

## **SECTION III**

### **MARKET RULE 1**

#### **APPENDIX D**

### **ALTERNATIVE DISPUTE RESOLUTION REVIEW**

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## **ALTERNATIVE DISPUTE RESOLUTION REVIEW**

### **III.D.1 ADR Review**

**III.D.1.1 ISO Actions That Can Be Reviewed** A Market Participant may obtain prompt ADR review of any ISO action that is expressly subject to ADR review under the provisions of this Market Rule or an Appendix to this Market Rule (“Reviewable Action”), currently those actions specified in Section III.A.10.1 of *Appendix A* and Section III.A.7.1 of *Appendix B*.

**III.D.1.2 Requests for ADR Review.** The Market Participant must make a written request for ADR review within 30 days of notice from the ISO of the imposition of such Reviewable Action or proposed disclosure of such Reviewable Action, if the Market Participant proposes to seek ADR review.

### **III.D.2 Preliminary Meeting**

Concurrent with a request for ADR review, the Market Participant shall deliver to the ISO any information that it believes is pertinent to the ISO's decision that it wishes to submit to the ADR Neutral. The ISO will deliver to the Market Participant within ten business days thereafter a listing of all information on which it relied in making its decision and any other information that it intends to provide to the ADR Neutral, together with copies of any of such information not previously supplied to the Market Participant. The ISO shall provide, together with its listing of information, a notice setting a date not sooner than five working days after the date of the notice, for a meeting between the Market Participant and the ISO to discuss their differences. The Market Participant may supply prior to the date of the meeting additional information in response to any new information delivered by the ISO. If the parties are unable to resolve their differences at the meeting, an ADR Neutral

shall be selected as provided in Section III.D.7.3 and the written information from both parties shall be forwarded to the ADR Neutral.

The written record for the ADR review will consist of (i) all information provided by the Market Participant to the ISO up to the date of the meeting held pursuant to Section III.D.2.1 above and identified by the Market Participant as relevant to the action of the ISO under review, and (ii) all information furnished by the ISO to the Market Participant that supports its prior written determination, and (iii) position statements by the Market Participant and the ISO. The Market Participant's statement of position shall include a brief written statement of its disagreement with the determination of the ISO and the specific relief that it requests.

### **III.D.3 Factual Basis for ADR Review**

ADR review will be based on facts and materials presented to the ISO by the Market Participant, as well as the facts and materials relied on by the ISO in making its decision. The goal of this process is not to create a separate ADR record, but to provide rapid review by an impartial third party of the basis for the ISO's decision and, if necessary, the granting of a remedy. ADR review is intended to operate only after the ISO and the Market Participant have made a good faith effort to discuss and resolve their differences.

#### **III.D.4 Nature of Review**

On the basis of the written record and the presentations of the ISO and the Market Participant, the ADR Neutral shall review the facts and circumstances which relate to the ISO decision and the Reviewable Action imposed by the ISO including any proposed disclosure of such Reviewable Action by the ISO. The ADR Neutral will apply the standard of review specified in the appropriate section of this Market Rule or Appendix to this Market Rule that permitted ADR review of such Reviewable Action in order to determine whether to affirm the ISO's decision or to grant a remedy.



### **III.D.5 Parties to ADR Review**

The ADR review is confidential. The only parties to an ADR review are the ISO and the Market Participant or Market Participants on which the disputed Reviewable Action is imposed. The ADR review and any record are not open to non-parties.

### **III.D.6 Remedies**

The ADR Neutral shall either affirm or remove the Reviewable Action. The decision of the ADR Neutral shall not preclude the Market Participant from presenting new information or new proposals for voluntary remedies to the ISO, nor shall it prevent the ISO from imposing remedies on the same Market Participant or Market Participants in similar circumstances based on new information or further discussions with the Market Participant. No financial compensation may be awarded in an ADR review. The decision of the ADR Neutral shall be included as a permanent part of any file or record the ISO maintains concerning the Reviewable Action.

### **III.D.7 Procedure**

**III.D.7.1 Objective.** It is the intent of the ADR process that disputes be resolved as expeditiously as possible.

**III.D.7.2 Confidentiality.** All information disclosed in the course of ADR review shall be subject to confidentiality protections that satisfy the requirements of the ISO New England Information Policy. Each ADR Neutral shall enter into a confidentiality agreement with the ISO.

