



July 28, 2020

**VIA ELECTRONIC FILING**

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

**Re: *ISO New England Inc. and New England Power Pool,*  
Docket No. ER20-\_\_\_\_-000; Revisions to the ISO New England Information  
Policy Regarding Notices Related to Defaulting Participants**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act,<sup>1</sup> ISO New England Inc. (the “ISO” or “ISO-NE”), joined by the New England Power Pool (“NEPOOL”) Participants Committee (together, the “Filing Parties”),<sup>2</sup> hereby submit this transmittal letter and revisions to the ISO New England Information Policy (the “Information Policy”) which is Attachment D to ISO’s Transmission, Markets and Services Tariff (the “Tariff”). Specifically, the revisions modify Section 2.3 of the Information Policy, which provides for notices by the ISO in the case of participant<sup>3</sup> default, suspension, or bankruptcy.<sup>4</sup> In support of these Tariff changes (the “Information Policy Changes”), the ISO is submitting the Affidavit of Cheryl Arnold, the Director of Finance and Accounting at the ISO (the “Arnold Affidavit”), which is sponsored

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<sup>1</sup> 16 U.S.C. § 824d (2020).

<sup>2</sup> Under New England’s Regional Transmission Organization (“RTO”) arrangements, the rights to make this filing are the ISO’s. NEPOOL, which pursuant to the Participants Agreement provides the sole Participant Processes for advisory voting on ISO matters, supported the changes reflected in this filing and, accordingly, joins in the filing.

<sup>3</sup> For purposes of this filing, use of the term “participant(s)” refers to “Governance Participant(s)” as defined in the Participants Agreement as Individual Participants and NEPOOL Participants.

<sup>4</sup> Capitalized terms used but not defined in this filing are intended to have the meaning given to such terms in the Tariff, the Second Restated New England Power Pool Agreement, and the Participants Agreement.

solely by the ISO. The ISO respectfully requests an effective date of October 1, 2020 for the Information Policy Changes.

## **I. DESCRIPTION OF THE FILING PARTIES; COMMUNICATIONS**

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

NEPOOL is a voluntary association organized in 1971 pursuant to the New England Power Pool Agreement, and it has grown to include more than 500 members. The Participants include all of the electric utilities rendering or receiving service under the Tariff, as well as independent power generators, marketers, load aggregators, brokers, consumer-owned utility systems, end users, demand resource providers, developers and a merchant transmission provider. Pursuant to revised governance provisions accepted by the Federal Energy Regulatory Commission (“Commission”),<sup>5</sup> the Participants act through the NEPOOL Participants Committee. The Participants Committee is authorized by Section 6.1 of the Second Restated NEPOOL Agreement and Section 8.1.3(c) of the Participants Agreement to represent NEPOOL in proceedings before the Commission. Pursuant to Section 2.2 of the Participants Agreement, “NEPOOL provide[s] the sole Participant Processes for advisory voting on ISO matters and the selection of ISO Board members, except for input from state regulatory authorities and as otherwise may be provided in the Tariff, TOA and the Market Participant Services Agreement included in the Tariff.”

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

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

And to NEPOOL as follows:

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\*Persons designated for service.<sup>6</sup>

## II. STANDARD OF REVIEW

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

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<sup>6</sup> Due to the joint nature of this filing, the Filing Parties respectfully request a waiver of Section 385.203(b)(3) of the Commission’s regulations to allow the inclusion of more than two persons on the service list in this proceeding.

<sup>7</sup> *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002).

<sup>8</sup> *Id.* at 10 (quoting *Winnfield v. FERC*, 744 F.2d 871, 876 (D.C. Cir. 1984)).

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984).

<sup>11</sup> *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

a result, even if an intervenor or the Commission develops an alternative proposal, the Commission must accept this Section 205 filing if it is just and reasonable.<sup>12</sup>

### III. BACKGROUND

The Information Policy is intended to (i) allow participants to provide certain confidential information to the ISO and to other participants and stakeholders with a common understanding of how such information will be used and kept confidential, and (ii) provide the ISO, participants and other stakeholders with clear guidance regarding when it is appropriate and permissible to disclose information (including confidential information) in connection with the operation of and participation in the markets administered by the ISO.

Section 2.3 of the Information Policy is essentially a notice provision, with two main components. First, it requires the ISO to make certain disclosures to participants and State authorities when any participant enters bankruptcy or defaults (without curing within a specified period) under its arrangements with the ISO. The purpose of the disclosure is to inform stakeholders of the potential market risks caused by such participants and includes: (i) information about the type and available amount of financial assurance the participant has in place; (ii) information about the type and amount of the default (in the case of a participant that has defaulted under the Financial Assurance Policy or the Billing Policy); (iii) whether the default has been cured; (iv) whether default procedures have been applied pursuant to the Billing Policy; (v) the net invoiced amount of purchases made by the participant in the New England Markets (in the case of a participant subject to a bankruptcy or insolvency petition); (vi) whether the participant owns a registered Load Asset; and (vii) other details. To fulfill this requirement, the ISO sends a weekly notice to the enumerated recipients containing the aforementioned disclosures about each defaulting or bankrupt participant (the “Section 2.3 Weekly Notice”). Second, Section 2.3 requires the ISO to promptly send notice to the Commission, State energy regulatory agencies, and participants when any participant is suspended from the New England Markets.<sup>13</sup>

### IV. EXPLANATION OF THE INFORMATION POLICY CHANGES

The Information Policy Changes filed here are designed (i) to improve and clarify communications with stakeholders regarding the status of participants emerging from bankruptcy

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<sup>12</sup> Cf. *Southern California Edison Co., et al*, 73 FERC ¶ 61,219, at 61,608 n.73 (1995) (“Having found the Plan to be just and reasonable, there is no need to consider in any detail the alternative plans proposed by the Joint Protesters.”) (citing *Bethany*).

<sup>13</sup> Section 2.3 of the Information Policy provides that a notice of suspension shall not be sent to the Commission if the defaulting participant cures the default that resulted in the suspension prior to the end of the next Business Day following the default.

and (ii) to provide the ISO with greater flexibility when disclosing confidential information of defaulting participants to the Commission, courts of competent jurisdiction (including bankruptcy courts), and/or other agencies. The Information Policy Changes do not modify the type of information that will be disclosed on the Section 2.3 Weekly Notice and do not affect the confidentiality and non-disclosure obligations of participants and other stakeholders under the Information Policy.

The first issue addressed by the Information Policy Changes relates to when participants are removed from the Section 2.3 Weekly Notice. As required by Section 2.3, the Section 2.3 Weekly Notice contains the enumerated information about any participant that is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws. The current language of Section 2.3 requires such participants to remain on the Section 2.3 Weekly Notice until the applicable proceeding has been dismissed, discharged, or closed, even if such participant is not otherwise in default and has been operating its business in the ordinary course throughout the bankruptcy proceeding or pursuant to a court-approved plan of bankruptcy. Typically, there is a material period of time between when a court-approved plan of bankruptcy becomes effective and the related proceeding is dismissed, discharged or closed. Therefore, a court's approval of a bankruptcy plan may be a more practical milestone to mark the point in the bankruptcy proceeding in which the entity is no longer a heightened risk to other participants. In other words, leaving an entity on the Section 2.3 Weekly Notice simply because its bankruptcy case has not been officially "dismissed, discharged, or closed" but is otherwise operating fully under a confirmed plan does not add informational value for recipients of the Section 2.3 Weekly Notice and may mislead recipients not closely tracking the progress of a particular bankruptcy proceeding. In order to better reflect that the market risk related to a bankrupt participant is greatly reduced upon the effectiveness of a court-approved plan of bankruptcy even if the related case is still pending, the Information Policy Changes add the effectiveness of a court-approved bankruptcy plan as one of the triggers for removing a bankrupt participant from the Section 2.3 Weekly Notice.

Additionally, the Information Policy Changes clarify that a participant's default status and bankruptcy status are independent criteria when evaluating whether such participant should be included on the Section 2.3 Weekly Notice. As currently written, Section 2.3 sets forth three triggers for when a participant may be removed from the Section 2.3 Weekly Notice. The applicability of these triggers is unclear in the case of a participant that is both in default under the Financial Assurance Policy and/or the Billing Policy and is the subject of a voluntary or involuntary bankruptcy petition or has sought relief under bankruptcy or insolvency laws. Therefore, the Information Policy Changes make clear that a defaulting participant remains on the Section 2.3 Weekly Notice regardless of its bankruptcy status and vice versa. This is consistent with the intent of Section 2.3, which is to notify the pool of heightened risk, whether such risk is related to bankruptcy, default, or both. The Information Policy Changes further

clarify that termination from the New England Markets results in a removal from the Section 2.3 Weekly Notice regardless of default status or bankruptcy status.

