

INTERIM INDEPENDENT SYSTEM OPERATOR AGREEMENT

This Interim Independent System Operator Agreement (this "Agreement") is made and entered into this 1st day of July, 1997, by and between the entities which are the participants in the New England Power Pool pursuant to the Restated New England Power Pool Agreement dated as of September 1, 1971, as amended and restated to date, acting herein by and through the NEPOOL Management Committee (collectively, the "NEPOOL Participants" or "NEPOOL"), on the one hand, and ISO New England Inc. (the "ISO"), on the other (each a "Party" and, together, the "Parties").

Whereas, the NEPOOL Participants own and currently operate facilities for the generation and transmission of wholesale electric power, and/or are engaged in the competitive wholesale electricity market in New England; and

Whereas, NEPOOL currently coordinates and directs the operation of the System through a mechanism of central dispatch in order to attain maximum practicable economy consistent with proper standards of reliability; and

Whereas, NEPOOL desires to transfer to the ISO responsibility for, among other things, direction and control of the operation of the System consistent with proper standards of reliability, administration of NEPOOL's open-access transmission tariff and administration of a power exchange, consistent with the requirements of the Federal Energy Regulatory Commission; and

Whereas, NEPOOL further desires to establish a mechanism for funding the future operations of the ISO through the imposition of certain fees on the services provided by the ISO;

Whereas, in order to begin such transition, NEPOOL and the ISO desire to enter into this Agreement;

Now, therefore, NEPOOL and the ISO, each in consideration of the mutual agreements set forth herein, agree as follows.

1. **PURPOSE**

1.1 **Interim Agreement.** The purpose of this Agreement is to set forth the responsibilities and authority of the ISO and the services to be furnished to NEPOOL by the ISO, including without limitation billing and planning services, in connection with the transfer to the ISO of responsibility for the operation of the NEPOOL Control Center as the control center operator for the NEPOOL Control Area and the administration of the transmission and market arrangements under the Tariff and the NEPOOL Agreement.

1.2 **Final ISO Agreement.** The entering into of this Agreement by the ISO shall be authorized by the ISO Board upon its election. Thereafter, the ISO Board shall have the opportunity to negotiate such changes to this Agreement, if any, as it may deem appropriate. Any such changes as may be agreed to by the ISO and NEPOOL shall be incorporated in the Final ISO Agreement.

1.3 **Interim Activities.** It is contemplated by the Parties that the ISO shall assume responsibility for operation of the NEPOOL Control Center and administration of the Tariff on July 1, 1997. Promptly following the execution of this Agreement, the ISO Board shall use its best efforts to hire a chief executive officer of the ISO (the "ISO Chief Executive") and additional staff as contemplated by Section 5.3.

1.4 **ISO Independence.** In order for the ISO to achieve the requisite independence to carry out the purposes articulated in the preamble to this Agreement and in this Section, the Parties acknowledge that the ISO must have authority over its budget and the authority to plan for and operate the System in accordance with the System Rules and Procedures promulgated pursuant to the provisions set forth in this Agreement, with the concurrence of the FERC where applicable.

1.5 **Intent of the Parties.** In the event an issue arises as to the interpretation of a provision of this Agreement which relates to the extent to which the ISO is intended to operate independently, any ambiguity in the provision in question shall be interpreted in a manner that is consistent with the Parties' intent to ensure the independence of the ISO.

2. **DEFINITIONS**

2.1 **Affiliate:** When used in reference to a person or entity, means another person or entity which controls, is controlled by, or is under common control with, such person or entity. As used in the preceding sentence, "control" means the possession, directly or indirectly, of the power to direct the management or policies of an entity. A voting interest of ten percent (10%) or more creates a rebuttable presumption of control.

2.2 **Agreement:** The agreement identified in the first paragraph of this document, including all schedules thereto, as the same may be amended or supplemented from time to time.

2.3 **Control Area:** An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

- (i) match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);
- (ii) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and the criteria of the applicable regional reliability council of the NERC; and
- (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

2.4 **CRS:** Criteria, Rules and Standards for administration of the NEPOOL Agreement and operation of the System, as in effect on the date of this Agreement.

2.5 **Designated Generation Facilities:** All generating facilities in the NEPOOL Control Area that are subject to central dispatch pursuant to Section 13 of the NEPOOL Agreement.

2.6 **Designated Transmission Facilities:** All transmission facilities that constitute "Pool Transmission Facilities" pursuant to Section 15 of the NEPOOL Agreement and any other transmission facilities that are subject to central dispatch pursuant to the NEPOOL Agreement or deemed necessary by the ISO following consultation with NEPOOL to carry out the ISO's responsibilities under this Agreement.

2.7 **Effective Date:** July 1, 1997.

- 2.8 **FERC:** The Federal Energy Regulatory Commission.
- 2.9 **Final ISO Agreement:** The agreement to be negotiated and entered into between NEPOOL on behalf of the NEPOOL Participants and the ISO pursuant to Section 1.2 which will supersede this Agreement.
- 2.10 **Force Majeure:** Any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment not due to lack of proper care or maintenance, any order, regulation or restriction imposed by a court or governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control.
- 2.11 **Good Utility Practice:** Any practice, method, or act engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any practice, method, or act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not limited to a single, optimum practice, method or act to the exclusion of others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the region.
- 2.12 **ISO:** ISO New England Inc. and any permitted successors and assigns.
- 2.13 **ISO Board:** The directors of the ISO who shall be selected in accordance with the procedures described in Sections 5.1 and 5.2.
- 2.14 **ISO Chief Executive:** The chief executive officer of the ISO to be hired by the ISO Board.
- 2.15 **NECPUC:** The New England Conference of Public Utilities Commissioners, Inc.
- 2.16 **NEPOOL:** The New England Power Pool, the power pool created under and governed by the NEPOOL Agreement, and the entities collectively participating in the New England Power Pool.
- 2.17 **NEPOOL Agreement:** The Restated New England Power Pool Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, including the Tariff.

2.18 **NEPOOL Control Area:** The Control Area for NEPOOL to be administered by, or under the direction and control of, the ISO.

2.19 **NEPOOL Control Center:** The dispatching facilities used by NEPOOL in carrying out its responsibilities under the NEPOOL Agreement, consisting of certain land and a building located at One Sullivan Road, Holyoke, Massachusetts, together with furnishings and equipment contained therein.

2.20 **NEPOOL Information Policy:** The CRS No. 45 establishing guidelines regarding the information received, created and distributed by the NEPOOL Participants and the ISO in connection with the settlement, operation and planning of the System, as the same may be amended or supplemented from time to time.

2.21 **NEPOOL Market:** The market for electric energy, capacity and certain ancillary services within the NEPOOL Control Area.

2.22 **NEPOOL Participants:** The entities (or group of entities which have elected to be treated as a single NEPOOL Participant pursuant to the NEPOOL Agreement) who from time to time are members of NEPOOL and parties to the NEPOOL Agreement.

