

**SECTION III**

**MARKET RULE 1**

**APPENDIX B**

**IMPOSITION OF  
SANCTIONS BY THE ISO**

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## IMPOSITION OF SANCTIONS BY THE ISO

### III.B.1 Purpose and Objectives

**III.B.1.1 Sanctionable Behavior.** This *Appendix B* sets forth the procedures and standards under which the ISO may impose sanctions for certain violations (“Sanctionable Behavior” as delineated in Section III.B.3 of this *Appendix B*) of Market Participants’ obligations under the ISO New England Filed Documents and other ISO New England System Rules (collectively, “Market Participant Obligations”). The ISO New England System Rules embody procedures and standards of conduct that are intended to assure short-term reliability and the competitiveness and efficiency of the markets. The ISO’s ability to impose sanctions under this *Appendix B* is intended to deter noncompliance by Market Participants with Market Participant Obligations that: (i) materially impairs or threatens to materially impair short-term reliability, (ii) materially impairs or threatens to materially impair the competitiveness or efficiency of the markets, (iii) involves unexcused failure to

follow certain ISO instructions, or (iv) involves unexcused failure to provide to the ISO in certain circumstances accurate and timely information required and requested by the ISO.

**III.B.1.2 Rule Changes.** If this *Appendix B* is inadequate to assure short-term reliability and the efficiency and competitiveness of markets, the ISO may promulgate new or changed rules to address the problem. The sanctions set forth in this *Appendix B* are intended to assure compliance by the Market Participants with Market Participant Obligations from time to time in effect, and are not a substitute for the appropriate modification of such Market Participant Obligations. Where an ISO New England Filed Document or other ISO New England System Rule is ambiguous, the ISO will seek clarification of the rule rather than impose sanctions on behavior that a Market Participant could reasonably believe was in compliance with Market Participant Obligations. Behavior not constituting a violation by a Market Participant of its Market Participant Obligations, and not otherwise specifically made subject

to sanction by another rule, is not Sanctionable Behavior under this

***Appendix B.***

**III.B.1.3 Objectives.**

**III.B.1.3.1 Equitable Sharing.** It is an objective of the ISO New England Filed Documents and other ISO New England System Rules to provide for equitable sharing of the responsibilities, benefits and costs resulting from the establishment of markets and the maintenance of proper standards of reliability for the New England Control Area. Each Market Participant is entitled to expect performance by other Market Participants of their Market Participant Obligations. This ***Appendix B*** is intended to create an efficient deterrent to noncompliance by Market Participants of their Market Participant Obligations. The ISO will not impose sanctions if it believes that the consequences of Sanctionable Behavior in the markets are a sufficient deterrent.

**III.B.1.3.2 ISO Standard of Conduct.** In order for the sanctions provided for within this *Appendix B* to be an effective deterrent, the application by the ISO of this *Appendix B* must be consistent and non-discriminatory.

**III.B.1.4 Interpretation.** The remaining provisions of this *Appendix B* shall be interpreted and applied consistently with this Section III.B.1.

## **III.B.2 Application of Sanctions**

**III.B.2.1 General Rule.** The ISO may impose sanctions on any Market Participant that directly engages in Sanctionable Behavior.

**III.B.2.2 Control of Resources.** With respect to a Resource, sanctions may be imposed on the Market Participant with operating control of the Resource or authority to submit bids or offers for the Resource, as appropriate.

**III.B.2.2.1 Operating Control.** A Market Participant that has authority to submit bids or offers with respect to a Resource as to which its non-Market Participant affiliate has operating control will be deemed to have operating control of such Resource for purposes of this *Appendix B*. An Ownership Share that does not provide a right to operating control or authority to submit bids or offers for a Resource shall not serve as a basis for imposition of sanctions except as set forth in Section III.B.2.2.2.

**III.B.2.2.2 Special Rule for Contract Rights.** With respect to a jointly owned Resource or External Resource where the Market Participant is not the operator of the Resource:

- (a) The Market Participant with authority to submit bids or offers for such a Resource is entitled to rely in good faith on operating parameters and information as to Resource availability, capacity and operating conditions supplied by the person with operating control of the Resource unless the Market Participant knew, or should have known, that such operating parameters or information as to Resource availability, capacity and operating condition were inaccurate.
- (b) A Market Participant that enters into a contract or new transaction under an existing service agreement which is structured in a way that provides such Market Participant authority to submit bids or offers for such Resource shall include in such contract or a supplement thereto the language with respect to contracts of the type entered into set forth in *Exhibit 2* to this *Appendix B*.
- (c) The Market Participant with authority to submit bids or offers for such a Resource shall use its reasonable efforts to ensure operation of such Resource in accordance with Market Participant Obligations, consistent with its rights under its contract. The Market Participant with authority to submit bids or offers shall be subject to sanction as if it were

the Market Participant with operating control of such Resource if (i) the person with operating control is not a Market Participant and engages in conduct that would be sanctionable if such person were a Market Participant and (ii) the Market Participant with authority to submit bids or offers fails to use reasonable efforts, consistent with its rights under its contract, to prevent operation that would otherwise be sanctionable.

**III.B.2.3 Transmission Facilities.** To the extent identified in this *Appendix B*, a Market Participant with operating control of transmission facilities may be subject to sanction with respect to operation of such facilities.

