

SECTION III

MARKET RULE 1

APPENDIX B

**IMPOSITION OF
SANCTIONS BY THE ISO**

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 sanctions may be imposed 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 authority 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 issue a Formal Warning or refer to the Commission conduct 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 effective deterrent to noncompliance by Market Participants of their Market Participant Obligations. The ISO will not issue a Formal Warning or refer conduct to the Commission 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. If in the course of its activities, the ISO identifies any Market Participant behavior it believes may be in violation of this *Appendix B*, the ISO will evaluate whether to issue a Formal Warning as discussed in Sections III.B.4.1.1 and III.B.5.2. If after such evaluation, the ISO believes that such conduct could warrant monetary sanctions under this *Appendix B*, the ISO will refer such potentially Sanctionable Behavior to the Commission for a determination regarding whether monetary sanctions will be imposed under Sections III.B.4.1.2 and III.B.4.1.3. In any case in which the ISO determines that issuance of a Formal Warning is appropriate, the subject conduct will also be referred to FERC for a determination regarding monetary sanctions. The ISO shall impose monetary sanctions only as directed by the Commission. In addition to any authority afforded the ISO in this *Appendix B*, the Commission shall have the authority to assess the sanctions set forth and described in this *Appendix B*. The Commission shall have the

authority to remedy a violation under this ***Appendix B*** from the date of the violation. Nothing in this rule shall be deemed to be a limitation or condition on the authority of the Commission or other entity under current law or regulation. Since the ISO is only one possible source of information regarding a suspected sanctionable event, the Commission may impose sanctions under this ***Appendix B*** for conduct not brought to its attention by a referral from the ISO.

III.B.2.2 Control of Resources. With respect to a Resource, Demand Resource or Other Demand Resource, sanctions may be imposed on the Market Participant with operating control of the Resource, Demand Resource or Other Demand Resource or authority to submit bids or offers for the Resource, Demand Resource or Other Demand 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, Demand Resource or Other Demand Resource as to which its non-Market Participant affiliate has operating control will be deemed to

have operating control of such Resource, Demand Resource or Other Demand 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, Demand Resource or Other Demand 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, Demand Resource or Other Demand Resource for which the Market Participant is not the operator of the Resource, Demand Resource or Other Demand Resource:

- (a) The Market Participant with authority to submit bids or offers for such a Resource, Demand Resource or Other Demand Resource is entitled to rely in good faith on operating parameters and information as to availability, capacity and operating conditions supplied by the person with operating control of the Resource, Demand Resource or Other Demand Resource as long as the Market Participant's conduct is consistent with the

requirements of due diligence as discussed below in Section III.B.3.7.2.

- (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, Demand Resource or Other Demand 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, Demand Resource or Other Demand 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, Demand Resource or Other Demand 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 and III.B.5; 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 Demand Resource’s or Other Demand 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 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 such ICAP Resource, 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, monetary sanctions up to the product of two times the ICAP Transition Rate (pro-rated on a daily basis), multiplied by the maximum number of MWs that the ICAP Resource failed to schedule or offer in any hour in that day may be imposed; provided, however, that no monetary 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, an additional monetary sanction may be imposed 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 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, including any subsequent revision of the Economic Maximum Limit value, 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, unless the Market Participant exercised due diligence to prevent such understatement, as discussed below in Section III.B.3.7.2.
- (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, that the Resource currently could not, consistent with Accepted Electric Industry Practice, attain at least 95% of such value, unless the Market Participant exercised due diligence to prevent such overstatement, as discussed below in Section III.B.3.7.2.

III.B.3.2.3 Misrepresentation Regarding Operating Conditions. A

misrepresentation regarding operating conditions means the making by a Market Participant of any materially inaccurate statement to the ISO regarding inability or restricted ability of its Resource, Demand Resource or Other Demand 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, unless the Market Participant exercised due diligence to

prevent such misrepresentation, as discussed below in

Section III.B.3.7.2.

III.B.3.2.4 Misrepresentation of Resource Availability.

Misrepresentation with respect to Resource, Demand Resource or Other Demand Resource availability means a failure by a Market Participant to advise the ISO as soon as reasonably practical that a Resource, Demand Resource or Other Demand 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, unless the Market Participant exercised due diligence to prevent such misrepresentation, as discussed below in Section III.B.3.7.2.

III.B.3.2.5 Performance.

