants Committee (as provided in Section 3.1(d)) during the process of making this determination.

(A) If the ISO determines that the information is *Confidential Information*, the ISO Information Contact will refer the request to the Furnishing Entity(ies) and the ISO will not release the requested information unless it is directed to do so by the Furnishing Entity(ies) or ordered to do so by a court or regulatory authority with jurisdiction over such matters. If the Furnishing Entity(ies) directs the ISO to release the requested information, the ISO will next determine whether the requested information is Strategic Information as set forth in Section 3.1(c)(i)(B) below. The Furnishing Entity(ies) shall bear any costs reasonably incurred by the ISO in opposing the issuance of such an order requiring disclosure of the Furnishing Entity(ies)' *Confidential Information*. Notwithstanding the foregoing, upon the request of a regulatory agency, other than FERC or its staff or the CFTC or its staff, having appropriate jurisdiction and subject to an appropriate confidentiality order entered under such agency's procedures sufficient to preserve the confidential nature of the information submitted, and with advance notice to the Furnishing Entity(ies), the ISO Information Contact may submit *Confidential Information* to such agency.

(B) If the information requested is Strategic Information, the ISO shall determine whether to release the requested information, in consultation with the Independent Market Advisor, NEPOOL Counsel and/or the Furnishing Entity(ies), as the ISO deems appropriate. If the ISO releases such information, it will do so by making the information public.

(C) If the information requested is neither *Confidential Information* nor Strategic Information, the ISO shall determine whether to release the requested information; provided that the Participants Committee, acting on the recommendation of an appropriate Stakeholder Committee, may request the ISO to release the requested information.

(ii) If, after consultation with the Independent Market Advisor, NEPOOL Counsel and/or the Furnishing Entity, as appropriate, the ISO cannot, in its good faith judgment, determine the classification status of requested information or otherwise believes that a Formal Information Request raises policy questions that should be determined by the Governance Participants, then the following procedure shall apply:

(A) The ISO shall refer the request to the Participants Committee with its recommendation for action.

(B) The Participants Committee, acting on recommendation of a subcommittee or working group, as appropriate, may approve of or suggest modifications to the recommendation of the ISO. If the Participants Committee approves the ISO's recommendation, or if the ISO accepts the Participants Committee's suggested modifications, the Participants Committee's decision shall determine the response to the Formal Information Request; provided, however, that, to the extent that the information requested is found to be *Confidential Information*, the ISO shall continue to maintain the confidentiality of such information in accordance with the terms of this Information Policy.

(g) Release of Information; Prioritization of Formal Information Requests

(i) The ISO shall reasonably attempt to comply with any Formal Information Request that has been granted within thirty (30) days of the Initial Response or Follow-Up Response informing the Requesting Entity that its request has been granted. The ISO may condition the release of any information to a Requesting Entity upon payment of the ISO's reasonable cost to identify and prepare such information.

(ii) If the ISO does not have the resources available to comply with all outstanding Formal Information Requests within the time provided in clause (i) above, the ISO will consult with the Participants Committee or its designated subcommittee or working group to determine how such Formal Information Requests should be prioritized.

(h) Definition of Strategic Information

For purposes of this Policy, Strategic Information means any information, except Public Information, that would affect a Governance Participant's bid or offer strategy in the New England electric markets including information affecting the offer price for or cost of operation of a resource, the capacity or availability of a resource, or any other offer parameter for a resource.

Strategic Information includes *Confidential Information* supplied by Governance Participants to the extent such information would affect a Governance Participant's bid or offer strategy such as, for example:

- All offer prices and parameters for particular resources including bid blocks and times.
- Cost information regarding operation of one or more resources if and to the extent supplied to the ISO.
- Information regarding fuel availability for thermal resources or impoundment levels for hydroelectric facilities.
- Information regarding transmission outages, not otherwise made public, for scheduled maintenance or otherwise that affects the availability of certain generating resources.

Strategic Information may also include information calculated or produced by the ISO such as:

- Aggregate prices and quantities offered that are derived through the unit commitment process.
- Information regarding which resources will run or have run during any particular market settlement period.
- Information derived through the unit commitment process or the market settlement system as to units that run out of merit.
- Information regarding the existence or location of certain short-term transmission constraints.

No Strategic Information that is *Confidential Information* will be released except in compliance with the provisions of this Information Policy regarding *Confidential Information*.

3.2 Disclosure to FERC and the CFTC

(a) Procedures for Disclosure to FERC

If the FERC or its staff, during the course of an investigation or otherwise, requests information from the ISO that is *Confidential Information* or CEII, the ISO shall provide the requested information to the FERC or its staff, within the time provided for in the request for information. In providing *Confidential Information* to FERC or its staff, the ISO shall, consistent with 18 C.F.R §§ 1b.20 and 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify any affected Furnishing Entity(ies) (1) when it is notified by FERC or its staff, that a request for disclosure of *Confidential Information* has been received at which time the ISO and the affected Furnishing Entity(ies) may respond before such information would be made public; and (2) when it is notified by FERC or its staff that a decision to disclose *Confidential Information* has been made, at which time the ISO and the affected Furnishing Entity(ies) may respond before such information would be made public. In providing CEII to FERC or its staff, the ISO shall, consistent with 18 CFR § 388.112, request that the information be treated as CEII by the FERC and its staff.

(b) Procedures for Disclosure to the CFTC

Furnishing Entity(ies) permits the ISO to provide *Confidential Information* or CEII to the CFTC or its staff in response to a subpoena or other request for information or documentation without notifying Furnishing Entity(ies) prior to providing such information to the CFTC. The ISO shall provide the requested information or documentation to the CFTC or its staff within the time provided for in the

request for information or documentation. In providing *Confidential Information* or CEII to the CFTC or its staff, the ISO shall: (i) request, on behalf of the Furnishing Entity(ies), that the information be treated as confidential and non-public by the CFTC and its staff, as provided in 17 C.F.R. § 145.9; and (ii) make clear through the confidentiality legend required by 17 C.F.R. § 145.9 that both the ISO and the Furnishing Entity(ies) are the submitters of the *Confidential Information* or CEII as provided under 17 C.F.R. § 145.9.

3.3 Disclosure to Authorized Persons and ISO/MMU Requesting Entities

(a) Definitions

For purposes of this Section 3.3, the following terms shall have the meanings set forth below:

“Affected Governance Participant” shall mean a Governance Participant, which, as a result of its Participation in the markets administered by the ISO, provided Confidential Market Information to the ISO, which Confidential Market Information is requested by or is disclosed to an Authorized Person under a Non-Disclosure Agreement.

“Authorized Commission” shall mean a State public utility commission within the geographic limits of the New England Control Area that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State.

“Authorized Person” shall mean a person who has executed a Non-Disclosure Agreement, and is authorized in writing by an Authorized Commission to receive and discuss Confidential Market Information. Authorized Persons may include attorneys representing an Authorized Commission, consultants and/or contractors directly employed by an Authorized Commission, provided; however, that consultants or contractors may not initiate requests for Confidential Market Information from the ISO or the IMMU.

“Confidential Market Information” shall mean *Confidential Information* consisting of market data relating to the markets administered by the ISO, including data supplied by Governance Participants and aggregate data regularly compiled by the ISO. Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports

and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/IMMU, except to the extent that the communications become part of final written reports or final written analyses by the ISO/IMMU, (vi) communications between an Affected Governance Participant and the ISO made on a confidential basis as part of a settlement proceeding or negotiation; and (vii) information provided to the ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding.

“Information Request” shall mean a written request, in accordance with the terms of this Section 3.3 for disclosure of Confidential Market Information pursuant to Section 3.3 of this Information Policy.

“ISO/MMU Requesting Entity” shall mean an independent system operator or regional transmission organization subject to the Commission’s jurisdiction, or its market monitor, that is requesting Confidential Market Information pursuant to Section 3.3(c) of this Information Policy.

“Non-Disclosure Agreement” shall mean an agreement between an Authorized Person and the ISO pursuant to Section 3.3 of this Information Policy, the form of which is appended to this Information Policy (Appendix A), wherein the Authorized Person is given access to otherwise restricted Confidential Market Information, for the benefit of their respective Authorized Commission.

“State Certification” shall mean the Certification of an Authorized Commission, pursuant to Section 3.3 of this Information Policy, the form of which is appended to this Information Policy (Appendix B), wherein the Authorized Commission identifies all Authorized Persons employed or retained by such Authorized Commission, a copy of which shall be filed with FERC.

“Third Party Request” shall mean any request or demand by any entity upon an Authorized Person, an Authorized Commission or an ISO/MMU Requesting Entity for release or disclosure of Confidential Market Information provided to the Authorized Person, Authorized Commission or ISO/MMU Requesting Entity by the ISO, the Internal Market Monitor or the External Market Monitor. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

(b) Procedures for Disclosures to Authorized Persons

(i) Notwithstanding anything in this section to the contrary, the ISO and/or the External Market Monitor shall disclose Confidential Market Information, otherwise required to be maintained in confidence pursuant to this Information Policy, to an Authorized Person under the following conditions:

(1) The Authorized Person has executed a Non-Disclosure Agreement with the ISO representing and warranting that he or she: (i) is an Authorized Person; (ii) is duly authorized to enter into and perform the obligations of the Non-Disclosure Agreement; (iii) has adequate procedures to protect against the release of any Confidential Market Information received, (iv) is familiar with, and will comply with any applicable procedures of the Authorized Commission which the Authorized Person represents, (v) covenants and agrees on behalf of himself or herself not to disclose the Confidential Market Information and to deny any Third Party Requests and defend against any legal process which seeks the release of any Confidential Market Information received in contravention of the terms of the Non-Disclosure Agreement, and (vi) is not in breach of any Non-Disclosure Agreement entered into with the ISO.

(2) The Authorized Commission employing or retaining the Authorized Person has provided the ISO with: (a) a final order of FERC prohibiting the release by the Authorized Person or the Authorized Commission of Confidential Market Information in accordance with the terms of this Information Policy and the Non-Disclosure Agreement; and (b) either an order of such Authorized Commission or a certification from counsel to such Authorized Commission, confirming that the Authorized Commission (i) has statutory authority to protect the confidentiality of any Confidential Market Information received from public release or disclosure and from release or disclosure to any other entity, (ii) will defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders, (iii) will provide the ISO with prompt notice of any such Third Party Request or legal proceedings and will consult with the ISO and/or any Affected Governance Participant in its efforts to deny the Third Party Request or defend against such legal process, (iv) in the event a protective order or other remedy is denied, will direct Authorized Persons authorized by it to furnish only that portion of the Confidential Market Information which their legal counsel advises the ISO in writing is legally required to be furnished, (v) will exercise its best efforts to obtain

assurance that confidential treatment will be accorded to such Confidential Market Information and (vi) has adequate procedures to protect against the release of such Confidential Market Information; and (c) confirmation in writing that the Authorized Person is authorized by the Commission to enter into the Non-Disclosure Agreement and to receive Confidential Market Information under this Information Policy.

(3) The Authorized Commission employing or retaining the Authorized Person has provided the ISO with a State Certification.

(4) The ISO and the External Market Monitor shall be expressly entitled to rely upon such FERC and Authorized Commission orders, the State Certification and/or certifications of counsel in providing Confidential Market Information to the Authorized Person, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder due to the ineffectiveness of the FERC and/or Commission orders, or the inaccuracy of such certification of counsel.

(5) The Authorized Person may discuss Confidential Market Information with other Authorized Persons who are parties to Non-Disclosure Agreements, provided; however, that the ISO shall have confirmed in advance and in writing that it has previously released the Confidential Market Information in question to such Authorized Persons. The ISO shall respond to any written request for confirmation within two (2) business days of its receipt.

(6) The ISO shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on the ISO's website or by written request. Such schedule shall be compiled by the ISO, based on information provided by any Authorized Person and/or Authorized Commission. The ISO shall update the schedule promptly upon receipt of information from an Authorized Person or Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the ISO in the compilation and/or maintenance of the schedule.

(ii) The External Market Monitor or other designated representative of the ISO may, in the course of discussions with any Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or their Authorized Commission to determine whether additional Information Requests for information are appropriate. The External Market Monitor or other representative of the ISO will not make any written or electronic disclosures of Confidential Market Information to the Authorized Person pursuant to this section. In any such discussions, the External Market Monitor or other representative of the ISO shall ensure that the individual or individuals receiving such Confidential Market Information are Authorized Persons as defined herein, request that the Authorized Person describe the purpose of the inquiry, orally designate Confidential Market Information that is disclosed, and refrain from identifying any specific Affected Governance Participant whose information is disclosed. The External Market Monitor or other representative of the ISO shall also be authorized to assist Authorized Persons in interpreting Confidential Market Information that is disclosed. The External Market Monitor or representative of the ISO shall provide any Affected Governance Participant and counsel for the Participants Committee with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Governance Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Market Information of any other Governance Participant and must be received by the Affected Governance Participant before the name of the Affected Governance Participant is released to the Authorized Person, provided; however, the identity of the Affected Party must be made to the Authorized Person within two (2) business days of the initial oral disclosure. The ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the oral disclosure.

(iii) As regards Information Requests:

(1) Information Requests to the ISO shall be in writing, which shall include electronic communications addressed to the External Market Monitor or other designated representative of the ISO, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the Information Request; (c) state the time period for which Confidential Market Information is requested; and (d) re-affirm

that only the Authorized Person shall have access to the Confidential Market Information requested. The ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of an Information Request of the Authorized Person as soon as possible, but not later than two (2) business days after the receipt of the Information Request.

(2) Subject to the provisions of section (iii)(3), the ISO shall supply Confidential Market Information to the Authorized Person in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested Confidential Market Information can be made available within such period, provided; however, that in no event shall Confidential Market Information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Governance Participant. To the extent that the ISO cannot reasonably prepare and deliver the requested Confidential Market Information within such five (5) day period, it shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Market Information. Upon providing Confidential Market Information to the Authorized Person, the ISO shall either provide a copy of the Confidential Market Information to the Affected Governance Participant(s), or provide a listing of the Confidential Market Information disclosed, provided; however, that the ISO shall not reveal any Governance Participant's Confidential Market Information to any other Governance Participant.

(3) Notwithstanding section (iii)(2), above, should the ISO, an Affected Governance Participant, or the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) object to an Information Request or any portion thereof, any of them may, within four (4) business days following the ISO's receipt of the Information Request, request, in writing, a conference with the Authorized Commission or the Authorized Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request, provided; however, nothing herein shall require the Authorized Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then the ISO, the Affected Governance Participant, the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) or the Authorized

Commission may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a “fast track” complaint and each party shall bear its own costs in connection with such FERC proceeding. If no FERC proceeding regarding the Information Request is commenced within such three day period, the ISO shall utilize its best efforts to respond to the Information Request promptly. During any pending FERC proceeding regarding an Information Request, the ISO shall continue to maintain the confidentiality of the Confidential Market Information subject to such Information Request.

(iv) In the event of any breach of a Non-Disclosure Agreement:

(1) The Authorized Person and/or their respective Authorized Commission shall promptly notify the ISO, who shall, in turn, promptly notify any Affected Governance Participant and counsel for the Participants Committee of any inadvertent or intentional release, or possible release, of Confidential Market Information provided pursuant to any Non-Disclosure Agreement.

(2) The ISO shall terminate such Non-Disclosure Agreement upon written notice to the Authorized Person and his or her Authorized Commission, and all rights of the Authorized Person thereunder shall thereupon terminate, provided; however, that the ISO may restore an individual’s status as an Authorized Person after consulting with the Affected Governance Participant and to the extent that: (i) the ISO determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (ii) there were no harm or damage suffered by the Affected Governance Participant; or (iii) similar good cause shown. Any appeal of the ISO’s actions under this section shall be to FERC.

(3) The ISO, the Affected Governance Participant, and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all Confidential Market Information to the ISO.

(4) No Authorized Person shall have responsibility or liability whatsoever under the Non-Disclosure Agreement or this Information Policy for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of Confidential Market Information to persons not authorized to receive it, provided that such Authorized Person is an employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this section (iv)(4) is intended to limit the liability of any person who is not an employee of or a member of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.

(5) Any dispute or conflict requesting the relief in section (iv)(2) or (iv)(3)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (4)(3)(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

(c) Procedures for Disclosures to an ISO/MMU Requesting Entity

(i) Notwithstanding anything in this section to the contrary, the ISO, the Internal Market Monitor or the External Market Monitor shall disclose Confidential Market Information, otherwise required to be maintained in confidence pursuant to this Information Policy, to an ISO/MMU Requesting Entity under the following conditions:

- (1) The ISO/MMU Requesting Entity has submitted to the ISO a written request for the disclosure of Confidential Market Information.
- (2) The written request explains why the requested Confidential Market Information is necessary to an investigation that the ISO/MMU Requesting Entity is undertaking pursuant to its tariff, other governing documents, or an applicable law or regulation to determine (a) if a Market Violation is occurring or has occurred, (b) if market power is being or has been exercised, or (c) if a market design flaw exists that affects either the New England markets or the markets administered by the ISO/MMU Requesting Entity.

- (3) The written request either (x) demonstrates, by providing copies of the relevant documentation, that the ISO/MMU Requesting Entity's tariff or other governing document limits further disclosure of the Confidential Market Information in a manner that satisfies all of the requirements set forth in Section 3.3(c)(ii) below, or (y) is accompanied by a non-disclosure agreement, which has been executed by both the ISO/MMU Requesting Entity and the ISO, that incorporates all of the requirements in Section 3.3(c)(ii) below, and a written certification that the ISO/MMU Requesting Entity possesses the legal authority to enter into the non-disclosure agreement, to be bound by it, and to perform all of the obligations of the non-disclosure agreement.

- (4) If the ISO/MMU Requesting Entity is an independent system operator or regional transmission organization that meets the conditions in this Section 3.3(c), then the ISO shall also disclose the requested Confidential Market Information to the ISO/MMU Requesting Entity's market monitor, on condition that the receiving market monitor satisfy the confidentiality requirements and obligations specified in Section 3.3(c)(i)(3) above.

(ii) The ISO/MMU Requesting Entity's governing documents or non-disclosure agreement must:

- (1) Covenant and agree not to disclose and to protect from disclosure the Confidential Market Information and to deny any Third Party Request and defend against any legal process which seeks the release of Confidential Market Information, except where disclosure is required by the Commission, by subpoena, or by other compulsory process;

- (2) Represent and warrant that the ISO/MMU Requesting Entity has adequate procedures to protect against the release of Confidential Market Information;

- (3) Establish a legally enforceable obligation to treat Confidential Market Information as confidential. Such obligation must be of a continuing nature, and must survive the

rescission, termination or expiration of the tariff, other governing document or non-disclosure agreement;

- (4) Require that the ISO/MMU Requesting Entity use the Confidential Market Information solely for the purpose of investigating (a) if a Market Violation is occurring or has occurred, (b) if market power is being or has been exercised, or (c) if a market design flaw exists that affects either the New England markets or the markets administered by the ISO/MMU Requesting Entity;
- (5) Require state commissions to request Confidential Market Information directly from the ISO or the Internal Market Monitor, in a manner consistent with Section 3.3(b) of this Information Policy, and promptly inform the ISO or the Internal Market Monitor of any request received from a state commission for Confidential Market Information;
- (6) Require the ISO/MMU Requesting Entity (a) to defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders; (b) to provide the ISO, the Internal Market Monitor or the External Market Monitor with prompt notice of any such Third Party Request or legal proceedings, and consult with the ISO, the Internal Market Monitor or the External Market Monitor in its efforts to deny the request or defend against such legal process; (c) in the event a protective order or other remedy is denied, to furnish only that portion of the Confidential Market Information which its legal counsel advises the ISO, the Internal Market Monitor or the External Market Monitor in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information;
- (7) Require the ISO/MMU Requesting Entity to promptly notify the ISO, the Internal Market Monitor or the External Market Monitor of any Third Party Requests for additional disclosure of the Confidential Market Information where Confidential Market Information has been disclosed to a court or regulatory body in response to a subpoena or other compulsory process, and to seek appropriate relief to prevent or limit further disclosure;

- (8) Require destruction of the Confidential Market Information at the earlier of (a) five business days after a request from the ISO, the Internal Market Monitor or the External Market Monitor for the return of the Confidential Market Information is received, or (b) the conclusion or resolution of the investigation.