The second issue addressed by the Information Policy Changes relates to the ISO's ability to include the Confidential Information of defaulting participants in filings related to a default under the Financial Assurance Policy or Billing Policy before the Commission, other agencies or courts of competent jurisdiction. The Information Policy requires that the ISO maintain the confidentiality of specified participant information unless addressed by a specific exception. Currently, Section 2.3 does not have a specific enumerated exception that would permit the ISO to include Confidential Information of a participant when making an agency or court filing in connection with a Financial Assurance Default or payment default (under the Billing Policy). A goal of the Information Policy Changes is to enable the ISO to file whatever relevant information is needed to provide the Commission, other regulator, or court with sufficient evidence to make a ruling in proceedings where the ISO deems such filing is necessary to protect the New England Markets from the effects of a default. Without this change, if the ISO filed Confidential Information about a participant regarding such participant's default, then it would need to do so in accordance with the relevant jurisdiction's procedural requirements for confidential information (e.g., under seal, redacted documents). This is administratively burdensome for the ISO and may cause a delay if the ISO needs to seek judicial or Commission relief related to a participant default.<sup>14</sup> Importantly, the Information Policy Changes do not give the ISO the right to file *any* Confidential Information about a defaulting participant; such disclosure must only be made to the "extent reasonably necessary" in the event of a Financial Assurance Default or payment default under the ISO New England Billing Policy. The Information Policy Changes will permit the ISO to take quicker action to protect the New England Markets from the effects of a default and put defaulting participants on notice that their confidential information may be disclosed by the ISO in related proceedings.

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<sup>14</sup> One recent example illustrating the issue involved an ISO filing in a bankruptcy proceeding to request a temporary stay, in which the ISO desired to show the daily obligations being incurred by a bankrupt participant to prove how quickly that participant's collateral was being depleted, which in turn demonstrated the market risk that would be mitigated by lifting the temporary stay. The process to file such information on a confidential basis resulted in a delay of several days, which led to increased market risk (due to the participant's dwindling collateral) and increased legal costs to the ISO. Thus, the Information Policy Changes would enable the ISO to avoid such increased market risk and costs and would allow the court to consider the request of the temporary stay more quickly.

## V. STAKEHOLDER PROCESS

The Information Policy Changes filed herein were considered through the complete NEPOOL Participant Processes.<sup>15</sup> At its May 12, 2020 meeting, the NEPOOL Markets Committee considered and voted unanimously to recommend that the NEPOOL Participants Committee support the Information Policy Changes.<sup>16</sup> Subsequent to the Markets Committee's consideration, the NEPOOL Participants Committee unanimously approved the Information Policy Changes as part of the Consent Agenda for its June 4, 2020 meeting.<sup>17</sup>

## VI. ADDITIONAL SUPPORTING INFORMATION

Section 35.13 of the Commission's regulations generally requires public utilities to file certain cost and other information related to an examination of traditional cost-of-service rates. However, the Information Policy Changes filed here do not modify a traditional "rate" and the ISO is not a traditional investor-owned utility. Therefore, to the extent necessary, the Filing Parties request waiver of Section 35.13 of the Commission's regulations.<sup>18</sup> Notwithstanding its request for waiver, the Filing Parties submit the following additional information in substantial compliance with relevant provisions of Section 35.13 of the Commission's regulations:

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

- This transmittal letter;
- Affidavit of Cheryl Arnold, sponsored solely by the ISO;
- Blacklined Section 2.3 of the Information Policy reflecting the Information Policy Changes submitted in this filing effective October 1, 2020;

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<sup>15</sup> Of note, the Information Policy Changes were also discussed at the March 26, 2020 meeting of the Budget and Finance Subcommittee of the Participants Committee but no formal action was taken or required.

<sup>16</sup> During the Markets Committee vote, one abstention was recorded from a member in NEPOOL's End User Sector.

<sup>17</sup> The Consent Agenda for a Participants Committee meeting, similar to the Consent Agenda for a Commission open meeting, is a group of actions (each recommended by a Technical Committee or subgroup established by the Participants Committee) to be taken by the Participants Committee through approval of a single motion at a meeting. All recommendations voted on as part of the Consent Agenda are deemed to have been voted on individually and independently. The Participants Committee's unanimous approval (with one abstention recorded from Mr. Michael Kuser) of the Consent Agenda included its support for the Information Policy Changes filed herein.

<sup>18</sup> 18 C.F.R. § 35.13 (2020).

- Clean Section 2.3 of the Information Policy reflecting the Information Policy Changes submitted in this filing effective October 1, 2020; and
- List of governors and utility regulatory agencies in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to which a copy of this filing has been sent.

35.13(b)(2) – As set forth in Section I above, the ISO requests that the Information Policy Changes filed here become effective on October 1, 2020.

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

35.13(b)(4) – A description of the materials submitted pursuant to this filing is contained in Part VI of this transmittal letter.

35.13(b)(5) – The reasons for this filing are discussed in Part IV of this transmittal letter.

35.13(b)(6) – The ISO's approval of the Information Policy Changes is evidenced by this filing. These Information Policy Changes reflect the results of the Participant Processes required by the Participants Agreement and reflect the unanimous support of the NEPOOL Participants Committee.

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

35.13(c)(1) – The Information Policy Changes herein do not modify a traditional "rate," and the statement required under this Commission regulation is not applicable to the instant filing.



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

35.13(c)(3) – No specifically assignable facilities have been or will be installed or modified in connection with the Information Policy Changes filed herein.

## VII. CONCLUSION

For the reasons set forth above, the Filing Parties request that the Commission accept these Information Policy Changes, with an effective date of October 1, 2020.

Respectfully submitted,

**ISO NEW ENGLAND INC.**

By: /s/ Tyler E. Barnett

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**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**ISO New England Inc.**

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**Docket No. ER20- -000**

**AFFIDAVIT OF CHERYL ARNOLD**

My name is Cheryl Arnold. I am the Director of Finance and Accounting for ISO New England Inc. (the "ISO"). I joined the ISO in May of 1998 as Accounting Supervisor. I later became the ISO's Controller and I am currently the Director of Finance and Accounting. Prior to joining the ISO, I worked at MASSPOWER, a generating facility in Springfield, MA for five years, first as Senior Accountant, and then as Controller. Previous to that, I was the Accountant for Bank North Group Inc. and then Accounting Manager for First Vermont Bank in Brattleboro, Vermont for five years. I also worked at MassMutual as an accountant for a year. I earned a Master of Business Administration from the University of Massachusetts and a Bachelor of Business Administration from American International College.

I support the revisions to enhance and clarify Section 2.3 of the ISO New England Information Policy submitted in this filing. I participated in the drafting of the revisions and I declare that the information included in the filing letter submitted in this proceeding is true and correct to the best of my knowledge and belief.



Cheryl Arnold  
Director of Finance and Accounting  
ISO New England, Inc.

Executed on July 28, 2020

**ATTACHMENT D**  
**ISO New England Information Policy**

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## **Introduction**

The ISO New England Information Policy establishes rules and guidelines regarding the appropriate disclosure of all information received, created and distributed in connection with the operation of and participation in the markets administered by ISO New England Inc. (the “ISO”). The Information Policy allows stakeholder committees, task forces and working groups (collectively, “Stakeholder Committees”), the ISO, and Governance Participants to share information with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained.

The Information Policy document consists of three sections. Section 1 highlights the Information Policy's intent and objectives. Section 2 discusses confidentiality issues. Finally, Section 3 specifies what types of information are available to whom.

Changes to the Information Policy will be made in accordance with Section 11.3 of the Participants Agreement.

## **Section 1 -Policy Intent & Objectives**

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

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

1. To operate the bulk power supply system on a day-to-day basis.

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

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

This Information Policy will:

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

This Information Policy is intended to comport with the obligation of the ISO, Stakeholder Committees and the Governance Participants to comply fully with the antitrust laws and the information access and disclosure provisions of the standards of conduct for transmission providers promulgated by the Commission in 18 C.F.R. Part 358. The Information Policy is expressly intended both: (1) to protect against the disclosure of *Confidential Information* that could facilitate anticompetitive conduct prohibited by the antitrust laws and (2) to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.