- (a) Resource, Demand Resource or Other Demand Resource performance and availability are subject to, among other factors, climatic variations and emissions, license and other limitations. The Market Participant's Offer Data or a Supply Offer describes the technical abilities of equipment in expected operating conditions and is not subject to

sanction if actual operating conditions vary as long as the Market Participant exercised due diligence as discussed below in Section III.B.3.7.2. 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, Demand Resource or Other Demand Resource availability if it exercised due diligence as discussed below in Section III.B.3.7.2 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, Demand Resource or Other Demand Resource for reasons relating to the economics of operating that Resource, Demand Resource or Other Demand Resource. Such decisions may include, but are not limited to, sale of gas available to the Market Participant as fuel for a Resource, Demand Resource or Other Demand Resource, reducing output temporarily to defer maintenance in response to unanticipated operating difficulties or refueling, or shutting down a Resource, Demand Resource or Other Demand Resource during a period

when the Market Participant does not reasonably expect the Resource-, Demand Resource- or Other Demand Resource-specific New England Market revenues to justify operation of the Resource, Demand Resource or Other Demand 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, Demand Resource or Other Demand 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, Demand Resource or Other Demand 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, Demand Resource or Other Demand Resource where the Resource-, Demand Resource- or Other Demand 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, Demand Resource or Other Demand 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.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 about the ability of a Market Participant's Resource, Demand Resource or Other Demand Resource to perform, which failure is not excused under the provisions of Sections III.B.3.4.7 or III.B.3.6, unless the Market Participant exercised due diligence to prevent such failure, as discussed below in Section III.B.3.7.2.

III.B.3.4.6 ICAP Information. If (i) a Market Participant with an ICAP Resource fails to provide the information required by Section III.8 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 monetary sanctions may be imposed if the information is not provided by the end of the following day. Starting on the third day that the required information is late, daily monetary sanction may be imposed of up to the higher of \$500 or \$5 per MW of Installed Capacity that the Generator or

Resource, Demand Resource or Other Demand Resource in question is capable of providing. Starting on the tenth day that the required information is late, a daily monetary sanction of up to the higher of \$1000 or \$10 per MW of DMNC may be imposed. If a Transmission Provider or meter reader fails to provide the information required by Section III.8 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 a monetary sanction may be applied if the information is not provided by the end of the following day. Starting on the third day that the required information is late, a daily monetary sanction of up to \$5,000 a day may be imposed. Starting on the tenth day that required information is late, a daily monetary sanction of up to \$10,000 may be imposed.

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 exercised due diligence as discussed below in Section III.B.3.7.2 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 necessary findings are made and the applicable procedures under this *Appendix B* are followed, sanctions may be imposed 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 sanctions are imposed 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, a sanction may be pursued 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.5.5 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, a finding may be made that behavior is intentional if there is (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 it may be reasonably inferred that the behavior was intentional. In making an inference as to intent pursuant to clause (iii) above, 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 shall be considered.

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 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 shall also be considered, and intent pursuant to clause (iii) above shall not be inferred unless a finding is made 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 Due Diligence. Where any subsection of Section III.B.3
requires a determination regarding the exercise of due diligence
by a Market Participant with regard to providing information to
the ISO, such determination shall be made consistent with the
Commission's Market Behavior Rule 3, incorporated in this
Market Rule 1 below.

Market Behavior Rule 3 (Communications)

Seller will provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.

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.4.3.2 in certain circumstances. There are three categories of sanctions listed below. The first, Formal Warning, may be issued at the discretion of the ISO. The second and third, Administrative Sanctions and Formula-Based Sanctions, are monetary sanctions that will be imposed by the ISO only as directed by the Commission.

III.B.4.1.1 Formal Warning. A Formal Warning consists of written notification from the ISO to a Market Participant stating that potentially Sanctionable Behavior has occurred and notifying the Market Participant that the conduct has been referred to the Commission as discussed below in Section III.B.5.4.

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 I* imposed on Sanctionable Behavior.

III.B.4.2 Level of Sanction. The Administrative Sanction and Formula-Based Sanction, are intended to be maximum monetary sanctions except as described in III.B.4.3.2 and a sanction in a lesser amount than that specified in *Exhibit I* may be imposed if a 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*. Both an Administrative Sanction and a Formula-Based Sanction may be imposed with respect to the same Sanctionable Behavior if both sanctions are necessary for appropriate deterrence.

If a single event is sanctionable under two different sections or subsections of this *Appendix B*, monetary sanctions may only be imposed 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, Administrative Sanctions may be imposed under Section III.B.3.5 and a sanction may be imposed 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 a pattern of behavior may be reviewed, 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. Administrative Sanctions and Formula-Based Sanctions may be increased 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 a determination is made 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.

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 monetary 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 will make disclosure of monetary sanctions imposed on a particular Market Participant if so directed by the Commission based on the Commission's determination that 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.

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, Demand Resource or Other Demand Resource performance under the ISO New England Manuals of this *Appendix B*, in making inquiry of Market Participants 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 in determining whether to issue a Formal Warning

- (a) Based upon information in its possession and information provided by the Market Participant, the ISO shall first determine if it believes Sanctionable Behavior has occurred. To conclude that potentially 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 conduct and (iii) a written finding that the conduct 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 issue a Formal Warning more than six months after a record is made of the information leading to the belief that Sanctionable Behavior may have occurred pursuant to Section III.B.5.1.1.
- (c) If the ISO believes that Sanctionable Behavior has occurred, the ISO may consider the following factors in determining whether to issue a Formal Warning under Section III.B.4.1.1:

- (i) The nature of the potentially 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 potentially Sanctionable Behavior.