3.4 Disclosure to Academic Institutions

Notwithstanding anything to the contrary set forth herein, the ISO may disclose Confidential Market Information (as defined in Section 3.3), otherwise to be maintained in confidence pursuant to this Information Policy, to a research university (an “Authorized Institution”), solely for the purpose of academic research by Authorized Researchers (as defined below), under the following conditions:

- (a) The Authorized Institution has delivered an information request to the ISO in writing (the “Academic Institution Information Request”), which shall include electronic communications addressed to the External Market Monitor, and shall: (i) describe with particularity the information sought; (ii) provide a description of the purpose of the Academic Institution Information Request (“Proposed Research”); (iii) state the time period for which the Confidential Market Information is requested; (iv) specify the individuals that will have access to such Confidential Market Information (the “Authorized Researchers”) and (v) specify the source of funding for the research to be performed with respect to the requested Confidential Market Information.
- (b) The ISO shall review the merits of the Academic Institution Information Request and may, in its sole discretion, reject such request without providing notice to affected Governance Participants and the Participants Committee as required in subsection 3.4(c) below.
- (c) In the event that the ISO does not initially reject the Academic Institution Information Request pursuant to subsection 3.4(b) above, the ISO shall provide affected Governance Participants and counsel to the Participants Committee with written notice, which shall include electronic communication, of an Academic Institution Information Request as soon as possible, but no later than five (5) business days after receipt of the Academic Institution Information Request. Such notice shall include all of the information contained in the Academic Institution Information Request.

(d) An authorized representative of the Authorized Institution has executed a non-disclosure agreement in the form attached hereto as Appendix C (the “Academic Institution Non-Disclosure Agreement”) in which the Authorized Institution (i) represents and warrants that the Authorized Institution (w) will only share the Confidential Market Information with Authorized Researchers identified in the Academic Institution Information Request, solely to be used for the purpose of the Proposed Research; (x) is duly authorized to enter into and perform the obligations of the Academic Institution Non-Disclosure Agreement; (y) has adequate procedures to protect against the release of any Confidential Market Information received; and (z) is not in breach of any other Academic Institution Non-Disclosure Agreement entered into with the ISO; and (ii) covenants and agrees not to disclose the Confidential Market Information and to deny any third-party requests for the Confidential Market Information and defend against any legal process that seeks the release of any Confidential Market Information.

(e) The ISO shall provide affected Governance Participants and counsel to the Participants Committee written notice, which shall include electronic communication, of its determination whether to release Confidential Market Information in response to an Academic Institution Information Request as soon as possible, but no later than five (5) business days following the provision of the notice required in subsection (c) above. Notice of the ISO’s determination shall also include all of the information contained in the Academic Institution Information Request, and shall inform the affected Governance Participants of their right to object to such release, as well as the deadline for any such objection and shall specifically state that in the event that the affected Governance Participants do not object to such release, any information released by the ISO pursuant to an Academic Institution Information Request may be subject to publication by the Authorized Institution; provided that such publication may only be made (x) upon written consent of the ISO and (y) if any material the Authorized Institution proposes to publish, which is related to or that relies upon the Confidential Market Information, is sufficiently redacted or summarized in a manner so that it may not be identified. The ISO shall not release Confidential Market Information relating to any affected Governance Participant that objects to such release within ten (10) business days of the ISO’s notice of its determination. Following the tenth (10th) business day after providing such notice, the ISO may, in its sole discretion, release Confidential Market Information relating to those affected Governance Participants that have not objected to such release to the Authorized Institution, provided, however, that the ISO shall redact all Confidential Market Information relating to any objecting affected Governance Participants, as applicable.

(f) In the event that an Authorized Institution or any Authorized Researcher publishes any material related to or that relies upon the Confidential Market Information, upon written consent of the ISO in accordance with Section 2.3.4 of the Academic Institution Non-Disclosure Agreement, the ISO shall provide notice to the Participants Committee regarding the medium (e.g., journal) in which the publication has been made.

APPENDIX A
FORM OF NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the “Agreement”) is made this _____ day of _____, 2004, by and between _____, an Authorized Person, as defined below, of _____ (the “State Commission”) having jurisdiction within the State of _____, with offices at _____ and ISO New England Inc., a Delaware corporation, with offices at One Sullivan Road, Holyoke, Massachusetts, 01040-2841 (“ISO”). The State Commission and ISO shall be referred to herein individually as a “Party,” or collectively as the “Parties.”

RECITALS

Whereas, ISO serves as the Regional Transmission Organization for the New England Control Area, and operates and oversees wholesale markets for electricity pursuant to the requirements of the ISO Tariff, as defined below; and

Whereas, the External Market Monitor (as defined below) serves as the independent market monitor for ISO’s wholesale markets for electricity, and

Whereas, the ISO New England Information Policy requires that ISO and the External Market Monitor maintain the confidentiality of Confidential Market Information; and

Whereas, the ISO New England Information Policy requires ISO and the External Market Monitor to disclose Confidential Market Information to Authorized Persons upon satisfaction of conditions stated in the ISO New England Information Policy, including, but not limited to, the execution of this Agreement

by the Authorized Person and the maintenance of the confidentiality of such information pursuant to the terms of this Agreement; and

Whereas, ISO desires to provide Authorized Persons with the broadest possible access to Confidential Market Information, consistent with ISO's and the External Market Monitor's obligations and duties under the ISO New England Information Policy, the ISO Tariff and other applicable FERC directives; and

Whereas, this Agreement is a statement of the conditions and requirements, consistent with the requirements of the ISO New England Information Policy, whereby ISO and the External Market Monitor may provide Confidential Market Information to the Authorized Person.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Definitions

1.1 Affected Governance Participant. A Governance Participant, which as a result of its participation in the markets administered by ISO, provided Confidential Market Information to ISO, which Confidential Market Information is requested by, or is disclosed to an Authorized Person under this Agreement.

1.2 Authorized Commission. A State public utility commission within the geographic limits of the New England Control Area (as that term is defined in the ISO Tariff) that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State.

1.3 Authorized Person. A person, including the undersigned, which has executed this Agreement and that is authorized in writing by an Authorized Commission to receive and discuss Confidential Market Information. Authorized Persons may include attorneys representing an Authorized Commission, consultants and/or contractors directly employed or retained by an Authorized Commission, provided however that consultants or contractors may not initiate requests for Confidential Market Information from ISO or the External Market Monitor.

1.4 Confidential Market Information. Shall mean *Confidential Information* (as defined in the ISO New England Information Policy) consisting of market data relating to the markets administered by ISO, including data supplied by Governance Participants and aggregate data regularly compiled by ISO.

Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/External Market Monitor, except to the extent that the communications become part of final written reports or final written analyses by the ISO/External Market Monitor, (vi) communications between an Affected Governance Participant and ISO made on a confidential basis as part of a settlement proceeding or negotiation; and (vii) information provided to ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding.

1.5 External Market Monitor. Shall have the meaning set forth in the ISO Tariff.

1.6 FERC. The Federal Energy Regulatory Commission.

1.7 Governance Participant. Shall have the meaning set forth in the ISO Tariff.

1.8 ISO New England Information Policy. Shall have the meaning set forth in the ISO Tariff.

1.9 Information Request. A written request, in accordance with the terms of this Agreement for disclosure of Confidential Market Information pursuant to Section 3.3 of the ISO New England Information Policy.

1.10 ISO Tariff. ISO's Transmission, Markets and Services Tariff, as it may be amended from time to time.

1.11 Third Party Request. Any request or demand by any entity upon an Authorized Person or an Authorized Commission for release or disclosure of Confidential Market Information. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

2. Protection of Confidentiality.

2.1 Duty to Not Disclose. The Authorized Person represents and warrants that he or she: (i) is presently an Authorized Person as defined herein; (ii) is duly authorized to enter into and perform this Agreement; (iii) has adequate procedures to protect against the release of Confidential Market Information, and (iv) is familiar with, and will comply with, all such applicable State Commission procedures. The Authorized Person hereby covenants and agrees on behalf of himself or herself not to disclose the Confidential Market Information and to deny any Third Party Request and defend against any legal process which seeks the release of Confidential Market Information in contravention of the terms of this Agreement.

2.2 Conditions Precedent. As a condition of the execution, delivery and effectiveness of this Agreement by ISO and the continued provision of Confidential Market Information pursuant to the terms of this Agreement, the Authorized Commission shall, prior to the initial oral or written request for Confidential Market Information by an Authorized Person on its behalf, provide ISO with: (a) a final order of FERC prohibiting the release by the Authorized Person or the State Commission of Confidential Market Information in accordance with the terms of the Operating Agreement and this Agreement; and (b) either an order of the State Commission or a certification from counsel to the State Commission, confirming that the State Commission has statutory authority to protect the confidentiality of the Confidential Market Information from public release or disclosure and from release or disclosure to any other entity, and that it has adequate procedures to protect against the release of Confidential Market Information; and (c) confirmation in writing that the Authorized Person is authorized by the State Commission to enter into this Agreement and to receive Confidential Market Information under the ISO New England Information Policy.

2.3 Discussion of Confidential Market Information with other Authorized Persons. The Authorized Person may discuss Confidential Market Information with other Authorized Persons who have executed non-disclosure agreements with ISO containing the same terms and conditions as this Agreement; provided, however, that ISO shall have confirmed in advance and in writing that ISO has previously released the Confidential Market Information in question to such Authorized Persons. ISO shall respond to any written request for confirmation within two (2) business days of its receipt.

2.4 Defense Against Third Party Requests. The Authorized Person shall defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Person shall provide ISO, and ISO shall provide each Affected Governance Participant and counsel for

the Participants Committee, with prompt notice of any such Third Party Request or legal proceedings, and shall consult with ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Person agrees to furnish only that portion of the Confidential Market Information which their legal counsel advises ISO (and of which ISO shall, in turn, advise any Affected Governance Participants) in writing is legally required to be furnished, and to exercise their best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

2.5 Care and Use of Confidential Market Information.

2.5.1 Control of Confidential Market Information. The Authorized Person(s) shall be the custodian(s) of any and all Confidential Market Information received pursuant to the terms of this Agreement from ISO or the External Market Monitor.

2.5.2 Access to Confidential Market Information. The Authorized Person shall ensure that Confidential Market Information received by that Authorized Person is disseminated only to those persons publicly identified as Authorized Persons on Exhibit “A” to the certification provided by the State Commission pursuant to the procedures contained in Section 2.2 of this Agreement.

2.5.3 Schedule of Authorized Persons.

(i) The Authorized Person shall promptly notify ISO of any change that would affect the Authorized Person’s status as an Authorized Person, and in such event shall request, in writing, deletion from the schedule referred to in section (ii), below.

(ii) ISO shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on ISO’s website and/or by written request. Such schedule shall be compiled by ISO, based on information provided by any Authorized Person and/or Authorized Commission. ISO shall update the schedule promptly upon receipt of information from an Authorized Person or Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by ISO in the compilation and/or maintenance of the schedule.

2.5.4 Use of Confidential Market Information. The Authorized Person and his or her Authorized Commission shall use the Confidential Market Information solely for the purpose of assisting the Authorized Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting, and generation planning and siting materially affecting retail customers within the State in which the Authorized Commission has regulatory jurisdiction, and for no other purpose. Without limiting the foregoing, the Authorized Person and his or her Authorized Commission shall not use its right to acquire Confidential Market Information as a means of conducting discovery or providing evidence during an adversarial proceeding against an Affected Governance Participant or any group of Participants. The Authorized Person and his or her Authorized Commission, however, shall not be prevented from using in an adversarial proceeding Confidential Market Information the Authorized Commission has obtained if: (i) such information becomes known in that proceeding through disclosure by entities other than the Authorized Commission; and (ii) the Authorized Commission discloses such Confidential Market Information consistent with the protections and procedures governing the disclosure of Confidential Market Information to parties in that proceeding; or (iii) the information being disclosed no longer meets the definition of Confidential Market Information.

2.5.5 Return of Confidential Market Information. Upon completion of the inquiry or investigation referred to in the Information Request, or for any reason the Authorized Person is, or will no longer be an Authorized Person, the Authorized Person shall (a) return the Confidential Market Information and all copies thereof to ISO, or (b) provide a certification that the Authorized Person has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information, unless such actions are inconsistent with or prohibited by applicable state law, in which case the Authorized Person shall continue to maintain the confidentiality of the Confidential Market Information in accordance with the terms and conditions of this Agreement. ISO may waive this condition in writing if such Confidential Market Information has become publicly available or non-confidential in the course of business or pursuant to the ISO Tariff or order of the FERC.

2.5.6 Notice of Disclosures. The Authorized Person, directly or through the Authorized Commission, shall promptly notify ISO, and ISO shall promptly notify any Affected Governance Participant, of any inadvertent or intentional release or possible release of the Confidential Market Information provided pursuant to this Agreement. The Authorized Person shall take all steps to minimize any further release of Confidential Market Information, and shall take reasonable steps to attempt to retrieve any Confidential Market Information that may have been released.

2.6 Ownership and Privilege. Nothing in this Agreement, or incident to the provision of Confidential Market Information to the Authorized Person pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against, subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of ISO and/or the Affected Governance Participant.

3. Procedure for Information Requests

3.1 Written Requests. Information Requests to ISO shall be in writing, which shall include electronic communications, addressed to the External Market Monitor or other ISO representatives as specified by ISO, with a concurrent copy to ISO's General Counsel, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the Information Request; (c) state the time period for which information is requested; and (d) re-affirm that only the Authorized Person shall have access to the Confidential Market Information requested. ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of an Information Request of the Authorized Person as soon as possible, but not later than two (2) business days after the receipt of the Information Request.

3.2 Oral Disclosures by the External Market Monitor. The External Market Monitor or other ISO representatives as specified by ISO may, in the course of discussions with an Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or the State Commission to determine whether additional Information Requests for information are appropriate. The External Market Monitor or other ISO representative will not make any written or electronic disclosures of Confidential Market Information to the Authorized Person pursuant to this section. In any such discussions, the External Market Monitor or other ISO representative shall ensure that the individual or individuals receiving such Confidential Market Information are Authorized Persons under this Agreement, request that the Authorized Person describe the purpose of the inquiry, orally designate Confidential Market Information that is disclosed and refrain from identifying any specific Affected Governance Participant whose information is disclosed. The External Market Monitor or other

ISO representative shall also be authorized to assist Authorized Persons in interpreting Confidential Market Information that is disclosed. ISO or the External Market Monitor shall (i) maintain a written record of oral disclosures pursuant to this section, which shall include the date of each oral disclosure and the Confidential Market Information disclosed in each such oral disclosure, and (ii) provide any Affected Governance Participant and counsel for the Participants Committee with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Governance Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Market Information of any other Governance Participant and must be received by the Affected Governance Participant before the name of the Affected Governance Participant is released to the Authorized Person; provided however, the identity of the Affected Party must be made available to the Authorized Person within two (2) business days of the initial oral disclosure. ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the initial oral disclosure.

3.3 Response to Information Requests.

3.3.1 Subject to the provisions of Section 3.3.2 below, ISO shall supply Confidential Market Information to the Authorized Person in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested Confidential Market Information can be made available within such period; provided however, that in no event shall Confidential Market Information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Governance Participant. To the extent that ISO can not reasonably prepare and deliver the requested Confidential Market Information within such five (5) day period, ISO shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Market Information. Upon providing Confidential Market Information to the Authorized Person, ISO shall either provide a copy of the Confidential Market Information to the Affected Governance Participant(s), or provide a listing of the Confidential Market Information disclosed; provided, however, that ISO shall not reveal any Governance Participant's Confidential Market Information to any other Governance Participant.

3.3.2 Notwithstanding section 3.3.1, above, should ISO or an Affected Governance Participant or the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) object to an Information Request or any portion thereof, ISO, the Affected Governance

Participant and/or the Participants Committee may, within four (4) business days following ISO's receipt of the Information Request, request, in writing (which shall include electronic communication) addressed to the State Commission with a copy to either the Affected Governance Participant, ISO and/or counsel to the Participants Committee, as the case may be, a conference with the State Commission or the State Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the State Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then ISO, the Affected Governance Participant, the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) or the State Commission may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. If no FERC proceeding regarding the Information Request is commenced by ISO, the Affected Governance Participant or the State Commission within such three day period, ISO shall utilize its best efforts to respond to the Information Request promptly. During any pending FERC proceeding regarding an Information Request, ISO shall continue to maintain the confidentiality of the Confidential Market Information subject to such Information Request.

3.3.3 To the extent that a response to any Information Request requires disclosure of Confidential Market Information of two or more Affected Governance Participants, ISO shall, to the extent possible, segregate such information and respond to the Information Request separately for each Affected Governance Participant.

4. Remedies.

4.1 Material Breach. The Authorized Person agrees that release of Confidential Market Information to persons not authorized to receive it constitutes a breach of this Agreement and may cause irreparable harm to ISO and/or the Affected Governance Participant. In the event of a breach of this Agreement by the Authorized Person, ISO shall terminate this Agreement upon written notice to the Authorized Person and his or her Authorized Commission, and all rights of the Authorized Person hereunder shall thereupon terminate; provided, however, that ISO may restore an individual's status as an Authorized Person after consulting with the Affected Governance Participant and to the extent that: (i) ISO determines that the

disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (ii) there were no harm or damages suffered by the Affected Governance Participant; or (iii) similar good cause shown. Any appeal of ISO's actions under this section shall be to FERC.

4.2 Judicial Recourse. In the event of any breach of this Agreement, ISO, the Affected Governance Participant and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all Confidential Market Information to ISO. The Authorized Person expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information to ISO.

4.3 Waiver of Monetary Damages. No Authorized Person shall have responsibility or liability whatsoever under this Agreement for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of, or in connection with, the release of Confidential Market Information to persons not authorized to receive it, provided that such Authorized Person is an employee or Governance Participant of an Authorized Commission at the time of such unauthorized release. Nothing in this Section 4.3 is intended to limit the liability of any person who is not an employee of or a Governance Participant of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.

5. Jurisdiction. The Parties agree that (i) any dispute or conflict requesting the relief in sections 4.1 and 4.2(a) above shall be submitted to FERC for hearing and resolution; (ii) any dispute or conflict requesting the relief in section 4.2(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution; and (iii) jurisdiction over all other actions and requested relief shall lie in any court of competent jurisdiction.

6. Notices. All notices required pursuant to the terms of this Agreement shall be in writing, and served at the following addresses or email addresses:

If to the Authorized Person:

-

—

—

—

(email address)

with a copy to

—

—

—

(email address)

If to Counsel for the Participants Committee:

—

—

—

(email address)

with a copy to

—

—

—

(email address)

If to ISO:

(email address)

with a copy to

(email address)

7. Severability and Survival. In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. In the event of conflicts between the terms of this Agreement and the Operating Agreement, the terms of the Operating Agreement shall in all events be controlling. The Authorized Person acknowledges that any and all obligations of the Authorized Person hereunder shall survive the severance or termination of any employment or retention relationship between the Authorized Person and their respective Authorized Commission.

8. Representations. The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.

9. Third Party Beneficiaries. The Parties specifically agree and acknowledge that each Governance Participant is an intended third party beneficiary of this Agreement entitled to enforce its provisions.

10. Counterparts. This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.

11. Amendment. This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

ISO NEW ENGLAND INC.

By:

AUTHORIZED PERSON

By:

Name:
Title:

Name:
Title:

APPENDIX B
FORM OF CERTIFICATION

This Certification (the “Certification”) is given this ____ day of _____, 200_, by _____, a _____ (the “Authorized Commission”), to and for the benefit of ISO New England Inc. (“ISO”) and its Governance Participants. The Authorized Commission and ISO shall be referred to herein collectively as the “Parties”.

Whereas, the Authorized Commission has designated the individuals on attached Exhibit “A” (the “Authorized Persons”) to receive Confidential Market Information from ISO, and

Whereas, the Authorized Persons and ISO have, or will, enter into non-disclosure agreements, governing the rights and obligations of the Authorized Persons, ISO and others regarding the Authorized Persons’ access to, provision of, use and control of the Confidential Market Information (the “Non-Disclosure Agreements”), and

Whereas, as a condition precedent to the execution of the Non-Disclosure Agreements and provision of Confidential Market Information to the Authorized Persons, the Authorized Commission is required to make certain representations and warranties to ISO, and

Whereas, ISO agrees to provide Confidential Market Information to the Authorized Persons, in their capacity as agents of the Authorized Commission, subject to the terms of this Certification, the Non-Disclosure Agreements, and an appropriate order of the Federal Energy Regulatory Commission protecting the confidentiality of such data;

Whereas, the Parties desire to set forth those representations and warranties herein.

