

ATTACHMENT ~~98~~

SAMPLE CORPORATE GUARANTY
(~~FOREIGN~~CANADIAN GUARANTOR)

This ~~FOREIGN~~CANADIAN GUARANTY AGREEMENT, dated [_____], (“Guaranty”) is made by [full legal name of guarantor], a [~~country~~province of formation and legal form of Guarantor] (“Guarantor”) on behalf of [full legal name of Market Participant/Non-Market Participant Transmission Customer], a [state of formation and legal form of Customer] (“Customer”), and in favor of ISO New England Inc. (the “ISO”), a Delaware nonprofit corporation. Capitalized terms used herein shall have the meaning specified in Section I of the ISO New England Transmission, Markets, and Services Tariff (the “ISO Tariff”).

WHEREAS, Customer seeks [to participate in the markets administered by the ISO and purchase other services in the ISO Control Area] [to obtain transmission service in the ISO Control Area]; and

WHEREAS, Customer seeks [to establish a “Market Credit Limit” and a “Transmission Credit Limit” under the ISO New England Financial Assurance Policy (the “Financial Assurance Policy”)] [to satisfy the capitalization requirements under the ISO New England Financial Assurance Policy (the “Financial Assurance Policy”)] through the provision of a corporate guaranty;

WHEREAS, [description of Guarantor’s legal affiliation with Customer]; and

WHEREAS, Customer’s [participation in the ISO markets] [receipt of transmission service in the ISO Control Area] will directly or indirectly benefit Guarantor.

NOW, THEREFORE, in consideration of the foregoing and the benefits to Guarantor arising from its relationship with Customer, Guarantor hereby agrees and covenants as follows:

1. Guaranteed Amounts. Guarantor unconditionally and irrevocably guarantees the prompt and complete payment of all amounts that Customer now or hereafter owes pursuant to the ISO Tariff, the Financial Assurance Policy, the ISO New England Billing Policy, the NEPOOL Agreement, the Participants Agreement and any other agreements, whether now existing or hereafter arising, between Customer and either the ISO or the NEPOOL Participants, as those tariffs, policies and agreements may be amended from time to time (collectively referred to as “the Agreements”); provided, however, that the aggregate amount guaranteed by Guarantor under this Guaranty shall not exceed \$[_____].

2. Term of Guaranty. This Guaranty shall continue in full force and effect until the earlier of (a) the date on which the Agreements are terminated with respect to Customer and all amounts owed by Customer pursuant to the Agreements are paid in full, including any amounts owed as a result of true-ups or other corrections to settlements of obligations owed or incurred while the Agreements and this Guaranty are in effect and (b) [date]. This Guaranty may be enforced by the ISO from time to time and as often as occasion for such enforcement may arise prior to the expiration or termination hereof. Guarantor’s liability hereunder shall survive the expiration or

termination hereof and remain in full force and effect as to obligations owed or incurred by Customer during the term of this Guaranty. This Guaranty shall survive and continue to bind Guarantor following any merger, reorganization, consolidation, or other change in Customer's or Guarantor's structure or business affairs.

3. Termination of Guaranty. Guarantor may terminate this Guaranty upon sixty (60) days written notice to the ISO.

4. Guaranty of Payment. This is a guaranty of payment and not of collection. If Customer fails to make any payment when due in strict accordance with the Agreements, Guarantor, upon demand, without any notice other than such demand, and without any further action by the ISO, shall make such payment not later than 5:00 p.m. (eastern prevailing time) on the next business day after such demand is made.

5. Obligations Unconditional. This Guaranty is a primary, absolute, unconditional, and continuing guaranty of the full and punctual payment by Customer of its obligations under the Agreements. Guarantor unconditionally guarantees the prompt and complete payment of all amounts owed by Customer under the Agreements if all or any part of such amounts is not paid by Customer when due. The ISO may from time to time, without notice or demand, and without affecting Guarantor's liability hereunder: (i) renew, extend, or otherwise change the terms of the Agreements and (ii) take and hold other security or financial assurance for this Guaranty or the Agreements and exchange, waive, release, or apply such security or financial assurance as the ISO deems appropriate in its sole discretion. Guarantor's liability under this Guaranty is not conditioned upon the validity or enforceability of the Agreements. Guarantor irrecoverably waives presentment, diligence, demand, protest or other notice of any kind, including, without limitation, notice of acceptance of this Guaranty and notice of any claim or demand upon Customer or Guarantor, it being understood that Guarantor waives all suretyship defenses generally.

