

SECTION III

MARKET RULE 1

APPENDIX A
MARKET MONITORING,
REPORTING AND MARKET POWER MITIGATION

APPENDIX A

MARKET MONITORING, REPORTING AND MARKET POWER MITIGATION

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MARKET MONITORING, REPORTING AND MARKET POWER MITIGATION

III.A.1. Purpose and Objectives

III.A.1.1. Thresholds. The mitigation measures set forth in this *Appendix A* for mitigation of market power (“Mitigation Measures”) are intended to provide the means for the ISO, in consultation with the Independent Market Monitoring Unit, to mitigate the market effects of any actions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions, or market rules for electric energy or electricity products. Actions or transactions undertaken by a Market Participant that are explicitly contemplated in Market Rule 1 (such as virtual supply or load bidding) or taken at the direction of the ISO are not in violation of this Market Rule. These Mitigation Measures are intended to minimize interference with open and competitive markets, and thus to permit to the maximum extent practicable, price levels to be determined by competitive forces under the prevailing market conditions. To that end, the Mitigation Measures authorize the mitigation of only specific conduct that exceeds well-defined thresholds specified below. When implemented, Mitigation Measures affecting the LMP or clearing prices in other markets will be applied *ex*

ante. Nothing in this Appendix A, including the application of a Mitigation Measure, shall be deemed to be a limitation of the ISO's authority to evaluate Market Participant behavior for potential sanctions under Appendix B of this Market Rule.

III.A.1.2. Other Conduct. In addition, the ISO, in consultation with the Independent Market Monitoring Unit, shall monitor the New England Markets for conduct that it determines constitutes an abuse of market power but does not trigger the thresholds specified below for the imposition of Mitigation Measures by the ISO. If the ISO, in consultation with the Independent Market Monitoring Unit, identifies any such conduct, and in particular conduct exceeding the thresholds specified in this *Appendix A*, it may make a filing under § 205 of the Federal Power Act (“§ 205”) with the Commission requesting authorization to apply appropriate Mitigation Measures. Any such filing shall identify the particular conduct the ISO, in consultation with the Independent Market Monitoring Unit, believes warrants mitigation, shall propose a specific Mitigation Measure for the conduct, and shall set forth the ISO's justification for imposing that Mitigation Measure.

III.A.1.3. Reserved.

III.A.2. Monitoring and Mitigation Principles

III.A.2.1. Conduct Subject to Mitigation. Mitigation Measures may be applied to Supply Offers, Increment Offers, Demand Bids, Decrement Bids, and offers relating to Installed Capacity, as well as to the scheduling or operation of a generation unit or transmission facility.

III.A.2.2. Conditions for the Imposition of Mitigation Measures.

III.A.2.2.1. Market Impact. To achieve the foregoing purpose and objectives, Mitigation Measures should only be imposed to remedy conduct that would substantially distort or impair the competitiveness of any of the markets administered by the ISO. Accordingly, and as more fully described in Sections III.A.5, III.A.6, III.A.8, and III.A.9 below, the ISO shall seek to impose Mitigation Measures only to remedy conduct that:

(a) is significantly inconsistent with competitive conduct as discussed below in Section III.A.2.2.2; and

(b) would result in a change in one or more prices in the New England Markets or NCP payments to a Market Participant beyond the thresholds defined in *Exhibit 1*, *Exhibit 2*, or Section III.A.5.3.3, as appropriate.

III.A.2.2.2. Conduct Inconsistent with a Competitive Market. In general, the ISO shall consider a Market Participant's conduct to be inconsistent with competitive conduct if

the conduct would (i) reduce the net revenue associated with the Resource, but for the effect of the conduct on market outcomes, or (ii) reduce the capability of the Transmission System resulting in a price impact in the New England Markets or NCPC payments in excess of either of the thresholds in *Exhibit 1*, *Exhibit 2*, or Section III.A.5.3.3., as appropriate.