Now, therefore, the Authorized Commission hereby makes the following representations and warranties, all of which shall be true and correct as of the date of execution of this Certification, and at all times thereafter, and with the express understanding that ISO and any Affected Member shall rely on each representation and/or warranty:

1. Definitions. Terms contained, but not defined, herein shall have the definitions or meanings ascribed to such terms in the Non-Disclosure Agreement or the ISO New England Information Policy.

2. Requisite Authority.

- a. The Authorized Commission hereby certifies that it has all necessary legal authority to execute, deliver, and perform the obligations in this Certification.

- b. Each Authorized Person is, at the time of the execution of this Certification, an employee of, or consultant to, the Authorized Commission, and has not materially breached any existing or past nondisclosure agreement or obligation, except as has been disclosed by the Authorized Commission to ISO in writing.

- c. The Authorized Persons have, through all necessary action of the Authorized Commission, been appointed and directed by the Authorized Commission to execute and deliver the Non-Disclosure Agreements to ISO and receive Confidential Market Information on the Authorized Commission's behalf and for its benefit.

- d. The Authorized Commission will, at all times after the provision of Confidential Market Information to the Authorized Persons, provide ISO with: (i) written notice of any changes in the Authorized Persons' qualification as an Authorized Person within two (2) business days of such change; (ii) written confirmation to any inquiry by ISO regarding the status or identification of any specific Authorized Person within two (2) business days of such request, and (iii) periodic written updates, no less often than semi-annually, containing the names of all Authorized Persons appointed by the Authorized Commission.

3. Protection of Confidential Market Information.

- a. The Authorized Commission has adequate internal procedures, to protect against the release of any Confidential Market Information by the Authorized Persons or other employee or agent of the Authorized Commission, and the Authorized Commission and the Authorized Persons will strictly enforce and periodically review all such procedures. In the event that ISO terminates a Non-Disclosure Agreement with an Authorized Person, and does not restore such individual's status as an Authorized Person, then the Authorized Commission shall review such internal procedures.

- b. The Authorized Commission has legal authority to protect the confidentiality of Confidential Market Information from public release or disclosure and/or from release or

disclosure to any other person or entity, either by the Authorized Commission or the Authorized Persons, as agents of the Authorized Commission.

c. The Authorized Commission shall ensure that Confidential Market Information and shall be maintained by, and accessible only to, the Authorized Persons.

d. The Authorized Commission and its Authorized Person(s) shall not disclose the Confidential Market Information.

4. Defense Against Requests for Disclosure. The Authorized Commission shall defend against, and will direct the Authorized Persons to defend against, disclosure of any Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Commission shall provide ISO with prompt notice of any such Third Party Request or legal proceedings, and shall consult with ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Commission agrees to furnish only that portion of the Confidential Market Information which their legal counsel advises ISO (and of which ISO shall, in turn, advise any Affected Member) in writing is legally required to be furnished, and to exercise then-best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

5. Use and Destruction of Confidential Market Information.

a. The Authorized Commission shall use, and allow the use of, the Confidential Market Information solely for the purpose of assisting the Authorized Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting, and generation planning and siting materially affecting retail customers within the State in which the Authorized Commission has regulatory jurisdiction, and for no other purpose. Without limiting the foregoing, the Authorized Commission shall not use its right to acquire Confidential Market Information as a means of conducting discovery or providing evidence during an adversarial proceeding against an Affected Governance Participant or any group of Participants. The Authorized Commission, however, shall not be prevented from using in an adversarial proceeding Confidential Market Information the Authorized Commission has obtained if: (i) such information becomes known in that proceeding through disclosure by entities other than the Authorized Commission; and (ii) the Authorized Commission discloses such

Confidential Market Information consistent with the protections and procedures governing the disclosure of Confidential Market Information to parties in that proceeding; or (iii) the information being disclosed no longer meets the definition of Confidential Market Information.

b. Upon completion of the inquiry or investigation referred to in any Information Request initiated by or on behalf of the Authorized Commission, or for any reason any Authorized Person is, or will no longer be an Authorized Person, the Authorized Commission will ensure that such Authorized Person either (a) returns the Confidential Market Information and all copies thereof to ISO, or (b) provides a certification that the Authorized Person and/or the Authorized Commission has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information, unless such actions are inconsistent with or prohibited by applicable state law, in which case the Authorized Commission shall continue to maintain the confidentiality of the Confidential Market Information in accordance with the terms and conditions of this Certification.

6. Notice of Disclosure of Confidential Market Information. The Authorized Commission shall promptly notify ISO of any inadvertent or intentional release or possible release of the Confidential Market Information provided to any Authorized Person, and shall take all available steps to minimize any further release of Confidential Market Information and/or retrieve any Confidential Market Information that may have been released.

7. Ownership and Privilege. Nothing in this Certification, or incident to the provision of Confidential Market Information to the Authorized Person pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of ISO and/or the Affected Governance Participant.

Executed, as of the date first set out above.

[Commission]

By: _____

Its: _____

[SEE NEXT PAGE]

EXHIBIT A

CERTIFICATION LIST OF AUTHORIZED PERSONS

Name of Authority	Mailing Address	Email	Tel #	Scope and Duration
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APPENDIX C

FORM OF ACADEMIC INSTITUTION NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the “Agreement”) is made this _____ day of _____, 200_, by and between _____, (the “Authorized Institution”), with offices at _____ and ISO New England Inc., a Delaware corporation, with offices at One Sullivan Road, Holyoke, Massachusetts, 01040-2841 (the “ISO”). The Authorized Institution and the ISO shall be referred to herein individually as a “Party,” or collectively as the “Parties.”

RECITALS

Whereas, the ISO serves as the Regional Transmission Organization for the New England Control Area, and operates and oversees wholesale markets for electricity pursuant to the requirements of the ISO Tariff, as defined below; and

Whereas, the External Market Monitor (as defined below) serves as the independent market monitor for ISO’s wholesale markets for electricity, and

Whereas, the ISO New England Information Policy requires that the ISO and the External Market Monitor maintain the confidentiality of Confidential Market Information; and

Whereas, the ISO New England Information Policy permits the ISO and the External Market Monitor to disclose Confidential Market Information to the Authorized Institution upon satisfaction of conditions stated in the ISO New England Information Policy, including, but not limited to, the execution of this Agreement by the Authorized Institution and the maintenance of the confidentiality of such information by the Authorized Institution pursuant to the terms of this Agreement; and

Whereas, the ISO desires to provide the Authorized Institution with access to Confidential Market Information, consistent with the ISO’s and the External Market Monitor’s obligations and duties under the ISO New England Information Policy, the ISO Tariff and other applicable FERC directives; and

Whereas, this Agreement is a statement of the conditions and requirements, consistent with the requirements of the ISO New England Information Policy, whereby the ISO may provide Confidential Market Information to the Authorized Institution.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the ISO Tariff.

1.1 Affected Governance Participant. A Governance Participant, which as a result of its participation in the markets administered by the ISO, provided Confidential Market Information to the ISO, which Confidential Market Information is requested by, or is disclosed to an Authorized Institution under this Agreement.

1.2 Authorized Researcher. Shall have the meaning set forth in the ISO New England Information Policy.

1.3 Confidential Market Information. Shall mean *Confidential Information* (as defined in the ISO New England Information Policy) consisting of market data relating to the markets administered by the ISO, including data supplied by Governance Participants and aggregate data regularly compiled by the ISO. Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/External Market Monitor, except to the extent that the communications become part of final written reports or final written analyses by the ISO/External Market Monitor, (vi) communications between an Affected Governance Participant and the ISO made on a confidential basis as part of a settlement proceeding or negotiation, and (vii) information provided to the ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding. If the aforementioned information in (i) through (vii) is furnished to the Authorized Institution, such information shall be protected according to the terms of this Agreement, and the Authorized Institution shall return such information to the ISO as promptly as possible.

1.4 Competitive Duty Personnel. Shall mean a person whose duties include (i) the marketing or sale of electric power at wholesale; (ii) the purchase or resale of electric power at wholesale; (iii) the direct supervision of any employee with duties specified in subparagraph (i) or (ii) of this paragraph; or

(iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale.

1.5 FERC. The Federal Energy Regulatory Commission.

1.6 External Market Monitor. Shall have the meaning set forth in the ISO Tariff.

1.7 Governance Participant. Shall have the meaning set forth in the ISO Tariff.

1.8 ISO New England Information Policy. Shall have the meaning set forth in the ISO Tariff.

1.9 Information Request. A written request by the Authorized Institution in accordance with the terms of this Agreement for disclosure of Confidential Market Information pursuant to Section 3.4 of the ISO New England Information Policy.

1.10 ISO Tariff. The ISO's Transmission, Markets and Services Tariff, as it may be amended from time to time.

1.11 Non-Disclosure Certificate. Shall mean the certificate annexed hereto by which Authorized Researchers who have been granted access to Confidential Market Information shall certify their understanding that such access to Confidential Market Information is provided pursuant to the terms and restrictions of this Agreement, that they are not Competitive Duty Personnel, and that they have read this Agreement and agree to be bound by it.

1.12 Notes of Confidential Market Information. Shall mean memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in the definition of Confidential Market Information set forth above. Notes of Confidential Market Information are subject to the same restrictions provided in this Agreement for Confidential Market Information except as specifically provided in this Agreement.

1.13 Proposed Research. Shall have the meaning set forth in Section 3.4 of the Information Policy.

1.14 Third Party Request. Any request or demand by any entity upon the Authorized Institution for release or disclosure of Confidential Market Information. A Third Party Request shall include, but shall

not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

2. Protection of Confidentiality.

2.1 Duty to Not Disclose. The Authorized Institution represents and warrants that it:

(i) is duly authorized to enter into and perform this Agreement; (ii) has adequate procedures to protect against the release of Confidential Market Information; and (iii) is familiar with, and will comply with, all such applicable procedures. The Authorized Institution hereby covenants and agrees not to disclose the Confidential Market Information and to deny any Third Party Request and defend against any legal process that seeks the release of Confidential Market Information in contravention of the terms of this Agreement.

2.2 Defense Against Third Party Requests. The Authorized Institution shall defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Institution shall provide the ISO, and the ISO shall provide each Affected Governance Participant and counsel for the Participants Committee, with prompt notice of any such Third Party Request or legal proceedings, and shall consult with the ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Institution agrees to furnish only that portion of the Confidential Market Information which its legal counsel advises the ISO (and of which the ISO shall, in turn, advise any Affected Governance Participants) in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

2.3 Care and Use of Confidential Market Information.

2.3.1 Control of Confidential Market Information. The Authorized Institution shall be the custodian of any and all Confidential Market Information received pursuant to the terms of this Agreement from the ISO or the External Market Monitor.

2.3.2 Access to Confidential Market Information. The Authorized Institution shall ensure that Confidential Market Information received by that Authorized Institution is disseminated only to those persons publicly identified as Authorized Researchers in the applicable Information Request, and that such Authorized Researchers have been advised of the confidential nature of the Confidential Market Information and have agreed to abide by the terms of this Agreement by signing a Non-Disclosure Certificate. The Authorized Institution agrees that it shall be liable for any breach of this Agreement by any of the Authorized Researchers.

2.3.3 Competitive Duty Personnel. If any person who has been an “Authorized Researcher” subsequently becomes Competitive Duty Personnel, that person shall thereafter have no access to Confidential Market Information, shall return all such materials to the Authorized Institution, and shall continue to comply with the requirements set forth in this Non-Disclosure Agreement with respect to Confidential Market Information to which such person previously had access.

2.3.4 Use of Confidential Market Information. The Authorized Institution shall use the Confidential Market Information solely for the purpose of the Proposed Research. An Authorized Researcher may make copies of Confidential Market Information, but such copies become Confidential Market Information. An Authorized Researcher may make notes of Confidential Market Information, which shall be treated as Notes of Confidential Market Information if they disclose the contents of Confidential Market Information. In the event that the Authorized Institution or any Authorized Researcher desires to publish any material related to or that relies upon the Confidential Market Information, the Authorized Institution or Authorized Researcher must ensure that the Confidential Market Information is sufficiently redacted or summarized so that it may not be identified. Any such publication must be approved in writing by the ISO in advance of its release.

2.3.5 Return of Confidential Market Information. Upon completion of the Proposed Research, or upon termination of this Agreement for any reason, the Authorized Institution shall (a) return the Confidential Market Information and all copies thereof to the ISO, or (b) provide a certification that the Authorized Institution has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information. The ISO may waive this condition in writing if such Confidential Market Information has become publicly available or non-confidential in the course of business or pursuant to the ISO Tariff or order of the FERC.

2.3.6 Notice of Disclosures. The Authorized Institution shall promptly notify the ISO, and the ISO shall promptly notify any Affected Governance Participant, of any inadvertent or intentional release or possible release of the Confidential Market Information provided pursuant to this Agreement. The Authorized Institution shall take all steps to minimize any further release of Confidential Market Information, and shall take reasonable steps to attempt to retrieve any Confidential Market Information that may have been released.

2.4 Ownership and Privilege. Nothing in this Agreement, or incident to the provision of Confidential Market Information to the Authorized Institution pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against, subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by the ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of the ISO and/or the Affected Governance Participant.

3. Remedies.

3.1 Material Breach. The Authorized Institution agrees that any release of Confidential Market Information to persons not authorized to receive it or any publication of any material related to or that relies upon the Confidential Market Information which is not (i) approved in writing by the ISO prior to publication and (ii) redacted or summarized in such a manner that the Confidential Market Information may not be identified shall constitute a breach of this Agreement and may cause irreparable harm to the ISO and/or the Affected Governance Participant. In the event of a breach of this Agreement by the Authorized Institution, the ISO may terminate this Agreement upon written notice to the Authorized Institution, and all rights of the Authorized Institution hereunder shall thereupon terminate; provided, however, that the ISO may restore status as an Authorized Institution after consulting with the Affected Governance Participant and to the extent that: (i) the ISO determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Institution; (ii) there were no harm or damages suffered by the Affected Governance Participant; or (iii) similar good cause shown. Notwithstanding the foregoing, the Authorized Institution hereby shall indemnify, save, hold harmless, discharge, and release the ISO and each affected Governance Participant from and against any and all payments, liabilities, damages, losses or costs and expenses paid or directly incurred by the ISO and/or

each affected Governance Participant arising from, based upon, related to, or associated with the breach of, or failure to perform or satisfy, any obligation of the Authorized Institution set forth in this Agreement.

3.2 Judicial Recourse. In the event of any breach of this Agreement, the ISO, the Affected Governance Participant and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) temporary, preliminary, and/or permanent injunctive relief with respect to any breach and (b) the immediate return of all Confidential Market Information to the ISO. The Authorized Institution expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information to the ISO.

4. Jurisdiction. The Parties agree that jurisdiction over all other actions and requested relief with respect to the Agreement shall lie in any court of competent jurisdiction.

5. Notices. All notices required pursuant to the terms of this Agreement shall be in writing, and served at the following addresses or email addresses:

If to the Authorized Institution:

-

—

—

—

(email address)

—

—

—

with a copy to

(email address)

If to Counsel for the Participants Committee:

(email address)

with a copy to

(email address)

If to ISO:

(email address)

with a copy to

(email address)

6. Severability and Survival. In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms.

7. Representations. The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.

8. Third Party Beneficiaries. The Parties specifically agree and acknowledge that each Governance Participant is an intended third party beneficiary of this Agreement entitled to enforce its provisions.

9. Counterparts. This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.

10. Amendment. This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

ISO NEW ENGLAND INC.

AUTHORIZED INSTITUTION

By:

By:

Name:

Name:

Title:

Title:

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential Market Information is provided to me pursuant to the terms and restrictions of the attached Non-Disclosure Agreement, that I have read such Non-Disclosure Agreement, and that I agree to be bound by it. In addition, I hereby certify that I am not a Competitive Duty Personnel as that term is defined in the Non-Disclosure Agreement. I understand that the contents of the Confidential Market Information, any notes or other memoranda, or any other form of information that copies or discloses Confidential Market Information shall not be disclosed to anyone other than in accordance with that Non-Disclosure Agreement.

By:

Title:

Representing:

Date: _____

—

[NOTICE ADDRESS]

ATTACHMENT D
ISO New England Information Policy

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Introduction

The ISO New England Information Policy establishes rules and guidelines regarding the appropriate disclosure of all information received, created and distributed in connection with the operation of and participation in the markets administered by ISO New England Inc. (the “ISO”). The Policy allows stakeholder committees, task forces and working groups (collectively, “Stakeholder Committees”), the ISO, and Governance Participants to share information with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained. This Policy document consists of three sections. Section 1 highlights the Policy's intent and objectives. Section 2 discusses confidentiality issues. Finally, Section 3 specifies what types of information are available to whom. This Section, in its entirety, is intended to replace the Information Classification Document appendix of the formerly adopted Policy (March 5, 1999 version). Changes to the Information Policy will be made in accordance with Section 11.3 of the Participants Agreement.

Section 1 -Policy Intent & Objectives

The intent of this Policy is twofold. First, to allow Governance Participants to provide certain *Confidential Information* to the ISO, Stakeholder Committees, and other Governance Participants with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained. Second, to provide the ISO, Stakeholder Committees and Governance Participants clear guidance regarding the appropriate disclosure of all information received, created or distributed in connection with the operation of and participation in the markets administered by the ISO. This Policy will pertain to all information held by Stakeholder Committees or the ISO, or furnished by or to a Governance Participant as a result of its participation in the markets administered by the ISO, whether it is publicly available or strictly confidential.

In order to meet the general obligations of the Transmission, Markets and Services Tariff, the Participants Agreement, the Transmission Operating Agreement, the Rates Design and Funds Disbursement Agreement, and other documents that affect the rates, terms, and conditions of service, including all exhibits and attachments to the listed documents (hereafter collectively referred to as the “Filed Documents”), each Governance Participant is required to furnish to and may be entitled to receive from Stakeholder Committees or the ISO certain information, some of which may be considered confidential, commercially sensitive, and/or strategic in nature. This information is used by the ISO, Stakeholder Committees or Governance Participants, as appropriate, for the following purposes, among others:

1. To operate the bulk power supply system on a day-to-day basis.
2. To administer the Open Access Transmission Tariff.
3. To administer the New England electricity markets, including the bidding process, billing system and settlement function.
4. To monitor the competitiveness and efficiency of the market and Governance Participants' compliance with relevant market rules and procedures.
5. To assess and plan for the long term reliability and adequacy of the New England bulk power supply system.
6. To provide reports and data as required or appropriate to the various user groups as described in Section 3 of this document.

It is recognized that the successful operation of the New England Control Area is highly dependent on access to certain types of information. The high degree of bulk power supply reliability and adequacy that customers of Governance Participants have become accustomed to expect is, to some degree, a result of Governance Participants' willingness to provide the necessary information. It is only with the ISO's continued access to the information necessary to perform its duties described above that the benefits obtained from bulk power supply pooling can continue.

This Information Policy will:

1. Recognize that protecting the confidentiality of certain information is important to the Governance Participants.
2. Recognize that the ISO and each Governance Participant have the responsibility to protect the confidentiality of such information.
3. Provide procedures and guidelines to the ISO, Stakeholder Committees and Governance Participants regarding the handling, publication and distribution of all information.

This Information Policy is intended to comport with the obligation of the ISO, Stakeholder Committees and the Governance Participants to comply fully with the antitrust laws and the information access and disclosure provisions of the standards of conduct promulgated by the Federal Energy Regulatory Commission in 18 C.F.R. § 37.4 (the “Codes of Conduct”). The Information Policy is expressly intended both: (1) to protect against the disclosure of *Confidential Information* that could facilitate anticompetitive conduct prohibited by the antitrust laws and (2) to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.

No modifications or additions shall be made to Section 3 of this document that result in limiting the disclosure of *Confidential Information* by Governance Participants that are municipalities, state or municipal agencies, or other public agencies unless such information contains trade secrets or commercial or financial information that has otherwise been kept confidential.