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

## **Section 2 -Confidentiality Issues**

### **2.0 Confidentiality**

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

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



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

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

## **2.1 Confidential Information**

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

- (a) Information that **(i)** is furnished by a Governance Participant (the "Furnishing Governance Participant") to the ISO, Stakeholder Committees or another Governance Participant, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England electricity markets, and **(iii)** has been designated in writing by the Furnishing Governance Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant seeks confidential treatment for such information, or, is classified as a type of confidential or proprietary information pursuant to Section 3.0.
  
- (b) Information that **(i)** is furnished by the ISO to a Governance Participant or a Stakeholder Committee, **(ii)** constitutes trade secrets or commercial or financial information the disclosure of which would have an adverse effect on the ability of the ISO to perform its responsibilities under the Participants Agreement, and **(iii)** has been designated in writing by the ISO as confidential or proprietary either in the document which provided such information, in transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the ISO seeks confidential treatment for such information. In addition, information that

is furnished by the ISO to a Governance Participant or a Stakeholder Committee relating to the job status or performance or terms of employment of any ISO employee shall be *Confidential Information*.

- (c) Information that (i) is furnished by a non-Governance Participant that takes part in a demand response program operated by the ISO (a “DR Information Provider”) to the ISO, Stakeholder Committees or any Governance Participant in connection with the demand response program, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the DR Information Provider or prejudice the position of the DR Information Provider in the demand response program, and (iii) has been designated in writing by the DR Information Provider as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the DR Information Provider seeks confidential treatment for such information.
  
- (d) Information that (i) is furnished by a non-Governance Participant acting as a Project Sponsor to the ISO, Stakeholder Committees or any Governance Participant in connection with the Forward Capacity Market, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Project Sponsor or prejudice the position of the Project Sponsor in the Forward Capacity Market, and (iii) has been designated in writing by the Project Sponsor as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Project Sponsor seeks confidential treatment for such information.
  
- (e) Information disclosed to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy that (i) is furnished by a Furnishing Governance Participant to the ISO, Stakeholder Committees or another Governance Participant or is furnished by the ISO to a Governance Participant or a Stakeholder Committee, (ii) constitutes sensitive or non-public information concerning the Participant or identifying or concerning the Principals of a Participant, the disclosure of which could harm the Furnishing Governance Participant or its Principals, and (iii) has been designated in writing by the

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

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

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

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

## **2.2 Treatment of Confidential Information**

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

Governance Participant that has furnished *Confidential Information* to Stakeholder Committees may require each recipient to return all or any portion of the *Confidential Information* once it is no longer needed by such recipient to fulfill its responsibilities under the Filed Documents.

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

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

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

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

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

Notwithstanding anything to the contrary in the ISO New England Information Policy and consistent with the Commission’s Order No. 787, the ISO may disclose *Confidential Information* concerning natural gas-fueled generation from resources located within the New England Control Area to the operating personnel of an interstate natural gas pipeline company that operates a pipeline provided that: (a) *Confidential Information* regarding specific generators will be shared only with the pipeline serving that generator directly and (b) the ISO has determined that it is operationally necessary to ensure reliability to disclose the *Confidential Information*.

### **2.3 Disclosure of Information Regarding Defaulting Governance Participants**

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

For the period beginning 90 calendar days prior to the date of the bankruptcy or insolvency petition or for the period beginning on the date of the payment default under the Billing Policy or Financial Assurance Default forward until such time as ~~the earlier of~~ (a) when the Governance Participant cures the default (unless otherwise required by this Section 2.3 to be disclosed in

connection with a bankruptcy or insolvency petition); (b) the earliest to occur of the following: when the bankruptcy ~~or insolvency petition case~~ is dismissed, ~~discharged, or such the bankruptcy case is otherwise closed,~~ or the plan of liquidation, plan of reorganization, or plan of adjustment filed in the bankruptcy case has been confirmed and such plan has become effective (unless otherwise required by this Section 2.3 to be disclosed in connection with a Financial Assurance Default or a payment default under the Billing Policy); or (c) in any event, when the Governance Participant's status with the ISO has been terminated (whether voluntarily or involuntarily): (i) the type and available amount of financial assurance in place on the date of disclosure; (ii) whether such Governance Participant has defaulted on its obligations under the Financial Assurance Policy, the amount of any such default as of the date of the disclosure, the date of the initial default, and when or whether the default is cured; (iii) whether such Governance Participant has defaulted on its payment obligations under the Billing Policy, the cumulative amount of any payment defaults as of the date of disclosure, the initial date of the default, the amount of default that remains outstanding as of the date of disclosure, when or whether the default is cured, and the billing default procedures that have been applied pursuant to Sections 3.3, 3.4, or 3.6 of the Billing Policy; (iv) for any Governance Participant subject to a bankruptcy or insolvency petition, the net invoiced amount of such Governance Participant's purchases in the New England Markets; and (v) whether such Governance Participant owns a registered Load Asset.

If a Governance Participant is suspended from the New England Markets, the ISO shall promptly send notice of such suspension to each of the members and alternates on the Participants Committee, the energy regulatory agencies in each of the New England states and the Commission. Said notice shall identify the specific date and time of the suspension. Notwithstanding the foregoing, notice of such suspension shall not be sent to the Commission if the Governance Participant cures the default related to such suspension prior to the end of the next Business Day following the default. If the ISO has issued a notice to the Commission that a Governance Participant has been suspended, and that Governance Participant subsequently cures and is no longer suspended (as determined by the ISO in its sole discretion), such Governance Participant may request the ISO to issue a notice state such fact. In the event of a Financial Assurance Default (as defined in the Financial Assurance Policy) or payment default under the Billing Policy, the ISO may, to the extent reasonably necessary, disclose "Confidential Information" related to such Financial Assurance Default or payment default in any proceeding before the Commission or a court or agency of competent jurisdiction.

## **2.4 Breach of Confidential Information Obligations**

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

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

## **Section 3 -Information Access**

### **3.0 Information Access**

#### **(a) Public Information**

This information includes:

- Public record filings with regulatory agencies. (Some examples include, but are not limited to, ISO budget data required for ISO tariff filings; and data associated with the Open Access Transmission Tariff.)
- Data posted on the OASIS. (Some examples include, but are not limited to, transmission facilities information including system inventory; new applications; scheduling information, Real-Time tie line use and surplus availability; aggregate amount of generation operating out of merit (for transmission, reliability and VAR) by Reliability Region (these regions will be defined by the ISO, such that no *Confidential Information* or Strategic Information is released), Real-Time Operating Reserve availability and curtailment or interruption of External Transactions.)
- Information and/or reports that are required to be filed with the Commission (unless specifically required to be filed on a confidential basis). (For example, the Filed Documents.)
- Public generator information including system inventory and new applications. (Some examples include, but are not limited to, Capacity, Energy, Loads & Transmission (CELT) Report; and generator applications pursuant to Section I.3.9.)
- Public Market Information includes any items required to be made public by (i) the Filed Documents; and (ii) other relevant documents, including without limitation the ISO New England Manuals and any other system rules, procedures or criteria for the operation of the New England system and administration of the New England Markets and the Filed Documents. (Some examples include, but are not limited to, aggregate market requirements and settlements; clearing prices; Locational Marginal Prices; lists of load zones, nodes and hubs; Emergency Energy notices; market monitoring input assumptions and threshold values; Financial Transmission Rights modeling and auction results; Auction Revenue Rights modeling and auction results, and the Net Commitment Period Compensation reporting described in Section III.F.4 of the Transmission, Markets and Services Tariff.)
- In addition, the ISO shall publish each month's bid and offer information for all markets on its website on the first day of the fourth calendar month following the month during which the applicable demand bids and supply offers were in effect (e.g., bid and offer data for January would be released on May 1), provided that the information is presented in a manner that does not reveal the specific



load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity's bids and offers over time.

- Market test information including any information equivalent to Public Market Information derived from test programs for new markets or market software or simulations of proposed market improvement (includes any and all information necessary for evaluation of the impacts of a proposed new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions).
- Long-term system planning and operations information consisting of load forecasts, transmission models (including power flow, short circuit and stability models and their related base cases and contingency files), transfer limits used for planning purposes, Installed Capacity Requirements and Governance Participants and non-Governance Participants proposed generation. This information does not include near-term transmission models or transfer limits within New England that are developed as part of system operations or real-time information from the control room energy management system.
- Public reports required by the Filed Documents (including, but not limited to, evaluation of procedures for determination of Locational Marginal Prices as well as the awarding Financial Transmission Rights and associated Congestion Costs and Transmission Congestion Credits).
- Public market monitoring information including, but not limited to, public reports by the Independent Market Advisor required by the Market Rules (includes the ISO's time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of the Governance Participants by name or provide a manner for identifying such Governance Participants, except as otherwise provided in the Filed Documents).
- Any other information that is not *Confidential Information* that the ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the markets or public understanding of the New England system and the operations of the ISO.