III.A.2.3. Categories of Conduct that May Warrant Mitigation or Sanctions.

III.A.2.3.1. In General. The categories of conduct set forth below, whether conduct by a single Market Participant or by multiple Market Participants acting in concert, including actions involving more than one Resource, may cause a material effect on prices or other payments in the New England Markets if exercised from a position of market power. Accordingly, the ISO shall monitor the New England Markets for such conduct, and shall impose appropriate Mitigation Measures if such conduct is detected and the other applicable conditions for the imposition of Mitigation Measures are met.

III.A.2.3.2. Conduct Not Deemed Anti-Competitive. As more fully described in Section III.B.3.2.6. of *Appendix B* to this Market Rule, certain economic decisions shall not be deemed a form of withholding or otherwise inconsistent with competitive conduct.

III.A.2.3.3. Physical Withholding by a Market Participant. The detailed procedures for evaluating physical withholding of Supply Offers are principally contained in Section III.A.4 below. This conduct involves not offering to sell or schedule the output of or services provided by a Resource capable of serving the New England Markets when it is economic to do so. The treatment of suspected physical withholding is more fully described in *Appendix B* to this Market Rule. Such withholding may include, but not be limited to

- (a) falsely declaring that a Resource has been forced out of service or otherwise become unavailable,
- (b) refusing to make a Supply Offer, or schedules for a Resource when it would be in the economic interest absent market power, of the withholding entity to do so,
- (c) operating a Resource in Real-Time to produce an output level that is less than the ISO Dispatch Rate, or
- (d) operating a transmission facility in a manner that is not economic, is not justified on the basis of legitimate safety or reliability concerns, and contributes to a binding transmission constraint.

Potential violation of this Section III.A.2.3.3. shall be referred to the Commission by the ISO as discussed in *Appendix B* of this Market Rule.

III.A.2.3.4. Other Withholding of Supply Offers. This conduct includes several subcategories. Detailed procedures are contained in Sections III.A.5 and III.A.6 for conduct involving the withholding of Supply Offers, including:

(a) *Economic Withholding*, that is, submitting a Supply Offer for a Resource that is unjustifiably high and violates the economic withholding criteria set forth in Section III.A.5 so that (i) the Resource is not or will not be dispatched or scheduled, or (ii) the bid or offer will set an unjustifiably high market clearing price.

(b) *Uneconomic production from a Resource*, that is, increasing the output of a Resource to levels that would otherwise be uneconomic, absent an order of the ISO, in order to cause, and obtain benefits from, a transmission constraint.

III.A.2.3.5. Anti-Competitive Increment Offers and Decrement Bids. This conduct involves bidding practices relating to Increment Offers and Decrement Bids that cause Day-Ahead LMPs not to achieve the degree of convergence with Real-Time LMPs that would be expected in a workably competitive market and is more fully treated in Section III.A.8.

III.A.2.3.6. Other Conduct. The ISO shall monitor the New England Markets for other categories of conduct, whether by a single Market Participant or by multiple Market Participants acting in concert, that have material effects on prices or NCPC payments

in the New England Markets. The ISO, in consultation with the Independent Market Monitoring Unit, shall: (i) seek to amend the foregoing list as may be appropriate to include any such conduct that would substantially distort or impair the competitiveness of any of the New England Markets administered by the ISO; and (ii) seek such other authorization to mitigate the effects of such conduct from the Commission as may be appropriate.

III.A.2.3.7. Market Behavior Rules. All market-based rate sellers in the New England Markets are subject to the Commission’s Market Behavior Rules. Market Behavior Rule 2 is incorporated in this Market Rule 1 below.

Market Behavior Rule 2(a) (Prohibition Against Wash Trades)

Prohibited actions and transactions include, but are not limited to: (a) pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk and no net change in beneficial ownership (sometimes called “wash trades”).

