

EXHIBIT 3

FORM OF MITIGATION AGREEMENT
[BID MITIGATION AND SEASONAL SHUT-DOWN]

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MITIGATION AGREEMENT
[BID MITIGATION OR SEASONAL SHUT-DOWN]

This Mitigation Agreement (“RMR Agreement”) is entered into as of this ____ day of _____, 200__ by and between ISO New England, Inc. (the “ISO”) and _____ (the “Participant”) (individually, a “Party,” and collectively, the “Parties”).

BACKGROUND

- A. Participant has the bidding authority for the ____ MW ____-fired generating unit(s) located near _____ and named _____ (the “Resource”).
- B. The ISO is responsible for the reliable and least-cost dispatch of the New England Control Area.
- C. The Resource is required to operate during certain hours or under certain conditions in order to relieve transmission congestion or to provide necessary ancillary services, at which times, the Resource possesses locational market power.
- D. The Participant’s authority to sell at market-based rates from the Resource is dependent upon mitigation of such locational market power.
- E. The ISO, under Appendix A of Market Rule 1, has the authority to mitigate the market power of a Resource after-the-fact and, at its discretion, to enter into mitigation agreements pursuant to Section III.A.4.7 of Appendix A as an alternative to mitigation of bids pursuant to Section III.A.4.6 of Appendix A.
- F. Pursuant to the ISO New England Procedure for Designated Congestion Areas and RMR Agreements, Exhibit 2 to Appendix A of Market Rule 1, the Parties wish to negotiate prospective mitigation of the Resource’s market power on the terms set forth below.

NOW THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this RMR Agreement as of the Effective Date, the Parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Except for the terms defined below and in the attached Schedules, capitalized terms shall be as defined in Market Rule 1.

1.1.1 “Affiliate” of a Party any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For purposes of this definition, control means the power to direct or cause direction of, directly or indirectly, the management or policies of the specified entity, whether through ownership of voting securities, partnership, or limited liability company interests, by contract or otherwise.

1.1.2 “Cost Reporting Procedures” shall have the meaning set forth in Section 3.3.

1.1.3 “Effective Date” shall have the meaning set forth in Section 2.1.1.

1.1.4 “Extension Term” shall have the meaning set forth in Section 2.1.2.

1.1.5 “FPA” means the Federal Power Act.

1.1.6 “Governmental Authority” means the government of any nation, state or other political subdivision thereof, including any entity exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.

1.1.7 “Initial Term” shall have the meaning set forth in Section 2.1.1.

1.1.8 “Party” means either the ISO or Participant and/or Agent as the context requires, and “Parties” means ISO or Participant and/or Agent, as the context requires.

1.1.9 “Stipulated Marginal Cost” shall have the meaning set forth in Section 3.3.

1.1.10 “Stipulated Bid Cost” shall have the meaning set forth in Section 3.3.

1.1.11 “Stipulated Start-Up Cost” shall have the meaning set forth in Section 3.3.

1.1.12 “Stipulated No Load Cost” shall have the meaning set forth in Section 3.3.

1.1.13 “Term” shall mean either the Initial Term or any Extension Term.

1.1.14 “Unit” means one of the _____ electricity generating units constituting a part of the Resource.

1.1.15 “Variable O&M” shall be the amount specified in Schedule 3.

1.2 Interpretation. In this RMR Agreement, unless otherwise indicated or otherwise required by the context, the following rules of interpretation shall apply:

1.2.1 Reference to and the definition of any document (including this RMR Agreement, ISO New England Filed Documents and the ISO New England System Rules) shall be deemed a reference to such document as it may be amended, supplemented, revised, or modified from time to time and any document that is a successor thereto.

1.2.2 The article and section headings, and other captions in this RMR Agreement are for convenience and reference purposes only and do not limit or affect its meaning.

1.2.3 Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

1.2.4 Accounting terms used herein shall have the meanings given to them under generally accepted accounting principles within the United States consistently applied.

1.2.5 The term “including” when used herein shall be by the way of example only and shall not be considered in any way a limitation.

1.3 Construction. This RMR Agreement has been drafted by both Parties and shall not be construed against any Party as the sole drafter.