Section 2 -Confidentiality Issues

2.0 Confidentiality

Confidential Information furnished by a Governance Participant to Stakeholder Committees and/or the ISO shall, for the purposes of this Information Policy, be considered the sole and exclusive property of such Governance Participant (the “Furnishing Governance Participant”). To the extent that such *Confidential Information* is furnished to Stakeholder Committees and/or the ISO it shall be used solely to perform their obligations under the NEPOOL Agreement and the ISO Agreement. No Governance Participant shall be entitled to receive from the ISO and/or Stakeholder Committees any *Confidential Information* furnished by another Governance Participant under the NEPOOL Agreement unless the Furnishing Governance Participant has provided the relevant Stakeholder Committees and/or the ISO written authorization for such release. The disclosure of *Confidential Information* in accordance with this Information Policy shall not be used by any Governance Participant as a basis for a claim that the Governance Participant furnishing such *Confidential Information* has waived, relinquished, or reduced in any way the Furnishing Governance Participant’s rights to prevent further disclosure of such *Confidential Information*.

The Governance Participants recognize that one of the purposes of the ISO is to prepare analyses, forecasts and reports for the general public, reliability councils, regulators and other user groups.

Preparation of such analyses, forecasts and reports requires the use of Governance Participants' information, some of which may be *Confidential Information* of an individual Governance Participant.

Governance Participants' obligations to provide information to the ISO or Stakeholder Committees arise under the Filed Documents. Nothing in this Information Policy is intended to expand or alter those obligations. Nothing in this Information Policy requires the ISO to release information to Stakeholder Committees, Governance Participants or any other person if the ISO in good faith believes that the release of such information would violate any applicable law or regulation, including the Codes of Conduct, or the terms of any valid confidentiality agreement or have a material adverse effect on the competitiveness or efficiency of the markets administered by the ISO.

2.1 Confidential Information

The following information will be considered *Confidential Information* for the purposes of this Policy:

- (a) Information that **(i)** is furnished by a Governance Participant (the "Furnishing Governance Participant") to the ISO, Stakeholder Committees or another Governance Participant, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England electricity markets, and **(iii)** has been designated in writing by the Furnishing Governance Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant seeks confidential treatment for such information.

- (b) Information that **(i)** is furnished by the ISO to a Governance Participant or a Stakeholder Committee, **(ii)** constitutes trade secrets or commercial or financial information the disclosure of which would have an adverse effect on the ability of the ISO to perform its responsibilities under the ISO Agreement, and **(iii)** has been designated in writing by the ISO as confidential or proprietary either in the document which provided such information, in transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the ISO seeks confidential treatment for such information. In addition, information that is furnished by the ISO to a Governance Participant or a Stakeholder Committee relating to the

job status or performance or terms of employment of any ISO employee (“ISO Employment Information”) shall be *Confidential Information*.

- (c) Information that **(i)** is furnished by a non-Governance Participant that takes part in a demand response program operated by the ISO (a “DR Information Provider”) to the ISO, Stakeholder Committees or any Governance Participant in connection with the demand response program, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the DR Information Provider or prejudice the position of the DR Information Provider in the demand response program, and **(iii)** has been designated in writing by the DR Information Provider as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the DR Information Provider seeks confidential treatment for such information.

- (d) Information that **(i)** is furnished by a non-Governance Participant acting as a Project Sponsor to the ISO, Stakeholder Committees or any Governance Participant in connection with the Forward Capacity Market, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Project Sponsor or prejudice the position of the Project Sponsor in the Forward Capacity Market, and **(iii)** has been designated in writing by the Project Sponsor as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Project Sponsor seeks confidential treatment for such information.

- (e) Information disclosed to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy that (i) is furnished by a Furnishing Governance Participant to the ISO, Stakeholder Committees or another Governance Participant or is furnished by the ISO to a Governance Participant or a Stakeholder Committee, (ii) constitutes sensitive or non-public information concerning the Participant or identifying or concerning the Principals of a Participant, the disclosure of which could harm the Furnishing Governance Participant or its Principals, and (iii) has been designated in writing by the Furnishing Governance Participant or by the ISO as confidential either in the document which

provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant or the ISO seeks confidential treatment for such information.

- (f) Any report, compilation or communication produced by the ISO or a Stakeholder Committee that contains information described in Clause (a), (b), (c), (d) or (e) above and allows for the specific identification of the Furnishing Governance Participant or the DR Information Provider.

Confidential Information shall exclude information if and to the extent such information (1) is or becomes generally available to the public without any party violating any obligation of secrecy relating to the information disclosed, or (2) is received by a Governance Participant in good faith from a third party who discloses such information on a non-confidential basis without violating any obligation of secrecy relating to the information disclosed, or (3) is defined as “Public Information,” in Section 3, or (4) can be shown by the recipient's prior records to have been already known to the recipient other than through disclosure by a third party which would not be subject to exclusion based on (2) above.

Confidential Information, as defined in this Section 2.1, may be provided to specific user groups entitled to information pursuant to Sections (a) through (i) of Section 3.0. Section 3.0 is not intended, however, to add to or vary the criteria specified above. Otherwise, except as specifically provided herein, no other distribution or disclosure of *Confidential Information* shall be permitted by the ISO, Stakeholder Committees or Governance Participants.

2.2 Treatment of Confidential Information

The Governance Participants shall take reasonable measures to assure that all of their employees, representatives, or agents who by virtue of their participation on, or as an alternate on, a Stakeholder Committee have access to *Confidential Information* of another entity that furnished the information, including, as appropriate, a Furnishing Governance Participant, a DR Information Provider or the ISO (the “Furnishing Entity”) (1) do not disclose such *Confidential Information* to any other employee, representative, or agent of the same Governance Participant or any other person except as permitted under this Section 2.2 and (2) use such information solely for the purpose of satisfying that person’s responsibilities on the Stakeholder Committee. Each Governance Participant shall, upon request by the Participants Committee, provide assurance that the terms of this Section 2.2 are complied with. Any Governance Participant that has furnished *Confidential Information* to Stakeholder Committees may

require each recipient to return all or any portion of the *Confidential Information* once it is no longer needed by such recipient to fulfill its responsibilities under the Filed Documents.

Notwithstanding the foregoing, the ISO, the Participants Committee or any Governance Participant may disclose *Confidential Information* of another Governance Participant or the ISO only: (1) if such disclosure is permitted in writing by the Furnishing Entity, DR Information Provider or the ISO, as the case may be, or (2) if disclosure is required by order of a court or regulatory agency of competent jurisdiction or dispute resolution pursuant to the Filed Documents, or (3) as otherwise specifically permitted by this Policy. Any entity subject to this Information Policy shall provide prompt written notice to the Furnishing Entity if that entity either is compelled by order of a court or regulatory agency of competent jurisdiction to disclose, or receives a request seeking to compel disclosure of, *Confidential Information* for which it is not the Furnishing Entity. Further, in recognition that certain Governance Participants are subject to public records and open meeting laws and that certain other demands may be placed on Governance Participants to disclose *Confidential Information*, a recipient of *Confidential Information* of another Governance Participant or the ISO may disclose such *Confidential Information* if and to the extent required by law or requested in writing pursuant to a public records demand or other legal discovery process, provided in either event that the disclosing Governance Participant gives the Furnishing Governance Participant or the ISO prompt written notice of the circumstances that may require such disclosure in time so that the Furnishing Governance Participant or the ISO has a reasonable opportunity to seek a protective order to prevent disclosure.

Notwithstanding anything to the contrary contained in this Section 2.2, the ISO, the Participants Committee, or any Governance Participant may disclose *Confidential Information* to an alternate dispute resolution (“ADR”) neutral in an ADR proceeding required or permitted by any New England market rule, including Appendix A, “Market Monitoring, Reporting and Market Power Mitigation,” and Appendix B, “Imposition of Sanctions,” to Market Rule 1, or to an arbitrator in an arbitration proceeding under the Filed Documents. In addition, the ISO or any Governance Participant may disclose *Confidential Information* to a Dispute Representative as defined in, and permitted by, Section 5 of the Billing Policy. Any such ADR neutral, arbitrator or Dispute Representative must agree to be bound by this Information Policy.

Notwithstanding anything to the contrary in this Information Policy, resource-specific information contained in the data fields of the Forward Capacity Tracking System, but not information provided to the

ISO as separate attachments via the Forward Capacity Tracking System, will be shared with subsequent Lead Market Participants or Project Sponsors for that resource.

Notwithstanding anything to the contrary in the ISO New England Information Policy, the ISO, the Participants Committee, or any Governance Participant may disclose *Confidential Information* as required or permitted to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy.

Notwithstanding anything to the contrary in the ISO New England Information Policy and consistent with FERC Order 787, from January 24, 2013 through April 30, 2013, the ISO may disclose ~~confidential- Confidential Information forecast and real time output information~~ concerning natural gas-fueled generation from resources located within the New England Control Area to the operating personnel of an interstate natural gas pipeline company that operates a pipeline provided that: (a) *Confidential Information* regarding specific generators will be shared only with the pipeline serving that generator directly ~~or serving the local distribution company that serves that generator;~~ and (b) the ISO has determined that it is operationally necessary to ensure reliability to disclose the *Confidential Information*; ~~(c) the ISO and the interstate natural gas pipeline company have entered into a non-disclosure agreement substantially in the form attached hereto as Appendix D; (d) the ISO will provide a summary of any disclosed Confidential Information to the affected generator within 48 hours following disclosure; and (e) the ISO will discontinue the disclosure of Confidential Information to the interstate natural gas pipeline if (i) the gas pipeline breaches or threatens to breach its obligations under the non-disclosure agreement or (ii) the ISO determines that disclosure is no longer required for reliability purposes. The generator whose Confidential Information is disclosed pursuant to this provision shall be entitled to all rights and remedies, in law or equity, with respect to any breach of the pipeline company’s obligation to maintain the disclosed data in confidence consistent with all applicable FERC orders and rules, including FERC Order No. 717, and FERC approved gas pipeline tariffs, to the same extent as if the generator had provided the information directly to the interstate natural gas pipeline company.~~

2.3 Disclosure of Information Regarding Defaulting Governance Participants

Notwithstanding any provision herein to the contrary, the information for release to Governance Participants identified in this Section shall no longer be deemed “*Confidential Information*” pursuant to the Information Policy. For any Governance Participant that is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws, or that has otherwise defaulted under its arrangements with the ISO, which default is not, or the ISO reasonably concludes will

not be, cured within five days of the date of the default, in the case of a Payment Default (as defined in the Billing Policy) or within ten days of the date of its default in the case of any other defaults, the following information with respect to that Governance Participant's obligations shall be disclosed by the ISO to each member and alternate on the Participants Committee, each Governance Participant's billing contacts, appropriate Stakeholder Committee(s) designated by the Participants Committee, and appropriate state regulatory or judiciary authority:

For the 60 calendar day period prior to the date of the bankruptcy, insolvency petition or other default (the "Default Date") and from the Default Date forward until such time as the Governance Participant cures the default: **(i)** the type and available amount of financial assurance in place; **(ii)** any notification provided by such Governance Participant pursuant to the Financial Assurance Policy and/or Billing Policy to the ISO of a material change in its financial status; **(iii)** any change in the type or available amount of financial assurance provided by such Governance Participant; **(iv)** whether such Governance Participant has defaulted on its payment obligations under the Billing Policy, the amount of any such default, the date of the default, and when or whether the default is cured; **(v)** whether such Governance Participant has defaulted on its obligations under the Financial Assurance Policy, the amount of any such default, the date of the default, and when or whether the default is cured; **(vi)** where the financial assurance provided by such Governance Participant is a bond, whether the ISO has provided notice of default to the surety and whether the surety has given notice of termination of the bond or otherwise disclaimed or refused to honor or delayed in honoring its obligations under the bond, and the response of the ISO to any such notice; **(vii)** whether such Governance Participant is a net seller or purchaser in the New England Markets; **(viii)** the amount of such Governance Participant's purchases in the New England Markets; and **(ix)** whether such Governance Participant owns a registered Load Asset.

If a Governance Participant is suspended from the New England Markets, the ISO immediately shall send notice of such suspension to each of the members and alternates on the Participants Committee, the energy regulatory agencies in each of the New England states and the Federal Energy Regulatory Commission. Said notice shall identify the specific date and time of the suspension.

2.4 Breach of Confidential Information Obligations

The Governance Participants and the ISO acknowledge that remedies at law for any breach of the obligations under this Section 2 would be inadequate and agree that, in enforcing this Section 2, in addition to any other remedies provided at law:

- (a) A Furnishing Governance Participant may, at its option, take one or both of the following actions: (i) apply to any court of equity having jurisdiction for an injunction restraining the ISO, any Stakeholder Committee or any Governance Participant from an actual or threatened violation of this Section 2 relating to *Confidential Information* provided by such Furnishing Governance Participant and (ii) submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.
- (b) The ISO may, at its option, take one or both of the following actions: (i) apply to any court of equity having jurisdiction for an injunction restraining a Governance Participant or any Stakeholder Committee from an actual or threatened violation of this Section 2 relating to *Confidential Information* and (ii) submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.
- (c) The Participants Committee may, at its option, take one or both of the following actions: (i) apply to any court of equity having jurisdiction for an injunction restraining the ISO from an actual or threatened violation of this Section 2 relating to *Confidential Information* and (ii) submit such actual or threatened violation to arbitration in accordance with the procedure provided in Section 17.3 of the Participants Agreement and Section I of the Transmission, Markets and Services Tariff.

Section 3 -Information Access

3.0 Information Access

(a) Public Information

This information includes:

- Public record filings with regulatory agencies. (Some examples include, but are not limited to, ISO Budget Data required for ISO Tariff Filings; and data associated with the Open Access Transmission Tariff.)

- Data posted on the Open Access Same-Time Information System (“OASIS”). (Some examples include, but are not limited to, Transmission Facilities Information including System Inventory; New Applications; Scheduling Information, Real Time Tie Line Use and Surplus Availability; Aggregate MW of generation operating out of merit (for transmission, reliability, and VAR) by Reliability Region (these Regions will be defined by the ISO, such that no *Confidential* or Strategic Information is released), Real Time Operating Reserve Availability and curtailment or interruption of External Transactions.)
- Information and/or reports that are required to be filed with the Federal Energy Regulatory Commission (“FERC”) (unless specifically required to be filed on a confidential basis). (For example, the Filed Documents.)
- Public Generator Information including System Inventory and New Applications. (Some examples include, but are not limited to, Capacity, Energy, Loads & Transmission (CELT) Report; and 18.4 Applications.)
- Public Market Information includes any items required to be made public by (i) the Filed Documents; (ii) other relevant documents, including without limitation the ISO New England Manuals and any other system rules, procedures or criteria for the operation of the New England system and administration of the Market and the Filed Documents; and (iii) the items listed in Aggregate Market Results, as posted under “Market Information” on the ISO website pursuant to this Information Policy. (Some examples include, but are not limited to, aggregate Market requirements and settlements; Clearing Prices; Locational Marginal Prices; lists of load zones, nodes and hubs; Emergency Energy notices; market monitoring input assumptions and threshold values; Financial Transmission Rights modeling and auction results; Auction Revenue Rights modeling and auction results; information relating to the Load Response Program; ICAP Market Schedules and UCAP auction results.)
- In addition, the System Operator shall publish each month’s bid and offer information for all markets on its website on the first day of the fourth calendar month following the month during which the applicable demand bids and supply offers were in effect (e.g., bid and offer data for January would be released on May 1), provided that the information is presented in a manner that does not reveal the specific load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity’s bids and offers over time.

- Market test information including any information equivalent to Public Market Information derived from test programs for new markets or market software or simulations of proposed market improvement (includes any and all information necessary for evaluation of the impacts of a proposed new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions).
- Long-term system planning and operations information consisting of load forecasts, transmission models (including power flow, short circuit and stability models and their related base cases and contingency files), transfer limits used for planning purposes, Installed Capacity Requirements and Governance Participants and non-Governance Participants proposed generation. This information does not include near-term transmission models or transfer limits within New England that are developed as part of system operations or real-time information from the control room energy management system; provided that, notwithstanding the provisions of Sections 3.0(b) and (g)(ii), the ISO may publish, on a weekly basis, the following information associated with NERC’s alert regarding “Consideration of Actual Field Conditions in Determination of Facility Ratings” for each transmission facility affected by the alert: (i) the identification of the facility subject to a rating change; (ii) the original rating of the facility; (iii) the new rating of the facility which reflects the de-rating due to the NERC alert, and; (iv) the non-binding expected date that the transmission facility de-rating will be remediated.
- Public Reports required by the Filed Documents (including, but not limited to, evaluation of procedures for determination of Locational Marginal Prices as well as the awarding Financial Transmission Rights and associated Congestion Costs and Transmission Congestion Credits).
- Public Market Monitoring Information including, but not limited to, public reports by the Independent Market Advisor required by the Market Rules (includes the ISO’s time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of the Governance Participants by name or provide a manner for identifying such Governance Participants, except as otherwise provided in the Filed Documents).

- Any other information that is not *Confidential Information* that the ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the markets or public understanding of the New England system and the operations of the ISO.

This data may be made available to the public at large. (Fees may be applicable to cover process and handling expenses.) [This information corresponds to the MIS security rule “PB” Public.]

(b) Non-Public Transmission Information

This information includes:

- Information and/or reports that are filed with the North American Electric Reliability Council (NERC). (Some examples include, but are not limited to, all NPCC data, see examples below.)
- Information and/or reports that are filed with the Northeast Power Coordinating Council (NPCC).
- Real-time system operations information, which is not posted on the OASIS, including but not limited to detailed operations data. (Some examples include, but are not limited to, real-time transmission line flows, real-time transfer limits, and real-time voltages.)
- Information relating to specific Generating facilities, which is required by transmission personnel to ensure the reliable operation of the New England bulk power system. (Some examples include, but are not limited to, detailed Generator operating characteristics; and dynamic swing recorder plots.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- Information related to system restoration efforts. (Some examples include, but are not limited to, ISO and Governance Participants' detailed Power System Restoration Plans.)

This information may be made available to Reliability Councils and all Governance Participants' Transmission Personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by

the Codes of Conduct and by other applicable FERC regulation. There is no direct correlation to the MIS Security Rules and there is currently no specific transmission information distributed via the MIS.

(c) Governance Participant Specific Data

This information includes:

- Data not yet posted on the OASIS. (Some examples include, but are not limited to, Interface Transmission Service Schedules Lists.)
- *Confidential Information*, as defined in Section 2.1 of this Policy, for which this Governance participant, or an Agent thereof, has the right to receive the data. (Some examples include, but are not limited to, Product Obligation; and Load.)
- Invoice and Settlement Data. (Some examples include, but are not limited to, Governance Participant Phase I/II Hourly Transfer Capability Allocations; Electrical Load, Adjusted Net Interchange, Obligation, Entitlement, Charges, and Payments for each market.)

[This data may be made available to active users or agents of the specified Governance Participant. This information corresponds to the MIS security rule “SM” Settlement Rule.]

(d) Asset Specific Information – Near Real-Time

This information includes:

- Near real-time information related to the particular asset. (Some examples include, but are not limited to, Generation Levels (MW); Designations (MW); Automatic Generation Control Status, Operating Limits, Response Rates, unit forecast and operation information, and Real Time Status of External Contract Sales and/or Purchases for which a Governance Participant has a contract on file with the ISO.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules. As applicable, this data may also be made available to a Governance Participant who is a contractual party to external or internal bilateral contracts for the specified Asset,

which corresponds to the MIS security rule “TH” Transaction Holder Rule.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

(e) Asset Specific Information – Forecast and post-Settlement

This information includes:

- Unit Forecast information relating to a particular Asset, which is necessary to determine the projected operation of particular Generators. (Some examples include, but are not limited to, Start Time; Generation; and Shut-Down Time.)
- Information relating to a particular Asset, which is necessary to determine the accuracy of Settlement. (Some examples include, but are not limited to, High Operating Limit; Generation; Ownership Share; and Duration on Automatic Generation Control.)
- Governance Participant input data. (Some examples include, but are not limited to, generation input data; and records of deficient performance.)
- Capability Responsibility (CR) data and calculations, for those specific Generating facilities for which a Governance Participant(s) has an ownership interest. (Some examples include, but are not limited to, Unit Capability Demonstrations and Audits; and Seasonal Claimed Capability.)
- All information, with the exception of bids, offers and meter data, necessary to verify Settlement data. (Some examples include, but are not limited to, Response Rate data; and Minimum Run-Time data.)

This data may be made available to those Governance Participants, or Agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. [This information corresponds to the MIS security rules “OS” Ownership Rule, “RS” Responsible Party Rule and an Entitlement Holder Rule, currently not identified in the MIS security rules.] The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (OP3 or any successor or similar document), by the Codes of Conduct and by other applicable FERC regulation.