Market Behavior Rule 2(b) (Prohibition Against Transactions Predicated on Submission of False Information)

Prohibited actions and transactions include, but are not limited to: (b) transactions predicated on submitting false information to transmission providers or other entities responsible for operation of the transmission grid (such as inaccurate load or generation data; or scheduling non-firm

service for products sold as firm), unless Seller exercised due diligence to prevent such occurrences.

Market Behavior Rule 2(c) (Prohibition Against Transactions Relating to the Creation of Artificial Congestion Followed by the “Relief” of such Artificial Congestion)

Prohibited actions and transactions include, but are not limited to: (c) transactions in which an entity first creates artificial congestion and then purports to relieve such artificial congestion (unless Seller exercised due diligence to prevent such occurrence).

Market Behavior Rule 2(d) (Prohibition Against Certain Collusive Acts)

Prohibited actions and transactions include, but are not limited to: (d) collusion with another party for the purpose of manipulating market prices, market conditions, or market rules for electric energy or electricity products.

III.A.2.4. Other Monitoring Objectives. The ISO, in consultation with the Independent Market Monitoring Unit, will conduct such additional monitoring as it deems necessary.

III.A.2.4.1. Monitoring Targets. Among other objectives, the ISO, in consultation with the Independent Market Monitoring Unit, will monitor for:

- (a) Anti-competitive Demand Bids, which is treated in greater detail in Section III.A.7;
- (b) Anti-competitive gaming of ICAP Resources, treated in Section III.A.9;

(c) Conduct and market outcomes that are inconsistent with competitive markets;

(d) Flaws in market design or software or in the implementation of rules by the ISO that create inefficient incentives or market outcomes;

(e) Actions in one market that affect price in another market;

(f) Other aspects of market implementation that prevent competitive market results, the extent to which market rules, including this *Appendix A*, interfere with efficient market operation, both short-run and long-run; and

(g) Rules or conduct that creates barriers to entry into a market.

III.A.2.4.2. Reports. The ISO will include significant results of such monitoring in its reports under Section III.A.11. Monitoring under this Section III.A.2.4 cannot serve as a basis for mitigation under Sections, III.A.6 or III.A.8. If the ISO concludes as a result of its monitoring that additional specific monitoring thresholds or mitigation remedies are necessary, it may proceed under Section III.A.2.5.

III.A.2.5. Further Changes. The ISO may, in consultation with the Independent Market Monitoring Unit, propose appropriate Mitigation Measures or suggest Market Rule changes for conduct that departs significantly from the conduct that would be expected under competitive market conditions but does not rise to the thresholds specified in Sections III.A.4, III.A.6,

III.A.7, or III.A.8. In considering whether to recommend such changes, the ISO shall evaluate whether the conduct has a significant effect on market prices or NCPC payments as specified below. The ISO will not recommend changes if it determines, from information provided by the Market Participant (or Parties that would be subject to mitigation) or from other information available to the ISO, that the conduct and associated price or NCPC payments under investigation are attributable to legitimate competitive market forces or incentives.

III.A.2.6. Duration of Mitigation Measures. Any Mitigation Measure imposed on a specific Market Participant, as specified below, shall expire not later than six months after the occurrence of the conduct giving rise to the measure, or at such earlier time as may be specified by the ISO, in consultation with the Independent Market Monitoring Unit, or as otherwise provided in this *Appendix A* or in *Appendix B* to this Market Rule.

III.A.3. Consultation Requirements

III.A.3.1. In General. If through the application of an appropriate index or screen or other monitoring of market conditions, conduct is identified that (i) exceeds an applicable threshold, and (ii) has a material effect, as specified below, on one or more prices or NCPC payments in the New England Markets administered by the ISO, the ISO will take the steps set forth in this Section III.A.3:

III.A.3.1.1. Notice and Opportunity to Respond. Before imposing mitigation for violation of general market thresholds (excluding thresholds regarding congestion mitigation)

(a) The ISO will, whenever practicable, contact the Market Participant engaging in the identified conduct to request an explanation of the conduct;

(b) If the explanation, if available, considered together with other information available to the ISO, indicates to the satisfaction of the ISO that the questioned conduct is consistent with competitive conduct as discussed above in Section III.A.2.2.2., no further action will be taken; and

(c) The ISO will consider any information a Market Participant submits, but is not required to delay mitigation while waiting for information.