ARTICLE 2 TERM

2.1 Term and Termination.

2.1.1 Initial Term. This RMR Agreement shall be effective (the “Effective Date”) at the beginning of the operating hour ending at 1:00 a.m., _____, 200__ and shall terminate at the end of the operating hour beginning at 11:00 p.m., _____, 200__ (the “Initial Term”).

2.1.2 Option to Extend.

[OPTION FOR ANNUAL TERM]

This RMR Agreement shall automatically extend each year for an additional one year term on each anniversary (an “Extension Term”) unless terminated in writing by either the Participant or the ISO upon notice given no later than 30 days prior to expiration of the Initial Term or any applicable Extension Term.

[OPTION FOR SEASONAL SHUT-DOWN]

As of the last day of the Initial Term, this RMR Agreement shall automatically be renewed to cover the same period in the following calendar year (an "Extension Term") unless terminated in writing by either the Participant or the ISO upon notice given no later than 30 days prior to expiration of the Initial Term or any applicable Extension Term.

2.2 Termination. This RMR Agreement may be terminated as follows:

2.2.1 ISO may terminate this RMR Agreement at any time during the Initial Term or an Extension Term upon thirty (30) days written notice to Participant;

2.2.2 This RMR Agreement may be terminated as provided in Section 6.2; and

2.2.3 Participant may terminate this RMR Agreement at any time upon the effectiveness of a cost-of-service tariff filed with the Commission covering sales from the Resource.

2.3 Survival. Notwithstanding the termination of this RMR Agreement, the Parties shall continue to be bound by the provisions of this RMR Agreement which by their nature are intended to, and shall, survive such termination.

ARTICLE 3 MARKET TRANSACTIONS AND MITIGATION

3.1 Market Transactions and Revenues. This RMR Agreement imposes no additional requirements on Participant with regard to the level at which the Resource is bid nor does it limit the Participant's right to enter into bilateral agreements. Nothing in this RMR Agreement limits a Participant's right to retain revenues earned in the market (after giving effect to the mitigation provided for herein) or through bilateral arrangements.

3.2 Bid Mitigation. On and after the date hereof, for all applicable hours that the Resource is designated or used pursuant to Section III.A.4.2.2 of Appendix A of Market Rule 1 pursuant to a Dispatch Instruction, the Parties agree that the Participant's bid will be mitigated and settled based on the highest of the following:

3.2.1 the LMP for such hour;

3.2.2 the lower of the Supply Offer or the applicable Reference Price; or

3.2.3 its Stipulated Bid Cost.

3.3 Stipulated Costs. Stipulated costs shall be determined using the applicable generating unit fossil fuel usage and related items for the applicable operating day, as reported to the ISO for market monitoring purposes, pursuant to the procedure set forth in "Reporting of Generating Unit Fuel Cost and Related Data for ISO New England Market Monitoring & Market Power Mitigation," www.iso-ne.com/market_monitoring/reporting_of_fuel_cost_and_related_data/ (the "Cost Reporting Procedures") as provided below. The form Participant shall use, as required by the Cost Reporting Procedures, is provided in Schedule 2. Capitalized terms used in the formulas below are defined in the Cost Reporting Procedures.

Stipulated Marginal Cost (“SMC”) = Incremental Operating Cost + Wear & Tear Adder + Avoided Costs Adder + Lost Opportunity Cost

Where:

Incremental Operating Cost = (Fuel + O&M + Other) x kWh

Fuel = (Fuel Use for Generation x Fuel Index Price) + Fuel Cost Ancillaries

O&M = Incremental Operating O&M as specified in Schedule 3

Other = (SO₂ Allowance Adder + NO_x Allowance Adder + Operating Permit Adder)

Wear and Tear Adder = Incremental Operating Cost x 0.10

Stipulated Bid Costs = Stipulated Marginal Cost + Stipulated Start-Up Cost + Stipulated No Load Cost

Where:

Stipulated Start-Up Cost = (Start-Up Fuel Use x Fuel Index Price) + Fuel Cost Ancillaries + Start-Up O&M + Start-Up Other

Stipulated No Load Cost = (No Load Fuel Use x Fuel Index Price) + Fuel Cost Ancillaries + No Load O&M + No Load Other

3.3.1 The Avoided Costs Adder [is not applicable] [is calculated as follows: (add appropriate language as required by Section 3.2.9.2 of Exhibit 3 to Appendix A of Market Rule 1X)].