This data may be made available to the public at large. (Fees may be applicable to cover process and handling expenses.)

**(b) Non-Public Transmission Information**

This information includes:

- Information and/or reports that are filed with NERC or NPCC
- 
- Real-time system operations information, which is not posted on the OASIS, including but not limited to detailed operations data. (Some examples include, but are not limited to, real-time transmission line flows, real-time transfer limits, and real-time voltages.)
- Information relating to specific generating facilities, which is required by transmission personnel to ensure the reliable operation of the New England bulk power system. (Some examples include, but are not limited to, detailed generator operating characteristics; and dynamic swing recorder plots.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of special protection systems; and transmission operations related to stability limits.)
- Information related to system restoration efforts. (Some examples include, but are not limited to, ISO and Governance Participants' detailed power system restoration plans.)

This information may be made available to reliability councils and all Governance Participants' transmission personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the codes of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulation.

**(c) Governance Participant Specific Data**

This information includes:

- Data not yet posted on the OASIS. (Some examples include, but are not limited to, interface transmission service schedules lists.)
- *Confidential Information*, as defined in Section 2.1 of this Information Policy, for which this Governance Participant, or an agent thereof, has the right to receive the data. (Some examples include, but are not limited to, product obligation; and load.)
- Invoice and Settlement Data. (Some examples include, but are not limited to, Governance Participant Phase I/II hourly transfer capability allocations; electrical load, adjusted net interchange, obligation, entitlement, Charges, and Payments for each market.)

This data may be made available to active users or agents of the specified Governance Participant.

**(d) Asset Specific Information – Near Real-Time**

This information includes:

- Near real-time information related to the particular asset. (Some examples include, but are not limited to, generation levels (MW); designations (MW); AGC status, operating limits, response rates, unit forecast and operation information, and Real-Time status of External Transactions)

This data may be made available to those Governance Participants, or agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. As applicable, this data may also be made available to a Governance Participant who is a contractual party to external or internal bilateral contracts for the specified Asset, The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the standards of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulations.

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

This information includes:

- Unit forecast information relating to a particular Asset, which is necessary to determine the projected operation of particular resources. (Some examples include, but are not limited to, Start-Up Time; generation; and shut-down time.)
- Information relating to a particular Asset, which is necessary to determine the accuracy of settlement. (Some examples include, but are not limited to, high operating limit; generation; Ownership Share; and duration on AGC.)
- Governance Participant input data. (Some examples include, but are not limited to, generation input data; and records of deficient performance.)
- Capability Responsibility data and calculations, for those specific generating facilities for which a Governance Participant(s) has an ownership interest. (Some examples include, but are not limited to, unit capability demonstration audits)
- All information, with the exception of bids, offers and meter data, necessary to verify settlement data. (Some examples include, but are not limited to, response rate data; and minimum run-time data.)

This data may be made available to those Governance Participants, or agents thereof, who are joint owners and/or entitlement holders in the Asset. The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the codes of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulations.

**(f) Meter, Bid and Offer Data**

This information includes:

- *Confidential Information* submitted as input to the market system. Bid and offer data may be made available to any Governance Participant with an Ownership Share, or agent thereof, for a specified Asset.
- A minimum power value derived by the ISO from a resource's Economic Minimum Limit may be included in the transmission models that are treated as public information pursuant to Section 3.0(a).

- Meter data may be made available to the Assigned Meter Reader for a specified Asset. Meter data may be manually distributed to the Host Participant whose unmetered load is calculated based on said meter data.

**(g) Reliability, Operations and Area Control Information**

**(i) Reliability-Related Information**

This information includes:

- Real-Time operating data, including *Confidential Information*, that is used to assure the reliable operation of the interconnected bulk power system and/or that may be authorized or required to be shared pursuant to reliability standard, NERC or NPCC rule, or by Commission request, order or rule. (Some examples include, but are not limited to, transmission interface limits, transmission line flows, line or circuit breaker status, generation output or phasor measurement data.)

Real-Time operating data that is used to assure reliable operation of the interconnected bulk power system is typically shared by the ISO with the Commission, NERC, NPCC, and any applicable “regional entity” (as defined in the Federal Power Act), or any reliability coordinator, balancing authority, transmission operator or equivalent entity.

**(ii) External Control Center Information**

This information includes:

- All system operations or planning information that relates to the particular external control center. (Some examples include, but are not limited to, transmission interface transfers and limits within the external control center area; and inter-area emergency assistance available, used for planning purposes, under ISO New England Operating Procedure No. 4 conditions.)
- Information that is required to assure the reliable operation of the interconnected bulk power system. (Some examples include, but are not limited to, all information deemed necessary in the event of ISO New England Operating Procedure No. 4 implementation; and, under non-

ISO New England Operating Procedure No. 4 system conditions, information related to inter-area flow control.)

- Inter-area transmission operating guides that relate to the particular external control area. (Some examples include, but are not limited to, PV-20 Cross Trip SPS – available to New York; and Phase I Runback SPS – available to Hydro Quebec.)
- Confidential Information (under signature of confidentiality agreements that provide rights to Governance Participants equivalent to those granted in this Information Policy to notice of and opportunity to defend against any release of their Confidential Information) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system. (Some examples include, but are not limited to, ISO operations and markets information, including market monitoring information, provided that market monitoring information shall only be shared with independent market operators or independent market monitors and only in connection with particular investigations affecting regional markets.)

This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO operations (control room/forecast office) or planning department directly to external control center personnel.

### **(iii) Local Control Center Information**

This information includes:

- All system operations or planning information. (Some examples include, but are not limited to, detailed system models; and transmission element data as detailed on NX-9 forms.)
- Information relating to specific generating facilities that is needed to assure the reliable operation of the New England Control Area. (Some examples include, but are not limited to, generator constraints, including the reason for such constraint; and detailed generator unit commitment.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of special protection systems; and transmission operations related to stability limits.)

- New England and Local Control Center System Restoration Plans. (Some examples include, but are not limited to, the ISO, Local Control Center and Governance Participants' detailed power system restoration plans.)

This information is not available to Governance Participants, a subset thereof, or the public at large, but is typically communicated by the ISO's control room/forecast office) directly to Local Control Center personnel.

**(h) Demand Response Provider Information**

This information is asset-specific Confidential Information, including:

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

Information relating to retail customers, customer data and load profiles is subject to certain state law restrictions and is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO's control room/forecast office directly to load response provider personnel.

**(i) ISO New England Information**

This information includes:

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

ISO personnel, consultants, counsel, and board members may have access to any information defined in the categories listed above.

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

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

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

This information includes:

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

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

**3.1 Process for Submitting and Tracking Formal Information Requests by Governance Participants**

**(a) Requesting Entities**

As used in this Section 3.1, the term “Requesting Entity” shall mean any Governance Participant or an Authorized Person, as defined in Section 3.3 of this Information Policy).

**(b) Public Information**

If a Requesting Entity requests that the ISO publish Public Information (as defined in Section 3.0(a) of this Information Policy) that is not currently published by the ISO, the ISO may after consultation with



the Participants Committee or its designated subcommittee or working group defer or deny such request if the ISO determines that publication of such data is not feasible at the time of such request due to resource limitations, including, without limitation, available software.

**(c) Non-Public Information**

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

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

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

**(d) Form of Request; Tracking**

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

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

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

**(e) Timing and Notice**

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

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

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

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

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

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

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

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

**(f) Consideration of Requests**

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

(A) If the ISO determines that the information is *Confidential Information*, the ISO Information Contact will refer the request to the Furnishing Entity(ies) and the ISO will

not release the requested information unless it is directed to do so by the Furnishing Entity(ies) or ordered to do so by a court or regulatory authority with jurisdiction over such matters. If the Furnishing Entity(ies) directs the ISO to release the requested information, the ISO will next determine whether the requested information is Strategic Information as set forth in Section 3.1(c)(i)(B) below. The Furnishing Entity(ies) shall bear any costs reasonably incurred by the ISO in opposing the issuance of such an order requiring disclosure of the Furnishing Entity(ies)' *Confidential Information*.