### **III.B.3 Sanctionable Behavior**

An act or omission described in any of Sections III.B.3.1, III.B.3.2, III.B.3.3, III.B.3.4, and III.B.3.5 (any such act or omission being referred to as “Sanctionable Behavior”) is subject to sanction under this *Appendix B* pursuant to the process and subject to the standards, exclusions and evaluative factors set forth in Sections III.B.4, III.B.5, and the ADR Procedures; provided that the action is intentional and not excused under sections III.B.3.2.5, III.B.3.2.6, or III.B.3.6.

**III.B.3.1 Failure to Perform.** Failure to perform, as described under Sections III.B.3.1.1, III.B.3.1.2, and III.B.3.1.3 of this *Appendix B*, may be determined by the ISO in accordance with the testing and audit procedures provided for in the ISO New England Manuals or other suitable information available to the ISO. Failure to perform is not subject to sanction if a Market Participant makes a timely submission of revised Offer Data or non-price related Supply Offer information to the ISO and performs in accordance with such revised data, but if a Market Participant’s revised data submission constitutes a misrepresentation of a Resource’s ability to perform, this may be subject to

sanction under Section III.B.3.2. The ISO may unilaterally modify a Market Participant's Offer Data and non-price related Supply Offer data in accordance with Section III.B.1.11.3(c) of this Market Rule.

**III.B.3.1.1 Failure to Provide Energy.** Failure to provide energy means a failure, in response to a Dispatch Instruction from the ISO, to attain at least 90% of the Resource's Economic Maximum Limit using the ramp rate submitted in the generator's Offer Data.

**III.B.3.1.2 Failure to Provide Services.** Failure to provide services means a failure, in response to a dispatch instruction from the ISO, to begin to move a Resource that is on line and operating at or above its Economic Minimum Limit to the new dispatch point in the dispatch instruction, based on the ramp rate submitted in the generator's Offer Data and the Supply Offer prices submitted, such that the actual output of the generator over one hour is not within 10% of the Dispatch Rate specified.

**III.B.3.1.3 Failure to Respond to Dispatch Instructions.** For a Fast Start Resource, failure to respond to dispatch instructions means a departure, by more than 25%, in meeting, in response to the Dispatch Instruction from the ISO, the operating response Offer Data time for starting up or shutting down a generating unit and, for all other Resources, failure to respond to Dispatch Instructions means a departure by the lesser of, 25% or 2 hours, in meeting the operating response Offer Data time in starting up a generating unit.

**III.B.3.1.4 Failure of ICAP Resources to Comply with Scheduling, Bidding, and Notification Requirements.** On any day in which an owner of the ICAP Resource fails to comply with the scheduling, bidding, or notification requirements applicable to ICAP Resources, or in which an owner of Installed Capacity from External Resources located in an External Control Area that has agreed not to curtail the energy associated with such Installed Capacity, or to afford it the same curtailment priority that it affords

its own Control Area load, fails to comply with scheduling, bidding, or notification requirements for certification as an owner of the ICAP Resource established in the ISO New England System Rules, the ISO may impose a financial sanction up to the product of a deficiency charge, as provided in Section III.8.5.1(d) of this Market Rule 1 (pro-rated on a daily basis), and the maximum number of MWs that the ICAP Resource failed to schedule or offer in any hour in that day; provided, however, that no financial sanction shall apply to any ICAP Resource if the energy it schedules, offers or declares to be unavailable on any day is greater than or equal to the Installed Capacity that it supplies for that day rounded down to the nearest whole MW. In addition, if an ICAP Resource fails to comply with applicable scheduling, bidding, or notification requirements, or if an owner of an ICAP Resource of Unforced Capacity from External Resources located in an External Control Area that has agreed not to curtail the Energy associated

with such Unforced Capacity, or to afford it the same curtailment priority that it affords its own Control Area load, fails to comply with the scheduling, bidding, or notification requirements for certification as an owner of the ICAP Resource established in the ISO New England System Rules during an hour in which the ISO curtails Transactions associated with New England ICAP Resources, the ISO may impose an additional financial sanction equal to the product of the number of MWs the ICAP Resource failed to schedule during that hour and the corresponding Real-Time LMP at the applicable External Node.

**III.B.3.1.5 Other Facility Failures Excluded.** Failure to perform does not include the effect of any failure or other unavailability of transmission, distribution or communications facilities so long as such failure or other unavailability is outside the reasonable control of the Market Participant.

### **III.B.3.2 Inaccurate Bid or Operating Information**

#### **III.B.3.2.1 Understatement of Economic Maximum Limit.**

- (a) Understatement of a generating Resource's Economic Maximum Limit means the submission of a Economic Maximum Limit value, including any subsequent revision of the Economic Maximum Limit value, in circumstances where the Market Participant knew or should have known that the Resource could currently attain an Economic Maximum Limit value consistent with Accepted Electric Industry Practice that is at least five percent (or 25 MW, whichever is less) greater than the Economic Maximum Limit value submitted by the Market Participant, and which submission is not excused under the provisions of Sections III.B.3.2.5, III.B.3.2.6, or III.B.3.6 .
- (b) The ability of a Resource to perform for short periods during Emergencies may vary from the long-run performance to be expected in accordance with Accepted Electric Industry Practice. The demonstration that a Resource is capable of higher output on a short-term basis during Emergencies shall not be evidence of the Resource's long-run performance.

#### **III.B.3.2.2 Overstatement of Emergency Generating Capability Under Emergency Conditions.** Overstatement of a generating Resource's

maximum generating capability means the submission of a value,

including any subsequent revision of such value to be applicable in Emergency Conditions, in circumstances where the Market Participant knew or should have known that the Resource currently could not, consistent with Accepted Electric Industry Practice, attain at least 95% of such value.