(f) Meter, Bid and Offer Data

This information includes:

- *Confidential Information* submitted as input to the Market System. Bid and offer data may be made available to any Governance Participant with a Generation Ownership Share, or Agent thereof, for a specified Asset. [This information corresponds to the MIS security rules “RS” Responsible Party Rule.]
- A minimum power value derived by the ISO from a resource’s Economic Minimum Limit may be included in the transmission models that are treated as public information pursuant to Section 3.0(a).
- Meter data may be made available to the Assigned Meter Reader for a specified Asset. There is no direct correlation to the MIS Security Rules and there is currently no specific MIS distribution of meter data. However, meter data may be manually distributed to the Host Participant whose unmetered load is calculated based on said meter data.

(g) Reliability, Operations and Area Control Information

(i) External Control Center Information

This information includes:

- All System Operations or Planning Information that relates to the particular external Control Center. (Some examples include, but are not limited to, transmission interface transfers and limits within the external control center area; and Inter-Area Emergency Assistance available, used for Planning purposes, under OP-4 conditions.)
- Information that is required to assure the reliable operation of the interconnected bulk power system. (Some examples include, but are not limited to, all information deemed necessary in the event of OP 4 implementation; and, under non-OP-4 system conditions, information related to Inter-Area flow control.)
- Inter-area Transmission Operating Guides that relate to the particular external control area. (Some examples include, but are not limited to, PV-20 Cross Trip SPS – available to New York; and Phase I Runback SPS – available to Hydro Quebec.)

- Confidential Information (under signature of confidentiality agreements that provide rights to Governance Participants equivalent to those granted in this Information Policy to notice of and opportunity to defend against any release of their Confidential Information) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system. (Some examples include, but are not limited to, ISO operations and markets information, including market monitoring information, provided that market monitoring information shall only be shared with independent market operators or independent market monitors and only in connection with particular investigations affecting regional markets.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of External Control Center Information. This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) or Planning Department directly to External Control Center personnel.

(ii) Internal (Satellites) Control Center Information

This information includes:

- All System Operations or Planning Information. (Some examples include, but are not limited to, detailed system models; and transmission element data as detailed on the NX-9 forms.)
- Information relating to specific Generating facilities that is needed to assure the reliable operation of the New England Control Area. (Some examples include, but are not limited to, Generator constraints, including the reason for such constraint; and detailed Generator unit commitment.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of Special Protection Systems; and transmission operations related to Stability Limits.)
- New England and Satellite System Restoration Plans. (Some examples include, but are not limited to, the ISO, Satellite and Governance Participants' detailed Power System Restoration Plans.)

There is no direct correlation to the MIS Security Rules and there is no specific MIS distribution of Internal (Satellite) Control Center Information. This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Satellite personnel.

(h) Load Response Provider Information

This information is asset-specific Confidential Information, including:

- Retail customer information;
- Customer data;
- Load profiles, and;
- Demand response information provided at the request of the Internal Market Monitor pursuant to Section III.A.17.

Information relating to retail customers, customer data and load profiles is subject to certain state law restrictions and is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO Operations (Control Room/Forecast Office) directly to Load Response Provider personnel.

(i) ISO New England Information

This information includes:

- Any Governance Participant or Asset specific information as requested by the ISO, which will be maintained in accordance with this Policy. (Some examples include, but are not limited to, all Governance Participant and Asset specific information, which is available to the ISO.)
- Any ISO Employment Information and ISO Administrative Information not specifically listed in other categories.

ISO personnel, Consultants, Counsel, and Board Members may have access to any information defined in the categories listed above. This information corresponds to the MIS security rule “ISO” ISO New England.

All *Confidential Information*, as defined in Section 2.1 of this Policy, will only be distributed in accordance with this Policy.

All other data, which is not specifically defined and is not *Confidential Information*, may be released at the discretion of the ISO in accordance with the procedures set forth in Sections 3.1, 3.2 and 3.3 hereto.

(j) Critical Energy Infrastructure Information (“CEII”)

This information includes:

- Information designated by a Governance Participant or the ISO as CEII, which is defined by FERC as “specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (1) relates details about the production, generation, transportation, transmission, or distribution of energy; (2) could be useful to a person in planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552 (2000); and (4) does not simply give the general location of the critical infrastructure.”
- Reports, summaries, compilations, analyses, notes or other information which contain such information.

Access to CEII shall be granted by the ISO in accordance with the CEII disclosure processes posted on its website and, in the event that the CEII also falls within a category of information (including *Confidential Information*) described herein, in accordance with this Information Policy. Governance Participants shall treat CEII as if it were *Confidential Information*, notwithstanding any other provision of this Information Policy, and additionally shall maintain CEII in a secure place.

3.1 Information Requests

(a) Requesting Entities

As used in this Section 3.1, the term “Requesting Entity” shall mean any entity (other than the FERC, or the Commodity Futures Trading Commission (“CFTC”)), or an Authorized Person, as defined in Section 3.3 of this Information Policy) that requests information from the ISO.

(b) Public Information

If a Requesting Entity requests that the ISO publish Public Information (as defined in Section 3.0(a) of this Information Policy) that is not currently published by the ISO, the ISO may after consultation with the Participants Committee or its designated subcommittee or working group defer or deny such request if the ISO determines that publication of such data is not feasible at the time of such request due to resource limitations, including, without limitation, available software.

(c) Non-Public Information

(i) A Requesting Entity that desires to make a formal request for information that is not Public Information from the ISO, the resolution of which request shall be appealable under Section 3.1(e)(v) of this Information Policy, shall submit a formal written request to the ISO in the manner set forth in Section 3.1(d) below (a “Formal Information Request”) for such information.

(ii) Requests for information from Requesting Entities to the ISO other than Formal Information Requests need not be in writing.

(iii) Any request for information from the FERC, or the CFTC, or from an Authorized Person (as defined in Section 3.3 of this Information Policy) shall be addressed according to the procedures set forth in Section 3.2 and Section 3.3 of this Information Policy, as applicable.

(d) Form of Request; Tracking

(i) Any Formal Information Request shall be directed to the point of contact designated by the ISO to handle such requests (the “ISO Information Contact”). The ISO shall post contact information for the ISO Information Contact on the ISO website.

(ii) A Formal Information Request shall be in writing, which shall include electronic communications addressed to the ISO Information Contact, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the information request; (c) state the time period for which such information is requested; (d) specifically designate such request as a Formal Information Request and make reference to Section 3.1(d)(ii) of the Information Policy; and (e) provide contact information for the person to whom the response to such Formal Information Request is to be directed.

(iii) The ISO Information Contact shall track all Formal Information Requests and provide a report indicating the nature of each request and the response to such request to the Markets Committee on a monthly basis.

(e) Timing and Notice

(i) The ISO Information Contact normally shall notify all affected Furnishing Entities within five (5) business days after receiving a Formal Information Request.

(ii) The ISO Information Contact normally shall provide the Requesting Entity with a response (an “Initial Response”) within fifteen (15) business days after receiving the Formal Information Request (the “Request Date”). The Initial Response shall indicate either (A) that the ISO has made a decision on the Formal Information Request in accordance with Section 3.1(f)(i) below, in which case it shall describe such decision, or (B) that the ISO was unable to reach a decision, and will be consulting with the Participants Committee in accordance with Section 3.1(f)(ii) below.

(iii) If the Initial Response indicates that the ISO is further consulting with the Participants Committee, the ISO Information Contact normally shall provide the Requesting Entity with a follow-up response (a “Follow-Up Response”) the earlier of ten (10) business days after a recommendation by the Participants Committee as set forth in Section 3.1(f)(ii) below or sixty (60) days following the Request Date, which response shall indicate either (A) that the ISO has made a decision on the Formal Information Request in accordance with Section 3.1(f)(ii) below, in which case it shall describe such decision, or (B) that the ISO has failed to make a decision with respect to the Formal Information Request, in which case such request shall be deemed denied.

(iv) The ISO Information Contact shall provide the Furnishing Entity(ies) with copies of any Initial Response or Follow-Up Response provided in response to a Formal Information Request on the same day that such responses are provided to the Requesting Entity. In addition, the ISO Information Contact shall provide the Furnishing Entity(ies) with at least ten (10) business days prior written notice of any release of *Confidential Information* or Strategic Information relating to such Furnishing Entity (whether such release is on the ISO’s own initiative, in response to a Formal Information Request, or otherwise), which written notice shall inform such Furnishing Entity(ies) of its right to dispute such release under Section 3.1(e)(v) of the Information Policy.

(v) The Requesting Entity shall have the right to appeal any Initial Response that contains a decision with respect to a Formal Information Request and any Follow-Up Response. Any affected Furnishing Entity shall have the right to appeal any Initial Response or Follow-Up Response that contains a decision with respect to a Formal Information Request and any decision

by the ISO to release *Confidential Information* or Strategic Information (whether such release is on the ISO's own initiative, in response to a Formal Information Request, or otherwise). The Participants Committee shall have the right to appeal any Initial Response that contains a decision with respect to a Formal Information Request. Notice of any appeal shall be provided contemporaneously to the Participants Committee and the ISO Information Contact.

(vi) Any appeal of the ISO's actions under this Section 3.1 with respect to a Formal Information Request shall be subject to binding arbitration with FERC's Alternative Dispute Resolution Service, as further described in 18 C.F.R. §§ 385.604, 385.605. The ISO and the disputing entity(ies) shall use reasonable efforts to insure that an arbitrator is selected and a hearing is scheduled within thirty (30) days of the ISO receiving notice of an appeal. Unless otherwise agreed by all parties, the duration of any arbitration hearing will be limited to one day. The arbitrator's decision shall be binding on the respective parties; provided, however, that any of the respective parties to the arbitrator's decision shall be entitled to appeal the arbitrator's decision directly to FERC.

(vii) Suitable forms of notice and/or communications pursuant to this subsection shall include, but not be limited to, electronic communications.

(f) Consideration of Requests

(i) After receiving a Formal Information Request, the ISO shall first determine whether (X) the information requested is information described in Sections (a) through (i) of Section 3.0 and (Y) the Requesting Entity is a member of a user group specifically entitled to receive such information pursuant to Sections (a) through (i) of Section 3.0. If the ISO determines that the Requesting Entity is not entitled to receive the requested information pursuant to Sections (a) through (i) of Section 3.0, the ISO shall then determine if the requested information is *Confidential Information* or Strategic Information. The ISO may consult with the Independent Market Advisor, NEPOOL Counsel, the Furnishing Entity(ies), and/or the Participants Committee (as provided in Section 3.1(d)) during the process of making this determination.

(A) If the ISO determines that the information is *Confidential Information*, the ISO Information Contact will refer the request to the Furnishing Entity(ies) and the ISO will not release the requested information unless it is directed to do so by the Furnishing Entity(ies) or ordered to do so by a court or regulatory authority with jurisdiction over

such matters. If the Furnishing Entity(ies) directs the ISO to release the requested information, the ISO will next determine whether the requested information is Strategic Information as set forth in Section 3.1(c)(i)(B) below. The Furnishing Entity(ies) shall bear any costs reasonably incurred by the ISO in opposing the issuance of such an order requiring disclosure of the Furnishing Entity(ies)' *Confidential Information*.

Notwithstanding the foregoing, upon the request of a regulatory agency, other than FERC or its staff or the CFTC or its staff, having appropriate jurisdiction and subject to an appropriate confidentiality order entered under such agency's procedures sufficient to preserve the confidential nature of the information submitted, and with advance notice to the Furnishing Entity(ies), the ISO Information Contact may submit *Confidential Information* to such agency.

(B) If the information requested is Strategic Information, the ISO shall determine whether to release the requested information, in consultation with the Independent Market Advisor, NEPOOL Counsel and/or the Furnishing Entity(ies), as the ISO deems appropriate. If the ISO releases such information, it will do so by making the information public.

(C) If the information requested is neither *Confidential Information* nor Strategic Information, the ISO shall determine whether to release the requested information; provided that the Participants Committee, acting on the recommendation of an appropriate Stakeholder Committee, may request the ISO to release the requested information.

(ii) If, after consultation with the Independent Market Advisor, NEPOOL Counsel and/or the Furnishing Entity, as appropriate, the ISO cannot, in its good faith judgment, determine the classification status of requested information or otherwise believes that a Formal Information Request raises policy questions that should be determined by the Governance Participants, then the following procedure shall apply:

(A) The ISO shall refer the request to the Participants Committee with its recommendation for action.

(B) The Participants Committee, acting on recommendation of a subcommittee or working group, as appropriate, may approve of or suggest modifications to the recommendation of the ISO. If the Participants Committee approves the ISO's recommendation, or if the ISO accepts the Participants Committee's suggested modifications, the Participants Committee's decision shall determine the response to the Formal Information Request; provided, however, that, to the extent that the information requested is found to be *Confidential Information*, the ISO shall continue to maintain the confidentiality of such information in accordance with the terms of this Information Policy.

(g) Release of Information; Prioritization of Formal Information Requests

(i) The ISO shall reasonably attempt to comply with any Formal Information Request that has been granted within thirty (30) days of the Initial Response or Follow-Up Response informing the Requesting Entity that its request has been granted. The ISO may condition the release of any information to a Requesting Entity upon payment of the ISO's reasonable cost to identify and prepare such information.

(ii) If the ISO does not have the resources available to comply with all outstanding Formal Information Requests within the time provided in clause (i) above, the ISO will consult with the Participants Committee or its designated subcommittee or working group to determine how such Formal Information Requests should be prioritized.

(h) Definition of Strategic Information

For purposes of this Policy, Strategic Information means any information, except Public Information, that would affect a Governance Participant's bid or offer strategy in the New England electric markets including information affecting the offer price for or cost of operation of a resource, the capacity or availability of a resource, or any other offer parameter for a resource.

Strategic Information includes *Confidential Information* supplied by Governance Participants to the extent such information would affect a Governance Participant's bid or offer strategy such as, for example:

- All offer prices and parameters for particular resources including bid blocks and times.

- Cost information regarding operation of one or more resources if and to the extent supplied to the ISO.
- Information regarding fuel availability for thermal resources or impoundment levels for hydroelectric facilities.
- Information regarding transmission outages, not otherwise made public, for scheduled maintenance or otherwise that affects the availability of certain generating resources.

Strategic Information may also include information calculated or produced by the ISO such as:

- Aggregate prices and quantities offered that are derived through the unit commitment process.
- Information regarding which resources will run or have run during any particular market settlement period.
- Information derived through the unit commitment process or the market settlement system as to units that run out of merit.
- Information regarding the existence or location of certain short-term transmission constraints.

No Strategic Information that is *Confidential Information* will be released except in compliance with the provisions of this Information Policy regarding *Confidential Information*.

3.2 Disclosure to FERC and the CFTC

(a) Procedures for Disclosure to FERC

If the FERC or its staff, during the course of an investigation or otherwise, requests information from the ISO that is *Confidential Information* or CEII, the ISO shall provide the requested information to the FERC or its staff, within the time provided for in the request for information. In providing *Confidential Information* to FERC or its staff, the ISO shall, consistent with 18 C.F.R §§ 1b.20 and 388.112, request that the information be treated as confidential and non-public by the FERC and its staff and that the information be withheld from public disclosure. The ISO shall notify any affected Furnishing Entity(ies) (1) when it is notified by FERC or its staff, that a request for disclosure of *Confidential Information* has been received at which time the ISO and the affected Furnishing Entity(ies) may respond before such

information would be made public; and (2) when it is notified by FERC or its staff that a decision to disclose *Confidential Information* has been made, at which time the ISO and the affected Furnishing Entity(ies) may respond before such information would be made public. In providing CEII to FERC or its staff, the ISO shall, consistent with 18 CFR § 388.112, request that the information be treated as CEII by the FERC and its staff.

(b) Procedures for Disclosure to the CFTC

Furnishing Entity(ies) permits the ISO to provide *Confidential Information* or CEII to the CFTC or its staff in response to a subpoena or other request for information or documentation without notifying Furnishing Entity(ies) prior to providing such information to the CFTC. The ISO shall provide the requested information or documentation to the CFTC or its staff within the time provided for in the request for information or documentation. In providing *Confidential Information* or CEII to the CFTC or its staff, the ISO shall: (i) request, on behalf of the Furnishing Entity(ies), that the information be treated as confidential and non-public by the CFTC and its staff, as provided in 17 C.F.R. § 145.9; and (ii) make clear through the confidentiality legend required by 17 C.F.R. § 145.9 that both the ISO and the Furnishing Entity(ies) are the submitters of the *Confidential Information* or CEII as provided under 17 C.F.R. § 145.9.

3.3 Disclosure to Authorized Persons and ISO/MMU Requesting Entities

(a) Definitions

For purposes of this Section 3.3, the following terms shall have the meanings set forth below:

“Affected Governance Participant” shall mean a Governance Participant, which, as a result of its Participation in the markets administered by the ISO, provided Confidential Market Information to the ISO, which Confidential Market Information is requested by or is disclosed to an Authorized Person under a Non-Disclosure Agreement.

“Authorized Commission” shall mean a State public utility commission within the geographic limits of the New England Control Area that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State.

“Authorized Person” shall mean a person who has executed a Non-Disclosure Agreement, and is authorized in writing by an Authorized Commission to receive and discuss Confidential Market Information. Authorized Persons may include attorneys representing an Authorized Commission, consultants and/or contractors directly employed by an Authorized Commission, provided; however, that consultants or contractors may not initiate requests for Confidential Market Information from the ISO or the IMMU.

“Confidential Market Information” shall mean *Confidential Information* consisting of market data relating to the markets administered by the ISO, including data supplied by Governance Participants and aggregate data regularly compiled by the ISO. Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/IMMU, except to the extent that the communications become part of final written reports or final written analyses by the ISO/IMMU, (vi) communications between an Affected Governance Participant and the ISO made on a confidential basis as part of a settlement proceeding or negotiation; and (vii) information provided to the ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding.

“Information Request” shall mean a written request, in accordance with the terms of this Section 3.3 for disclosure of Confidential Market Information pursuant to Section 3.3 of this Information Policy.

“ISO/MMU Requesting Entity” shall mean an independent system operator or regional transmission organization subject to the Commission’s jurisdiction, or its market monitor, that is requesting Confidential Market Information pursuant to Section 3.3(c) of this Information Policy.

“Non-Disclosure Agreement” shall mean an agreement between an Authorized Person and the ISO pursuant to Section 3.3 of this Information Policy, the form of which is appended to this Information Policy (Appendix A), wherein the Authorized Person is given access to otherwise restricted Confidential Market Information, for the benefit of their respective Authorized Commission.

“State Certification” shall mean the Certification of an Authorized Commission, pursuant to Section 3.3 of this Information Policy, the form of which is appended to this Information Policy (Appendix B),

wherein the Authorized Commission identifies all Authorized Persons employed or retained by such Authorized Commission, a copy of which shall be filed with FERC.

“Third Party Request” shall mean any request or demand by any entity upon an Authorized Person, an Authorized Commission or an ISO/MMU Requesting Entity for release or disclosure of Confidential Market Information provided to the Authorized Person, Authorized Commission or ISO/MMU Requesting Entity by the ISO, the Internal Market Monitor or the External Market Monitor. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

(b) Procedures for Disclosures to Authorized Persons

(i) Notwithstanding anything in this section to the contrary, the ISO and/or the External Market Monitor shall disclose Confidential Market Information, otherwise required to be maintained in confidence pursuant to this Information Policy, to an Authorized Person under the following conditions:

(1) The Authorized Person has executed a Non-Disclosure Agreement with the ISO representing and warranting that he or she: (i) is an Authorized Person; (ii) is duly authorized to enter into and perform the obligations of the Non-Disclosure Agreement; (iii) has adequate procedures to protect against the release of any Confidential Market Information received, (iv) is familiar with, and will comply with any applicable procedures of the Authorized Commission which the Authorized Person represents, (v) covenants and agrees on behalf of himself or herself not to disclose the Confidential Market Information and to deny any Third Party Requests and defend against any legal process which seeks the release of any Confidential Market Information received in contravention of the terms of the Non-Disclosure Agreement, and (vi) is not in breach of any Non-Disclosure Agreement entered into with the ISO.