3.3.2 Lost Opportunity Cost [is not applicable] [is as follows: -- to be filled in if negotiated].

3.3.3 The “Fuel Index Price” shall mean the current daily price calculated by the ISO, using the third party data as specified on Schedule 1, applicable to the delivery point specified on Schedule 1.

ARTICLE 4 REPORTING AND SETTLEMENT

4.1 Cost Reporting.

4.1.1 To permit the ISO to calculate mitigation in accordance with this RMR Agreement, Participant shall update in monthly filings with the ISO all of its cost data for the Resource in the form required by the ISO as set forth on Schedule 2. If Participant fails to provide updated information on a timely basis, mitigation shall be in accordance with Appendix A of Market Rule 1 and the mitigation provisions of this RMR Agreement shall not be applicable until the updated information is provided. The ISO will give the Participant 30 days' prior written notice of any change in the form and will update Schedule 2 accordingly.

4.1.2 The Operating Limits and Variable O&M charges applicable to the Resource during the Initial Term are set forth in Schedule 3 hereto. Except with respect to Variable O&M charges incurred by the Participant as a result of specific request of the ISO, such Operating Limits and Variable O&M charges shall be reestablished periodically, prior to the Effective Date of any Extension Term as follows:

(a) The Participant shall provide the ISO with an updated Schedule 3 no earlier than 75 days and no later than 60 days prior to the end of the Initial Term or any applicable Extension Term to be effective for the next Extension Term.

(b) On or before the thirtieth day prior to the end of the Initial Term or any Extension Term, if the ISO does not elect to terminate the RMR Agreement, the ISO shall confirm in writing its acceptance of the revised Schedule 3.

(c) If the ISO does not agree to the revised Schedule, the Schedule in effect for that Term shall remain in effect during the Extension Term pending alternative dispute resolution pursuant to Appendix D of Market Rule 1.

4.2 Settlement. The mitigated Bids applicable to the Resource shall be paid in accordance with existing settlement procedures.

ARTICLE 5 RESOURCE OPERATION AND MAINTENANCE

5.1 Participant's Obligation. Participant shall operate and maintain the Resource in accordance with the ISO New England Filed Documents, the ISO New England Manuals, and the ISO New England Administrative Procedures, as applicable, and Accepted Electric Industry Practice.

5.2 Accepted Electric Industry Practice. Nothing herein shall be construed as to require Participant to take action that is contrary to Accepted Electric Industry Practice.

ARTICLE 6 REMEDIES

6.1 Damages and Other Relief.

6.1.1 Liability of ISO. The ISO shall not be liable to Participant for actions or omissions by the ISO in performing its obligations under this RMR Agreement, provided it has not willfully breached this RMR Agreement or engaged in willful misconduct. To the extent Participant has claims against the ISO, Participant 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, Participant acknowledges and agrees, have no personal liability for obligations of the ISO by reason of their status as directors, members, officers, employees or agents of the ISO.

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

6.1.3 Limitation of Liability. In no event shall either Party to this RMR 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 RMR Agreement.

6.1.4 Indemnification. Participant 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 Participant in connection with this RMR Agreement, except in cases of gross negligence or willful misconduct by the ISO or its directors, officers, members, employees or agents.

6.2 Termination for Default. If any Party shall fail to perform any material obligation imposed on it by this RMR Agreement and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this RMR Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this RMR Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this RMR Agreement. The Party not in default shall have a duty to mitigate damages. Termination of this RMR Agreement pursuant to this Section 6.2 shall be without prejudice to the right of Participant or ISO to collect any amounts due to it prior to the time of termination.

6.3 Waiver. The failure to exercise any remedy or to enforce any right provided in this RMR Agreement or applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing.