**III.B.3.2.3 Misrepresentation Regarding Operating Conditions. A**

misrepresentation regarding operating conditions means the making by a Market Participant of any statement to the ISO regarding inability or restricted ability of its Resource to perform, or the unavailability or restricted availability of its transmission facilities, including any statement as to the existence of a forced outage, force majeure or Emergency affecting its facilities, in circumstances where the Market Participant knew or should have known the statement to be materially inaccurate.

**III.B.3.2.4 Misrepresentation of Resource Availability.** Misrepresentation with respect to Resource availability means a failure by a Market Participant to advise the ISO as soon as reasonably practical that a Resource which the Market Participant has indicated is available to provide Operating Reserve could not respond upon request in accordance with the Offer Data and Supply Offer submitted by the Market Participant, in circumstances where the Market Participant knew or should have known such Resource's inability to respond.

**III.B.3.2.5 Excuse for Good Faith Description.**

- (a) Resource performance and availability are subject to, among other factors, climatic variations and emissions, license and other limitations. A good faith effort to describe in the Market Participant's Offer Data or a Supply Offer the technical abilities of equipment in expected operating conditions is not subject to sanction if actual operating conditions vary. However, a Market Participant is still expected to provide an appropriate data revision if operating conditions vary materially from the Market Participant's Offer Data or an applicable Supply Offer.

- (b) A Market Participant shall be deemed to have satisfied its obligation to deliver accurate information as to operating conditions or Resource availability if it had made a good faith effort to supply accurate, responsive information; inadvertent errors or omissions shall not be Sanctionable Behavior.

**III.B.3.2.6 Certain Economic Decisions Excused.** Market Participants may make decisions affecting the availability of a Resource for reasons relating to the economics of operating that Resource. Such decisions may include, but are not limited to, sale of gas available to the Market Participant as fuel for such Resource, reducing output temporarily to defer maintenance in response to unanticipated operating difficulties or refueling, or shutting down a Resource during a period when the Market Participant does not reasonably expect the Resource-specific New England Market revenues to justify operation of the Resource in that period. For such decisions, the Market Participant shall not be subject to sanction under III.B.3.2.1, III.B.3.2.2, III.B.3.2.3, or III.B.3.2.4 so long as it

provides to the ISO timely information that accurately describes the nature of the Market Participant's decision and result of such decision on the performance of such Resource and otherwise acts in accordance with the applicable provisions of ISO New England Operating Procedure 5 (Unit Outages) or any other rule that provides for the coordination required to minimize the impact of Resource unavailability on short-term reliability, including obtaining permission to the extent required by ISO New England Operating Procedure 5 or such other rule. It is not the intent of this Subsection's reference to Operating Procedure 5 or other rules to require a Market Participant to provide services from all or a portion of a Resource where the Resource-specific New England Market revenues derived from the provision of such service do not justify the associated operating costs or Opportunity Costs (whether intertemporal or in non-New England Markets or both) of providing such service from such Resource. It is also not the intent of this

Section to provide a basis for a Market Participant to circumvent the mitigation rules specified in *Appendix A* or any other ISO New England Filed Document or ISO New England System Rule.

### **III.B.3.3 Failure to Follow ISO Instructions**

**III.B.3.3.1 Failure to Follow Scheduling Procedures.** Failure to comply with applicable ISO New England System Rules for scheduling or rescheduling Resource maintenance, including failure to follow an established schedule without rescheduling.

**III.B.3.3.2 Failure to Follow Transmission Instructions.** Failure to follow transmission instructions means (i) failure to follow routine ISO transmission dispatch instructions, or (ii) failure to follow ISO operating instructions during a system Emergency with respect to transmission facilities or (iii) failure to comply with the Transmission, Markets and Services Tariff or applicable ISO New

England System Rules for scheduling or rescheduling transmission maintenance, including failure to follow an established schedule without rescheduling.

### **III.B.3.4 Failure to Provide Information**

**III.B.3.4.1 Routine Reports.** Failure to provide timely, accurate routine scheduled reports.

**III.B.3.4.2 Emergencies or System Disturbances.** Failure to provide timely, accurate information in response to ISO inquiries about system Emergencies or disturbances in the New England Control Area.

**III.B.3.4.3 Special Information Requests.** Failure by a Market Participant to meet an agreed schedule to provide information that the ISO needs to perform its responsibilities to apply and implement ISO New England Filed Documents and other ISO New England System Rules, for purposes other than current operations, that is not

contained in routine scheduled reports, or to work in good faith to establish such a schedule that is reasonable based on the complexity of the information request and the urgency of the ISO's need for the information that, in either case, is not excused by Sections III.B.3.4.7 or III.B.3.6 .

**III.B.3.4.4 Market Settlement Information.** Failure to provide timely or accurate billing or metering information or similar information used in settlement, which is not excused by Sections III.B.3.4.7 or III.B.3.6 .

**III.B.3.4.5 Resource Information.** Failure to provide, in response to an ISO inquiry, pertinent information that a Market Participant knew or should have known about the ability of its Resource to perform, which failure is not excused under the provisions of Sections III.B.3.4.7 or III.B.3.6 .