(2) The Authorized Commission employing or retaining the Authorized Person has provided the ISO with: (a) a final order of FERC prohibiting the release by the Authorized Person or the Authorized Commission of Confidential Market Information in accordance with the terms of this Information Policy and the Non-Disclosure Agreement; and (b) either an order of such Authorized Commission or a certification from counsel to

such Authorized Commission, confirming that the Authorized Commission (i) has statutory authority to protect the confidentiality of any Confidential Market Information received from public release or disclosure and from release or disclosure to any other entity, (ii) will defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders, (iii) will provide the ISO with prompt notice of any such Third Party Request or legal proceedings and will consult with the ISO and/or any Affected Governance Participant in its efforts to deny the Third Party Request or defend against such legal process, (iv) in the event a protective order or other remedy is denied, will direct Authorized Persons authorized by it to furnish only that portion of the Confidential Market Information which their legal counsel advises the ISO in writing is legally required to be furnished, (v) will exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information and (vi) has adequate procedures to protect against the release of such Confidential Market Information; and (c) confirmation in writing that the Authorized Person is authorized by the Commission to enter into the Non-Disclosure Agreement and to receive Confidential Market Information under this Information Policy.

(3) The Authorized Commission employing or retaining the Authorized Person has provided the ISO with a State Certification.

(4) The ISO and the External Market Monitor shall be expressly entitled to rely upon such FERC and Authorized Commission orders, the State Certification and/or certifications of counsel in providing Confidential Market Information to the Authorized Person, and shall in no event be liable, or subject to damages or claims of any kind or nature hereunder due to the ineffectiveness of the FERC and/or Commission orders, or the inaccuracy of such certification of counsel.

(5) The Authorized Person may discuss Confidential Market Information with other Authorized Persons who are parties to Non-Disclosure Agreements, provided; however, that the ISO shall have confirmed in advance and in writing that it has previously released the Confidential Market Information in question to such Authorized Persons. The ISO shall respond to any written request for confirmation within two (2) business days of its receipt.

(6) The ISO shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on the ISO's website or by written request. Such schedule shall be compiled by the ISO, based on information provided by any Authorized Person and/or Authorized Commission. The ISO shall update the schedule promptly upon receipt of information from an Authorized Person or Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by the ISO in the compilation and/or maintenance of the schedule.

(ii) The External Market Monitor or other designated representative of the ISO may, in the course of discussions with any Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or their Authorized Commission to determine whether additional Information Requests for information are appropriate. The External Market Monitor or other representative of the ISO will not make any written or electronic disclosures of Confidential Market Information to the Authorized Person pursuant to this section. In any such discussions, the External Market Monitor or other representative of the ISO shall ensure that the individual or individuals receiving such Confidential Market Information are Authorized Persons as defined herein, request that the Authorized Person describe the purpose of the inquiry, orally designate Confidential Market Information that is disclosed, and refrain from identifying any specific Affected Governance Participant whose information is disclosed. The External Market Monitor or other representative of the ISO shall also be authorized to assist Authorized Persons in interpreting Confidential Market Information that is disclosed. The External Market Monitor or representative of the ISO shall provide any Affected Governance Participant and counsel for the Participants Committee with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Governance Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Market Information of any other Governance Participant and must be received by the Affected Governance Participant before the name of the Affected Governance Participant is released to the Authorized Person, provided; however, the identity of the Affected Party must be made to the Authorized Person within two (2) business days of the initial oral disclosure. The ISO shall provide an Affected

Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the oral disclosure.

(iii) As regards Information Requests:

(1) Information Requests to the ISO shall be in writing, which shall include electronic communications addressed to the External Market Monitor or other designated representative of the ISO, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the Information Request; (c) state the time period for which Confidential Market Information is requested; and (d) re-affirm that only the Authorized Person shall have access to the Confidential Market Information requested. The ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of an Information Request of the Authorized Person as soon as possible, but not later than two (2) business days after the receipt of the Information Request.

(2) Subject to the provisions of section (iii)(3), the ISO shall supply Confidential Market Information to the Authorized Person in response to any Information Request within five (5) business days of the receipt of the Information Request, to the extent that the requested Confidential Market Information can be made available within such period, provided; however, that in no event shall Confidential Market Information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Governance Participant. To the extent that the ISO cannot reasonably prepare and deliver the requested Confidential Market Information within such five (5) day period, it shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Market Information. Upon providing Confidential Market Information to the Authorized Person, the ISO shall either provide a copy of the Confidential Market Information to the Affected Governance Participant(s), or provide a listing of the Confidential Market Information disclosed, provided; however, that the ISO shall not reveal any Governance Participant's Confidential Market Information to any other Governance Participant.

(3) Notwithstanding section (iii)(2), above, should the ISO, an Affected Governance Participant, or the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) object to an Information Request or any portion thereof, any of them may, within four (4) business days following the ISO's receipt of the Information Request, request, in writing, a conference with the Authorized Commission or the Authorized Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request, provided; however, nothing herein shall require the Authorized Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then the ISO, the Affected Governance Participant, the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) or the Authorized Commission may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. If no FERC proceeding regarding the Information Request is commenced within such three day period, the ISO shall utilize its best efforts to respond to the Information Request promptly. During any pending FERC proceeding regarding an Information Request, the ISO shall continue to maintain the confidentiality of the Confidential Market Information subject to such Information Request.

(iv) In the event of any breach of a Non-Disclosure Agreement:

(1) The Authorized Person and/or their respective Authorized Commission shall promptly notify the ISO, who shall, in turn, promptly notify any Affected Governance Participant and counsel for the Participants Committee of any inadvertent or intentional release, or possible release, of Confidential Market Information provided pursuant to any Non-Disclosure Agreement.

(2) The ISO shall terminate such Non-Disclosure Agreement upon written notice to the Authorized Person and his or her Authorized Commission, and all rights of the Authorized Person thereunder shall thereupon terminate, provided; however, that the ISO

may restore an individual's status as an Authorized Person after consulting with the Affected Governance Participant and to the extent that: (i) the ISO determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (ii) there were no harm or damage suffered by the Affected Governance Participant; or (iii) similar good cause shown. Any appeal of the ISO's actions under this section shall be to FERC.

(3) The ISO, the Affected Governance Participant, and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all Confidential Market Information to the ISO.

(4) No Authorized Person shall have responsibility or liability whatsoever under the Non-Disclosure Agreement or this Information Policy for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with the release of Confidential Market Information to persons not authorized to receive it, provided that such Authorized Person is an employee or member of an Authorized Commission at the time of such unauthorized release. Nothing in this section (iv)(4) is intended to limit the liability of any person who is not an employee of or a member of an Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.

(5) Any dispute or conflict requesting the relief in section (iv)(2) or (iv)(3)(a) above, shall be submitted to FERC for hearing and resolution. Any dispute or conflict requesting the relief in section (4)(3)(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution.

(c) Procedures for Disclosures to an ISO/MMU Requesting Entity

(i) Notwithstanding anything in this section to the contrary, the ISO, the Internal Market Monitor or the External Market Monitor shall disclose Confidential Market Information,

otherwise required to be maintained in confidence pursuant to this Information Policy, to an ISO/MMU Requesting Entity under the following conditions:

- (1) The ISO/MMU Requesting Entity has submitted to the ISO a written request for the disclosure of Confidential Market Information.
- (2) The written request explains why the requested Confidential Market Information is necessary to an investigation that the ISO/MMU Requesting Entity is undertaking pursuant to its tariff, other governing documents, or an applicable law or regulation to determine (a) if a Market Violation is occurring or has occurred, (b) if market power is being or has been exercised, or (c) if a market design flaw exists that affects either the New England markets or the markets administered by the ISO/MMU Requesting Entity.
- (3) The written request either (x) demonstrates, by providing copies of the relevant documentation, that the ISO/MMU Requesting Entity's tariff or other governing document limits further disclosure of the Confidential Market Information in a manner that satisfies all of the requirements set forth in Section 3.3(c)(ii) below, or (y) is accompanied by a non-disclosure agreement, which has been executed by both the ISO/MMU Requesting Entity and the ISO, that incorporates all of the requirements in Section 3.3(c)(ii) below, and a written certification that the ISO/MMU Requesting Entity possesses the legal authority to enter into the non-disclosure agreement, to be bound by it, and to perform all of the obligations of the non-disclosure agreement.
- (4) If the ISO/MMU Requesting Entity is an independent system operator or regional transmission organization that meets the conditions in this Section 3.3(c), then the ISO shall also disclose the requested Confidential Market Information to the ISO/MMU Requesting Entity's market monitor, on condition that the receiving market monitor satisfy the confidentiality requirements and obligations specified in Section 3.3(c)(i)(3) above.

(ii) The ISO/MMU Requesting Entity's governing documents or non-disclosure agreement must:

- (1) Covenant and agree not to disclose and to protect from disclosure the Confidential Market Information and to deny any Third Party Request and defend against any legal process which seeks the release of Confidential Market Information, except where disclosure is required by the Commission, by subpoena, or by other compulsory process;
- (2) Represent and warrant that the ISO/MMU Requesting Entity has adequate procedures to protect against the release of Confidential Market Information;
- (3) Establish a legally enforceable obligation to treat Confidential Market Information as confidential. Such obligation must be of a continuing nature, and must survive the rescission, termination or expiration of the tariff, other governing document or non-disclosure agreement;
- (4) Require that the ISO/MMU Requesting Entity use the Confidential Market Information solely for the purpose of investigating (a) if a Market Violation is occurring or has occurred, (b) if market power is being or has been exercised, or (c) if a market design flaw exists that affects either the New England markets or the markets administered by the ISO/MMU Requesting Entity;
- (5) Require state commissions to request Confidential Market Information directly from the ISO or the Internal Market Monitor, in a manner consistent with Section 3.3(b) of this Information Policy, and promptly inform the ISO or the Internal Market Monitor of any request received from a state commission for Confidential Market Information;
- (6) Require the ISO/MMU Requesting Entity (a) to defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders; (b) to provide the ISO, the Internal Market Monitor or the External

Market Monitor with prompt notice of any such Third Party Request or legal proceedings, and consult with the ISO, the Internal Market Monitor or the External Market Monitor in its efforts to deny the request or defend against such legal process; (c) in the event a protective order or other remedy is denied, to furnish only that portion of the Confidential Market Information which its legal counsel advises the ISO, the Internal Market Monitor or the External Market Monitor in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information;

(7) Require the ISO/MMU Requesting Entity to promptly notify the ISO, the Internal Market Monitor or the External Market Monitor of any Third Party Requests for additional disclosure of the Confidential Market Information where Confidential Market Information has been disclosed to a court or regulatory body in response to a subpoena or other compulsory process, and to seek appropriate relief to prevent or limit further disclosure;

(8) Require destruction of the Confidential Market Information at the earlier of (a) five business days after a request from the ISO, the Internal Market Monitor or the External Market Monitor for the return of the Confidential Market Information is received, or (b) the conclusion or resolution of the investigation.

3.4 Disclosure to Academic Institutions

Notwithstanding anything to the contrary set forth herein, the ISO may disclose Confidential Market Information (as defined in Section 3.3), otherwise to be maintained in confidence pursuant to this Information Policy, to a research university (an “Authorized Institution”), solely for the purpose of academic research by Authorized Researchers (as defined below), under the following conditions:

(a) The Authorized Institution has delivered an information request to the ISO in writing (the “Academic Institution Information Request”), which shall include electronic communications addressed to the External Market Monitor, and shall: (i) describe with particularity the information sought; (ii) provide a description of the purpose of the Academic Institution Information Request (“Proposed Research”); (iii) state the time period for which the Confidential Market Information is requested; (iv) specify the individuals that will have access to such Confidential Market Information (the “Authorized Researchers”) and (v) specify the source of

funding for the research to be performed with respect to the requested Confidential Market Information.

(b) The ISO shall review the merits of the Academic Institution Information Request and may, in its sole discretion, reject such request without providing notice to affected Governance Participants and the Participants Committee as required in subsection 3.4(c) below.

(c) In the event that the ISO does not initially reject the Academic Institution Information Request pursuant to subsection 3.4(b) above, the ISO shall provide affected Governance Participants and counsel to the Participants Committee with written notice, which shall include electronic communication, of an Academic Institution Information Request as soon as possible, but no later than five (5) business days after receipt of the Academic Institution Information Request. Such notice shall include all of the information contained in the Academic Institution Information Request.

(d) An authorized representative of the Authorized Institution has executed a non-disclosure agreement in the form attached hereto as Appendix C (the “Academic Institution Non-Disclosure Agreement”) in which the Authorized Institution (i) represents and warrants that the Authorized Institution (w) will only share the Confidential Market Information with Authorized Researchers identified in the Academic Institution Information Request, solely to be used for the purpose of the Proposed Research; (x) is duly authorized to enter into and perform the obligations of the Academic Institution Non-Disclosure Agreement; (y) has adequate procedures to protect against the release of any Confidential Market Information received; and (z) is not in breach of any other Academic Institution Non-Disclosure Agreement entered into with the ISO; and (ii) covenants and agrees not to disclose the Confidential Market Information and to deny any third-party requests for the Confidential Market Information and defend against any legal process that seeks the release of any Confidential Market Information.

(e) The ISO shall provide affected Governance Participants and counsel to the Participants Committee written notice, which shall include electronic communication, of its determination whether to release Confidential Market Information in response to an Academic Institution Information Request as soon as possible, but no later than five (5) business days following the provision of the notice required in subsection (c) above. Notice of the ISO’s determination shall also include all of the information contained in the Academic Institution Information Request,

and shall inform the affected Governance Participants of their right to object to such release, as well as the deadline for any such objection and shall specifically state that in the event that the affected Governance Participants do not object to such release, any information released by the ISO pursuant to an Academic Institution Information Request may be subject to publication by the Authorized Institution; provided that such publication may only be made (x) upon written consent of the ISO and (y) if any material the Authorized Institution proposes to publish, which is related to or that relies upon the Confidential Market Information, is sufficiently redacted or summarized in a manner so that it may not be identified. The ISO shall not release Confidential Market Information relating to any affected Governance Participant that objects to such release within ten (10) business days of the ISO's notice of its determination. Following the tenth (10th) business day after providing such notice, the ISO may, in its sole discretion, release Confidential Market Information relating to those affected Governance Participants that have not objected to such release to the Authorized Institution, provided, however, that the ISO shall redact all Confidential Market Information relating to any objecting affected Governance Participants, as applicable.

(f) In the event that an Authorized Institution or any Authorized Researcher publishes any material related to or that relies upon the Confidential Market Information, upon written consent of the ISO in accordance with Section 2.3.4 of the Academic Institution Non-Disclosure Agreement, the ISO shall provide notice to the Participants Committee regarding the medium (e.g., journal) in which the publication has been made.

APPENDIX A
FORM OF NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the "Agreement") is made this _____ day of _____, 2004, by and between _____, an Authorized Person, as defined below, of _____ (the "State Commission") having jurisdiction within the State of _____, with offices at _____ and ISO New England Inc., a Delaware corporation, with offices at One Sullivan Road, Holyoke, Massachusetts, 01040-2841 ("ISO"). The State Commission and ISO shall be referred to herein individually as a "Party," or collectively as the "Parties."

RECITALS

Whereas, ISO serves as the Regional Transmission Organization for the New England Control Area, and operates and oversees wholesale markets for electricity pursuant to the requirements of the ISO Tariff, as defined below; and

Whereas, the External Market Monitor (as defined below) serves as the independent market monitor for ISO's wholesale markets for electricity, and

Whereas, the ISO New England Information Policy requires that ISO and the External Market Monitor maintain the confidentiality of Confidential Market Information; and

Whereas, the ISO New England Information Policy requires ISO and the External Market Monitor to disclose Confidential Market Information to Authorized Persons upon satisfaction of conditions stated in the ISO New England Information Policy, including, but not limited to, the execution of this Agreement by the Authorized Person and the maintenance of the confidentiality of such information pursuant to the terms of this Agreement; and

Whereas, ISO desires to provide Authorized Persons with the broadest possible access to Confidential Market Information, consistent with ISO's and the External Market Monitor's obligations and duties under the ISO New England Information Policy, the ISO Tariff and other applicable FERC directives; and

Whereas, this Agreement is a statement of the conditions and requirements, consistent with the requirements of the ISO New England Information Policy, whereby ISO and the External Market Monitor may provide Confidential Market Information to the Authorized Person.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Definitions

1.1 Affected Governance Participant. A Governance Participant, which as a result of its participation in the markets administered by ISO, provided Confidential Market Information to ISO, which Confidential Market Information is requested by, or is disclosed to an Authorized Person under this Agreement.

1.2 Authorized Commission. A State public utility commission within the geographic limits of the New England Control Area (as that term is defined in the ISO Tariff) that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State.

1.3 Authorized Person. A person, including the undersigned, which has executed this Agreement and that is authorized in writing by an Authorized Commission to receive and discuss Confidential Market Information. Authorized Persons may include attorneys representing an Authorized Commission, consultants and/or contractors directly employed or retained by an Authorized Commission, provided however that consultants or contractors may not initiate requests for Confidential Market Information from ISO or the External Market Monitor.

1.4 Confidential Market Information. Shall mean *Confidential Information* (as defined in the ISO New England Information Policy) consisting of market data relating to the markets administered by ISO, including data supplied by Governance Participants and aggregate data regularly compiled by ISO. Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/External Market Monitor, except to the extent that the communications become part of final written reports or final written analyses by the ISO/External Market Monitor, (vi) communications between an Affected Governance Participant and ISO made on a confidential basis as part of a settlement proceeding or negotiation; and (vii) information provided to ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding.

1.5 External Market Monitor. Shall have the meaning set forth in the ISO Tariff.

1.6 FERC. The Federal Energy Regulatory Commission.

1.7 Governance Participant. Shall have the meaning set forth in the ISO Tariff.

1.8 ISO New England Information Policy. Shall have the meaning set forth in the ISO Tariff.

1.9 Information Request. A written request, in accordance with the terms of this Agreement for disclosure of Confidential Market Information pursuant to Section 3.3 of the ISO New England Information Policy.

1.10 ISO Tariff. ISO's Transmission, Markets and Services Tariff, as it may be amended from time to time.

1.11 Third Party Request. Any request or demand by any entity upon an Authorized Person or an Authorized Commission for release or disclosure of Confidential Market Information. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

2. Protection of Confidentiality.

2.1 Duty to Not Disclose. The Authorized Person represents and warrants that he or she: (i) is presently an Authorized Person as defined herein; (ii) is duly authorized to enter into and perform this Agreement; (iii) has adequate procedures to protect against the release of Confidential Market Information, and (iv) is familiar with, and will comply with, all such applicable State Commission procedures. The Authorized Person hereby covenants and agrees on behalf of himself or herself not to disclose the Confidential Market Information and to deny any Third Party Request and defend against any legal process which seeks the release of Confidential Market Information in contravention of the terms of this Agreement.

2.2 Conditions Precedent. As a condition of the execution, delivery and effectiveness of this Agreement by ISO and the continued provision of Confidential Market Information pursuant to the terms of this Agreement, the Authorized Commission shall, prior to the initial oral or written request for Confidential Market Information by an Authorized Person on its behalf, provide ISO with: (a) a final order of FERC prohibiting the release by the Authorized Person or the State Commission of Confidential Market Information in accordance with the terms of the Operating Agreement and this Agreement; and (b) either an order of the State Commission or a certification from counsel to the State Commission, confirming that the State Commission has statutory authority to protect the confidentiality of the Confidential Market Information from public release or disclosure and from release or disclosure to any other entity, and that it has adequate procedures to protect against the release of Confidential Market

Information; and (c) confirmation in writing that the Authorized Person is authorized by the State Commission to enter into this Agreement and to receive Confidential Market Information under the ISO New England Information Policy.

2.3 Discussion of Confidential Market Information with other Authorized Persons. The Authorized Person may discuss Confidential Market Information with other Authorized Persons who have executed non-disclosure agreements with ISO containing the same terms and conditions as this Agreement; provided, however, that ISO shall have confirmed in advance and in writing that ISO has previously released the Confidential Market Information in question to such Authorized Persons. ISO shall respond to any written request for confirmation within two (2) business days of its receipt.

2.4 Defense Against Third Party Requests. The Authorized Person shall defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Person shall provide ISO, and ISO shall provide each Affected Governance Participant and counsel for the Participants Committee, with prompt notice of any such Third Party Request or legal proceedings, and shall consult with ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Person agrees to furnish only that portion of the Confidential Market Information which their legal counsel advises ISO (and of which ISO shall, in turn, advise any Affected Governance Participants) in writing is legally required to be furnished, and to exercise their best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

2.5 Care and Use of Confidential Market Information.

2.5.1 Control of Confidential Market Information. The Authorized Person(s) shall be the custodian(s) of any and all Confidential Market Information received pursuant to the terms of this Agreement from ISO or the External Market Monitor.