6. Additional Security. This Guaranty shall be in addition to, and not in substitution for or degradation of, any other security or financial assurance that the ISO may at any time hold in respect of the obligations of Customer under the Agreements. The ISO may enforce this Guaranty notwithstanding that it may hold any guarantee, lien, security of or for Customer under the Agreements, or have available to it any other remedy at law or equity.

7. Expenses. Guarantor shall pay on demand all reasonable costs incurred by the ISO in the enforcement of this Guaranty, including attorney fees and expenses.

8. ISO Remedies; No Set-Off. The rights and remedies of the ISO under this Guaranty are cumulative and concurrent and shall not be exclusive of any other rights or remedies that the ISO may have against Customer or Guarantor. No set-off, counterclaim, or defense of any kind that Guarantor may have against Customer or any other guarantor shall diminish or impair the rights and remedies of the ISO and the obligations of Guarantor hereunder.

9. Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership, or other debtor relief law or any judgment, order, or decision thereunder, the ISO must rescind or surrender any payment received by the ISO, any prior release or discharge from

the terms of this Guaranty shall be nullified and this Guaranty shall be reinstated and remain in full force and effect. Guarantor shall not prove any claim in competition with the ISO or the NEPOOL Participants regarding any payment under the Agreements in bankruptcy or insolvency proceedings of any nature.

10. Subordination. All indebtedness of Customer to Guarantor is subordinated to indebtedness of Customer to the ISO and the NEPOOL Participants, in each case whether now existing or hereafter arising. So long as there is no default under the Agreements, however, Guarantor may continue to receive and retain payments on the subordinated indebtedness.

11. Subrogation. Guarantor irrevocably waives any right of subrogation to any of the rights, claims, security interests, or liens of the ISO against Customer under the Agreements or in any collateral or other security, and Guarantor shall have no right of recourse, reimbursement, contribution, indemnification, or similar right against Customer or any other guarantor of Customer's payments under the Agreements until all amounts owed by Customer pursuant to the Agreements have been paid in full, including any amounts owed as a result of true-ups or other corrections to settlements of obligations incurred while this Guaranty is in effect. If any amount shall be paid to Guarantor on account of such subrogation rights at any time while any amount is due from Customer under the Agreements, such amount shall be held by Guarantor in trust for the ISO and shall, forthwith upon receipt by Guarantor, be turned over to the ISO in the exact form received by Guarantor (duly indorsed by Guarantor or Customer, if required), to be applied to Customer's obligations under the Agreements.

12. Financial Reporting. Guarantor shall be required to comply with the reporting and other requirements established in the Financial Assurance Policy for ~~Foreign~~Canadian Guarantors. All financial reports and other information submitted to the ISO shall be in the English language.

13. Payments.

a. All payments to the ISO by Guarantor shall be made in U.S. dollars to such account in the United States as the ISO may from time to time designate to Guarantor and shall be free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by any governmental authority (collectively, "Taxes"). If any Taxes are required to be withheld from any amounts payable to Guarantor under this Guaranty, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guarantee.

b. All references in the Agreements and in this Guaranty to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America.

c. The obligations of Guarantor under this Guaranty shall, notwithstanding judgment in a currency other than U.S. dollars (the "Judgment Currency"), be discharged only to the extent that, on any day following receipt by the ISO of any sum adjudged to be due in the Judgment Currency, the ISO may in accordance with normal banking procedures purchase U.S. dollars with the Judgment Currency. If the amount of U.S. dollars so purchased is less than the sum originally

due to the ISO in U.S. dollars, Guarantor agrees, as a separate obligation and notwithstanding such judgment, to indemnify the ISO against such loss.

14. Representations and Warranties. Guarantor represents and warrants to the ISO that:

a. Guarantor is duly organized, validly existing, and in good standing under the laws of the ~~country~~province of its organization. Guarantor has the legal power to execute and deliver this Guaranty and to perform this Guaranty in accordance with its terms. All necessary actions have been taken to authorize the execution and delivery of this Guaranty and performance of this Guaranty in accordance with its terms. This Guaranty is a legal, valid, and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms.

b. There is no action or proceeding pending or, to Guarantor's knowledge, threatened before any court, tribunal, arbitrator, or governmental agency that may materially adversely affect Guarantor's ability to perform its obligations under this Guaranty.

c. The financial statements and all other written statements provided by Guarantor to the ISO in connection with this Guaranty and the Agreements are true and accurate in all material respects and do not omit any material fact that, without such fact, would make any part of those statements or this Guaranty misleading. There is no fact that Guarantor has not disclosed in writing to the ISO of which Guarantor is aware or which Guarantor can reasonably foresee that would materially adversely affect Guarantor or the ability of Guarantor to perform its obligations hereunder. At such reasonable times as the ISO requests, Guarantor will furnish the ISO with such other financial information as the ISO may reasonably request.