**III.B.3.4.6 ICAP Information.** If (i) an ICAP Resource fails to provide the information required by Section III.8.3.5 of Market Rule 1 in a timely fashion, or (ii) a Supplier of Unforced Capacity from External Resources located in an External Control Area that has agreed not to curtail the Energy associated with such Installed Capacity, or to afford it the same curtailment priority that it affords its own Control Area load, fails to provide the information required for certification as an owner of the ICAP Resource established in the ISO Procedures, the ISO may take the following actions: On the first day that required information is late, the ISO shall notify the owner of the ICAP Resource that required information is past due and that it reserves the right to impose financial sanctions if the information is not provided by the end of the following day. Starting on the third day that the required information is late, the ISO may impose a daily financial sanction of up to the higher of \$500 or \$5 per MW of Installed Capacity that the Generator or

Resource in question is capable of providing. Starting on the tenth day that the required information is late, the ISO may impose a daily financial sanction of up to the higher of \$1000 or \$10 per MW of DMNC. If a Transmission Provider or meter reader fails to provide the information required by Section III.8.2.3 of Market Rule 1 in a timely fashion, the ISO may take the following actions:

On the first day that required information is late, the ISO shall notify the Transmission Provider that required information is past due and that it reserves the right to impose financial sanctions if the information is not provided by the end of the following day.

Starting on the third day that the required information is late, the ISO may impose a daily financial sanction up to \$5,000 a day.

Starting on the tenth day that required information is late, the ISO may impose a daily financial sanction up to \$10,000.

**III.B.3.4.7 Timeliness and Accuracy.**

- (a) If a Market Participant, for good cause, requests an extension of time to deliver information subject to a routine scheduled report or a special information request, the ISO shall grant a reasonable extension, and failure to provide information by the original delivery date shall not be Sanctionable Behavior.
- (b) A Market Participant shall be deemed to have satisfied its obligation to deliver accurate information if it has made a good faith effort to supply accurate, responsive information; inadvertent errors or omissions shall not be Sanctionable Behavior.

**III.B.3.5 Relationship with and Failure to Comply with *Appendix A*.** Certain Market Participant conduct may be both Sanctionable Behavior and a basis for imposing a mitigation remedy under *Appendix A*. Provided that the ISO makes the necessary findings and follows the applicable procedures under this *Appendix B*, the ISO may impose sanctions under this *Appendix B* for Sanctionable Behavior without regard to whether the ISO also imposes or seeks to impose any mitigation remedy on the Market Participant for the same conduct under *Appendix A*. In addition, provided that the ISO makes the

necessary findings and follows the applicable procedures under *Appendix A*, the ISO may impose one or more mitigation remedies under *Appendix A* without regard to whether the ISO seeks to impose or imposes sanctions under this *Appendix B* for Sanctionable Behavior that forms the basis for a mitigation remedy.

To the extent that compliance with an *Appendix A* remedy requires specific actions by a Market Participant, and such mitigation remedy is not currently the subject of ADR review under *Appendix A* and has not been removed as the result of ADR review, the ISO may sanction a Market Participant under this *Appendix B* for a failure by that Market Participant to comply with such mitigation remedy whether or not such failure is intentional, unless such failure is excused under the provisions of III.B.3.6 .

### **III.B.3.6 Certain Behavior Excused.**

**III.B.3.6.1 Force Majeure.** No failure by a Market Participant to perform Market Participant Obligations shall be Sanctionable Behavior to the extent and for the period that the Market Participant's inability to perform is caused by an event or condition of force majeure affecting the Market Participant; provided that the Market Participant gives notice to the ISO of the event or condition as promptly as possible after it knows of the event or condition and makes all reasonable efforts to cure, mitigate or remedy the effects of the force majeure event or condition.

**III.B.3.6.2 Safety, Licensing or Other Requirements.** No failure by a Market Participant to perform Market Participant Obligations shall be Sanctionable Behavior if the Market Participant is acting in good faith to preserve the safety of persons or the safety or integrity of

equipment subject to Dispatch Instructions or to comply with facility licensing, environmental or other requirements of law.

**III.B.3.6.3 Emergencies.** No failure by a Market Participant to perform Market Participant Obligations shall be Sanctionable Behavior if the Market Participant is acting in good faith and consistent with Accepted Electric Industry Practice to preserve system reliability in a system Emergency or other system disturbance; provided that a Market Participant shall not override direct ISO instructions except in cases described in Section III.B.3.6.2.

**III.B.3.6.4 Conflicting Directives.** To the extent that any action or omission by a Market Participant is specifically required or provided for by the Market Rules or by ISO instructions, such action or omission shall not be Sanctionable Behavior.

**III.B.3.6.5 Time Limitation.** No failure by a Market Participant to perform Market Participant Obligations shall be subject to sanction if the Market Participant's failure occurred more than six months prior to the ISO providing written notice to the Market Participant pursuant to Section III.B.5.3 of the ISO's belief that such failure may constitute Sanctionable Behavior.

**III.B.3.7 Interpretation.**

**III.B.3.7.1 Intent.** Where any subsection of Section III.B.3 requires that behavior be intentional to constitute Sanctionable Behavior, the ISO may make a finding that behavior is intentional if it finds (i) direct evidence of intent, (ii) evidence of reckless endangerment of short-term reliability or (iii) evidence of a pattern of unexcused behavior or circumstances from which the ISO may reasonably infer that the behavior was intentional. In making an inference as to intent pursuant to clause (iii) above, the ISO shall consider the financial

benefits or detriments to the Market Participant of its behavior and the adequacy of any alternative explanation provided by the Market Participant for its behavior. Actions taken by a Market Participant in good faith shall not be viewed as part of a pattern of unexcused behavior or otherwise serve as the basis of a finding of intent. The ISO shall also consider the degree to which the Market Participant's behavior materially impaired or threatened to materially impair short-term reliability or the competitiveness or efficiency of the markets and shall not infer intent pursuant to clause (iii) above unless the ISO finds that the Market Participant's behavior materially impaired or threatened to materially impair short-term reliability or the competitiveness or efficiency of the markets. Behavior that would materially impair short-term reliability or the competitiveness or efficiency of the markets if it were engaged in on a widespread basis by other Market Participants to the same degree and at the same time as by the Market Participant engaging

in the behavior, shall be deemed to threaten to materially impair short-term reliability or the competitiveness or efficiency of the New England Markets, as the case may be.