2.5.2 Access to Confidential Market Information. The Authorized Person shall ensure that Confidential Market Information received by that Authorized Person is disseminated only to those persons publicly identified as Authorized Persons on Exhibit “A” to the certification provided by the State Commission pursuant to the procedures contained in Section 2.2 of this Agreement.

2.5.3 Schedule of Authorized Persons.

(i) The Authorized Person shall promptly notify ISO of any change that would affect the Authorized Person's status as an Authorized Person, and in such event shall request, in writing, deletion from the schedule referred to in section (ii), below.

(ii) ISO shall maintain a schedule of all Authorized Persons and the Authorized Commissions they represent, which shall be made publicly available on ISO's website and/or by written request. Such schedule shall be compiled by ISO, based on information provided by any Authorized Person and/or Authorized Commission. ISO shall update the schedule promptly upon receipt of information from an Authorized Person or Authorized Commission, but shall have no obligation to verify or corroborate any such information, and shall not be liable or otherwise responsible for any inaccuracies in the schedule due to incomplete or erroneous information conveyed to and relied upon by ISO in the compilation and/or maintenance of the schedule.

2.5.4 Use of Confidential Market Information. The Authorized Person and his or her Authorized Commission shall use the Confidential Market Information solely for the purpose of assisting the Authorized Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting, and generation planning and siting materially affecting retail customers within the State in which the Authorized Commission has regulatory jurisdiction, and for no other purpose. Without limiting the foregoing, the Authorized Person and his or her Authorized Commission shall not use its right to acquire Confidential Market Information as a means of conducting discovery or providing evidence during an adversarial proceeding against an Affected Governance Participant or any group of Participants. The Authorized Person and his or her Authorized Commission, however, shall not be prevented from using in an adversarial proceeding Confidential Market Information the Authorized Commission has obtained if: (i) such information becomes known in that proceeding through disclosure by entities other than the Authorized Commission; and (ii) the Authorized Commission discloses such Confidential Market Information consistent with the protections and procedures governing the disclosure of Confidential Market Information to parties in that proceeding; or (iii) the information being disclosed no longer meets the definition of Confidential Market Information.

2.5.5 Return of Confidential Market Information. Upon completion of the inquiry or investigation referred to in the Information Request, or for any reason the Authorized Person is, or will no longer be an Authorized Person, the Authorized Person shall (a) return the Confidential Market Information and all copies thereof to ISO, or (b) provide a certification that the Authorized Person has destroyed all paper

copies and deleted all electronic copies of the Confidential Market Information, unless such actions are inconsistent with or prohibited by applicable state law, in which case the Authorized Person shall continue to maintain the confidentiality of the Confidential Market Information in accordance with the terms and conditions of this Agreement. ISO may waive this condition in writing if such Confidential Market Information has become publicly available or non-confidential in the course of business or pursuant to the ISO Tariff or order of the FERC.

2.5.6 Notice of Disclosures. The Authorized Person, directly or through the Authorized Commission, shall promptly notify ISO, and ISO shall promptly notify any Affected Governance Participant, of any inadvertent or intentional release or possible release of the Confidential Market Information provided pursuant to this Agreement. The Authorized Person shall take all steps to minimize any further release of Confidential Market Information, and shall take reasonable steps to attempt to retrieve any Confidential Market Information that may have been released.

2.6 Ownership and Privilege. Nothing in this Agreement, or incident to the provision of Confidential Market Information to the Authorized Person pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against, subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of ISO and/or the Affected Governance Participant.

3. Procedure for Information Requests

3.1 Written Requests. Information Requests to ISO shall be in writing, which shall include electronic communications, addressed to the External Market Monitor or other ISO representatives as specified by ISO, with a concurrent copy to ISO's General Counsel, and shall: (a) describe with particularity the information sought; (b) provide a description of the purpose of the Information Request; (c) state the time period for which information is requested; and (d) re-affirm that only the Authorized Person shall have access to the Confidential Market Information requested. ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall

include electronic communication, of an Information Request of the Authorized Person as soon as possible, but not later than two (2) business days after the receipt of the Information Request.

3.2 Oral Disclosures by the External Market Monitor. The External Market Monitor or other ISO representatives as specified by ISO may, in the course of discussions with an Authorized Person, orally disclose information otherwise required to be maintained in confidence, without the need for a prior Information Request. Such oral disclosures shall provide enough information to enable the Authorized Person or the State Commission to determine whether additional Information Requests for information are appropriate. The External Market Monitor or other ISO representative will not make any written or electronic disclosures of Confidential Market Information to the Authorized Person pursuant to this section. In any such discussions, the External Market Monitor or other ISO representative shall ensure that the individual or individuals receiving such Confidential Market Information are Authorized Persons under this Agreement, request that the Authorized Person describe the purpose of the inquiry, orally designate Confidential Market Information that is disclosed and refrain from identifying any specific Affected Governance Participant whose information is disclosed. The External Market Monitor or other ISO representative shall also be authorized to assist Authorized Persons in interpreting Confidential Market Information that is disclosed. ISO or the External Market Monitor shall (i) maintain a written record of oral disclosures pursuant to this section, which shall include the date of each oral disclosure and the Confidential Market Information disclosed in each such oral disclosure, and (ii) provide any Affected Governance Participant and counsel for the Participants Committee with oral notice of any oral disclosure immediately, but not later than one (1) business day after the oral disclosure. Such oral notice to the Affected Governance Participant shall include the substance of the oral disclosure, but shall not reveal any Confidential Market Information of any other Governance Participant and must be received by the Affected Governance Participant before the name of the Affected Governance Participant is released to the Authorized Person; provided however, the identity of the Affected Party must be made available to the Authorized Person within two (2) business days of the initial oral disclosure. ISO shall provide an Affected Governance Participant and counsel for the Participants Committee with written notice, which shall include electronic communication, of any oral disclosure as soon as possible, but not later than two (2) business days after the date of the initial oral disclosure.

3.3 Response to Information Requests.

3.3.1 Subject to the provisions of Section 3.3.2 below, ISO shall supply Confidential Market Information to the Authorized Person in response to any Information Request within five (5) business

days of the receipt of the Information Request, to the extent that the requested Confidential Market Information can be made available within such period; provided however, that in no event shall Confidential Market Information be released prior to the end of the fourth (4th) business day without the express consent of the Affected Governance Participant. To the extent that ISO can not reasonably prepare and deliver the requested Confidential Market Information within such five (5) day period, ISO shall, within such period, provide the Authorized Person with a written schedule for the provision of such remaining Confidential Market Information. Upon providing Confidential Market Information to the Authorized Person, ISO shall either provide a copy of the Confidential Market Information to the Affected Governance Participant(s), or provide a listing of the Confidential Market Information disclosed; provided, however, that ISO shall not reveal any Governance Participant's Confidential Market Information to any other Governance Participant.

3.3.2 Notwithstanding section 3.3.1, above, should ISO or an Affected Governance Participant or the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) object to an Information Request or any portion thereof, ISO, the Affected Governance Participant and/or the Participants Committee may, within four (4) business days following ISO's receipt of the Information Request, request, in writing (which shall include electronic communication) addressed to the State Commission with a copy to either the Affected Governance Participant, ISO and/or counsel to the Participants Committee, as the case may be, a conference with the State Commission or the State Commission's authorized designee to resolve differences concerning the scope or timing of the Information Request; provided, however, nothing herein shall require the State Commission to participate in any conference. Any party to the conference may seek assistance from FERC staff in resolution of the dispute. Should such conference be refused by any participant, or not resolve the dispute, then ISO, the Affected Governance Participant, the Participants Committee (with respect to an Information Request that applies to multiple Governance Participants) or the State Commission may initiate appropriate legal action at FERC within three (3) business days following receipt of written notice from any conference participant terminating such conference. Any complaints filed at FERC objecting to a particular Information Request shall be designated by the party as a "fast track" complaint and each party shall bear its own costs in connection with such FERC proceeding. If no FERC proceeding regarding the Information Request is commenced by ISO, the Affected Governance Participant or the State Commission within such three day period, ISO shall utilize its best efforts to respond to the Information Request promptly. During any pending FERC proceeding regarding an Information Request, ISO shall continue to maintain the confidentiality of the Confidential Market Information subject to such Information Request.

3.3.3 To the extent that a response to any Information Request requires disclosure of Confidential Market Information of two or more Affected Governance Participants, ISO shall, to the extent possible, segregate such information and respond to the Information Request separately for each Affected Governance Participant.

4. Remedies.

4.1 Material Breach. The Authorized Person agrees that release of Confidential Market Information to persons not authorized to receive it constitutes a breach of this Agreement and may cause irreparable harm to ISO and/or the Affected Governance Participant. In the event of a breach of this Agreement by the Authorized Person, ISO shall terminate this Agreement upon written notice to the Authorized Person and his or her Authorized Commission, and all rights of the Authorized Person hereunder shall thereupon terminate; provided, however, that ISO may restore an individual's status as an Authorized Person after consulting with the Affected Governance Participant and to the extent that: (i) ISO determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Person; (ii) there were no harm or damages suffered by the Affected Governance Participant; or (iii) similar good cause shown. Any appeal of ISO's actions under this section shall be to FERC.

4.2 Judicial Recourse. In the event of any breach of this Agreement, ISO, the Affected Governance Participant and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) an order from FERC requiring any breach to cease and preventing any future breaches; (b) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (c) the immediate return of all Confidential Market Information to ISO. The Authorized Person expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information to ISO.

4.3 Waiver of Monetary Damages. No Authorized Person shall have responsibility or liability whatsoever under this Agreement for any and all liabilities, losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of, or in connection with, the release of Confidential Market Information to persons not authorized to receive it, provided that such Authorized Person is an employee or Governance Participant of an Authorized Commission at the time of such unauthorized release. Nothing in this Section 4.3 is intended to limit the liability of any person who is not an employee of or a Governance Participant of an

Authorized Commission at the time of such unauthorized release for any and all economic losses, damages, demands, fines, monetary judgments, penalties, costs and expenses caused by, resulting from, or arising out of or in connection with such unauthorized release.

5. Jurisdiction. The Parties agree that (i) any dispute or conflict requesting the relief in sections 4.1 and 4.2(a) above shall be submitted to FERC for hearing and resolution; (ii) any dispute or conflict requesting the relief in section 4.2(c) above may be submitted to FERC or any court of competent jurisdiction for hearing and resolution; and (iii) jurisdiction over all other actions and requested relief shall lie in any court of competent jurisdiction.

6. Notices. All notices required pursuant to the terms of this Agreement shall be in writing, and served at the following addresses or email addresses:

If to the Authorized Person:

-

—

—

—

(email address)

with a copy to

—

—

—

(email address)

If to Counsel for the Participants Committee:

—

(email address)
with a copy to

(email address)

If to ISO:

(email address)
with a copy to

(email address)

7. Severability and Survival. In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. In the event of conflicts between the terms of this Agreement and the Operating Agreement, the terms of the Operating Agreement shall in all events be controlling. The Authorized Person acknowledges that any and all obligations of the Authorized Person hereunder shall survive the severance or termination of any employment or retention relationship between the Authorized Person and their respective Authorized Commission.

8. Representations. The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.

9. Third Party Beneficiaries. The Parties specifically agree and acknowledge that each Governance Participant is an intended third party beneficiary of this Agreement entitled to enforce its provisions.

10. Counterparts. This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.

11. Amendment. This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

ISO NEW ENGLAND INC.

By:

Name:

Title:

AUTHORIZED PERSON

By:

Name:

Title:

APPENDIX B
FORM OF CERTIFICATION

This Certification (the “Certification”) is given this ____ day of _____, 200_, by _____, a _____ (the “Authorized Commission”), to and for the benefit of ISO New England Inc. (“ISO”) and its Governance Participants. The Authorized Commission and ISO shall be referred to herein collectively as the “Parties”.

Whereas, the Authorized Commission has designated the individuals on attached Exhibit “A” (the “Authorized Persons”) to receive Confidential Market Information from ISO, and

Whereas, the Authorized Persons and ISO have, or will, enter into non-disclosure agreements, governing the rights and obligations of the Authorized Persons, ISO and others regarding the Authorized Persons’ access to, provision of, use and control of the Confidential Market Information (the “Non-Disclosure Agreements”), and

Whereas, as a condition precedent to the execution of the Non-Disclosure Agreements and provision of Confidential Market Information to the Authorized Persons, the Authorized Commission is required to make certain representations and warranties to ISO, and

Whereas, ISO agrees to provide Confidential Market Information to the Authorized Persons, in their capacity as agents of the Authorized Commission, subject to the terms of this Certification, the Non-Disclosure Agreements, and an appropriate order of the Federal Energy Regulatory Commission protecting the confidentiality of such data;

Whereas, the Parties desire to set forth those representations and warranties herein.

Now, therefore, the Authorized Commission hereby makes the following representations and warranties, all of which shall be true and correct as of the date of execution of this Certification, and at all times thereafter, and with the express understanding that ISO and any Affected Member shall rely on each representation and/or warranty:

1. Definitions. Terms contained, but not defined, herein shall have the definitions or meanings ascribed to such terms in the Non-Disclosure Agreement or the ISO New England Information Policy.

2. Requisite Authority.

- a. The Authorized Commission hereby certifies that it has all necessary legal authority to execute, deliver, and perform the obligations in this Certification.

- b. Each Authorized Person is, at the time of the execution of this Certification, an employee of, or consultant to, the Authorized Commission, and has not materially breached any existing or past nondisclosure agreement or obligation, except as has been disclosed by the Authorized Commission to ISO in writing.

- c. The Authorized Persons have, through all necessary action of the Authorized Commission, been appointed and directed by the Authorized Commission to execute and deliver the Non-Disclosure Agreements to ISO and receive Confidential Market Information on the Authorized Commission's behalf and for its benefit.

- d. The Authorized Commission will, at all times after the provision of Confidential Market Information to the Authorized Persons, provide ISO with: (i) written notice of any changes in the Authorized Persons' qualification as an Authorized Person within two (2) business days of such change; (ii) written confirmation to any inquiry by ISO regarding the status or identification of any specific Authorized Person within two (2) business days of such request, and (iii) periodic written updates, no less often than semi-annually, containing the names of all Authorized Persons appointed by the Authorized Commission.

3. Protection of Confidential Market Information.

- a. The Authorized Commission has adequate internal procedures, to protect against the release of any Confidential Market Information by the Authorized Persons or other employee or agent of the Authorized Commission, and the Authorized Commission and the Authorized Persons will strictly enforce and periodically review all such procedures. In the event that ISO terminates a Non-Disclosure Agreement with an Authorized Person, and does not restore such individual's status as an Authorized Person, then the Authorized Commission shall review such internal procedures.

- b. The Authorized Commission has legal authority to protect the confidentiality of Confidential Market Information from public release or disclosure and/or from release or

disclosure to any other person or entity, either by the Authorized Commission or the Authorized Persons, as agents of the Authorized Commission.

c. The Authorized Commission shall ensure that Confidential Market Information and shall be maintained by, and accessible only to, the Authorized Persons.

d. The Authorized Commission and its Authorized Person(s) shall not disclose the Confidential Market Information.

4. Defense Against Requests for Disclosure. The Authorized Commission shall defend against, and will direct the Authorized Persons to defend against, disclosure of any Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Commission shall provide ISO with prompt notice of any such Third Party Request or legal proceedings, and shall consult with ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Commission agrees to furnish only that portion of the Confidential Market Information which their legal counsel advises ISO (and of which ISO shall, in turn, advise any Affected Member) in writing is legally required to be furnished, and to exercise then-best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

5. Use and Destruction of Confidential Market Information.

a. The Authorized Commission shall use, and allow the use of, the Confidential Market Information solely for the purpose of assisting the Authorized Commission in discharging its legal responsibility to monitor the wholesale and retail electricity markets, operations, transmission planning and siting, and generation planning and siting materially affecting retail customers within the State in which the Authorized Commission has regulatory jurisdiction, and for no other purpose. Without limiting the foregoing, the Authorized Commission shall not use its right to acquire Confidential Market Information as a means of conducting discovery or providing evidence during an adversarial proceeding against an Affected Governance Participant or any group of Participants. The Authorized Commission, however, shall not be prevented from using in an adversarial proceeding Confidential Market Information the Authorized Commission has obtained if: (i) such information becomes known in that proceeding through disclosure by entities other than the Authorized Commission; and (ii) the Authorized Commission discloses such

Confidential Market Information consistent with the protections and procedures governing the disclosure of Confidential Market Information to parties in that proceeding; or (iii) the information being disclosed no longer meets the definition of Confidential Market Information.

b. Upon completion of the inquiry or investigation referred to in any Information Request initiated by or on behalf of the Authorized Commission, or for any reason any Authorized Person is, or will no longer be an Authorized Person, the Authorized Commission will ensure that such Authorized Person either (a) returns the Confidential Market Information and all copies thereof to ISO, or (b) provides a certification that the Authorized Person and/or the Authorized Commission has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information, unless such actions are inconsistent with or prohibited by applicable state law, in which case the Authorized Commission shall continue to maintain the confidentiality of the Confidential Market Information in accordance with the terms and conditions of this Certification.

6. Notice of Disclosure of Confidential Market Information. The Authorized Commission shall promptly notify ISO of any inadvertent or intentional release or possible release of the Confidential Market Information provided to any Authorized Person, and shall take all available steps to minimize any further release of Confidential Market Information and/or retrieve any Confidential Market Information that may have been released.

7. Ownership and Privilege. Nothing in this Certification, or incident to the provision of Confidential Market Information to the Authorized Person pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of ISO and/or the Affected Governance Participant.

Executed, as of the date first set out above.

[Commission]

By: _____

Its: _____

[SEE NEXT PAGE]

EXHIBIT A

CERTIFICATION LIST OF AUTHORIZED PERSONS

Name of Authority	Mailing Address	Email	Tel #	Scope and Duration
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APPENDIX C

FORM OF ACADEMIC INSTITUTION NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (the “Agreement”) is made this _____ day of _____, 200_, by and between _____, (the “Authorized Institution”), with offices at _____ and ISO New England Inc., a Delaware corporation, with offices at One Sullivan Road, Holyoke, Massachusetts, 01040-2841 (the “ISO”). The Authorized Institution and the ISO shall be referred to herein individually as a “Party,” or collectively as the “Parties.”

RECITALS

Whereas, the ISO serves as the Regional Transmission Organization for the New England Control Area, and operates and oversees wholesale markets for electricity pursuant to the requirements of the ISO Tariff, as defined below; and

Whereas, the External Market Monitor (as defined below) serves as the independent market monitor for ISO’s wholesale markets for electricity, and

Whereas, the ISO New England Information Policy requires that the ISO and the External Market Monitor maintain the confidentiality of Confidential Market Information; and

Whereas, the ISO New England Information Policy permits the ISO and the External Market Monitor to disclose Confidential Market Information to the Authorized Institution upon satisfaction of conditions stated in the ISO New England Information Policy, including, but not limited to, the execution of this Agreement by the Authorized Institution and the maintenance of the confidentiality of such information by the Authorized Institution pursuant to the terms of this Agreement; and

Whereas, the ISO desires to provide the Authorized Institution with access to Confidential Market Information, consistent with the ISO’s and the External Market Monitor’s obligations and duties under the ISO New England Information Policy, the ISO Tariff and other applicable FERC directives; and

Whereas, this Agreement is a statement of the conditions and requirements, consistent with the requirements of the ISO New England Information Policy, whereby the ISO may provide Confidential Market Information to the Authorized Institution.

NOW, THEREFORE, intending to be legally bound, the Parties hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the ISO Tariff.

1.1 Affected Governance Participant. A Governance Participant, which as a result of its participation in the markets administered by the ISO, provided Confidential Market Information to the ISO, which Confidential Market Information is requested by, or is disclosed to an Authorized Institution under this Agreement.