d. No bankruptcy or insolvency proceedings are pending or, to the best of Guarantor's knowledge, contemplated by or against Guarantor under Title 11 of the United States Code, as now or hereafter in effect, or any other applicable law, domestic or foreign, as now or hereafter in effect, relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement or composition, extension or adjustment of debts, or other debtor relief, or similar laws affecting the rights of creditors.

e. Guarantor is subject to Massachusetts civil and commercial law with respect to its obligations under this Guaranty and has no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff, or legal process (and hereby waives any defense of immunity to the extent available to Guarantor). This Guaranty is in proper legal form for enforcement against Guarantor. No filing, recording or notarization of any kind is required for enforcement of this Guaranty. No tax or other charge not already paid must be paid on or as a condition to the enforceability of this Guaranty, and there are no taxes imposed by the country in which Guarantor is organized or has its principal business office on or by virtue of Guarantor's execution or delivery of this Guaranty other than payable by Guarantor and which have already been paid.

15. Assignment. The ISO may assign its rights under this Guaranty without in any way diminishing Guarantor's liability hereunder.

16. Adequacy of Consideration. Guarantor acknowledges that the consideration it has received on account of this Guaranty constitutes adequate consideration for its obligations hereunder. Guarantor acknowledges that the ISO will rely on this Guaranty in allowing Customer to undertake obligations under the Agreements. Guarantor irrevocably waives any defense to the enforcement of this Guaranty based upon lack of consideration.

17. Communications and Service of Process.

a. Demands, notices, and other communications given to Guarantor shall be deemed effective when received, shall be in writing, and shall be delivered by hand with receipt of delivery or registered mail to the following address: **[Guarantor notice address.]**

b. Notices and other communications given to the ISO shall be deemed effective when received, shall be in writing, and shall be delivered by hand with receipt of delivery or registered mail to the following address:

ISO New England Inc.
Attention: Credit Department
1 Sullivan Rd.
Holyoke, Ma 01040

~~c. Guarantor shall maintain, at all times, a registered agent in Massachusetts (the "Process Agent"). Guarantor hereby irrevocably appoints its Process Agent as its true and lawful agent and attorney in fact in its name, place and stead to accept such service of any and all writs, processes and summonses. Guarantor further agrees that the failure of its Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor consents and agrees that such service shall constitute in every respect, valid and effective service. Guarantor's Process Agent is set forth below, and Guarantor shall provide the ISO with written notification of any change of its Process Agent or the address thereof.~~

~~[PROCESS AGENT]
[ADDRESS]
[TELEPHONE]
[EMAIL]~~

18. Amendment and Waiver. The terms and provisions of this Guaranty may not be amended or waived without the prior written consent of the ISO and Guarantor.

19. Entire Agreement. This Guaranty embodies the entire agreement between Guarantor and the ISO with respect to the matters set forth herein and supersedes all prior such agreements.

20. Severability. Should any provision of this Guaranty be determined by a court of competent jurisdiction to be unenforceable, all of the other provisions shall remain effective.

21. Choice of Law; Jurisdiction; Venue; and Service of Process. This Guaranty shall be governed by the laws of the Commonwealth of Massachusetts without regard to conflicts of laws

principles. Guarantor irrevocably and unconditionally submits to the jurisdiction of any Massachusetts court or any United States court sitting in Massachusetts over any action or proceeding arising out of or relating to this Guaranty and irrevocably agrees that all claims in such action or proceeding may be heard and determined by such court. Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Guarantor waives any objection to venue on the basis of forum non conveniens. Guarantor irrevocably consents to the service of process in any action or proceeding by the mailing of copies of such process to Guarantor at its address set forth herein. Guarantor agrees that any action or proceeding brought against the ISO arising out of or relating to this Guaranty shall be brought only in a Massachusetts court or a United States court sitting in Massachusetts. Nothing herein shall affect the right of the ISO to bring any action or proceeding against Guarantor or its property in the courts of any other jurisdictions.

22. Waiver of Jury Trial. GUARANTOR IRREVOCABLY, VOLUNTARILY, AND WITH ADVICE OF COUNSEL WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS GUARANTY OR THE AGREEMENTS.

23. Dispute. Any dispute arising under, out of, in connection with, or relating to this Guaranty, including any dispute or difference concerning the existence, validity, or enforceability of this Guaranty shall be resolved in accordance with the dispute resolution procedures under the ISO Tariff.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty as of this _____ day of _____, _____.

[GUARANTOR]

By: _____

Name: _____

Title: _____

Summary report:	
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