6.4 Beneficiaries. Except as is specifically set forth in this RMR Agreement, nothing in this RMR Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this RMR Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this RMR Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

ARTICLE 7 COVENANTS OF THE PARTIES

7.1 Insurance. Participant shall arrange for and maintain an appropriate minimum level of liability and property insurance coverage with respect to the Resource as follows: [to be negotiated].

7.2 Representations and Warranties.

7.2.1 ISO represents and warrants to Participant as follows:

(a) ISO is a validly existing corporation with full authority to enter into this RMR Agreement.

(b) ISO has taken all necessary measures to have the execution and delivery of this RMR Agreement authorized, and upon the execution and delivery of this RMR Agreement, this RMR Agreement shall be a legally binding obligation of ISO.

(c) ISO has all regulatory authorizations necessary for it to perform its obligations under this RMR Agreement.

(d) The execution, delivery, and performance of this RMR Agreement are within the ISO's powers and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it.

7.2.2 Participant represents and warrants to ISO as follows:

(a) Participant is a validly existing entity with full authority to enter into this RMR Agreement.

(b) Participant has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this RMR Agreement, this Agreement shall be a legally binding obligation of Participant.

(c) Participant has, or has applied for, all regulatory authorizations, necessary for it to perform its obligations under this RMR Agreement.

(d) The execution, delivery, and performance of this RMR Agreement are within the Participant's powers and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law applicable to it.

**ARTICLE 8
MISCELLANEOUS**

8.1 Assignment.

8.1.1 None of the Parties shall assign its rights or delegate its duties under this RMR Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this Section 8.1, this RMR Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.

8.1.2 Notwithstanding Section 8.1.1, each Party may, without the need for consent from the other Party (and without relieving itself from liability hereunder), transfer or assign this RMR Agreement: (i) to an Affiliate, or (ii) where such transfer is incident to a merger or consolidation with, or transfer of all, or substantially all, of the assets of the transferor to another person, business entity, or political subdivision or public corporation created under the Laws governing the creation and existence of the transferor which shall as a part of such succession assume all of the obligations of the assignor or transferor under this RMR Agreement. Any Party may collaterally assign its rights in this RMR Agreement to its lenders without the need for consent from the other Party. To the extent that any Party seeks to transfer its rights and obligations to a successor entity, such Party shall seek to assign this RMR Agreement to such successor entity, pursuant to this Section 8.1.2.

8.2 Notices. Except as otherwise expressly provided in this RMR Agreement or required by Law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this RMR Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section 8.2).

PARTICIPANT:

ISO:

NOTICES & CORRESPONDENCE

[TO COME]

PAYMENTS BY WIRE TRANSFER

[TO COME]

NOTICES & CORRESPONDENCE

[TO COME]

PAYMENTS BY WIRE TRANSFER

[TO COME]

INVOICES

[TO COME]

INVOICES

[TO COME]

The foregoing notice provisions may be modified by providing written notice, in accordance with ISO Protocols established from time-to-time.

8.3 Parties' Representatives. All Parties to this RMR Agreement shall ensure that throughout the term of this RMR Agreement, duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this RMR Agreement. Acts and omissions of representatives shall be deemed to be acts and omissions of the Party. Participant and ISO shall be entitled to assume that the representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party. Participant's representatives shall be identified on Exhibit A. ISO's representatives shall be identified on Exhibit B. The Parties may at any time replace their representatives by sending the other Party a revision to its respective Exhibit.

8.4 Effect of Invalidation, Modification, or Condition. Each covenant, condition, restriction, and other term of this RMR Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this RMR Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this RMR Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement or refer the dispute for resolution under the Alternative Dispute Resolution provisions in Appendix D to Market Rule 1.

8.5 Amendments. Any amendments or modifications of this RMR Agreement shall be made only in writing and duly executed by all Parties to this RMR Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from the Commission.

8.6 Governing Law. This RMR Agreement shall be governed by and construed under the Laws of the Commonwealth of Massachusetts without regard to conflicts of laws principles.

8.7 Entire Agreement. This RMR Agreement consists of the terms and conditions set forth herein, as well as the Appendices hereto, which are incorporated by reference herein and made a part hereof. This RMR Agreement contains the entire agreement between the Parties and supersedes all prior negotiations, undertakings, agreements and business term sheets.