III.A.3.1.2. Consideration of Information in All Cases. In every case, the ISO will consider all available explanations of behavior that are based on a Market Participant's cost of providing any market product, including

- (a) Any relevant opportunity costs,
- (b) The need to shape bids and offers for a Limited Energy Resource to maximize the economic value from that Resource over time given the unique characteristics of the Resource, and
- (c) any special price limitations applicable to dual-fuel resources.

III.A.3.1.3. Advance Consultation by Market Participant. If a Market Participant anticipates submitting offers in a market administered by the ISO that will exceed the thresholds specified in Sections III.A.4, III.A.5, III.A.6, III.A.7, or III.A.8 for identifying conduct inconsistent with competition, the Market Participant may contact the ISO to provide an explanation of any legitimate basis for any such changes in the Market Participant's offers. If a Market Participant's explanation of the reasons for its bidding indicates to the satisfaction of the ISO, in consultation with the Independent Market Monitoring Unit that the questioned conduct is consistent with competitive conduct, no further action will be taken.

III.A.3.1.4. Market Participant Access to Its Reference Levels.

(a) The ISO will make available to the Market Participant the Reference Levels (as defined in Section III.A.5.6.1) applicable to that Market Participant's offers; the energy components will generally be available on a daily basis, but in all cases Reference Levels will be available upon request. The Market Participant shall not modify such Reference Levels in the ISO's systems.

(b) Upon request or at the initiative of the ISO, the ISO shall consult with a Market Participant with respect to the information and analysis used to determine Reference Levels under Section III.A.5.6 for that Market Participant. If cost data or other information submitted by a Market Participant indicates to the satisfaction of the ISO, in consultation with the Independent Market Monitoring Unit, that the Reference Levels for that Market Participant should be changed, revised Reference Levels shall be determined, communicated to the Market Participant, and implemented, as soon as practicable.

III.A.4. Physical Withholding

III.A.4.1. Identification of Conduct Inconsistent with Competition. This Section defines thresholds used to identify possible instances of physical withholding in the ISO's evaluation of whether to issue a Formal Warning pursuant to *Appendix B*. This Section does not limit the ISO's ability to refer potential instances of physical withholding to the Commission for a determination regarding the application of monetary sanctions. For energy Resources, only Resources required to offer in the Day-Ahead Energy Market will be evaluated for physical withholding in the Day-Ahead Energy Market. All Resources will be evaluated in the Real-Time Energy Market. Transmission facilities will be evaluated both Day-Ahead and in Real-Time. In addition to being subject to Mitigation Measures contained in this *Appendix A*, Market Participants may be subject to sanctions contained in *Appendix B* to this Market Rule.

III.A.4.2. Thresholds for Identifying Physical Withholding.

III.A.4.2.1. Initial Thresholds. Except as specified in subsection III.A.4.2.4 below, the following initial thresholds will be employed by the ISO to identify physical withholding of a Resource:

(a) Withholding that exceeds the lower of 10% or 100 MW of a Resource's capacity;

(b) Withholding that exceeds in the aggregate the lower of 5% or 200 MW of a Market Participant's total capacity for Market Participants with more than one Resource; or

(c) Operating a Resource in Real-Time at an output level that is less than 90% of the ISO's Dispatch Rate for the Resource.