**III.D.7.3 Selection and Compensation of Neutrals.** The ISO, with the advice and consent of the Participants Committee, shall identify one or more firms or individuals that are prepared to act as neutrals in ADR proceedings under this *Appendix D* (“ADR Neutrals”). ADR Neutrals shall be compensated as provided in the ISO New England Manuals.

Upon the initiation of ADR proceedings, by any Market Participant, an ADR Neutral shall be selected to handle the ADR within five (5) business days

pursuant to procedures in the ISO New England Manuals. The ADR neutral shall have no financial interest in the proceedings and no affiliation with any party that would tend to create a conflict of interest.

### **III.D.8 Hearing**

The ADR Neutral who is assigned to an ADR process shall receive the complete written record at the time of assignment. The ADR Neutral, in consultation with the parties, shall schedule a hearing to be held not later than ten (10) business days after the ADR Neutral is selected. The schedule may be altered either by consent of all parties or, if it is clearly not possible to provide a fair review within the schedule given the complexity of the record, at the direction of the ADR Neutral.

After reviewing the written record the ADR Neutral may pose questions in writing or in a conference call with representatives of both parties that he or she would like to have addressed at the hearing. All parties shall be copied on any written communications between the ADR Neutral and any other party. There shall be no oral communications between the ADR Neutral and any party unless all parties have been given notice and an opportunity to participate, other than as necessary for administrative purposes.

At the hearing each party will have up to four hours to present its views regarding the written record and applicable law. A party may, subject to such limitations as the ADR Neutral may impose, pose questions to the other party; provided that the time spent in responding to questions shall be counted against the time limit of the party asking the question. A party may reserve time for rebuttal. There will be no witnesses or cross examination, but a party may choose to have experts or counsel make all or a portion of its presentation. The ADR Neutral is free to question any presenter.

The hearing shall be held in Holyoke, Massachusetts, or such other location as the parties and the ADR Neutral may agree.

### **III.D.9 Decision**

The ADR Neutral shall render a reasoned decision in writing stating whether the Reviewable Action is affirmed, reduced or removed and the proposed disclosure may be made within five business days of the hearing. Any party may request a meeting with the ADR Neutral to discuss the ADR Neutral's decision.

### **III.D.10 Costs**

The costs of the ADR process (including any fees for the participation of the ADR Neutral in the specific proceeding but not including any retainer for the ADR Neutral) shall be assessed to the Market Participant if the Reviewable Action is affirmed and to the ISO if the Reviewable Action is removed, and apportioned by the ADR Neutral among the parties if the Reviewable Action is reduced. Costs assessed to the ISO shall be automatically included in the ISO's budget.

### **III.D.11 Related ADR Reviews**

ADR reviews involving the same Resource or Resources or Market Participant or Market Participants may be determined by the same ADR Neutral and may, in appropriate cases, be consolidated.

### **III.D.12 Effect of ADR Process**

The decision of the ADR Neutral is binding on the ISO and the Market Participant except as specifically provided in this Section III.D.12. The ISO may appeal the removal of a Reviewable Action to the Commission. A Market Participant may appeal the imposition of a Reviewable Action to the Commission prior to having requested an ADR Process or by appealing the decision of the ADR Neutral to the Commission. Except for this ADR process, a Market Participant may not seek removal of the Reviewable Action, or any other remedy against the ISO, in any forum other than the Commission, and may not contest the decision of an ADR Neutral in any forum other than the Commission. The ISO may not contest the removal of a Reviewable Action in any forum other than the Commission.

### **III.D.13 Appeal to the Commission**

A Market Participant may appeal a Reviewable Action directly to the Commission whether or not it has requested an ADR process. Prior to making such an appeal to the Commission, a Market Participant may request a written explanation of the basis for the Reviewable Action whether or not a request for ADR review has been made. In responding to such an appeal the ISO may provide the Commission with all relevant information regarding its Reviewable Action but shall be under no obligation to request confidential treatment for information specifically identifying the Market Participant whom a Reviewable Action has been taken notwithstanding anything to the contrary contained in the ISO New England Information Policy.



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