**III.B.3.7.2 Knowledge.** Where any subsection of Section III.B.3 requires that the ISO determine that a Market Participant “knew or should have known” particular information as an element of a determination that Sanctionable Behavior has occurred, the ISO may only make a finding based on evidence that the Market Participant’s operating personnel, other persons responsible for communicating such information to the ISO , or management personnel supervising such persons (i) knew the relevant information; (ii) had the relevant information readily available to them in normal control room displays or operating records; (iii) failed to obtain the relevant information, and such information was readily available to them from third parties, but only to the extent that failure to obtain such

third-party information constitutes reckless endangerment of short-term reliability; or (iv) would have known the information had such person exercised the degree of diligence required by Accepted Electric Industry Practice. Failure of a Resource to attain one or more offer or bid parameters on one or more occasions does not constitute evidence that a Market Participant knew or should have known that the Resource could not subsequently attain such offer or bid parameters. The ISO may consider a Market Participant's efforts (or lack of efforts) to investigate a Resource's failure to perform, its efforts to correct any deficiencies and the Market Participant's conclusions as to whether they have been corrected. Failure to obtain information that is readily available as described in clauses (ii) or (iii) above is excused during the continuance of the circumstances described in III.B.3.6.1, III.B.3.6.2, or III.B.3.6.3.

### **III.B.4 Sanctions**

**III.B.4.1 Amount and Nature.** *Exhibit 1* to this *Appendix B* sets forth the maximum applicable sanctions with respect to each category of Sanctionable Behavior set forth in Section III.B.3 subject to potential increase under Section III.B.5.2.2 in certain circumstances. In most cases the ISO may impose three categories of sanctions:

**III.B.4.1.1 Formal Warning.** A Formal Warning consists of written notification from the ISO to a Market Participant stating that Sanctionable Behavior has occurred and directing the Market Participant not to engage in further Sanctionable Behavior.

**III.B.4.1.2 Administrative Sanctions.** Administrative Sanctions consist of fixed, per-event monetary charges set forth in *Exhibit 1* imposed on Sanctionable Behavior.

**III.B.4.1.3 Formula-Based Sanctions.** Formula-Based Sanctions are monetary charges determined by a formula set forth in *Exhibit 1* imposed on Sanctionable Behavior.

**III.B.4.2 Level of Sanction.** In imposing an Administrative Sanction or a Formula-Based Sanction, the ISO may impose the sanction in a lesser amount than that specified in *Exhibit 1* if it determines that the lesser amount will have a sufficient deterrent effect.

**III.B.4.3 Non-Exclusivity and Increases.**

**III.B.4.3.1 Cumulative Effect.** Sanctions imposed under this *Appendix B* are in addition to any mitigation remedies available to the ISO under *Appendix A*. The ISO may impose both an Administrative Sanction and a Formula-Based Sanction with respect to the same Sanctionable Behavior if it believes both sanctions are necessary for appropriate deterrence.

If a single event is sanctionable under two different sections or subsections of this *Appendix B*, the ISO may only impose a sanction under one of such sections or subsections; provided that if an event is sanctionable under one or more sections or subsections and is also sanctionable under Section III.B.3.5, the ISO may impose Administrative Sanctions under Section III.B.3.5 and a sanction under one other section or subsection. For purposes of this *Appendix B* an “event” means the facts and circumstances constituting a single occurrence of behavior, or multiple occurrences of the same sanctionable behavior within a day, sanctionable under this *Appendix B*. While the ISO may review a pattern of behavior, for example, to make a finding of intent under Subsection III.B.3.7.1, the pattern of behavior may consist of multiple events, each one of which is subject to sanction once a finding of intent is made. With respect to operating behavior, an event relates to a single operating action. For example, if the ISO

gives an instruction to ramp up a Resource and the Market Participant fails to ramp up, that failure is a single event even if it continues over several hours and despite repeated instructions. However, providing inaccurate information about the Resource to the ISO in response to questions about the failure to ramp up is a separate event as is failure of the same Resource to ramp down later in the day. Failure to provide information relates to a particular report or a particular request for information, and separate inaccuracies in the same report or in response to the same information request are not separate events.

**III.B.4.3.2 Increased Sanctions.** The ISO may increase Administrative Sanctions and Formula-Based Sanctions to an amount up to triple the base amount of the sanction in the following circumstances:

- (a) If Sanctionable Behavior occurs during a system Emergency; or

- (b) If the ISO determines that the Sanctionable Behavior is part of a continuing pattern of Sanctionable Behavior for which one or more monetary sanctions have previously been imposed upon the Market Participant; or
- (c) If the Sanctionable Behavior is a failure by a Market Participant to comply with any market mitigation remedy the ISO has imposed on such Market Participant pursuant to *Appendix A* that is not currently the subject of ADR review under *Appendix A* and has not been removed as the result of such ADR review.