III.A.4.2.2. Adjustment to Generating Capacity. The amounts of generating capacity considered withheld for purposes of applying the foregoing thresholds shall include unjustified deratings, that is, falsely declaring a Resource derated, and the portions of a Resource's available output that is not scheduled, offered, or that exceeds the economic withholding thresholds. The amounts deemed withheld shall not include generating output that is subject to a forced outage or capacity that is out of service for maintenance in accordance with an ISO maintenance schedule, subject to verification by the ISO as may be appropriate that an outage was forced.

III.A.4.2.3. Withholding of Transmission. A transmission facility shall be deemed physically withheld if it is not operated in accordance with ISO instructions and such

failure to conform to ISO instructions causes transmission congestion. A transmission facility shall not be deemed withheld if it is subject to a forced outage or is out of service for maintenance in accordance with an ISO maintenance schedule, subject to verification by the ISO as may be appropriate that an outage was forced.

III.A.4.2.4. Resources in Congestion Areas. Minimum quantity thresholds shall not be applicable to the identification of physical withholding by a Resource in an area the ISO has determined is congested.

III.A.4.3. Hourly Market Impact and NCPC Thresholds. Before evaluating possible instances of physical withholding for imposition of sanctions, the ISO shall investigate the reasons for the change in accordance with Section III.A.3. If the physical withholding in question is not explained to the satisfaction of the ISO, the ISO, in consultation with the Independent Market Monitoring Unit, will determine whether the conduct in question causes a price impact in the New England Markets or NCPC payments in excess of either of the thresholds in *Exhibit 1*, *Exhibit 2*, or Section III.A.5.3.3, as appropriate.

III.A.4.4. Sanctioning. If the conduct would have an effect in excess of either of the thresholds in *Exhibit 1*, *Exhibit 2*, or Section III.A.5.3.3, as appropriate, and has not been satisfactorily explained in accordance with Section III.A.3, the ISO, in consultation with the Independent Market Monitoring Unit, will evaluate whether it believes sanctions apply pursuant to *Appendix B* to this Market Rule 1. The ISO will evaluate whether to issue a Formal Warning as discussed in Sections III.B.4.1.1 and III.B.5.2. If after such evaluation, the ISO believes that such conduct could warrant monetary sanctions under *Appendix B*, the ISO will refer such potentially Sanctionable Behavior, along with any explanation provided by the Market Participant, to the Commission for a determination regarding whether monetary sanctions will be imposed pursuant to Sections III.B.4.1.2 and III.B.4.1.3 of *Appendix B*.

III.A.5. Economic Withholding and Uneconomic Production

III.A.5.1. Purpose. This Section defines thresholds of economic withholding in constrained areas. If conduct is detected that exceeds the thresholds specified in Sections III.A.5.3 or III.A.5.4 and the ISO determines that there is a market impact, as provided in Section III.A.5.5, the conduct shall be remedied by the prospective application of a Default Offer as described in Section III.A.5.7.

III.A.5.2. Applicability.

III.A.5.2.1. In General. Only Resources required to offer in the Day-Ahead market will be evaluated for economic withholding in the Day-Ahead market. All Supply Offers will be evaluated in the Real-Time market.

III.A.5.2.1.1. Partially De-Listed Capacity. The partially de-listed portion of an ICAP Resource will be exempt from Mitigation Measures in the Day-Ahead Energy Market, as follows:

For each hour, the Market Monitoring Unit shall compute the prorated de-listed MW quantity for each Resource, calculated as:

$$\text{Min} \left\{ (\text{MW Quantity Delisted}) \times \frac{\text{Economic Max}}{\text{Seasonal Claimed Capability}}, \text{MW Quantity Delisted} \right\}$$

The partially de-listed portion of an ICAP Resource exempt from evaluation for economic withholding in the Day-Ahead Energy Market will be the prorated de-listed MW quantity closest to the Resource's offered hourly Economic Maximum (i.e., the block beginning at the MW level determined by subtracting the prorated de-listed MW quantity from the Economic Maximum), subject to each of the following conditions:

(a) The Resource shall be treated as a fully-listed ICAP Resource when it is reviewed for economic withholding up to and including the block containing the Resource's Economic Minimum;

(b) the Resource shall be treated as a fully-listed ICAP Resource when it is reviewed for economic withholding if the Resource's Day-Ahead schedule includes any Self-Scheduled MWs;

(c) the entire offer block of a Resource shall be treated as a fully-listed ICAP Resource in any case where the block contains listed MW; and

(d) Day-Ahead Energy Market Mitigation Measures will apply to all hours in the Day-Ahead Energy Market.