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

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

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

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

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

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

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

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

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

**(h) Definition of Strategic Information**

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

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

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

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

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

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

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

### **3.2 Disclosure to the Commission and the CFTC**

#### **(a) Procedures for Disclosure to the Commission**

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

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

**(b) Procedures for Disclosure to the CFTC**

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

**3.3 Disclosure to Authorized Persons and ISO/MMU Requesting Entities**

**(a) Definitions**

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

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

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

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

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

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

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

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

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



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

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

**(b) Procedures for Disclosures to Authorized Persons**

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

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

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

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

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

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

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

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

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

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

(iii) As regards Information Requests:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

### **3.4 Disclosure to Academic Institutions**

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

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

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

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

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

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

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

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

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

## **APPENDIX A**

### **FORM OF NON-DISCLOSURE AGREEMENT**

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

#### **RECITALS**

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

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

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

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

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

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

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

**1. Definitions**

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

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

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

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

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

**1.6 FERC.** The Federal Energy Regulatory Commission.

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

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

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

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

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

## **2. Protection of Confidentiality.**

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

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

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

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

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

**2.5 Care and Use of Confidential Market Information.**

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

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

### **2.5.3 Schedule of Authorized Persons.**

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

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

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

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



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

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

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

### **3. Procedure for Information Requests**

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

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

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

### **3.3 Response to Information Requests.**

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

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

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

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

#### **4. Remedies.**

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

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

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

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

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

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

If to the Authorized Person:

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(email address)

with a copy to

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(email address)

If to Counsel for the Participants Committee:

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(email address)  
with a copy to

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(email address)

If to ISO:

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(email address)  
with a copy to

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(email address)

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

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

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

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

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

ISO NEW ENGLAND INC.

By:

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Name:

Title:

AUTHORIZED PERSON

By:

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Name:

Title:

**APPENDIX B**  
**FORM OF CERTIFICATION**

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

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

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

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

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

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

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

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



**2. Requisite Authority.**

- a. The Authorized Commission hereby certifies that it has all necessary legal authority to execute, deliver, and perform the obligations in this Certification.
  
- b. Each Authorized Person is, at the time of the execution of this Certification, an employee of, or consultant to, the Authorized Commission, and has not materially breached any existing or past nondisclosure agreement or obligation, except as has been disclosed by the Authorized Commission to ISO in writing.
  
- c. The Authorized Persons have, through all necessary action of the Authorized Commission, been appointed and directed by the Authorized Commission to execute and deliver the Non-Disclosure Agreements to ISO and receive Confidential Market Information on the Authorized Commission's behalf and for its benefit.
  
- d. The Authorized Commission will, at all times after the provision of Confidential Market Information to the Authorized Persons, provide ISO with: (i) written notice of any changes in the Authorized Persons' qualification as an Authorized Person within two (2) business days of such change; (ii) written confirmation to any inquiry by ISO regarding the status or identification of any specific Authorized Person within two (2) business days of such request, and (iii) periodic written updates, no less often than semi-annually, containing the names of all Authorized Persons appointed by the Authorized Commission.

**3. Protection of Confidential Market Information.**

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

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

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

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

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

**5. Use and Destruction of Confidential Market Information.**

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

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

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

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

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

**Executed**, as of the date first set out above.

**[Commission]**

By: \_\_\_\_\_

Its: \_\_\_\_\_

[SEE NEXT PAGE]

**EXHIBIT A**

**CERTIFICATION LIST OF AUTHORIZED PERSONS**

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

### FORM OF ACADEMIC INSTITUTION NON-DISCLOSURE AGREEMENT

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

#### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

**1.5 Commission.** The Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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



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

## **2. Protection of Confidentiality.**

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

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

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

**2.3 Care and Use of Confidential Market Information.**

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

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

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

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

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

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

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

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

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

### **3. Remedies.**

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

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

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

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

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

If to the Authorized Institution:

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(email address)

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with a copy to

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(email address)

If to Counsel for the Participants Committee:

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(email address)

with a copy to

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(email address)

If to ISO:

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(email address)

with a copy to

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(email address)

**6. Severability and Survival.** In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. The obligations of the Parties set forth in this Agreement shall survive the termination or completion of this Agreement.

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

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

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

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

ISO NEW ENGLAND INC.

AUTHORIZED INSTITUTION

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

**NON-DISCLOSURE CERTIFICATE**

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

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

Representing:

\_\_\_\_\_

Date: \_\_\_\_\_

[NOTICE ADDRESS]

**ATTACHMENT D**  
**ISO New England Information Policy**



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## **Introduction**

The ISO New England Information Policy establishes rules and guidelines regarding the appropriate disclosure of all information received, created and distributed in connection with the operation of and participation in the markets administered by ISO New England Inc. (the “ISO”). The Information Policy allows stakeholder committees, task forces and working groups (collectively, “Stakeholder Committees”), the ISO, and Governance Participants to share information with the benefit of a common understanding regarding how that information will be used and how appropriate confidentiality will be maintained.

The Information Policy document consists of three sections. Section 1 highlights the Information Policy's intent and objectives. Section 2 discusses confidentiality issues. Finally, Section 3 specifies what types of information are available to whom.

Changes to the Information Policy will be made in accordance with Section 11.3 of the Participants Agreement.

## **Section 1 -Policy Intent & Objectives**

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

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

1. To operate the bulk power supply system on a day-to-day basis.

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

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

This Information Policy will:

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

This Information Policy is intended to comport with the obligation of the ISO, Stakeholder Committees and the Governance Participants to comply fully with the antitrust laws and the information access and disclosure provisions of the standards of conduct for transmission providers promulgated by the Commission in 18 C.F.R. Part 358. The Information Policy is expressly intended both: **(1)** to protect against the disclosure of *Confidential Information* that could facilitate anticompetitive conduct prohibited by the antitrust laws and **(2)** to distribute information to the extent and in a manner consistent with preserving the competitiveness and efficiency of the New England electric markets and the reliability of the bulk power system.

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

## **Section 2 -Confidentiality Issues**

### **2.0 Confidentiality**

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

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

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

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

## **2.1 Confidential Information**

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

- (a) Information that **(i)** is furnished by a Governance Participant (the "Furnishing Governance Participant") to the ISO, Stakeholder Committees or another Governance Participant, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Furnishing Governance Participant or prejudice the position of that Governance Participant in the New England electricity markets, and **(iii)** has been designated in writing by the Furnishing Governance Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Furnishing Governance Participant seeks confidential treatment for such information, or, is classified as a type of confidential or proprietary information pursuant to Section 3.0.
  
- (b) Information that **(i)** is furnished by the ISO to a Governance Participant or a Stakeholder Committee, **(ii)** constitutes trade secrets or commercial or financial information the disclosure of which would have an adverse effect on the ability of the ISO to perform its responsibilities under the Participants Agreement, and **(iii)** has been designated in writing by the ISO as confidential or proprietary either in the document which provided such information, in transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the ISO seeks confidential treatment for such information. In addition, information that

is furnished by the ISO to a Governance Participant or a Stakeholder Committee relating to the job status or performance or terms of employment of any ISO employee shall be *Confidential Information*.

- (c) Information that **(i)** is furnished by a non-Governance Participant that takes part in a demand response program operated by the ISO (a “DR Information Provider”) to the ISO, Stakeholder Committees or any Governance Participant in connection with the demand response program, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the DR Information Provider or prejudice the position of the DR Information Provider in the demand response program, and **(iii)** has been designated in writing by the DR Information Provider as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the DR Information Provider seeks confidential treatment for such information.
  
- (d) Information that **(i)** is furnished by a non-Governance Participant acting as a Project Sponsor to the ISO, Stakeholder Committees or any Governance Participant in connection with the Forward Capacity Market, **(ii)** constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Project Sponsor or prejudice the position of the Project Sponsor in the Forward Capacity Market, and **(iii)** has been designated in writing by the Project Sponsor as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document that identifies the information with sufficient specificity and clarity so that the entity receiving such information has been made aware that the Project Sponsor seeks confidential treatment for such information.
  
- (e) Information disclosed to satisfy the “Minimum Criteria for Market Participation” set forth in Section II.A of the ISO New England Financial Assurance Policy that (i) is furnished by a Furnishing Governance Participant to the ISO, Stakeholder Committees or another Governance Participant or is furnished by the ISO to a Governance Participant or a Stakeholder Committee, (ii) constitutes sensitive or non-public information concerning the Participant or identifying or concerning the Principals of a Participant, the disclosure of which could harm the Furnishing Governance Participant or its Principals, and (iii) has been designated in writing by the

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

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

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

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

## **2.2 Treatment of Confidential Information**

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



Governance Participant that has furnished *Confidential Information* to Stakeholder Committees may require each recipient to return all or any portion of the *Confidential Information* once it is no longer needed by such recipient to fulfill its responsibilities under the Filed Documents.