1.2 Authorized Researcher. Shall have the meaning set forth in the ISO New England Information Policy.

1.3 Confidential Market Information. Shall mean *Confidential Information* (as defined in the ISO New England Information Policy) consisting of market data relating to the markets administered by the ISO, including data supplied by Governance Participants and aggregate data regularly compiled by the ISO. Confidential Market Information shall not include the following categories of information without excluding any objective market data associated with them that would otherwise be provided under the first sentence of this definition: (i) draft versions of reports and analyses, (ii) internal ISO documents not related to market data, (iii) attorney-client communications, (iv) attorney work-product privileged information, (v) communications about Confidential Market Information between an Affected Governance Participant and the ISO/External Market Monitor, except to the extent that the communications become part of final written reports or final written analyses by the ISO/External Market Monitor, (vi) communications between an Affected Governance Participant and the ISO made on a confidential basis as part of a settlement proceeding or negotiation, and (vii) information provided to the ISO on a confidential basis as part of an Alternative Dispute Resolution proceeding. If the aforementioned information in (i) through (vii) is furnished to the Authorized Institution, such information shall be protected according to the terms of this Agreement, and the Authorized Institution shall return such information to the ISO as promptly as possible.

1.4 Competitive Duty Personnel. Shall mean a person whose duties include (i) the marketing or sale of electric power at wholesale; (ii) the purchase or resale of electric power at wholesale; (iii) the direct supervision of any employee with duties specified in subparagraph (i) or (ii) of this paragraph; or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale.

1.5 FERC. The Federal Energy Regulatory Commission.

1.6 External Market Monitor. Shall have the meaning set forth in the ISO Tariff.

1.7 Governance Participant. Shall have the meaning set forth in the ISO Tariff.

1.8 ISO New England Information Policy. Shall have the meaning set forth in the ISO Tariff.

1.9 Information Request. A written request by the Authorized Institution in accordance with the terms of this Agreement for disclosure of Confidential Market Information pursuant to Section 3.4 of the ISO New England Information Policy.

1.10 ISO Tariff. The ISO's Transmission, Markets and Services Tariff, as it may be amended from time to time.

1.11 Non-Disclosure Certificate. Shall mean the certificate annexed hereto by which Authorized Researchers who have been granted access to Confidential Market Information shall certify their understanding that such access to Confidential Market Information is provided pursuant to the terms and restrictions of this Agreement, that they are not Competitive Duty Personnel, and that they have read this Agreement and agree to be bound by it.

1.12 Notes of Confidential Market Information. Shall mean memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in the definition of Confidential Market Information set forth above. Notes of Confidential Market Information are subject to the same restrictions provided in this Agreement for Confidential Market Information except as specifically provided in this Agreement.

1.13 Proposed Research. Shall have the meaning set forth in Section 3.4 of the Information Policy.

1.14 Third Party Request. Any request or demand by any entity upon the Authorized Institution for release or disclosure of Confidential Market Information. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

2. Protection of Confidentiality.

2.1 Duty to Not Disclose. The Authorized Institution represents and warrants that it:

(i) is duly authorized to enter into and perform this Agreement; (ii) has adequate procedures to protect against the release of Confidential Market Information; and (iii) is familiar with, and will comply with, all such applicable procedures. The Authorized Institution hereby covenants and agrees not to disclose the Confidential Market Information and to deny any Third Party Request and defend against any legal process that seeks the release of Confidential Market Information in contravention of the terms of this Agreement.

2.2 Defense Against Third Party Requests. The Authorized Institution shall defend against any disclosure of Confidential Market Information pursuant to any Third Party Request through all available legal process, including, but not limited to, obtaining any necessary protective orders. The Authorized Institution shall provide the ISO, and the ISO shall provide each Affected Governance Participant and counsel for the Participants Committee, with prompt notice of any such Third Party Request or legal proceedings, and shall consult with the ISO and/or any Affected Governance Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Authorized Institution agrees to furnish only that portion of the Confidential Market Information which its legal counsel advises the ISO (and of which the ISO shall, in turn, advise any Affected Governance Participants) in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Market Information.

2.3 Care and Use of Confidential Market Information.

2.3.1 Control of Confidential Market Information. The Authorized Institution shall be the custodian of any and all Confidential Market Information received pursuant to the terms of this Agreement from the ISO or the External Market Monitor.

2.3.2 Access to Confidential Market Information. The Authorized Institution shall ensure that Confidential Market Information received by that Authorized Institution is disseminated only to those persons publicly identified as Authorized Researchers in the applicable Information Request, and that such Authorized Researchers have been advised of the confidential nature of the Confidential Market Information and have agreed to abide by the terms of this Agreement by signing a Non-Disclosure Certificate. The Authorized Institution agrees that it shall be liable for any breach of this Agreement by any of the Authorized Researchers.

2.3.3 Competitive Duty Personnel. If any person who has been an “Authorized Researcher” subsequently becomes Competitive Duty Personnel, that person shall thereafter have no access to Confidential Market Information, shall return all such materials to the Authorized Institution, and shall continue to comply with the requirements set forth in this Non-Disclosure Agreement with respect to Confidential Market Information to which such person previously had access.

2.3.4 Use of Confidential Market Information. The Authorized Institution shall use the Confidential Market Information solely for the purpose of the Proposed Research. An Authorized Researcher may make copies of Confidential Market Information, but such copies become Confidential Market Information. An Authorized Researcher may make notes of Confidential Market Information, which shall be treated as Notes of Confidential Market Information if they disclose the contents of Confidential Market Information. In the event that the Authorized Institution or any Authorized Researcher desires to publish any material related to or that relies upon the Confidential Market Information, the Authorized Institution or Authorized Researcher must ensure that the Confidential Market Information is sufficiently redacted or summarized so that it may not be identified. Any such publication must be approved in writing by the ISO in advance of its release.

2.3.5 Return of Confidential Market Information. Upon completion of the Proposed Research, or upon termination of this Agreement for any reason, the Authorized Institution shall (a) return the Confidential Market Information and all copies thereof to the ISO, or (b) provide a certification that the Authorized Institution has destroyed all paper copies and deleted all electronic copies of the Confidential Market Information. The ISO may waive this condition in writing if such Confidential Market

Information has become publicly available or non-confidential in the course of business or pursuant to the ISO Tariff or order of the FERC.

2.3.6 Notice of Disclosures. The Authorized Institution shall promptly notify the ISO, and the ISO shall promptly notify any Affected Governance Participant, of any inadvertent or intentional release or possible release of the Confidential Market Information provided pursuant to this Agreement.

The Authorized Institution shall take all steps to minimize any further release of Confidential Market Information, and shall take reasonable steps to attempt to retrieve any Confidential Market Information that may have been released.

2.4 Ownership and Privilege. Nothing in this Agreement, or incident to the provision of Confidential Market Information to the Authorized Institution pursuant to any Information Request, is intended, nor shall it be deemed, to be a waiver or abandonment of any legal privilege that may be asserted against, subsequent disclosure or discovery in any formal proceeding or investigation. Moreover, no transfer or creation of ownership rights in any intellectual property comprising Confidential Market Information is intended or shall be inferred by the disclosure of Confidential Market Information by the ISO, and any and all intellectual property comprising Confidential Market Information disclosed and any derivations thereof shall continue to be the exclusive intellectual property of the ISO and/or the Affected Governance Participant.

3. Remedies.

3.1 Material Breach. The Authorized Institution agrees that any release of Confidential Market Information to persons not authorized to receive it or any publication of any material related to or that relies upon the Confidential Market Information which is not (i) approved in writing by the ISO prior to publication and (ii) redacted or summarized in such a manner that the Confidential Market Information may not be identified shall constitute a breach of this Agreement and may cause irreparable harm to the ISO and/or the Affected Governance Participant. In the event of a breach of this Agreement by the Authorized Institution, the ISO may terminate this Agreement upon written notice to the Authorized Institution, and all rights of the Authorized Institution hereunder shall thereupon terminate; provided, however, that the ISO may restore status as an Authorized Institution after consulting with the Affected Governance Participant and to the extent that: (i) the ISO determines that the disclosure was not due to the intentional, reckless or negligent action or omission of the Authorized Institution; (ii) there were no harm or damages suffered by the Affected Governance Participant; or (iii) similar good cause shown.

Notwithstanding the foregoing, the Authorized Institution hereby shall indemnify, save, hold harmless, discharge, and release the ISO and each affected Governance Participant from and against any and all payments, liabilities, damages, losses or costs and expenses paid or directly incurred by the ISO and/or each affected Governance Participant arising from, based upon, related to, or associated with the breach of, or failure to perform or satisfy, any obligation of the Authorized Institution set forth in this Agreement.

3.2 Judicial Recourse. In the event of any breach of this Agreement, the ISO, the Affected Governance Participant and/or the Participants Committee shall have the right to seek and obtain at least the following types of relief: (a) temporary, preliminary, and/or permanent injunctive relief with respect to any breach and (b) the immediate return of all Confidential Market Information to the ISO. The Authorized Institution expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Market Information to the ISO.

4. Jurisdiction. The Parties agree that jurisdiction over all other actions and requested relief with respect to the Agreement shall lie in any court of competent jurisdiction.

5. Notices. All notices required pursuant to the terms of this Agreement shall be in writing, and served at the following addresses or email addresses:

If to the Authorized Institution:

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(email address)

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with a copy to

(email address)

If to Counsel for the Participants Committee:

(email address)

with a copy to

(email address)

If to ISO:

(email address)

with a copy to

(email address)

6. Severability and Survival. In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms.

7. Representations. The undersigned represent and warrant that they are vested with all necessary corporate, statutory and/or regulatory authority to execute and deliver this Agreement, and to perform all of the obligations and duties contained herein.

8. Third Party Beneficiaries. The Parties specifically agree and acknowledge that each Governance Participant is an intended third party beneficiary of this Agreement entitled to enforce its provisions.

9. Counterparts. This Agreement may be executed in counterparts and all such counterparts together shall be deemed to constitute a single executed original.

10. Amendment. This Agreement may not be amended except by written agreement executed by authorized representatives of the Parties.

ISO NEW ENGLAND INC.

AUTHORIZED INSTITUTION

By:

By:

Name:

Name:

Title:

Title:

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Confidential Market Information is provided to me pursuant to the terms and restrictions of the attached Non-Disclosure Agreement, that I have read such Non-Disclosure Agreement, and that I agree to be bound by it. In addition, I hereby certify that I am not a Competitive Duty Personnel as that term is defined in the Non-Disclosure Agreement. I understand that the contents of the Confidential Market Information, any notes or other memoranda, or any other form of information that copies or discloses Confidential Market Information shall not be disclosed to anyone other than in accordance with that Non-Disclosure Agreement.

By:

Title:

Representing:

Date: _____

—

[NOTICE ADDRESS]

APPENDIX D

FORM OF PIPELINE NON-DISCLOSURE AGREEMENT

~~_____ This NON-DISCLOSURE AGREEMENT (the “Agreement”) is made this ____ day of _____, 2013 (the “Effective Date”) between _____ (the “Pipeline”) and ISO NEW ENGLAND INC., a Delaware corporation (“ISO-NE”) (the Pipeline and ISO-NE, individually, a “Party” and, collectively, the “Parties”).~~

~~WHEREAS, the Parties are working to coordinate the sharing of relevant data regarding gas and electric operations in New England to ensure the reliability of both systems; and~~

~~WHEREAS, from January 24, 2013 through April 30, 2013, ISO-NE’s Information Policy allows it to share forecast and real-time output information concerning natural gas fueled generation from resources located within the New England Control Area to the operating personnel of the interstate natural gas pipeline companies that operate the pipeline that serves directly that generator or serves the local distribution company that serves that generator; and~~

~~_____ WHEREAS, in furtherance thereof, the Parties may, but are in no way obligated to, deliver to each other certain information; and~~

~~WHEREAS this Agreement is entered into to ensure that Confidential Information is not disclosed to unauthorized recipients in violation of this Agreement.~~

~~_____ NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:~~

~~1. Definition of Confidential Information. (a) The following constitutes “Confidential Information”: (i) information regarding forecast and real-time electric output of natural gas fueled generating resources located within New England (“Affected Generators”); (ii) oral, written or recorded/electronic information about either Party, its vendors, agents and customers (including participants in the New England Power Pool) that is marked confidential” or “proprietary” if written or recorded/electronic; and (iii) all reports, summaries, compilations, analyses, notes or other information which contain any such information described in clause (i) or (ii).~~

~~(b) — This provision shall not apply to any information which:~~

~~(i) — can be demonstrated to have been in the possession of the Party receiving the information (the “Receiving Party”) prior to receipt thereof from the Party disclosing the information (the “Disclosing Party”) without any obligation of confidentiality or to have been developed in the course of work entirely independent of any disclosure made hereunder or the subject matter of this Agreement;~~

~~(ii) — is or becomes part of the public domain other than through breach of this Agreement or through the fault of the Receiving Party; or~~

~~(iii) — has been independently acquired or developed by the Receiving Party or its officers, employees, consultants, advisers or attorneys without violating any obligations under this Agreement.~~

~~(c) — The Parties acknowledge and agree that nothing in this Agreement is intended to create an obligation on a Party to disclose information of any kind to the other Party (including, without limitation, any information the disclosure of which, in the sole judgment of such Party, would violate any law or governmental regulation) or to take any action of any kind with respect to facilities that the Party owns or controls in response to any information that the Party receives from the other Party. The Disclosing Party shall have no liability to the Receiving Party for the Receiving Party’s reliance on Confidential Information provided by the Disclosing Party or for any actions that the Receiving Party takes (or fails to take) with respect to such Confidential Information.~~

~~2. — Non Disclosure.~~

~~(a) — The “Confidential Period,” as used herein, shall mean the period of six months following the disclosure of the discrete piece of Confidential Information. During the Confidential Period, the Receiving Party shall not, in any manner, either directly or indirectly, divulge, disclose, or communicate to any person, firm, corporation or other entity, or use for any purposes other than those set forth herein, the relevant Confidential Information acquired from the Disclosing Party, without the express prior written consent of the Disclosing Party and any Affected Generators. During the Confidential Period, ISO-NE shall not disclose the relevant Confidential Information of the Pipeline to anyone except to~~

~~officers and employees of ISO-NE responsible for reliable electric operations and to the outside consultants, advisers and/or attorneys who advise those responsible employees, in each case who have a need to know to ensure the reliability of electric operations in New England and who have been advised of the confidential nature of the Confidential Information and who have agreed to abide by the terms of this Agreement. During the Confidential Period, the Pipeline shall not disclose the relevant Confidential Information of ISO-NE or any Affected Generator to anyone except the Pipeline's transmission function employees, as defined by the Federal Energy Regulatory Commission, and to the outside consultants, advisers and/or attorneys who advise those transmission function employees, in each case who have a need to know to ensure the reliability of gas operations in New England and who have been advised of the confidential nature of the Confidential Information and who have agreed to abide by the terms of this Agreement. Subject to the limitations of liability contained herein, the Receiving Party agrees that it shall be liable for any breach of this Agreement by its officers, employees, consultants, advisers and attorneys.—~~

~~(b) — Upon execution of this Agreement, each Party shall advise the other Party in writing of its disclosure procedures (i.e., individuals within the categories described above to be called, or email addresses to be used for the delivery of electronic information) to be followed in sharing Confidential Information pursuant to this Agreement. Such procedures may be revised from time to time by either Party at its sole discretion by providing written notice to the other Party. Each Party agrees to provide the Confidential Information only to the individuals specified in the procedures, if any.—~~

~~(c) — If the Receiving Party or one of its representatives is required to disclose Confidential Information by subpoena, law or other directive of a court, administrative agency, legislative or judicial body, governing tribunal or commission, or arbitration panel, the Receiving Party hereby agrees to provide the Disclosing Party with prompt notice of such request or requirement. Moreover, if the Pipeline is the Receiving Party, it shall also give notice to ISO, which shall in turn give notice to any Affected Generator. The Disclosing Party and any Affected Generators shall jointly (i) seek an appropriate protective order or other remedy, (ii) consult with the Receiving Party with respect to taking steps to resist or narrow the scope of such request or legal process, or (iii) waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party and Affected Generators, if any, waive compliance with the provisions hereof, the Receiving Party hereby agrees to furnish only that portion of the Confidential Information which the Receiving Party's counsel advises is legally required and to request that confidential treatment will be accorded such Confidential Information.—~~

~~3. Ownership and Return of Confidential Information.~~

~~(a) All Confidential Information shall remain the property of the Disclosing Party or the Affected Generator, as applicable.~~

~~(b) If the Disclosing Party, in its sole discretion, so requests, the Receiving Party will promptly deliver to the Disclosing Party all Confidential Information, including all copies, reproductions, summaries, compilations, or extracts thereof in the Receiving Party's possession or in the possession of any representative of the Receiving Party, but excluding documents, memoranda, notes and other writings prepared by the Receiving Party or by the Receiving Party's representatives to whom the Receiving Party has delivered the Confidential Information, which contain the Confidential Information. All documents, memoranda, notes and other writings prepared by the Receiving Party, or by the Receiving Party's representatives to whom the Receiving Party has delivered the Confidential Information, which contain the Confidential Information (including recorded/electronic versions thereof) shall be destroyed by the Receiving Party (such destruction to be confirmed in writing to the Disclosing Party). Notwithstanding anything herein to the contrary, the Receiving Party may retain one archival copy of the Confidential Information as required to meet its legal obligations. If an archival copy is retained, it will be treated by the Receiving Party the same way Receiving Party treats its own confidential business information. Also, the Receiving Party shall not be obligated to search for and destroy, delete or erase or return Confidential Information, or any analyses, compilations, studies or other documents which have been prepared and which contain any Confidential Information, if such are maintained as part of a back-up or archival system or records in electronic information and storage systems, including but not limited to such systems as any recording media for analog or digital information, PDA's, smart phones or cell phones, computers, phone systems, instant messages, e-mail or voice mail, as part of the routine maintenance and operation of such systems. The Receiving Party will treat Confidential Information in its electronic information and storage systems the same way the Receiving Party treats its own confidential business information.~~

~~—~~

~~4. Equitable Relief; Damages. Without prejudice to the rights and remedies otherwise available, the Disclosing Party shall be entitled to seek direct damages and (subject to the court's requirements for bonding and burden of proof) equitable relief by way of injunction or otherwise if the Receiving Party or any of the Receiving Party's representatives breach or threaten to breach any of the provisions of this Agreement. The Receiving Party reserves all rights to oppose, and defenses to, such relief. **ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN**~~

~~NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL (INCLUDING LOST OPPORTUNITY OR PROFIT) DAMAGES OR FOR DAMAGES IN TORT.~~

5. ~~Term; Survival.~~ This Agreement terminates May 1, 2013. The obligations of the Parties with respect to Confidential Information disclosed hereunder prior to the date of such termination shall survive as specified herein. The following provisions shall survive the termination of this Agreement for the purposes of any claim brought under or relating to this Agreement: Section 4 (Equitable Relief; Damages); Section 5 (Survival); and Section 7 (Governing Law; Venue; Jury Trial).

6. ~~No Waiver.~~ Each Party understands and agrees that no failure or delay by the other Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

7. ~~GOVERNING LAW; VENUE; JURY TRIAL. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT REGARD TO ITS CONFLICTS OF LAWS PRINCIPLES. VENUE FOR ANY ACTION HEREUNDER SHALL BE WITHIN MASSACHUSETTS. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY.~~

8. ~~Assignment Prohibited.~~ Any assignment of a Party's rights, obligations or duties under this Agreement without the other Party's prior written consent shall be void. ISO-NE shall give the Affected Generators notice of a proposed assignment by the Pipeline.

9. ~~Entire Agreement.~~ This Agreement contains the entire agreement between the Parties concerning the confidentiality of the Confidential Information and supercedes all previous agreements, and no modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon the parties, unless approved in writing by each of them.

10. ~~Severability.~~ If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. ~~11. — Due Authorization. Each Party represents and warrants that (a) it has full power and authority to enter into this Agreement, (b) execution of this Agreement will not violate any other agreement with a third party, and (c) the person signing this Agreement on its behalf has been properly authorized and empowered to enter into this Agreement.~~

12. ~~12. — No Warranty. The Parties acknowledge that, while it is their intention to provide to each other Confidential Information which is accurate and complete, no Party makes any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information.— Notwithstanding the foregoing, no Party shall disclose to the other Confidential Information about which it has direct knowledge of its inaccuracy or incompleteness. No Party shall have an obligation hereunder to amend or update Confidential Information once it has been disclosed.—~~

13. ~~13. — No Third Party Beneficiaries. The Parties do not confer any rights or remedies upon any person other than the Parties to this Agreement and their respective successors and permitted assigns.—~~

~~IN WITNESS WHEREOF, the parties hereto have executed this Non-Disclosure Agreement as of the date first written above.~~

ISO NEW ENGLAND INC. _____

By _____ By _____

Title: _____ Title: _____

New England Governors, State Utility Regulators and Related Agencies

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