8.8 Independent Contractors. Participant and ISO acknowledge that they are independent contractors, and that nothing in this RMR Agreement shall create any joint venture, partnership, or principal/agent relationship between the Parties. Neither Participant nor ISO shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

8.9 Counterparts. This RMR Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

8.10 Confidentiality. Confidential information identified as such by a Party and provided to the other Party pursuant to this Mitigation Agreement shall be governed by the *ISO New England Information Policy*, subject to the following:

8.10.1 Nothing herein or therein shall limit the right of a Party to file a copy of this Agreement with the Commission, without redaction, to the extent that law, regulation, or agency order makes such filing necessary or appropriate.

8.10.2 Notwithstanding anything in this Agreement to the contrary, if during the course of an investigation or otherwise, the Commission requests that a Party (the “responding Party”) provide to it information that has been designated by the other Party to be treated as confidential under this Agreement, the responding Party shall provide the requested information to the Commission or its staff within the time provided for in the request for information. The responding Party shall promptly notify the other Party upon receipt of any such request and either Party, consistent with 18 CFR § 388.112, may, but shall not be required, to 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.

IN WITNESS WHEREOF the Parties have executed and delivered this RMR Agreement as of the date first above written.

Participant:

ISO:

[PARTICIPANT]

ISO New England, Inc.

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

Participant's Representatives

[PARTICIPANT TO PROVIDE]

EXHIBIT B

ISO's Representatives
[ISO TO PROVIDE]

SCHEDULE 1

INFORMATION ON STIPULATED MARGINAL COST

1. The Fuel Index Price for the Resource shall use the following data source:

[Check applicable box]

Energy/Petroleum Argus
Gas Daily (Financial Times Energy)

<i>[Check applicable box]</i>	<u>Fuel Type</u>	<u>Frequency of Data</u>
	Coal_HS	weekly
	Coal_LS	weekly
	MA_natgas1	daily (business days)
	MA_natgas2	daily (business days)
	MA_natgas3	daily (business days)
	avg_MA_natgas	daily (business days)
	NY_natgas	daily (business days)
	No2	daily (business days)
	No2_LS_aka_DIESE L	daily (business days)
	No6_030	daily (business days)
	No6_070	daily (business days)
	No6_100	daily (business days)
	No6_220	daily (business days)
	No6_300	daily (business days)
	Jet_fuel	daily (business days)
	LS_Jet_kero	daily (business days)

based on the following delivery point_____

2. [If applicable] Participant represents that absent receipt of the Avoided Cost Adder, during the [Initial Term] [Extension Term] it would have shut down the Resource as follows:

SCHEDULE 2

COST REPORTING FORM

Hour	Actual Net Generation (MWh)	Heat Rate (Btu/kWh)	Fuel Use For Generation (MMBtu)	Start-up & No-Load Indicator	Start-up Fuel Use (MMBtu)	No-Load Fuel Use (MMBtu)	Total Fuel Consumption (MMBtu)	Fuel Cost Delivered (\$)	Fuel Cost Ancillaries (\$)	Fuel Cost Adders (\$)	Start-Up & No-Load O&M Costs (\$)
A	B	C	$D = \frac{B \times C}{1000}$	E = "H", "C", or "N"	F > 0 if E = "H" or "C"	G > 0 if E = "N"	H = D + F + G	I = H * Q	J = H * R	K = H * (T + V + X)	L > 0 if E = "H", "C" or "N"
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Q	Fuel Cost Delivered (Sec. II.A)	\$/MMBtu	U	NOx Allowance Value	\$/Ton
R	Fuel Cost Ancillaries (Sec. II.B-F)	\$/MMBtu	V	NOx Allowance Adder	\$/MMBtu
S	SO2 Allowance Value	\$/Ton	W	Operating Permit Fee	\$/Ton of Emissions
T	SO2 Allowance Adder	\$/MMBtu	X	Operating Permit Fee Adder	\$/MMBtu

SCHEDULE 3

RESOURCE INFORMATION

Operating Limits are as follows:

Variable O&M shall be as follows:

Sheet Nos. 7524 through 7549 are reserved for future use.