2.23 **NERC:** The North American Electric Reliability Council.

2.24 **Non-Participant:** Any entity that is not a NEPOOL Participant that receives service under the Tariff.

2.25 **NPCC:** Northeast Power Coordinating Council.

2.26 **NUSCO:** Northeast Utilities Service Company.

2.27 **OASIS:** The Open Access Same-Time Information System, an electronic bulletin board described in the Tariff.

2.28 **Operating Procedures:** The detailed procedures adopted by NEPOOL for operation of the System as in effect on the date of this Agreement.

2.29 **Operating Year:** A calendar year. The first Operating Year shall commence on the Effective Date and continue until the following December 31, and the last Operating Year shall conclude on the date that this Agreement terminates.

2.30 **Party or Parties:** The NEPOOL Participants, acting collectively through NEPOOL, and the ISO as identified in the first paragraph of this Agreement.

2.31 **Satellites:** Those control centers now existing or to be established whose facilities are separate from the NEPOOL Control Center and which perform dispatching and other functions essential to the reliable operation of the System. Satellite responsibilities include, but are not limited to, regional transmission security analysis, switching and tagging, and implementation of applicable System Rules and Procedures. The locations of the Satellites as of the date of this Agreement are set forth on Schedule A attached hereto.

2.32 **System:** Designated Generation Facilities and Designated Transmission Facilities.

2.33 **System Rules and Procedures:** The criteria, rules, standards and procedures to be developed pursuant to this Agreement for operation of the System and administration of the transmission and market arrangements under the Tariff and the NEPOOL Agreement. Upon the Effective Date of this Agreement, the CRS and Operating Procedures then in effect shall constitute the System Rules and Procedures until modified, replaced or supplemented pursuant to the procedures set forth in Section 6.17.

2.34 **Tariff:** The NEPOOL Open Access Transmission Tariff set out in Attachment B to the NEPOOL Agreement, as modified and amended from time to time, which designates the terms and conditions of non-discriminatory regional transmission service provided by the NEPOOL Participants.

3. **TERM**

The term of this Agreement shall begin on the Effective Date and continue until the fifth anniversary of the Effective Date, unless earlier superseded by the Final ISO Agreement or otherwise terminated in accordance with the provisions of Section 13.

4. **AGREEMENT ADMINISTRATION**

4.1 **Equipment, Facilities and Personnel.** The ISO and each of the NEPOOL Participants, either directly or through the Satellites, shall maintain the necessary equipment, facilities and personnel sufficient for the ISO to operate the NEPOOL Control Area in accordance with Section 6.1, and the NEPOOL Participants to operate their Designated Generation and Designated Transmission Facilities in accordance with Section 7.1.

4.2 **Representative of the ISO.** The ISO Board shall designate a representative (the “ISO Representative”) with authority to act for the ISO in connection with the administration of this Agreement.

4.3 **Representatives of NEPOOL.** The NEPOOL Management Committee or the NEPOOL Executive Committee acting on its behalf or its designee(s) shall have authority to act for NEPOOL in connection with the administration of this Agreement.

4.4 **Consultation.** The ISO shall consult as necessary with the NEPOOL Executive Committee or its designee(s) in order to resolve any matters which may arise in connection with the services of the ISO under this Agreement. Any matter which remains in dispute shall be resolved in accordance with the dispute resolution provisions referred to in Section 12.

4.5 **Joint Committees.** The NEPOOL Executive Committee and the ISO may from time to time form such committees as they may deem necessary to assist them in carrying out activities appropriate to the administration of this Agreement.

5. **QUALIFICATIONS OF THE ISO**

5.1 **ISO Board:** (a) Except for the ISO Chief Executive who shall serve as a member of the ISO Board as provided in Section 5.2, the initial members of the ISO Board shall be nominated by a Nominating Committee to be established by the NEPOOL Executive Committee reflecting the diversity of the NEPOOL Participants. The Nominating Committee shall be composed of ten members, with two members to be drawn from each of the following groups of NEPOOL Participants:

- (i) investor-owned utilities whose voting shares under the NEPOOL Agreement equals or exceeds 3% of the aggregate voting shares of all NEPOOL Participants under the NEPOOL Agreement;
- (ii) investor-owned utilities whose voting shares under the NEPOOL Agreement constitute less than 3% of the aggregate voting shares of all NEPOOL Participants under the NEPOOL Agreement;
- (iii) municipally-owned and cooperatively-owned utilities;
- (iv) non-utility generators;
- (v) power marketers, brokers and load aggregators.

The Nominating Committee shall give notice to and invite the participation of a representative or representatives of NECPUC as a non-voting member at all meetings of Nominating Committee.

(b) The Nominating Committee shall appoint a sub-committee from among its members (the “Steering Committee”) to work with an executive search firm to review the qualifications of and pre-screen potential candidates for the ISO Board. The candidates shall be identified by the executive search firm or otherwise brought to the attention of the Steering Committee. The Steering Committee shall recommend to the Nominating Committee a pool of qualified candidates so pre-screened by the Steering Committee. The Steering Committee shall give notice to and invite the participation of a representative or representatives of NECPUC as a non-voting member at all meetings of the Steering Committee.

(c) The nine members of the ISO Board other than the ISO Chief Executive shall be elected by the NEPOOL Executive Committee from and out of a slate of no fewer than 15 candidates nominated by the Nominating Committee. The NEPOOL Executive Committee shall give notice to and invite the participation of a representative or representatives of NECPUC as a non-voting member at the meeting held to elect the independent directors.

(d) Subsequent directors shall be elected by a majority of the directors then in office, in accordance with procedures set forth in the Certificate of Incorporation of the ISO.

(e) The ISO Board shall elect from among its members a Chair of the ISO Board; provided, however, that the ISO Chief Executive shall not be eligible for election as the Chair. The Chair shall serve in accordance with the By-laws of the ISO and shall preside at all meetings of the ISO Board.

5.2 Composition. The ISO Board shall be composed of ten members, and no director shall be affiliated with any NEPOOL Participant or other market participant in the NEPOOL Control Area. The ISO Chief Executive shall, by virtue of his office, serve as a member of the ISO Board with full voting rights as a director. The remaining nine members shall possess a cross-section of skills and experience (such as, for purposes of illustration but not by way of mandate or limitation, experience in FERC electric regulatory affairs, electric utility management, corporate finance, bulk power systems, human resource administration, power pool operations, public policy, consumer advocacy, environmental affairs, business management and information systems), to ensure that the ISO has sufficient knowledge and expertise to perform its obligations under this Agreement. At least three of the directors shall have prior relevant experience

in the electric industry. In addition, to ensure sensitivity to regional concerns, strong preference shall be given to electing members from New England to the extent qualified candidates are available and such representation can be accomplished consistent with the ISO's conflict of interest policy.