III.A.5.2.2. Pivotal Supplier. A “Pivotal Supplier” shall mean, for each hour any Market Participant whose aggregate energy Supply Offers (up to and including Economic Max) for such hour are greater than the Supply Margin. The “Supply Margin” for an hour shall mean the total energy Supply Offers (up to and including Economic Max) for such hour, less total system load (as adjusted for net interchange with other Control Areas and including Operating Reserve). Prior to the Day-Ahead clearing process or the Real-Time hourly dispatch, the ISO shall calculate the Supply Margin and designate any Pivotal Suppliers and related generating Resources for each hour in the Day-Ahead Market and the Real-Time Market. In the Day-Ahead Energy Market, an ISO Load Forecast shall be used in making the above determination.

III.A.5.3. Thresholds for Identifying Economic Withholding.

III.A.5.3.1. General Thresholds. The ISO shall investigate the reasons for and market impact of any offers from a Pivotal Supplier that exceed the following thresholds. Offers from a Pivotal Supplier exceeding these thresholds and market impact thresholds and for which no sufficient explanation has been provided, shall be mitigated to the Default Offer as determined in Section III.A.5.7.3.

(a) Energy Offer Price. A 300 % increase or an increase of \$100/MWh above the Reference Level, whichever is lower, but excluding offers under \$25.

(b) Startup and No-load Offer Price. A 200 % increase above the Reference Level.

(c) Reserved.

(d) Time Based Offer Parameters. An increase greater than 2 hours in elements of a generating Resource's Offer Data that are expressed in time (e.g. minimum run time, minimum down time, cold start time, hot start time) or greater than six hours for any combination of such time-based Offer Data compared to the unit's Reference Levels.

(e) Offer Parameters Expressed Other than in Time or Dollars. A 100 % increase for Offer Data that are minimum values, or a 50 % decrease for Offer Data that are maximum values (including, but not limited to, ramp rates and maximum starts per day).

III.A.5.3.2. Reserved.

III.A.5.3.3. Additional Thresholds Applicable in Constrained Areas. In addition to the thresholds set forth in Section III.A.5.3.1, for generating Resources located in a constrained area (including generating Resources located in a DCA during constrained periods), the following thresholds shall be employed by the ISO to identify economic withholding that may warrant Mitigation Measures. Offers exceeding these conduct thresholds and market impact thresholds and for which no sufficient explanation has

been provided, shall be mitigated to the Reference Level determined as specified in Section III.A.5.6, unless an agreement has been negotiated under the procedures set forth in *Exhibit 2* to this *Appendix A*.

(a) For Supply Offers for the Real-Time Market: for intervals in which a generating Resource is dispatched for the purpose of relieving a transmission constraint above the level at which it otherwise would have been dispatched (“Constrained Hours”), the ISO shall assess the market impact of any Supply Offers (Section III.A.5.5.2(b)) that meet the following thresholds:

(i) Energy Offer Price – an increase of \$25 or 50%, whichever is lower, above the Reference Level; or

(ii) Start-Up or No-Load Price – an increase of 25% above the Reference Level.

(b) For Supply Offers for the Day-Ahead Market: for all Constrained Hours (as defined above) the ISO shall assess the market impact of any Supply Offers for the generating Resource that meet a threshold determined in accordance with the formula specified in subsection (a).