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

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

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

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

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

Notwithstanding anything to the contrary in the ISO New England Information Policy and consistent with the Commission’s Order No. 787, the ISO may disclose *Confidential Information* concerning natural gas-fueled generation from resources located within the New England Control Area to the operating personnel of an interstate natural gas pipeline company that operates a pipeline provided that: (a) *Confidential Information* regarding specific generators will be shared only with the pipeline serving that generator directly and (b) the ISO has determined that it is operationally necessary to ensure reliability to disclose the *Confidential Information*.

### **2.3 Disclosure of Information Regarding Defaulting Governance Participants**

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

For the period beginning 90 calendar days prior to the date of the bankruptcy or insolvency petition or for the period beginning on the date of the payment default under the Billing Policy or Financial Assurance Default forward until such time as (a) when the Governance Participant cures the default (unless otherwise required by this Section 2.3 to be disclosed in connection with

a bankruptcy or insolvency petition); (b) the earliest to occur of the following: when the bankruptcy case is dismissed, the bankruptcy case is closed, or the plan of liquidation, plan of reorganization, or plan of adjustment filed in the bankruptcy case has been confirmed and such plan has become effective (unless otherwise required by this Section 2.3 to be disclosed in connection with a Financial Assurance Default or a payment default under the Billing Policy); or (c) in any event, when the Governance Participant's status with the ISO has been terminated (whether voluntarily or involuntarily): (i) the type and available amount of financial assurance in place on the date of disclosure; (ii) whether such Governance Participant has defaulted on its obligations under the Financial Assurance Policy, the amount of any such default as of the date of the disclosure, the date of the initial default, and when or whether the default is cured; (iii) whether such Governance Participant has defaulted on its payment obligations under the Billing Policy, the cumulative amount of any payment defaults as of the date of disclosure, the initial date of the default, the amount of default that remains outstanding as of the date of disclosure, when or whether the default is cured, and the billing default procedures that have been applied pursuant to Sections 3.3, 3.4, or 3.6 of the Billing Policy; (iv) for any Governance Participant subject to a bankruptcy or insolvency petition, the net invoiced amount of such Governance Participant's purchases in the New England Markets; and (v) whether such Governance Participant owns a registered Load Asset.

If a Governance Participant is suspended from the New England Markets, the ISO shall promptly send notice of such suspension to each of the members and alternates on the Participants Committee, the energy regulatory agencies in each of the New England states and the Commission. Said notice shall identify the specific date and time of the suspension. Notwithstanding the foregoing, notice of such suspension shall not be sent to the Commission if the Governance Participant cures the default related to such suspension prior to the end of the next Business Day following the default. If the ISO has issued a notice to the Commission that a Governance Participant has been suspended, and that Governance Participant subsequently cures and is no longer suspended (as determined by the ISO in its sole discretion), such Governance Participant may request the ISO to issue a notice state such fact. In the event of a Financial Assurance Default (as defined in the Financial Assurance Policy) or payment default under the Billing Policy, the ISO may, to the extent reasonably necessary, disclose "Confidential Information" related to such Financial Assurance Default or payment default in any proceeding before the Commission or a court or agency of competent jurisdiction.

## **2.4 Breach of Confidential Information Obligations**

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

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

### **Section 3 -Information Access**

#### **3.0 Information Access**

##### **(a) Public Information**

This information includes:

- Public record filings with regulatory agencies. (Some examples include, but are not limited to, ISO budget data required for ISO tariff filings; and data associated with the Open Access Transmission Tariff.)
- Data posted on the OASIS. (Some examples include, but are not limited to, transmission facilities information including system inventory; new applications; scheduling information, Real-Time tie line use and surplus availability; aggregate amount of generation operating out of merit (for transmission, reliability and VAR) by Reliability Region (these regions will be defined by the ISO, such that no *Confidential Information* or Strategic Information is released), Real-Time Operating Reserve availability and curtailment or interruption of External Transactions.)
- Information and/or reports that are required to be filed with the Commission (unless specifically required to be filed on a confidential basis). (For example, the Filed Documents.)
- Public generator information including system inventory and new applications. (Some examples include, but are not limited to, Capacity, Energy, Loads & Transmission (CELT) Report; and generator applications pursuant to Section I.3.9.)
- Public Market Information includes any items required to be made public by **(i)** the Filed Documents; and **(ii)** other relevant documents, including without limitation the ISO New England Manuals and any other system rules, procedures or criteria for the operation of the New England system and administration of the New England Markets and the Filed Documents. (Some examples include, but are not limited to, aggregate market requirements and settlements; clearing prices; Locational Marginal Prices; lists of load zones, nodes and hubs; Emergency Energy notices; market monitoring input assumptions and threshold values; Financial Transmission Rights modeling and auction results; Auction Revenue Rights modeling and auction results, and the Net Commitment Period Compensation reporting described in Section III.F.4 of the Transmission, Markets and Services Tariff.)
- In addition, the ISO shall publish each month's bid and offer information for all markets on its website on the first day of the fourth calendar month following the month during which the applicable demand bids and supply offers were in effect (e.g., bid and offer data for January would be released on May 1), provided that the information is presented in a manner that does not reveal the specific

load or supply asset, its owners, or the name of the entity making the bid or offer, but that allows the tracking of each individual entity's bids and offers over time.

- Market test information including any information equivalent to Public Market Information derived from test programs for new markets or market software or simulations of proposed market improvement (includes any and all information necessary for evaluation of the impacts of a proposed new market or an improvement to an existing market, such as cost-shifting impacts and price impacts under certain conditions).
- Long-term system planning and operations information consisting of load forecasts, transmission models (including power flow, short circuit and stability models and their related base cases and contingency files), transfer limits used for planning purposes, Installed Capacity Requirements and Governance Participants and non-Governance Participants proposed generation. This information does not include near-term transmission models or transfer limits within New England that are developed as part of system operations or real-time information from the control room energy management system.
- Public reports required by the Filed Documents (including, but not limited to, evaluation of procedures for determination of Locational Marginal Prices as well as the awarding Financial Transmission Rights and associated Congestion Costs and Transmission Congestion Credits).
- Public market monitoring information including, but not limited to, public reports by the Independent Market Advisor required by the Market Rules (includes the ISO's time and expenses in pursuing sanctionable behavior on a case-by-case basis and periodic reports of sanctions imposed and the sanctionable behavior upon which such sanctions were imposed, provided that the information is presented in a manner that does not allow for the identification of the Governance Participants by name or provide a manner for identifying such Governance Participants, except as otherwise provided in the Filed Documents).
- Any other information that is not *Confidential Information* that the ISO determines is appropriate for public dissemination because it will improve system reliability, the efficiency of the markets or public understanding of the New England system and the operations of the ISO.

This data may be made available to the public at large. (Fees may be applicable to cover process and handling expenses.)

**(b) Non-Public Transmission Information**

This information includes:

- Information and/or reports that are filed with NERC or NPCC
- 
- Real-time system operations information, which is not posted on the OASIS, including but not limited to detailed operations data. (Some examples include, but are not limited to, real-time transmission line flows, real-time transfer limits, and real-time voltages.)
- Information relating to specific generating facilities, which is required by transmission personnel to ensure the reliable operation of the New England bulk power system. (Some examples include, but are not limited to, detailed generator operating characteristics; and dynamic swing recorder plots.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of special protection systems; and transmission operations related to stability limits.)
- Information related to system restoration efforts. (Some examples include, but are not limited to, ISO and Governance Participants' detailed power system restoration plans.)

This information may be made available to reliability councils and all Governance Participants' transmission personnel. The release of relevant transmission outage information to affected generators, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the codes of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulation.

**(c) Governance Participant Specific Data**

This information includes:

- Data not yet posted on the OASIS. (Some examples include, but are not limited to, interface transmission service schedules lists.)
- *Confidential Information*, as defined in Section 2.1 of this Information Policy, for which this Governance Participant, or an agent thereof, has the right to receive the data. (Some examples include, but are not limited to, product obligation; and load.)
- Invoice and Settlement Data. (Some examples include, but are not limited to, Governance Participant Phase I/II hourly transfer capability allocations; electrical load, adjusted net interchange, obligation, entitlement, Charges, and Payments for each market.)

This data may be made available to active users or agents of the specified Governance Participant.

**(d) Asset Specific Information – Near Real-Time**

This information includes:

- Near real-time information related to the particular asset. (Some examples include, but are not limited to, generation levels (MW); designations (MW); AGC status, operating limits, response rates, unit forecast and operation information, and Real-Time status of External Transactions)

This data may be made available to those Governance Participants, or agents thereof, who are joint Owners and/or Entitlement Holders in the Asset. As applicable, this data may also be made available to a Governance Participant who is a contractual party to external or internal bilateral contracts for the specified Asset, The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the standards of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulations.