5.3 ISO Staff. The ISO shall maintain a staff of employees sufficient in number, skill, training and knowledge to satisfy its obligations under this Agreement. In addition to such additional staff as the ISO may deem reasonably necessary to perform its obligations under this Agreement, it is contemplated by the Parties that the existing NEPOOL staff, who are currently employed by NUSCO and provide services to NEPOOL pursuant to a service agreement with NEPOOL, will be offered employment by the ISO. Until such employment by the ISO, the NEPOOL staff will continue to operate the NEPOOL Control Center and administer the Tariff pursuant to a service agreement to be entered into between the ISO and NUSCO.

5.4 Conflict of Interest Policy. (a) The ISO shall adopt and enforce a conflict of interest policy which shall comply with the requirements of FERC Order 888.

(b) The ISO as a corporate entity shall not have any financial interest in the economic performance of any NEPOOL Participant or any other market participant in the NEPOOL Control Area or any Affiliate of either, nor shall it engage in any transactions, directly or indirectly, for its own account in the NEPOOL Market.

5.5 Non-Profit Entity. (a) The ISO shall exist as a non-profit corporation and shall not perform any services other than the services contemplated by this Agreement and related activities without the prior written consent of NEPOOL, which consent shall not be unreasonably withheld. It is understood and agreed that the provisions of this Section 5.5 are not intended to preclude or limit the ability of the ISO to deal with Non-Participants in performing its duties under this Agreement and the Tariff.

(b) If the ISO desires to engage in any activity which in its reasonable judgment is a significant related activity not contemplated by this Agreement, the ISO shall give written notice of its intention to engage in such related activity to the NEPOOL Executive Committee. The NEPOOL Executive Committee shall have thirty (30) days to determine whether it concurs in the judgment of the ISO that the proposed activity is a "related activity" as contemplated in subparagraph (a) above. If the NEPOOL Executive Committee disagrees with the determination of the ISO, it shall give written notice of its disagreement to the ISO within such thirty (30) day period, and the ISO shall refrain from engaging in such activity pending resolution of the dispute in accordance with the dispute resolution procedures described in Section 12.1.

5.6 Advisory Committee. (a) The ISO Board shall establish and appoint the members of an Advisory Committee. The purpose of the Advisory Committee shall be to provide information, feedback and assistance to the ISO Board on matters relating to the operation of this Agreement and the NEPOOL Market. The Advisory Committee shall not have oversight responsibilities with respect to decisions of the ISO Board but rather shall serve as an information resource to the Board and a vehicle to provide the viewpoints of a broad spectrum of parties with an interest in the NEPOOL Market. The Advisory Committee shall be composed of approximately 20 members representing a broad spectrum of interests, including for purposes of illustration but not by way of mandate or limitation individuals representing the following viewpoints:

- (i) New England state regulatory;
- (ii) New England residential consumer;
- (iii) New England commercial or industrial consumer;
- (iv) environmental;
- (v) public interest;
- (vi) municipal government;
- (vii) NEPOOL Market participants;
- (viii) economic;
- (ix) engineering;
- (x) academia.

(b) The ISO Board shall establish Bylaws for the Advisory Committee providing for, among other things, the appointment of a Chair and requiring not less than one meeting a year between the ISO Board and the Advisory Committee. The ISO shall provide the Advisory Committee with such administrative support as may be necessary for the committee to perform its functions as delineated by the ISO Board. The Advisory Committee shall have no staff or budget and the members shall serve without pay, provided, however, that the ISO shall reimburse Advisory Committee members for reasonable out-of-pocket expenses incurred in attending committee meetings.

6. RIGHTS AND OBLIGATIONS OF THE ISO

6.1 Operation of the System. The ISO shall serve as the operator of the NEPOOL Control Area and assume responsibility for the continued operation of the NEPOOL Control Center, consistent with the terms of this Agreement, the NEPOOL Agreement and the Tariff, the System Rules and Procedures, Good Utility Practice and applicable laws and regulations.

6.2 Administration of Transmission and Market Arrangements. The ISO shall administer the transmission and market arrangements in accordance with the Tariff, the NEPOOL Agreement and the System Rules and Procedures.

6.3 System Planning. The ISO shall independently review the long-range System assessment and transmission construction plans of the NEPOOL Participants, and shall convey its findings and recommendations to NEPOOL. The ISO may propose or adopt such new System Rules or Procedures as it may deem necessary or desirable to

implement any such recommendations, subject to and in accordance with the procedures set forth in Section 6.17. The ISO shall also conduct such System assessment and planning as may be requested by NEPOOL.

6.4 Market Assessment. The ISO shall have the authority to independently assess the competitiveness and efficiency of the NEPOOL Market and shall convey its findings and recommendations to NEPOOL. The ISO may propose or adopt such new System Rules or Procedures as it may deem necessary or desirable to implement any such recommendations, subject to and in accordance with the procedures set forth in Section 6.17

6.5 Facilities and Equipment. (a) The ISO shall have the right to use such facilities, equipment and software as are currently used by NEPOOL in directing the operation of the System, including without limitation the NEPOOL Control Center, to enable the ISO to perform its obligations under this Agreement. At the request of the NEPOOL Participants, the ISO will enter into a sublease (the "Sublease") for the NEPOOL Control Center. Except to the extent covered by insurance proceeds received by the ISO, all costs incurred by the ISO under the Sublease will be included in the ISO's budget or changes thereto pursuant to Section 8.5 and paid by the NEPOOL Participants pursuant to Section 8.8. If the ISO determines a need for additional facilities or equipment to carry out its responsibilities under this Agreement (such as, for purposes of illustration, computer equipment, but not including transmission facilities or generating units), the ISO may request funding for such equipment or facilities in its budget as provided in Sections 8.2 and 8.5.

(b) All land, structures, fixtures, equipment and facilities, and other capital assets, and all software and other intellectual property or rights to intellectual property or other assets, acquired or developed by the ISO in order to carry out its responsibilities under this Agreement shall be the property of the NEPOOL Participants or shall be acquired by the NEPOOL Participants under lease in accordance with arrangements approved by the NEPOOL Management Committee. The ISO shall refrain from any action that would create any lien, security interest or encumbrance of any kind upon the facilities, equipment or other assets of any NEPOOL Participant, or upon anything that becomes affixed to such facilities, equipment or other assets. Upon the request of any NEPOOL Participant, the ISO (i) shall provide a written statement that it has taken no action that would create any such lien, security interest or encumbrance, and (ii) shall take all actions within the control of the ISO, at the direction and expense of the requesting NEPOOL Participant, required for compliance by such NEPOOL Participant with the provisions of its mortgage relating to such facilities, equipment or other assets.

6.6 System Reliability. The ISO shall have primary responsibility for ensuring short-term reliability of the System consistent with the applicable standards set by NERC and the NPCC. The ISO may direct any NEPOOL Participant to take any action necessary to preserve the reliable operation of the NEPOOL Control Area under the circumstances and in the manner set forth in the Tariff and the System Rules and Procedures.