III.A.5.4. Threshold for Identifying Uneconomic Production. In addition to the thresholds governing forms of economic withholding in Section III.A.5.3.3, the ISO will monitor for actions not consistent with competitive conduct, as defined in Section III.A.2.2.2, involving uneconomic production. The following thresholds may warrant the imposition of a Mitigation

Measure as provided in Section III.A.5.7.4: (i) Energy scheduled at an LMP that is less than 20% of the applicable Reference Level and that causes transmission congestion; or (ii) Real-Time output from a Resource that exceeds 110% of the ISO's Dispatch Rate, and causes transmission congestion.

III.A.5.5. Hourly Market Impact and NCPC Thresholds.

III.A.5.5.1. Initial Investigation. Before imposing any Mitigation Measure as permitted in Section III.A.5.7, with regard to offers and bids identified in accordance with Sections III.A.5.3.1, III.A.5.3.3, and III.A.5.4, the ISO shall investigate the reasons for the change in accordance with the applicable provisions of Section III.A.3. If the offers and bids in question are not explained to the satisfaction of the ISO, the ISO, in consultation with the Independent Market Monitoring Unit, will determine whether the offers and bids in question would, if not mitigated, cause a material effect on the LMP at a Node, or clearing prices in the New England Markets or NCPC charges as provided in Sections III.A.5.5.2 and III.A.5.5.3.

III.A.5.5.2. Market Impact Thresholds. Before a Mitigation Measure is imposed on offers exceeding the conduct thresholds, the ISO will determine whether there is an impact as follows:

(a) For offers exceeding the thresholds in Section III.A.5.3.1(a), a material effect is one in excess of either of the thresholds in *Exhibit I*, Section 1.

(b) For offers exceeding thresholds in Section III.A.5.3.3, a material effect is one in excess of the conduct threshold specified in Section III.A.5.3.3 above or NCPC payment thresholds as specified in *Exhibit I*, Section 2.

III.A.5.5.3. Calculation of Price Impact.

(a) When it has the capability to do so, the Internal Market Monitoring Unit, in consultation with the Independent Market Monitoring Unit, shall determine the effect on prices in constrained areas as the difference between the LMP at the Resource node and the LMP at the Hub. When it has the capability to do so, the Internal Market Monitoring Unit, in consultation with the Independent Market Monitoring Unit, shall determine the effect on prices in unconstrained areas by rerunning the ISO's market settlement software (MSS) through the market operator interface (MOI). The Internal Market Monitoring Unit, in consultation with the Independent Market Monitoring Unit, shall determine the effect on NCPC payments of questioned conduct by comparing NCPC payments calculated using actual offers to NCPC payment calculated using the default offer.

(b) When a determination in accordance with paragraph (a) above is not practicable, including, but not limited to when market operations are being performed in the back-up control center during an Emergency, the ISO, in consultation with the Independent Market Monitoring Unit, shall manually determine the effect on prices or NCPC payments of

questioned conduct. The price impact analysis will be performed to allow *ex ante* mitigation in the Day-Ahead Energy Market. *Ex ante* mitigation in the Real-Time Energy Market will be performed as soon as practicable.

(c) The Internal Market Monitoring Unit may, in consultation with the Independent Market Monitoring Unit, set thresholds below which it need not apply the MSS and MOI if it is reasonable to conclude that the market impact thresholds are not likely to be violated.

(d) In constrained areas, if appropriate models are not available as the result of limitations in hardware, software, or other technical difficulties, the ISO will manually evaluate the impact to determine if it is at least as large as the threshold value. If that is not practicable, then either of the following will be deemed to be a violation of the market impact screen for a constrained area Resource exceeding a conduct threshold specified in Section III.A.5.3: (i) the scheduling of such Resource, or (ii) if the unit is not scheduled, a determination that the Reference Level for such Resource is less than the offer price of the marginal resource by more than the threshold specified in *Exhibit 2*, Section 2.4, will be deemed to have violated the market impact screen.