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

This information includes:



- Unit forecast information relating to a particular Asset, which is necessary to determine the projected operation of particular resources. (Some examples include, but are not limited to, Start-Up Time; generation; and shut-down time.)
- Information relating to a particular Asset, which is necessary to determine the accuracy of settlement. (Some examples include, but are not limited to, high operating limit; generation; Ownership Share; and duration on AGC.)
- Governance Participant input data. (Some examples include, but are not limited to, generation input data; and records of deficient performance.)
- Capability Responsibility data and calculations, for those specific generating facilities for which a Governance Participant(s) has an ownership interest. (Some examples include, but are not limited to, unit capability demonstration audits)
- All information, with the exception of bids, offers and meter data, necessary to verify settlement data. (Some examples include, but are not limited to, response rate data; and minimum run-time data.)

This data may be made available to those Governance Participants, or agents thereof, who are joint owners and/or entitlement holders in the Asset. The release of relevant generation outage information to affected transmission owners, to the extent required or desired for coordination of transmission and generation outages, shall be governed by the processes available for such coordination (ISO New England Operating Procedure No. 3 or any successor or similar document), by the codes of conduct prescribed by 18 C.F.R. Part 358 and by other applicable Commission regulations.

**(f) Meter, Bid and Offer Data**

This information includes:

- *Confidential Information* submitted as input to the market system. Bid and offer data may be made available to any Governance Participant with an Ownership Share, or agent thereof, for a specified Asset.
- A minimum power value derived by the ISO from a resource's Economic Minimum Limit may be included in the transmission models that are treated as public information pursuant to Section 3.0(a).

- Meter data may be made available to the Assigned Meter Reader for a specified Asset. Meter data may be manually distributed to the Host Participant whose unmetered load is calculated based on said meter data.

**(g) Reliability, Operations and Area Control Information**

**(i) Reliability-Related Information**

This information includes:

- Real-Time operating data, including *Confidential Information*, that is used to assure the reliable operation of the interconnected bulk power system and/or that may be authorized or required to be shared pursuant to reliability standard, NERC or NPCC rule, or by Commission request, order or rule. (Some examples include, but are not limited to, transmission interface limits, transmission line flows, line or circuit breaker status, generation output or phasor measurement data.)

Real-Time operating data that is used to assure reliable operation of the interconnected bulk power system is typically shared by the ISO with the Commission, NERC, NPCC, and any applicable “regional entity” (as defined in the Federal Power Act), or any reliability coordinator, balancing authority, transmission operator or equivalent entity.

**(ii) External Control Center Information**

This information includes:

- All system operations or planning information that relates to the particular external control center. (Some examples include, but are not limited to, transmission interface transfers and limits within the external control center area; and inter-area emergency assistance available, used for planning purposes, under ISO New England Operating Procedure No. 4 conditions.)
- Information that is required to assure the reliable operation of the interconnected bulk power system. (Some examples include, but are not limited to, all information deemed necessary in the event of ISO New England Operating Procedure No. 4 implementation; and, under non-

ISO New England Operating Procedure No. 4 system conditions, information related to inter-area flow control.)

- Inter-area transmission operating guides that relate to the particular external control area. (Some examples include, but are not limited to, PV-20 Cross Trip SPS – available to New York; and Phase I Runback SPS – available to Hydro Quebec.)
- Confidential Information (under signature of confidentiality agreements that provide rights to Governance Participants equivalent to those granted in this Information Policy to notice of and opportunity to defend against any release of their Confidential Information) and non-confidential information may be shared among Control Areas for the purposes of increasing markets coordination, including elimination of seams, increasing market efficiency and study purposes of the interconnected bulk power system. (Some examples include, but are not limited to, ISO operations and markets information, including market monitoring information, provided that market monitoring information shall only be shared with independent market operators or independent market monitors and only in connection with particular investigations affecting regional markets.)

This information is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO operations (control room/forecast office) or planning department directly to external control center personnel.

### **(iii) Local Control Center Information**

This information includes:

- All system operations or planning information. (Some examples include, but are not limited to, detailed system models; and transmission element data as detailed on NX-9 forms.)
- Information relating to specific generating facilities that is needed to assure the reliable operation of the New England Control Area. (Some examples include, but are not limited to, generator constraints, including the reason for such constraint; and detailed generator unit commitment.)
- Transmission Operating Guides. (Some examples include, but are not limited to, guides for operation of special protection systems; and transmission operations related to stability limits.)

- New England and Local Control Center System Restoration Plans. (Some examples include, but are not limited to, the ISO, Local Control Center and Governance Participants' detailed power system restoration plans.)

This information is not available to Governance Participants, a subset thereof, or the public at large, but is typically communicated by the ISO's control room/forecast office) directly to Local Control Center personnel.

**(h) Demand Response Provider Information**

This information is asset-specific Confidential Information, including:

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

Information relating to retail customers, customer data and load profiles is subject to certain state law restrictions and is not available to Governance Participants, a subset thereof, or the Public at large, but is typically communicated by the ISO's control room/forecast office directly to load response provider personnel.

**(i) ISO New England Information**

This information includes:

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

ISO personnel, consultants, counsel, and board members may have access to any information defined in the categories listed above.

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

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

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

This information includes:

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

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

**3.1 Process for Submitting and Tracking Formal Information Requests by Governance Participants**

**(a) Requesting Entities**

As used in this Section 3.1, the term “Requesting Entity” shall mean any Governance Participant or an Authorized Person, as defined in Section 3.3 of this Information Policy).

**(b) Public Information**

If a Requesting Entity requests that the ISO publish Public Information (as defined in Section 3.0(a) of this Information Policy) that is not currently published by the ISO, the ISO may after consultation with

the Participants Committee or its designated subcommittee or working group defer or deny such request if the ISO determines that publication of such data is not feasible at the time of such request due to resource limitations, including, without limitation, available software.

**(c) Non-Public Information**

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

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

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

**(d) Form of Request; Tracking**

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

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

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

**(e) Timing and Notice**

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

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

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

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

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

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

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

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

**(f) Consideration of Requests**

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

(A) If the ISO determines that the information is *Confidential Information*, the ISO Information Contact will refer the request to the Furnishing Entity(ies) and the ISO will



not release the requested information unless it is directed to do so by the Furnishing Entity(ies) or ordered to do so by a court or regulatory authority with jurisdiction over such matters. If the Furnishing Entity(ies) directs the ISO to release the requested information, the ISO will next determine whether the requested information is Strategic Information as set forth in Section 3.1(c)(i)(B) below. The Furnishing Entity(ies) shall bear any costs reasonably incurred by the ISO in opposing the issuance of such an order requiring disclosure of the Furnishing Entity(ies)' *Confidential Information*.

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

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

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

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

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

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

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

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

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

**(h) Definition of Strategic Information**

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

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

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

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

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

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

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

### **3.2 Disclosure to the Commission and the CFTC**

#### **(a) Procedures for Disclosure to the Commission**

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

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

**(b) Procedures for Disclosure to the CFTC**

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

**3.3 Disclosure to Authorized Persons and ISO/MMU Requesting Entities**

**(a) Definitions**

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

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

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

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

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

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

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

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

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

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

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

**(b) Procedures for Disclosures to Authorized Persons**

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

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

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

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

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

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

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

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

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



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

(iii) As regards Information Requests:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.4 Disclosure to Academic Institutions**

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

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

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

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

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

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

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

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

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

## **APPENDIX A FORM OF NON-DISCLOSURE AGREEMENT**

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

### **RECITALS**



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

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

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

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

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

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

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

**1. Definitions**

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

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

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

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

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

**1.6 FERC.** The Federal Energy Regulatory Commission.

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

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

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

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

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

## **2. Protection of Confidentiality.**

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

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

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

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

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

**2.5 Care and Use of Confidential Market Information.**

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

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

### **2.5.3 Schedule of Authorized Persons.**

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

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

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

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

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

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

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

### **3. Procedure for Information Requests**

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

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

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

### **3.3 Response to Information Requests.**

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

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

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



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

#### **4. Remedies.**

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

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

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

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

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

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

If to the Authorized Person:

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(email address)

with a copy to

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(email address)

If to Counsel for the Participants Committee:

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(email address)  
with a copy to

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(email address)

If to ISO:

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(email address)  
with a copy to

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(email address)

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

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

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

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

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

ISO NEW ENGLAND INC.