6.7 Emergency Power. The ISO shall have authority for and on behalf of NEPOOL to enter into arrangements to procure emergency power under the conditions set forth in

the NEPOOL Agreement and the System Rules and Procedures and in applicable interconnection agreements.

6.8 **Maintenance Scheduling.** The ISO shall be responsible for overseeing the scheduling of maintenance of the Designated Transmission Facilities and the Designated Generation Facilities in conformance with the System Rules and Procedures.

6.9 **System Restoration.** In the event that a System shutdown occurs affecting all or part of the NEPOOL Control Area, the ISO shall, in accordance with the System Rules and Procedures, coordinate the restoration of service in conjunction with the Satellites and other NEPOOL Participant control centers.

6.10 **Interconnection Contracts.** The ISO shall administer the interconnection contracts with utilities and other entities outside of the NEPOOL Control Area.

6.11 **Satellites.** The Parties contemplate that eventually many, if not all, of the operational and competitive functions performed by the Satellites will be transferred to the ISO. However, because of the significant complexity, reliability implications and cost involved in making this transfer, the Satellites will remain in existence for at least the next few years with the transfer date to be determined by the ISO. In performing its obligations hereunder, the ISO shall have the authority to direct and oversee the operation of the Satellites. The Satellites and the personnel who operate the Satellites shall be subject to appropriate standards of conduct complying with FERC Order 889, and the ISO shall have the authority and responsibility for monitoring compliance by the Satellites with such standards of conduct while competitive functions exist at the Satellites.

6.12 **Dissemination of Information.** The ISO shall disseminate information furnished to it by NEPOOL Participants consistent with the NEPOOL Information Policy and the employee code of conduct referred to in Section 6.14, and shall maintain the confidentiality of such information in accordance with the provisions of such policy.

6.13 **OASIS.** The ISO shall continue to develop, maintain and operate an OASIS consistent with the requirements of applicable laws and regulations.

6.14 **Code of Conduct.** The ISO shall develop and implement an employee code of conduct that at a minimum complies with the requirements of FERC Order 889.

6.15 **Annual Report and Performance Audit.** The ISO shall prepare and submit to NEPOOL an annual report on its performance under this Agreement and cooperate in the

conduct of a periodic audit of its performance. The audit shall be conducted by an independent third party to be chosen by mutual agreement of the Parties, and shall be conducted at such intervals as shall be determined by the NEPOOL Executive Committee, but no more frequently than every three years unless a specified issue has been identified for audit by the NEPOOL Executive Committee.

6.16 **Financial Statements.** The ISO shall deliver to NEPOOL as soon as available but in any event within ninety (90) days after the end of each calendar year audited

financial statements for such year for the ISO, duly certified by independent public accountants of national recognized standing.

6.17 System Rules and Procedures. (a) The ISO shall initially operate the NEPOOL Control Center in accordance with the CRS and Operating Procedures as currently in effect. The ISO may propose or implement such changes to the CRS and Operating Procedures as it may deem necessary or advisable in connection with the performance of its obligations under this Agreement in accordance with the procedures set forth in this Section 6.17.

(b) NEPOOL and the ISO shall have joint responsibility to develop such new System Rules and Procedures as may be necessary to allow the ISO to carry out its obligations under this Agreement. The System Rules and Procedures will in the ordinary course be developed through the appropriate NEPOOL Committees, and the ISO will participate in the development of these System Rules and Procedures or changes thereto through representation on the NEPOOL Executive Committee and each of NEPOOL's Market Reliability Planning, Regional Transmission Planning, Regional Market Operations and Regional Transmission Operations Committees, respectively, as provided in the NEPOOL Agreement. The ISO shall have the right to initiate rulemaking at any time on any matter through its representatives on the NEPOOL Committees.

(c) If the applicable NEPOOL Committee fails to adopt a System Rule or Procedure or change thereto proposed by the ISO, the ISO shall have the right to appeal the action of such NEPOOL Committee to the NEPOOL Management Committee. Such appeal shall be taken prior to the end of the tenth business day following the meeting of the NEPOOL Committee to which the appeal relates by giving to the Secretary of the NEPOOL Management Committee a signed and written notice of appeal and by mailing a copy of the notice to each member of the Management Committee. Unless the NEPOOL Management Committee otherwise acts within sixty (60) days of such notice, the System Rule or Procedure or change thereto proposed by the ISO will be deemed approved by the NEPOOL Management Committee. If the NEPOOL Management Committee denies the appeal of the ISO, the ISO may next submit the matter to the ISO Board for determination. The ISO shall give notice of any such submission to the Secretary of the NEPOOL Management Committee within ten days of the action of the NEPOOL Management Committee and shall mail a copy of such notice to each member of the NEPOOL Management Committee. Unless the ISO Board acts within sixty (60) days of such notice, the NEPOOL Management Committee action will be deemed approved. If the ISO Board determines within such period that the System Rule or Procedure or change should be adopted, then the System Rule or Procedure or change, as applicable, proposed by the ISO may be implemented by the ISO sixty (60) days following delivery to the NEPOOL Management Committee of notice of the ISO Board determination, subject to approval by the FERC if required by applicable law or regulation. If the ISO so implements such new System Rule or Procedure or change, then the NEPOOL Management Committee may (i) request that the matter be submitted to the dispute resolution process contained in Section 21.1 of the NEPOOL Agreement or (ii) submit the decision of the ISO Board directly to the FERC. The new System Rule or Procedure or change shall continue in effect during the foregoing process. If NEPOOL

and the ISO agree to invoke the dispute resolution procedures and the ISO is not satisfied with the result following that process, then notwithstanding anything to the contrary set forth in Section 21.1 of the NEPOOL Agreement, the ISO may promptly notify NEPOOL of its disagreement and in such event the new System Rule or Procedure or change shall continue to remain in effect. Upon receipt of any such notice from the ISO, NEPOOL may then submit the matter to the FERC for final resolution.

(d) In addition to the rights of the ISO described in subparagraph (c), the ISO shall have the right to appeal any other actions of any NEPOOL Committee in the rulemaking process to the NEPOOL Management Committee. Such appeal shall be taken prior to the end of the tenth business day following the meeting of the NEPOOL Committee to which the appeal relates by giving to the Secretary of the NEPOOL Management Committee a signed and written notice of appeal and by mailing a copy of the notice to each member of the Management Committee. In the event the dispute resolution procedures described in this subparagraph (d) have been invoked, the action of the NEPOOL Committee subject to the dispute shall be suspended indefinitely pending resolution of the dispute. If the NEPOOL Management Committee denies the appeal of the ISO or takes action on any rulemaking issue either *sua sponte* or on appeal from any other NEPOOL Participant and the ISO is not in agreement with such action, the ISO may next submit the matter to the ISO Board for determination. The ISO shall give notice of any such submission to the Secretary of the NEPOOL Management Committee within ten days of the action of the NEPOOL Management Committee and shall mail a copy of such notice to each member of the NEPOOL Management Committee. Unless the ISO Board acts within sixty (60) days of such notice, the NEPOOL Management Committee action will be deemed approved. If the ISO Board decides within such period against NEPOOL, then the NEPOOL Management Committee may (i) request that the matter be submitted to the dispute resolution process contained in Section 21.1 of the NEPOOL Agreement or (ii) submit the decision of the ISO Board directly to the FERC. If NEPOOL and the ISO agree to invoke the dispute resolution procedures and the ISO is not satisfied with the result following that process, then notwithstanding anything to the contrary set forth in Section 21.1 of the NEPOOL Agreement, the ISO may promptly notify NEPOOL of its disagreement, and in such event the action of the NEPOOL Committee in question shall continue to be suspended. Upon receipt of any such notice from the ISO, NEPOOL may then submit the matter to the FERC for final resolution.