**III.B.4.4 Costs.** In addition to applicable sanctions, if a monetary sanction is imposed, the ISO may charge to the sanctioned Market Participant the reasonable costs of the ISO's investigation of the Sanctionable Behavior. Such costs will be payable after the deadline for requesting ADR has passed and any requested ADR proceedings are complete and the ADR decision in any such proceeding sustains the imposition of a monetary sanction.

**III.B.4.5 Disclosure.** Except as provided in this Section III.B.4.5 , the ISO will not disclose the imposition of particular sanctions on a particular Market Participant, but will make periodic reports of sanctions imposed and the

Sanctionable Behavior upon which such sanctions were imposed that do not identify Market Participants by name or provide a basis for identifying such Market Participants. However, the ISO may make disclosure of monetary sanctions imposed on a particular Market Participant if in the ISO's judgment such disclosure is warranted by the nature of the Sanctionable Behavior and monetary sanctions previously imposed on the Market Participant have been unsuccessful in deterring repeated Sanctionable Behavior. The ISO shall notify the Market Participant before making disclosure, and the Market Participant shall be entitled to obtain ADR review of the proposed disclosure. No disclosure of a monetary sanction will be made until after the deadlines for requesting ADR with respect to the sanction and proposed disclosure have passed and any requested ADR proceedings are complete and the ADR decision sustains the ISO's actions.

### **III.B.5 Process For Imposing Sanctions**

#### **III.B.5.1 Observation and Communication.**

**III.B.5.1.1 Observation.** If, in the conduct of system operations or settlement, in auditing Resource performance under in the ISO New England Manuals of this *Appendix B*, in making inquiry of Market Participant s about operating problems, in monitoring the competitiveness and efficiency of the markets, or otherwise in the receipt of information relevant to the performance of its duties, the ISO discovers behavior that it believes may constitute Sanctionable Behavior, the ISO shall make a record of the information leading to ISO's belief that Sanctionable Behavior may have occurred.

**III.B.5.1.2 Communication.** The ISO shall thereafter contact the Market Participant whose behavior is in question, inform the Market Participant of the information leading to the ISO's belief that

Sanctionable Behavior may have occurred, and provide the Market Participant the opportunity to discuss the behavior observed or documented by the ISO and to offer additional facts or explanation of circumstances as follows

- (a) that tend to show that no Sanctionable Behavior occurred, or
- (b) that should be weighed in determining whether to impose a sanction and, if so, what level of sanction to impose.

**III.B.5.1.3 Other Information.** The ISO may make use of information provided by third parties in forming the basis for an inquiry to a Market Participant about possible Sanctionable Behavior, and is not required to reveal the identity or existence of such third parties. However, unsubstantiated statements by third parties may not serve as the basis for the imposition of sanctions.

### **III.B.5.2 Consideration by ISO**

#### **III.B.5.2.1 Occurrence of Sanctionable Behavior**

- (a) Based upon information in its possession and information provided by the Market Participant, the ISO shall first determine if Sanctionable Behavior has occurred. To conclude that Sanctionable Behavior has occurred under any specific subsection of Section III.B.3, the ISO must make (i) a written finding with respect to each element of such Sanctionable Behavior, as set forth in the relevant subsection, including the basis of any finding as to intent or state of knowledge under Section III.B.3.7, (ii) a written finding with respect to the duration of the Sanctionable Behavior and (iii) a written finding that the Sanctionable Behavior is not excused by any specific provision of Section III.B.3.
- (b) The ISO shall evaluate any information provided by the Market Participant as promptly as practicable and shall seek to make the determination required by this Section within 60 days of making a record of the information leading to the ISO's belief that sanctionable behavior may have occurred pursuant to Section III.B.5.1.1. In no event shall the ISO impose a sanction more than six months after it makes a record of the information leading to its belief that sanctionable behavior may have occurred pursuant to Section III.B.5.1.1.

### **III.B.5.2.2 Level of Sanction.**

- (a) If the ISO determines that Sanctionable Behavior has occurred, the ISO may impose a sanction under Section III.B.4. In determining which sanction or sanctions to apply, the ISO shall consider:
  - (i) The nature of the Sanctionable Behavior and the degree of impact on short-term reliability or the competitiveness and efficiency of markets;
  - (ii) The Market Participant's past history of Sanctionable Behavior and the nature of sanctions previously imposed; and
  - (iii) The promptness and effectiveness of the Market Participant's response in correcting the Sanctionable Behavior.
  
- (b) Ordinarily, the ISO will issue a Formal Warning before imposing a monetary sanction for similar behavior. However, in cases of Sanctionable Behavior that materially impairs short-term reliability or the competitiveness or efficiency of markets, or reflects the sanctioned Market Participant's unexcused failure to obey ISO instructions, the ISO may directly impose a monetary sanction. The ISO has no obligation to consider a Formal Warning with respect to sanctions imposed under Section III.B.3.5 . The ISO will select the level of sanction based on its determination of the need for effective deterrence and consistency with sanctions imposed in similar circumstances.

- (c) The ISO shall make (i) a written finding with respect to the level of sanction imposed and the factors considered by it pursuant to Subsection III.B.5.2.2(a), (ii) a written finding with respect to the basis of any increased sanction pursuant to Section III.B.4.3.2, (iii) a calculation of the amount of any monetary sanction, and (iv), if disclosure of a sanction is proposed, a written finding as to why disclosure of the sanction is appropriate.