By:

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Name:

Title:

AUTHORIZED PERSON

By:

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Name:

Title:

**APPENDIX B**  
**FORM OF CERTIFICATION**

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

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

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

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

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

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

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

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

**2. Requisite Authority.**

- a. The Authorized Commission hereby certifies that it has all necessary legal authority to execute, deliver, and perform the obligations in this Certification.
  
- b. Each Authorized Person is, at the time of the execution of this Certification, an employee of, or consultant to, the Authorized Commission, and has not materially breached any existing or past nondisclosure agreement or obligation, except as has been disclosed by the Authorized Commission to ISO in writing.
  
- c. The Authorized Persons have, through all necessary action of the Authorized Commission, been appointed and directed by the Authorized Commission to execute and deliver the Non-Disclosure Agreements to ISO and receive Confidential Market Information on the Authorized Commission's behalf and for its benefit.
  
- d. The Authorized Commission will, at all times after the provision of Confidential Market Information to the Authorized Persons, provide ISO with: (i) written notice of any changes in the Authorized Persons' qualification as an Authorized Person within two (2) business days of such change; (ii) written confirmation to any inquiry by ISO regarding the status or identification of any specific Authorized Person within two (2) business days of such request, and (iii) periodic written updates, no less often than semi-annually, containing the names of all Authorized Persons appointed by the Authorized Commission.

**3. Protection of Confidential Market Information.**

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

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

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

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

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

**5. Use and Destruction of Confidential Market Information.**

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

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

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

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

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

**Executed**, as of the date first set out above.

**[Commission]**

By: \_\_\_\_\_



Its: \_\_\_\_\_

[SEE NEXT PAGE]

**EXHIBIT A**

**CERTIFICATION LIST OF AUTHORIZED PERSONS**

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

### FORM OF ACADEMIC INSTITUTION NON-DISCLOSURE AGREEMENT

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

#### RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

**1.5 Commission.** The Federal Energy Regulatory Commission.

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

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

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

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

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

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

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

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

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

## **2. Protection of Confidentiality.**

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

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

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

**2.3 Care and Use of Confidential Market Information.**

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

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

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

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

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

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

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

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

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

### **3. Remedies.**

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



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

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

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

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

If to the Authorized Institution:

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(email address)

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with a copy to

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(email address)

If to Counsel for the Participants Committee:

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(email address)

with a copy to

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(email address)

If to ISO:

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(email address)

with a copy to

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(email address)

**6. Severability and Survival.** In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. The obligations of the Parties set forth in this Agreement shall survive the termination or completion of this Agreement.

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

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

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

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

ISO NEW ENGLAND INC.

AUTHORIZED INSTITUTION

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

Title:

Title:

**NON-DISCLOSURE CERTIFICATE**

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

By:

\_\_\_\_\_

Title:

\_\_\_\_\_

Representing:

\_\_\_\_\_

Date:

\_\_\_\_\_

[NOTICE ADDRESS]

## New England Governors, State Utility Regulators and Related Agencies\*

### Connecticut

The Honorable Ned Lamont  
Office of the Governor  
State Capitol  
210 Capitol Ave.  
Hartford, CT 06106  
[bob.clark@ct.gov](mailto:bob.clark@ct.gov)

Connecticut Attorney General Office  
55 Elm Street  
Hartford, CT 06106  
[Seth.Hollander@ct.gov](mailto:Seth.Hollander@ct.gov)  
[Robert.Marconi@ct.gov](mailto:Robert.Marconi@ct.gov)

Connecticut Department of Energy and  
Environmental Protection  
79 Elm Street  
Hartford, CT 06106  
[steven.cadwallader@ct.gov](mailto:steven.cadwallader@ct.gov)  
[robert.luysterborghs@ct.gov](mailto:robert.luysterborghs@ct.gov)

Connecticut Public Utilities Regulatory Authority  
10 Franklin Square  
New Britain, CT 06051-2605  
[michael.coyle@ct.gov](mailto:michael.coyle@ct.gov)

### Maine

The Honorable Janet Mills  
One State House Station  
Office of the Governor  
Augusta, ME 04333-0001  
[Jeremy.kennedy@maine.gov](mailto:Jeremy.kennedy@maine.gov)  
[Elise.baldacci@maine.gov](mailto:Elise.baldacci@maine.gov)

Maine Public Utilities Commission  
18 State House Station  
Augusta, ME 04333-0018  
[Maine.puc@maine.gov](mailto:Maine.puc@maine.gov)

### Massachusetts

The Honorable Charles Baker  
Office of the Governor  
State House

Boston, MA 02133

Massachusetts Attorney General Office  
One Ashburton Place  
Boston, MA 02108  
[rebecca.tepper@state.ma.us](mailto:rebecca.tepper@state.ma.us)

Massachusetts Department of Public Utilities  
One South Station  
Boston, MA 02110  
[Nancy.Stevens@state.ma.us](mailto:Nancy.Stevens@state.ma.us)  
[morgane.treanton@state.ma.us](mailto:morgane.treanton@state.ma.us)  
[Lindsay.griffin@mass.gov](mailto:Lindsay.griffin@mass.gov)

### New Hampshire

The Honorable Chris Sununu  
Office of the Governor  
26 Capital Street  
Concord NH 03301  
[Jared.chicoine@nh.gov](mailto:Jared.chicoine@nh.gov)

New Hampshire Public Utilities Commission  
21 South Fruit Street, Ste. 10  
Concord, NH 03301-2429  
[tom.frantz@puc.nh.gov](mailto:tom.frantz@puc.nh.gov)  
[george.mccluskey@puc.nh.gov](mailto:george.mccluskey@puc.nh.gov)  
[David.Shulock@puc.nh.gov](mailto:David.Shulock@puc.nh.gov)  
[David.goyette@puc.nh.gov](mailto:David.goyette@puc.nh.gov)  
[RegionalEnergy@puc.nh.gov](mailto:RegionalEnergy@puc.nh.gov)  
[kate.bailey@puc.nh.gov](mailto:kate.bailey@puc.nh.gov)  
[amanda.noonan@puc.nh.gov](mailto:amanda.noonan@puc.nh.gov)  
[Corrine.lemay@puc.nh.gov](mailto:Corrine.lemay@puc.nh.gov)

### Rhode Island

The Honorable Gina Raimondo  
Office of the Governor  
82 Smith Street  
Providence, RI 02903  
[Rosemary.powers@governor.ri.gov](mailto:Rosemary.powers@governor.ri.gov)  
[christopher.kearns@energy.ri.gov](mailto:christopher.kearns@energy.ri.gov)  
[nicholas.ucci@energy.ri.gov](mailto:nicholas.ucci@energy.ri.gov)

## **New England Governors, State Utility Regulators and Related Agencies\***

Rhode Island Public Utilities Commission  
89 Jefferson Blvd.  
Warwick, RI 02888  
[todd.bianco@puc.ri.gov](mailto:todd.bianco@puc.ri.gov)  
[Marion.Gold@puc.ri.gov](mailto:Marion.Gold@puc.ri.gov)

Meredith Hatfield, Executive Director  
New England Conference of Public Utilities  
Commissioners  
72 N. Main Street  
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### **Vermont**

The Honorable Phil Scott  
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109 State Street, Pavilion  
Montpelier, VT 05609  
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Anthony Roisman, President  
New England Conference of Public Utilities  
Commissioners  
112 State Street – Drawer 20  
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Vermont Public Utility Commission  
112 State Street  
Montpelier, VT 05620-2701  
[mary-jo.krolewski@vermont.gov](mailto:mary-jo.krolewski@vermont.gov)  
[sarah.hofmann@vermont.gov](mailto:sarah.hofmann@vermont.gov)  
[Margaret.cheney@vermont.gov](mailto:Margaret.cheney@vermont.gov)

Vermont Department of Public Service  
112 State Street, Drawer 20  
Montpelier, VT 05620-2601  
[bill.jordan@vermont.gov](mailto:bill.jordan@vermont.gov)  
[june.tierney@vermont.gov](mailto:june.tierney@vermont.gov)  
[Ed.McNamara@vermont.gov](mailto:Ed.McNamara@vermont.gov)

### **New England Governors, Utility Regulatory and Related Agencies**

Jay Lucey  
Coalition of Northeastern Governors  
400 North Capitol Street, NW, Suite 370  
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Heather Hunt, Executive Director  
New England States Committee on Electricity  
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Longmeadow, MA 01106  
[HeatherHunt@nescoe.com](mailto:HeatherHunt@nescoe.com)  
[JasonMarshall@nescoe.com](mailto:JasonMarshall@nescoe.com)