(e) If the ISO determines in good faith that (i) the failure to immediately implement a new System Rule or Procedure or a modification to the existing System Rules or Procedures would substantially and adversely affect (A) System reliability or security, or (B) the competitiveness or efficiency of the NEPOOL Market, and (ii) invoking the rulemaking procedures of the relevant NEPOOL Committee would not allow for timely redress of the ISO's concerns, the ISO may promulgate and implement such new or modified System Rule or Procedure unilaterally upon written notice to the NEPOOL Executive Committee, subject to approval by the FERC, if required.

(f) In the event the ISO promulgates a new or modified System Rule or Procedure under the circumstances set forth in subparagraph (e) above and the NEPOOL Executive Committee does not object to such System Rule or Procedure or change within sixty (60)

days of receipt of notification from the ISO, the System Rule or Procedure or change, as applicable, will be deemed accepted by NEPOOL.

(g) If the NEPOOL Executive Committee does not agree to the new System Rule and Procedure or the modification promulgated by the ISO pursuant to subparagraph (e), the NEPOOL Executive Committee and the ISO shall attempt in good faith to reach agreement on the issue in dispute as soon as practicable. The NEPOOL Executive Committee may (i) request that the matter be submitted to the dispute resolution process contained in Section 21.1 of the NEPOOL Agreement at any time during this process, or (ii) submit the actions of the ISO directly to the FERC. If NEPOOL and the ISO agree to invoke the dispute resolution procedures and the ISO is not satisfied with the result following that process, then notwithstanding anything to the contrary set forth in Section 21.1 of the NEPOOL Agreement, the ISO may promptly notify NEPOOL of its disagreement, and in such event the new System Rule or Procedure or change shall continue to remain in effect. Upon receipt of any such notice from the ISO, NEPOOL may then submit the matter to the FERC for final resolution. Any System Rule and Procedure or change implemented by the ISO shall remain in effect pending resolution of the dispute.

(h) The Parties understand and agree that the System Rules and Procedures adopted pursuant to this Agreement shall be consistent with the standards adopted by the NERC and the NPCC or any successor to either.

(i) The ISO shall have sole authority to interpret and implement the System Rules and Procedures developed pursuant to this Section 6.17 as it performs its operating responsibilities under this Agreement.

6.18 Subcontractors and Consultants. The ISO may engage subcontractors and consultants in the performance of its obligations under this Agreement when it determines that the use of such subcontractors or consultants is appropriate; provided, however, that the ISO shall not subcontract the whole or a substantial portion of its obligations under this Agreement and any subcontract entered into by the ISO shall not release the ISO from its obligations under this Agreement. Except as provided in Section 5.3, the ISO shall not subcontract with or procure any goods or services from any NEPOOL Participant or any Affiliate of the ISO or any NEPOOL Participant unless it has solicited bids for such subcontract or goods for services through an open and competitive process. All procurement procedures and protocols developed by the ISO shall be made publicly available.

7. **RIGHTS AND OBLIGATIONS OF NEPOOL AND THE NEPOOL PARTICIPANTS**

7.1 Operation of Facilities. The NEPOOL Participants shall operate their Designated Generation Facilities, Designated Transmission Facilities and Satellites in accordance with the NEPOOL Agreement and the Tariff, the System Rules and Procedures, Good Utility Practice and applicable laws and regulations, including the ISO's directions pursuant to this Agreement.

7.2 **Provision of Information.** The NEPOOL Participants shall provide the ISO with any and all information within their custody or control that the ISO deems necessary to perform its obligations under this Agreement, subject to applicable confidentiality limitations contained in the NEPOOL Information Policy.

7.3 **Development of System Rules and Procedures.** The NEPOOL Participants shall participate in developing the System Rules and Procedures necessary to allow the ISO to carry out its obligations under this Agreement in the manner described in Section 6.17.

7.4 **Payment for Services.** The NEPOOL Participants shall pay the ISO for services provided pursuant to the terms of this Agreement.

7.5 **Payment for Audits.** NEPOOL shall bear all costs of the audits of the ISO and its financial statements pursuant to Sections 6.15 and 6.16 of this Agreement.

7.6 **Emergency Actions.** The NEPOOL Participants shall follow the directions of the ISO to take actions necessary to preserve the reliable operation of the NEPOOL Control Area under the emergency and other conditions set forth in the Tariff and the System Rules and Procedures.

7.7 **Response to ISO Assessment.** NEPOOL shall respond in writing to any findings and recommendations conveyed by the ISO to the NEPOOL which result from any assessment of the System or the functioning of the NEPOOL Market undertaken by the ISO pursuant to Sections 6.3 and 6.4 within sixty (60) days of receipt by NEPOOL of such findings.

8. ISO BUDGET

8.1 **First Operating Year.** The budget for the first Operating Year shall be as set forth in Schedule B.

8.2 **Preparation of Annual Budget.** Seventy-five (75) days before the start of each Operating Year after 1997, the ISO shall prepare and submit to the NEPOOL Executive Committee a budget approved by the ISO Board for the upcoming Operating Year. The budget shall contain separate sections for the ISO's (i) operating expenses, (ii) proposed capital expenses, if any, and (iii) other extraordinary nonrecurring expenses, if any. To the extent that any proposed capital or other extraordinary expenses involve commitments which extend beyond the next Operating Year, the budget shall contain the projected expenses including carrying charges for the length of the project.

8.3 **Review of Budget.** The NEPOOL Executive Committee shall review and comment on the proposed budget no later than forty-five (45) days before the start of the Operating Year. The NEPOOL Executive Committee shall afford the ISO representative on such committee the opportunity to fully present the ISO's budget recommendations to the NEPOOL Executive Committee and shall give due consideration to such recommendations. Subject to the provisions of Sections 8.4, 8.5 and 8.6, the final budget

shall be as agreed to by the NEPOOL Executive Committee, with the approval of the NEPOOL Management Committee, and the ISO.