**III.B.5.3 Notice and Payments.** The ISO shall give written notice to the Market Participant of the imposition of any sanction, together with its written findings as required under Section III.B.5.1 and the ADR Procedures. The ISO's invoice for the amount of a sanction will be sent to the sanctioned Market Participant with the notice of the sanction. Payments of sanctions received shall be reflected as a credit to charges under Section IV of the Transmission, Markets and Services Tariff for Market Participants other than the sanctioned Market Participant (allocated in proportion to total charges under the Transmission, Markets and Services Tariff in the month the payment is received). The Market Participant shall pay the amount of the sanction to the ISO or post a bond for the amount of the sanction if the Market Participant is

seeking review of such sanction under the ADR Procedures within 30 days of the date of the ISO's invoice.

**III.B.5.4 No Limitations on Other Rights of the ISO.** Nothing contained in this *Appendix B* shall limit the ability of the ISO to collect information from Market Participants or to institute new rules pursuant to Section 11 of the Participants Agreement.

### **III.B.6 Tracking and Reporting**

The ISO shall track its time and expenses in pursuing sanctionable behavior on a case-by-case basis and shall post such information on its web site and publish it in its annual review of the operations of the New England markets made pursuant to Section III.A.9.3 of *Appendix A*. Such information shall be posted and published without disclosing the identity of Market Participants investigated or other details that enable such Market Participants to be identified.

The ISO shall include in the quarterly submission it provides to the FERC pursuant to Section III.A.9.2.2 of *Appendix A* information about the functioning of this *Appendix B* including the identities of the sanctioned parties, the reason for the sanction, and the method by which the amount of the sanction was calculated.

### **III.B.7 ADR Review Of Sanctions**

**III.B.7.1 Sanctions Subject to Review.** A Market Participant may obtain prompt ADR review of any sanction (other than a Formal Warning) imposed by the ISO on that Market Participant and any proposed disclosure of a sanction. A Market Participant must seek review pursuant to the procedure set forth in *Appendix D* to this Market Rule. Actions subject to review are:

- Imposition of a sanction;
- Level of sanction imposed;
- Increase of a sanction;
- Basis of calculation of a Formula-Based Sanction; and
- Proposed disclosure of a sanction.

**III.B.7.2 Formal Warnings.** A Market Participant may not obtain ADR review of the issuance of a Formal Warning. It may, however, deliver to the ISO within 30 days of the issuance of the Formal Warning a written statement of its reasons for disputing the imposition of the Formal Warning. The ISO shall retain any

such written statement with its record of the imposition of the Formal Warning. If the ISO relies on its prior imposition of the Formal Warning as a basis for imposing a more severe sanction for subsequent Sanctionable Behavior, the written statement shall also be made part of the record in any ADR proceeding relating to the subsequent Sanctionable Behavior. The ISO may, but is not obligated to, reconsider its decision to issue the Formal Warning upon receipt of the written statement. If the ISO determines to withdraw the Formal Warning, it shall so notify the Market Participant in writing, and the Formal Warning shall not be referred to in any subsequent proceeding or report or made the basis for any subsequent action.

**III.B.7.3 Requests for ADR Review.** A Market Participant may seek ADR review of the actions described in Section III.B.7.1 , and any request for ADR review will be deemed to be properly and timely made, if the Market Participant (i) timely pays the full amount of the sanction imposed or (ii) timely posts a bond with the ISO assuring payment in full of the sanction. Unless such timely

payment or posting of a bond occurs, the Market Participant may not obtain ADR review of the imposition of a monetary sanction. If the Market Participant makes payment in full of the sanction amount, it may, by notice accompanying its payment, state that it is paying subject to the outcome of the ADR review. The ISO will hold in escrow and invest any payment accompanied by such a notice pending the outcome of the ADR process, and will refund any amount by which the sanction is reduced or refund the entire amount if the sanction is removed, in either case, together with interest at the rate specified in the Transmission, Markets and Services Tariff, within 30 days of the decision rendered by the ADR Neutral.

**III.B.7.4 Standard of Review.** The ADR Neutral shall remove or reduce the ISO's sanction or prohibit the disclosure if it concludes that the ISO could not reasonably make its findings with respect to the occurrence of Sanctionable Behavior pursuant to Section III.B.5.2.1 or the level of the sanction and the appropriateness of a proposed disclosure pursuant to Section III.B.5.2.2 in light

of the entire factual record presented to the ADR Neutral and applicable law.  
The ADR Neutral shall separately consider the ISO 's findings as to (i) the occurrence and duration of the Sanctionable Behavior, (ii) the level of the sanction imposed, (iii) the basis for an increased sanction imposed pursuant to Section III.B.4.2.2, (iv) the basis of calculation of any monetary sanction and (v) the appropriateness of disclosure.

**Exhibit 1**

**Sanctionable Events**

<b>SANCTIONABLE EVENT</b>	<b>ADMINISTRATIVE SANCTION</b>	<b>FORMULA-BASED SANCTION</b>
<b>Failure to Perform in Markets as Defined in Section 3.1:</b>		
<ul style="list-style-type: none"> <li>Failure to Provide Energy as defined in Subsection III.B.3.1.1:</li> </ul>		
<ul style="list-style-type: none"> <li>Failure to attain High Operating Limit</li> </ul>	\$1000/Event <sup>1</sup>	MW Dev. * ½ LMP * Hrs
<ul style="list-style-type: none"> <li>Failure to Provide Services as defined in Subsection III.B.3.1.2:</li> </ul>		
<ul style="list-style-type: none"> <li>Failure to Move to Desired Dispatch Point</li> </ul>	\$1000/Event	MW Dev. * ½ LMP * Hrs
<ul style="list-style-type: none"> <li>Failure to Activate Operating Reserve</li> </ul>	\$1500/Event	N/A
<ul style="list-style-type: none"> <li>Failure to Respond to Dispatch Instructions as defined in Subsection III.B.3.1.3:</li> </ul>		
<ul style="list-style-type: none"> <li>Failure to start Generator</li> </ul>	\$500/Event	N/A
<ul style="list-style-type: none"> <li>Failure to shut down Generator</li> </ul>	\$500/Event	N/A
<b>Inaccurate Bid or Operating Information as Defined in Section 3.2:</b>		
<ul style="list-style-type: none"> <li>Understatement of High Operating Limit as defined in Subsection III.B.3.2.1</li> </ul>		

<sup>1</sup> An “event” may be an hour or per day, depending on the circumstances.