III.B.5.3 Dispute of Formal Warning. A Market Participant may dispute the issuance of a Formal Warning by delivering 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 a Formal Warning serves as a basis for imposing a monetary sanction for subsequent Sanctionable Behavior, the written statement shall also be made part of the record 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.5.4 Referral of Potentially Sanctionable Behavior to the Commission. In any case where the ISO issues a Formal Warning, the record regarding the conduct that is the subject of the Formal Warning will be referred to the Commission for a determination regarding the imposition of monetary sanctions pursuant to this *Appendix B*. If after evaluating potentially Sanctionable Behavior, the ISO does not issue a Formal Warning, but nonetheless believes that monetary sanctions could be warranted, the ISO will refer the record regarding the subject conduct to the Commission for a determination regarding the imposition of monetary sanctions pursuant to this *Appendix B*. Any referral to the Commission of potentially Sanctionable Behavior may include recommendations regarding whether and what level of monetary sanctions

should be imposed. Potentially Sanctionable Behavior may be referred to the Commission before the issuance of a Formal Warning by the ISO.

III.B.5.5 Notice and Payments. As directed by the Commission, the ISO shall give written notice to the Market Participant of the imposition of any monetary sanction, together with the written findings as required under Section III.B.5.1. 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.

III.B.5.6 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.

Sheet Nos. 7648 through 7651 are reserved for future use.

Exhibit 1

Sanctionable Events

SANCTIONABLE EVENT	ADMINISTRATIVE SANCTION	FORMULA-BASED SANCTION
Failure to Perform in Markets as Defined in Section 3.1:		
• Failure to Provide Energy as defined in Subsection III.B.3.1.1:		
• Failure to attain High Operating Limit	\$1000/Event ¹	MW Dev. * ½ LMP * Hrs
• Failure to Provide Services as defined in Subsection III.B.3.1.2:		
• Failure to Move to Desired Dispatch Point	\$1000/Event	MW Dev. * ½ LMP * Hrs
• Failure to Activate Operating Reserve	\$1500/Event	N/A
• Failure to Respond to Dispatch Instructions as defined in Subsection III.B.3.1.3:		
• Failure to start Generator	\$500/Event	N/A
• Failure to shut down Generator	\$500/Event	N/A
Inaccurate Bid or Operating Information as Defined in Section 3.2:		
• Understatement of High Operating Limit as defined in Subsection III.B.3.2.1		
• On Supply Offer	\$1000/Event	MW Dev. * ½ LMP * Hrs.
• On Revised Supply Offer	\$2000/Event	MW Dev. * ½ LMP * Hrs
• Overstatement of maximum capability under Emergency Conditions in Subsection III.B.3.2.2:	\$1000/Event	MW Dev. * ½ LMP * Hrs.
• Misrepresentation of Operating Conditions as defined in Subsection III.B.3.2.3:	\$5000/Event	MW Dev. * ½ LMP * Hrs.
• Misrepresentation of Resource, Demand Resource or Other Demand Resource Availability as defined in Subsection III.B.3.2.4:	\$1000/Event	MW Dev. * ½ LMP * Hrs.

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

SANCTIONABLE EVENT	ADMINISTRATIVE SANCTION	FORMULA-BASED SANCTION
Failure to Follow ISO Instructions as Defined in Section 3.3:		
• Failure to Follow Scheduling Procedures as defined in Subsection III.B.3.3.1:		
• Maintenance Scheduling Procedures	\$1000/Event	N/A
• Failure to Follow Transmission Instructions as defined in Subsection III.B.3.3.2:		
• Routine Dispatch	\$1000/Event	N/A
• During System Emergency	\$5000/Event	N/A
• Maintenance Scheduling Procedures	\$1000/Event	N/A
Failure to Provide Information as Defined in Section 3.4:		
• Routine, Scheduled Reports as defined in Subsection III.B.3.4.1:		
• Late	\$500/Event	N/A
• Inaccurate	\$1000/Event	N/A
• Emergencies or System Disturbances as defined in Subsection III.B.3.4.2:	\$2000/Event	N/A
• Special Information Requests as defined in Subsection III.B.3.4.3:	\$1000/Event	N/A
• Market Settlement Information as defined in Subsection III.B.3.4.4:		
• Late	\$2000/day	N/A
• Inaccurate	\$2000/Event	N/A
• Resource Demand Resource or Other Demand Resource Information as defined in Section III.B.3.4.5.	\$1500/Event	N/A
• Disregard of Mitigation Remedies as Defined in Section III.B.3.5.	\$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, Demand Resource or Other Demand 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, Demand Resource or Other Demand Resource is in compliance with its offer or bid parameters or whether Sanctionable Behavior has occurred.

Sheet Nos. 7655 through 7699 are reserved for future use.