8.4 Budget Disputes. If NEPOOL and the ISO cannot reach agreement by the first day of December in the then current Operating Year as to the budget, the final operating budget for the then current Operating Year shall remain in effect, as adjusted by multiplying the current budget by a reference index, and any previously approved capital expenditures and appropriate carrying charges shall continue to be authorized and funded; provided, however, that there shall be excluded from the roll-over budget any capital expenses, carrying charges or other extraordinary or nonrecurring expenses incurred by the ISO during the current Operating Year but not previously approved for the next Operating Year. Such reference index shall be the average quarterly escalation rate over the four previous calendar quarters determined based on the Employment Cost Index - Compensation of Private Industry Workers, White Collar Occupations as published by the Bureau of Labor Statistics, U.S. Department of Labor, in “U.S. Department of Labor News”, Table 3 (ECI - WCO). In the event the Employment Cost Index - Compensation of Private Industry Workers, White Collar Occupations is no longer published, a mutually agreed upon index shall be adopted.

8.5 Changes to the Budget. The ISO shall use all reasonable efforts to anticipate its funding needs for each Operating Year in connection with the preparation and submission of its proposed budget as provided in Section 8.2 above. Notwithstanding the foregoing, the ISO may, at any time, request an adjustment to its then current budget to address unanticipated events, including, but not limited to, events of Force Majeure. If the ISO in its reasonable judgment determines that the unanticipated event constitutes an urgent matter which requires prompt redress, NEPOOL shall fund the budget request subject to the right of NEPOOL to subsequently submit any item in dispute to the dispute resolution procedures described in Section 12.1.

8.6 Dispute Resolution. In the event the NEPOOL Executive Committee and the ISO are unable to reach agreement on the proposed budget for the next operating year or any change in the budget for the current year or the NEPOOL Management Committee fails to approve the budget or change in accordance with Section 8.3, then in addition to following the procedures set forth in Sections 8.4 and 8.5, the dispute shall be resolved in accordance with the dispute resolution procedures described in Section 12.1.

8.7 New Initiatives: The Parties contemplate that the Final ISO Agreement will contain additional provisions to be negotiated by the ISO Board and NEPOOL to address the manner in which new initiatives by the ISO requiring the expenditure of funds not previously agreed to by the ISO and NEPOOL will be authorized and approved. Under this Agreement, except as otherwise provided in this Section 8, any new spending initiatives proposed by the ISO are subject to the approval of NEPOOL, and disagreements between the ISO and NEPOOL with respect to such initiatives must be resolved in accordance with the dispute resolution procedures described in Section 12.1. Prior to the entering into of the Final ISO Agreement, NEPOOL will seek guidance from the FERC as to the appropriateness of continuing NEPOOL’s approval right as to this type of expenditure and possible alternative mechanisms, including without limitation the

possible role of the FERC as the avenue of first resort by the ISO for authorization of new spending initiatives.

8.8 Obligation to Pay. NEPOOL shall pay the ISO for its expenses as set forth in the then current budget. The ISO shall bill NEPOOL for such expenses monthly in advance. The ISO's expenses shall be allocated among the NEPOOL Participants in accordance with the provisions of the NEPOOL Agreement, and the ISO shall prepare and send to each NEPOOL Participant an individual statement covering its allocable share of the ISO's expenses in accordance with the billing procedures set forth in Section 9.2. The ISO shall reconcile its actual expenses against budgeted expenses no less frequently than quarterly, and may make such adjustments to its billing cycle as may be reasonably necessary to ensure that the ISO has sufficient working capital to carry on its operations under this Agreement.

8.9 Fees for Scheduling, System Control and Dispatch Service. Schedule 1 to the Tariff requires transmission customers to purchase scheduling, system control and dispatch services from the ISO in connection with the purchase of transmission service under the Tariff. Charges for scheduling, system control and dispatch service are to be based on the rate set forth on Schedule 1 to the Tariff. The ISO shall apply the amounts received by it for such ancillary services which are attributable to the ISO's expenses toward such expenses, and shall reduce the amounts to be billed to NEPOOL for its expenses under Section 8.8 by the amounts so received. Direct payment to the ISO of such charges shall be limited to Through or Out Service, as defined in the Tariff, for an initial period not exceeding six months. Thereafter, Regional Network Service, as defined in the Tariff, shall also pay such charges directly to the ISO.

8.10 Additional ISO Surcharges. The budgeting process in this Agreement contemplates that the ISO will be compensated by NEPOOL for the costs incurred or to be incurred by the ISO in performing its obligations hereunder, and that subject to the offset described in Section 8.9, such costs will be allocated to the NEPOOL Participants in accordance with the provisions of the NEPOOL Agreement. The Parties intend to develop a plan for funding the maximum practicable level of costs of the ISO through the imposition of additional fees on the services provided by the ISO. The Parties shall conclude their plan for such transaction based fees on or before the first anniversary of the Effective Date, and take all necessary steps to seek authorization from the FERC to implement such fees.

9. **BILLING SERVICES**

9.1 Billing Agent. NEPOOL hereby appoints the ISO and the ISO agrees to act as billing agent for NEPOOL in respect of amounts to be collected from or disbursed to NEPOOL Participants and Non-Participants under the NEPOOL Agreement and the Tariff.

9.2 Monthly Billing. The ISO shall prepare an itemized statement no less frequently than once a month for each NEPOOL Participant, setting forth the amounts owed to the ISO pursuant to Section 8.8 and the other amounts, if any, to be collected from or

disbursed to such NEPOOL Participant by the ISO as billing agent under this Agreement. Billings to Non-Participants for services received under the Tariff shall be made in accordance with the billing procedures established under the Tariff.

9.3 Payment Disputes. If a NEPOOL Participant disagrees with any amount set forth in a statement from the ISO, that NEPOOL Participant shall promptly notify the ISO and the ISO shall attempt to resolve such disagreement with that NEPOOL Participant. If the disagreement cannot be resolved by the NEPOOL Participant and the ISO, the ISO shall refer the matter to the NEPOOL Executive Committee for resolution. If the ISO disagrees with the resolution by the NEPOOL Executive Committee, it may submit the dispute to resolution under Section 12.1 of this Agreement. If the NEPOOL Participant disagrees with the resolution by the NEPOOL Executive Committee, it may submit the dispute to resolution under the dispute resolution procedures of the NEPOOL Agreement. Notwithstanding a NEPOOL Participant's disagreement with any amount set forth in a statement from the ISO, that NEPOOL Participant shall (i) pay when due all amounts not in dispute and (ii) pay into an independent escrow account the portion of the invoice in dispute, pending resolution of the dispute, in accordance with the procedures established pursuant to Section 21.2 of the NEPOOL Agreement.

9.4 Failure to Pay. If a NEPOOL Participant fails to pay the ISO any amount set forth on the monthly statement prepared by the ISO when due, the ISO shall provide notice to such NEPOOL Participant of the non-payment, with a copy to the NEPOOL Executive Committee or its designee. The NEPOOL Executive Committee may take such measures as may be permitted under the NEPOOL Agreement to collect such overdue payment from the defaulting NEPOOL Participant. If the non-payment relates to an amount payable under Section 8.8 or Section 8.5, the ISO may make such pro rata adjustments to the statements of the other NEPOOL Participants as may be required to hold the ISO harmless from the effects of such non-payment.