<b>SANCTIONABLE EVENT</b>	<b>ADMINISTRATIVE SANCTION</b>	<b>FORMULA-BASED SANCTION</b>
<ul style="list-style-type: none"> <li>On Supply Offer</li> </ul>	\$1000/Event	MW Dev. * ½ LMP * Hrs.
<ul style="list-style-type: none"> <li>On Revised Supply Offer</li> </ul>	\$2000/Event	MW Dev. * ½ LMP * Hrs
<ul style="list-style-type: none"> <li>Overstatement of maximum capability under Emergency Conditions in Subsection III.B.3.2.2:</li> </ul>	\$1000/Event	MW Dev. * ½ LMP * Hrs.
<ul style="list-style-type: none"> <li>Misrepresentation of Operating Conditions as defined in Subsection III.B.3.2.3:</li> </ul>	\$5000/Event	MW Dev. * ½ LMP * Hrs.
<ul style="list-style-type: none"> <li>Misrepresentation of Resource Availability as defined in Subsection III.B.3.2.4:</li> </ul>	\$1000/Event	MW Dev. * ½ LMP * Hrs.

<b>SANCTIONABLE EVENT</b>	<b>ADMINISTRATIVE SANCTION</b>	<b>FORMULA-BASED SANCTION</b>
<b>Failure to Follow ISO Instructions as Defined in Section 3.3:</b>		
<ul style="list-style-type: none"> <li>Failure to Follow Scheduling Procedures as defined in Subsection III.B.3.3.1:</li> </ul>		
<ul style="list-style-type: none"> <li>Maintenance Scheduling Procedures</li> </ul>	\$1000/Event	N/A
<ul style="list-style-type: none"> <li>Failure to Follow Transmission Instructions as defined in Subsection III.B.3.3.2:</li> </ul>		
<ul style="list-style-type: none"> <li>Routine Dispatch</li> </ul>	\$1000/Event	N/A
<ul style="list-style-type: none"> <li>During System Emergency</li> </ul>	\$5000/Event	N/A
<ul style="list-style-type: none"> <li>Maintenance Scheduling Procedures</li> </ul>	\$1000/Event	N/A
<b>Failure to Provide Information as Defined in Section 3.4:</b>		

SANCTIONABLE EVENT	ADMINISTRATIVE SANCTION	FORMULA-BASED SANCTION
<ul style="list-style-type: none"> <li>• Routine, Scheduled Reports as defined in Subsection III.B.3.4.1:</li> </ul>		
<ul style="list-style-type: none"> <li>• Late</li> </ul>	\$500/Event	N/A
<ul style="list-style-type: none"> <li>• Inaccurate</li> </ul>	\$1000/Event	N/A
<ul style="list-style-type: none"> <li>• Emergencies or System Disturbances as defined in Subsection III.B.3.4.2:</li> </ul>	\$2000/Event	N/A
<ul style="list-style-type: none"> <li>• Special Information Requests as defined in Subsection III.B.3.4.3:</li> </ul>	\$1000/Event	N/A
<ul style="list-style-type: none"> <li>• Market Settlement Information as defined in Subsection III.B.3.4.4:</li> </ul>		
<ul style="list-style-type: none"> <li>• Late</li> </ul>	\$2000/day	N/A
<ul style="list-style-type: none"> <li>• Inaccurate</li> </ul>	\$2000/Event	N/A
<ul style="list-style-type: none"> <li>• Resource Information as defined in Section III.B.3.4.5.</li> </ul>	\$1500/Event	N/A
<ul style="list-style-type: none"> <li>• Disregard of Mitigation Remedies as Defined in Section III.B.3.5.</li> </ul>	\$1500/day	N/A

## **Exhibit 2**

Market Participants shall include language substantially as follows in contracts for services from entities which are not Market Participants:

### **Article \_\_. Compliance with the Market Rules**

Seller agrees that it is familiar with the applicable ISO New England Filed Documents and other ISO New England System Rules relating to the offering of its Resources into the New England Markets. Seller further agrees to comply in all respects with these rules, and to exercise the degree of diligence required by Accepted Electric Industry Practice to assure that Offer Data and Supply Offer data or any other bid or offer information provided to purchaser as to Resource availability, capacity and operating conditions are accurate. Seller acknowledges that market settlement consequences and sanctions may be imposed on the purchaser by ISO New England for seller's failure to meet offer or bid parameters or to respond to operating instructions in accordance with ISO New England System Rules and for seller's actions that would constitute Sanctionable Behavior, as defined in this Market Rule. Seller agrees to comply with ISO dispatch instructions and to provide such information as the ISO reasonably requests in order for the ISO to maintain short term reliability and determine whether seller's Resource is in compliance with its offer or bid parameters or whether Sanctionable Behavior has occurred.

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