10. **LIABILITY, INDEMNIFICATION AND INSURANCE**

10.1 Liability of ISO. The ISO shall not be liable to the NEPOOL Participants for actions or omissions by the ISO in performing its obligations under this Agreement, provided it has not willfully breached this Agreement or engaged in willful misconduct. To the extent the NEPOOL Participants have claims against the ISO, the NEPOOL Participants may only look to the assets of the ISO for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of the ISO who, the NEPOOL Participants acknowledge and agree, have no personal liability for obligations of the ISO by reason of their status as directors, members, officers, employees or agents of the ISO.

10.2 Liability of NEPOOL Participants. The NEPOOL Participants shall not be liable to the ISO for a failure to perform under the terms of this Agreement, unless that failure to perform was a willful breach of this Agreement.

10.3 Limitation of Liability. In no event shall either Party to this Agreement be liable to the other Party for any incidental, consequential, multiple or punitive damages, loss of

revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance of this Agreement.

10.4 **Indemnification.** NEPOOL shall indemnify, defend and save harmless the ISO and its directors, officers, members, employees and agents from any and all damages, losses, claims and liabilities by or to third parties arising out of or resulting from the performance by the ISO under this Agreement or the actions or omissions of the NEPOOL Participants in connection with this Agreement, except in cases of gross negligence or willful misconduct by the ISO or its directors, officers, members, employees or agents.

10.5 **Insurance.** The ISO shall procure or cause to be procured and shall maintain in full force and effect at all times during the term of this Agreement, all insurance required by applicable laws or regulations and customary in the electric utility industry through insurance policies with responsible insurance companies authorized to do business in the United States in such amounts and for such coverages and upon such terms as agreed to through the process of approving the ISO's budget.

11. **FORCE MAJEURE**

11.1 **Obligations Excused.** A Party's obligations under this Agreement shall be excused (except for its payment obligations) to the extent and for the period that the Party's inability to perform is caused by an event of Force Majeure affecting the Party, and only to the extent of the duration of the same, provided that the Party claiming Force Majeure shall make all reasonable efforts to cure, mitigate or remedy the effects of the Force Majeure event. Nothing herein shall be construed to require either Party to settle a labor dispute.

11.2 **Notice of Event.** The Party claiming a Force Majeure event shall give prompt notice in writing to the other Party of the commencement of the Force Majeure event.

12. **DISPUTE RESOLUTION**

12.1 **Mediation and Arbitration.** Any dispute between the Parties to this Agreement arising out of or related to this Agreement shall be referred (i) by the ISO, to a representative or representatives designated by the Board of Directors of the ISO, and (ii) by NEPOOL, to a representative or representatives designated by the NEPOOL Executive Committee, for informal resolution as soon as is practicable. If the designated representatives are unable to informally resolve the dispute within thirty days of having it referred to them, either Party to the dispute may elect to submit the dispute to mediation, and/or arbitration to be resolved in accordance with the dispute resolution procedures set forth in Section 21.1 of the NEPOOL Agreement. The provisions of such Section 21.1 are hereby incorporated by reference herein, provided that the term "Participant" as used therein shall be deemed for purposes of the dispute resolution procedures to include the ISO. It is understood and agreed that the dispute resolution procedures set forth in Section 21.1 of the NEPOOL Agreement may be invoked by either Party to resolve a

dispute under this Agreement whether or not the matter subject to the dispute is specified in Section 21.1A of the NEPOOL Agreement.

12.2 FERC Jurisdiction. Nothing in this Agreement shall restrict the rights of the Parties to file a complaint with or submit any action to the FERC under relevant provisions of the Federal Power Act, nor shall anything in this section or elsewhere in the Agreement affect the jurisdiction of the FERC over matters arising under this Agreement.

13. **ISO TERMINATION OR RESIGNATION**

13.1 ISO Default. In the event that the NEPOOL Executive Committee determines that the ISO has failed, for any reason other than Force Majeure or the non-performance by NEPOOL Participants of their duties and obligations under this Agreement, to perform under this Agreement in a satisfactory fashion, the NEPOOL Executive Committee shall attempt to resolve the performance problem informally with the ISO Chief Executive. In the event that such informal efforts to resolve such performance problem are unsuccessful, the Chair of the NEPOOL Executive Committee shall put the NEPOOL Executive Committee's concerns in writing and shall submit a written request to the ISO Board asking that the ISO Board take appropriate action to resolve the performance problem. The ISO Board shall have 60 days to resolve the performance problem to the satisfaction of the NEPOOL Executive Committee or to submit the problem for resolution in accordance with the dispute resolution procedures set forth in Section 12.1.

13.2 Removal Vote. (a) In the event the ISO Board fails to satisfy the concerns submitted to it pursuant to Section 13.1 to the satisfaction of the NEPOOL Executive Committee within 60 days of the submittal, or if the ISO Board sought resolution of the concerns in accordance with the dispute resolution procedures set forth in Section 12.1 within such 60 day period and the concerns have not been resolved through such procedures, the NEPOOL Executive Committee shall have the right to submit the performance problem to the NEPOOL Management Committee for a vote as to whether the ISO should be removed and replaced.

(b) If the NEPOOL Management Committee votes to remove the ISO, NEPOOL may petition the FERC for approval to terminate the services of the ISO under this Agreement, but such termination by NEPOOL shall not be effective without the approval of the FERC.

(c) It is the intent of the Parties that the procedures in this Section 13.2 providing for potential removal of the ISO for failure to perform satisfactorily under this Agreement will be used only when the ISO has breached this Agreement and all reasonable good faith efforts have been exhausted under Section 13.1 to resolve concerns regarding the ISO's performance by means short of removal of the ISO.

13.3 Individual Party Concern with the ISO. In the event that any NEPOOL Participant believes that the ISO is not performing satisfactorily within the meaning of Section 13.1, such NEPOOL Participant may pursue the matter only by submitting a

complaint in writing concerning the matter to the NEPOOL Executive Committee. If the NEPOOL Executive Committee agrees with the complaint, the procedures of Section 13.1 shall apply. Notwithstanding the foregoing, nothing in this Section 13.3 shall restrict the right of any NEPOOL Participant to file a complaint with or submit any action to the FERC under the relevant provisions of the Federal Power Act.

13.4 Selection of New ISO. (a) In the event that the NEPOOL Management Committee vote(s) to terminate the services of the ISO pursuant to Section 13.2 and such termination is approved by the FERC, or the ISO gives a notice of resignation pursuant to Section 13.7, the NEPOOL Executive Committee shall designate ten individuals, representing a diversity of interests and with input from NECPUC, to form a subcommittee to select and negotiate a new service agreement with, or an assignment of this Agreement to, a new independent system operator.

(b) The selection of the new independent system operator and the proposed new service agreement or an assignment of this Agreement shall be subject to approval by a vote of the NEPOOL Management Committee.

(c) If, as a result of the procedure set forth in this Section 13.4, it is determined that this Agreement shall be assigned to a new independent system operator, the ISO shall agree to the assignment of this Agreement to the new independent system operator.

13.5 Transition. During the period that a new independent system operator is being chosen in accordance with Section 13.4, this Agreement shall remain in effect and the ISO shall continue to perform its functions in accordance with this Agreement. The ISO shall also work with the subcommittee appointed pursuant to Section 13.4 and the new independent system operator to effect a smooth transition, including, if requested by such subcommittee, (i) assisting in the preparation of an inventory of all equipment and supplies, (ii) assigning all subcontracts and other contracts as directed and (iii) assisting the training of any personnel of the successor independent system operator.

13.6 Breach of Contractual Obligations By NEPOOL Participants. (a) If a NEPOOL Participant fails to perform any of its obligations (other than its payment obligations) to the ISO under this Agreement, for reasons other than Force Majeure, the ISO shall provide notice of such failure to such NEPOOL Participant and to the NEPOOL Executive Committee. The NEPOOL Executive Committee shall take such measures as may be permitted under the NEPOOL Agreement to remedy the failure to perform by the defaulting party.

(b) If a NEPOOL Participant fails to comply with an authorized direction from the ISO, in circumstances in which such failure is not permitted by the System Rules and Procedures and the NEPOOL Agreement, and such failure imperils the safety or reliability of the NEPOOL Control Area, the ISO shall be authorized to take any action it deems to be prudent to maintain the safety and reliability of the NEPOOL Control Area.

13.7 Resignation of the ISO. If, after following the requirements of Section 13.6, the failure of a NEPOOL Participant to perform an obligation under this Agreement has not

been cured, and such failure to perform has a material adverse effect on the ISO, the ISO may, in addition to any other remedies that it may have at law or in equity, resign by giving notice to the NEPOOL Executive Committee.

13.8 Effect of Removal, Resignation or Assignment. The removal or resignation of the ISO, or the assignment of this Agreement as specified in Section 13.4, shall not discharge or relieve the ISO or NEPOOL from any obligations or liabilities that it may have incurred under the terms of this Agreement prior to such removal, resignation or assignment.

13.9 Fundamental Changes. In the event that future changes in the electric industry shall impact the operation of the NEPOOL Market in a fundamental manner not contemplated by this Agreement, either Party may petition the FERC to terminate this Agreement in order to address such changes in an alternative manner. Any such termination of this Agreement shall be on such terms as the FERC may specify.

14. GOVERNING LAW

The terms of this Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut.

15. NOTICES

Except as otherwise expressly provided herein, any notice required hereunder shall be in writing and may be given by any of the following means: overnight courier, hand delivery, certified mail (postage prepaid, return receipt requested), facsimile or other reliable electronic means.

Notice shall be given to the ISO at: ISO New England Inc.
Attn: Chief Executive
One Sullivan Road
Holyoke, MA 01041-1310

Notice shall be given to NEPOOL at: NEPOOL Executive Committee
Attn: Secretary
c/o Day, Berry & Howard
CityPlace
Hartford, CT 06103-3499

Any notice shall be deemed to have been given (i) upon delivery if given by overnight courier, hand delivery or certified mail or (ii) upon confirmation if given by facsimile or other reliable electronic means. Either Party may change their address for receiving notices contemplated by this Agreement by delivering notice of its new address to the other.

16. SUCCESSORS AND ASSIGNS

The rights and obligations created by this Agreement shall inure to and bind the successors and assigns of the ISO, provided, however, that the ISO shall not assign such rights and obligations without the written consent of the NEPOOL Management Committee.

17. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to create a partnership, joint venture or other joint legal entity making either Party jointly or severally liable for the acts or omissions of the other Party.

18. WAIVER

Delay by either Party in enforcing its rights under this Agreement shall not be deemed a waiver of such rights. Any waiver of rights by either Party with respect to any default or other matter arising under this Agreement shall not be deemed a waiver with respect to any default or other matter arising under this Agreement.

19. SEVERABILITY

If any term, condition, covenant, restriction or other provision of this Agreement is held by a court or regulatory agency of competent jurisdiction or by legislative enactment to be invalid, void or otherwise unenforceable, the remainder of the terms, conditions, covenants, restrictions and other provisions of this Agreement shall remain in full force and effect unless such an interpretation would materially alter the rights and privileges of either Party hereto. If any term, condition, covenant, restriction or other provision of this Agreement is held by a court or regulatory agency of competent jurisdiction or by legislative enactment to be invalid, void or otherwise unenforceable, the Parties shall attempt to negotiate an appropriate replacement provision or other revisions to this Agreement to restore the rights and obligations conferred under the original Agreement.

20. HEADINGS

The headings used in this Agreement are intended for convenience only and shall have no effect on the interpretation of any provision of this Agreement.

21. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each having the same force and effect as the original.

22. ENTIRE AGREEMENT

This Agreement, including all schedules hereto, and those portions of the NEPOOL Agreement and the Tariff relating to the obligations of the ISO, constitute the Parties' complete and exclusive statement of the terms of the Agreement and the matters contemplated herein. All prior written and oral understandings, offers or other communications of every kind pertaining to the subject matter of this Agreement are hereby superseded.

23. **AMENDMENT**

This Agreement may be amended only in writing and as agreed to by the ISO and NEPOOL, acting pursuant to a vote of the NEPOOL Management Committee.

NEPOOL and the ISO have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

NEPOOL PARTICIPANTS

ISO NEW ENGLAND INC.

By: _____

Chairman Title:
NEPOOL Executive Committee

SCHEDULE A
LOCATION OF SATELLITES

1. The "Maine Satellite"
c/o Central Maine Power Company
83 Edison Drive
Augusta, ME 04336-0001

2. CONVEX
c/o Connecticut Valley Electric Exchange
P.O. Box 270
Hartford, CT 06141-0270

3. The "New Hampshire Satellite"
c/o Public Service Company of New Hampshire
1000 Elm Street, P.O. Box 330
Manchester, NH 03105-0330

4. REMVEC
c/o Rhode Island - Eastern Mass - Vermont Energy Control
25 Research Drive
Westborough, MA 01582-0001

SCHEDULE B

The budget for the first Operating Year shall be based on the 1997 NEPOOL budget, as revised, of \$34.953 million, which includes (i) some expenses and start-up costs (which may be capitalized and amortized) to be incurred by NEPOOL during the period from January 1, 1997 through the date that responsibility for operation of the NEPOOL Control Center and administration of the Tariff is transferred by NEPOOL to the ISO, (ii) some other types of expenses which will be retained in a NEPOOL budget and not become part of the ISO budget, and (iii) the expenses and costs to be incurred by the ISO from the effective date of this Agreement through December 31, 1997.