III.A.5.6. Calculation of Resource Reference Levels.

III.A.5.6.1. Methods for Determining Reference Levels. The ISO will calculate a reference price or, where an element of a bid or offer is not in dollars, the time-based or quantity level (any of which being referred to as a “Reference Level”) for each component of a generator’s bid on the basis of the following procedures:

(a) From the SMD Effective Date until the ISO's hardware and software necessary for calculations in paragraphs (b) through (d) below is functional and the ISO has sufficient data to make appropriate calculations, the ISO will use the interim procedure that it has made available to Market Participants by posting on its website at least thirty (30) days in advance of the SMD Effective Date. The ISO will continue to use the interim procedure until it has given Market Participants advance notice of its ability to use the procedures below, but no earlier than 48 hours after such notice of full functionality has been posted on the ISO's website.

(b) Upon full functionality, the ISO will apply the first of the following procedures for which adequate information is available, except as described in subsection (iv) below:

(i) The lower of the mean or the median of a generating Resource's Supply Offers that have been accepted and are part of the seller's Day-Ahead Generation Obligation or Real-Time Generation Obligation (excluding negative values) or bid components (hereinafter, a "Submitted Offer") in competitive periods over the previous 90 days, adjusted for changes in fuel prices utilizing fuel indices generally applicable for the location and type of Resource;

(ii) If that procedure is not applicable due to lack of data, then the mean of the LMP at the Resource's location during the lowest-priced 25 % of the hours that the Resource was dispatched over the previous 90 days for similar hours or load levels, adjusted for changes in fuel prices; or

(iii) A level negotiated with the Market Participant submitting the bid or bids at issue, and intended to reflect the Resource's marginal costs, provided such a level has been negotiated prior to the occurrence of the conduct being examined by the ISO, and provided that the Market Participant has provided data on the Resource's operating costs in accordance with specifications provided by the ISO. The ISO's determination of a generating unit's marginal costs shall include an assessment of the unit's incremental operating costs in accordance with the following formula, and such other factors or adjustments as the ISO, in consultation with the Independent Market Monitoring Unit, shall reasonably determine to be appropriate based on such data supplied by the Market Participant or otherwise available to the ISO :

$$(\text{heat rate} * \text{fuel costs}) + (\text{emissions rate} * \text{emissions allowance price}) + \text{other variable and operating maintenance costs}$$

(iv) For any Resource that has been flagged as VAR, SCR, or as a Local Second Contingency Protection Resource for any hour in the Day-Ahead Energy Market or the Real-Time Energy Market in the previous 90 days, if the ratio of (the sum of the operating hours for flagged

days during the previous 90 days in which the number of Day-Ahead and Real-Time hours operated out of economic merit order exceed the number of Day-Ahead and Real-Time hours operated in economic merit order) divided by (the total number of Day-Ahead and Real-Time operating hours during the previous 90 days) is greater than or equal to 50 percent, then the Resource is not eligible for a Reference Level as described in subsection (i) above and will receive a Reference Level as described in subsection (iii) above. For the purposes of this subsection:

(1) A flagged day is any day in which the Resource has been flagged as VAR, SCR, or as a Local Second Contingency Protection Resource for any hour in either the Day-Ahead Energy Market or the Real-Time Energy Market.

(2) Operating hours are the hours in the Day-Ahead Energy Market for which a Resource has cleared MWs greater than zero and hours in the Real-Time Energy Market for which a Resource has metered MWs greater than zero. For days for which Real-Time Energy Market metered MWs are not yet available in the ISO's systems, telemetered MWs values will be used.

(3) Self-Scheduled hours will be excluded from all of the calculations described in this subsection, including the determination of operating hours.

(4) The determination as to whether a Resource operated in economic merit order during an hour will be based on its incremental energy offer.

III.A.5.6.2. Insufficient Data. If sufficient data does not exist to calculate a Reference Level as provided in Section III.A.5.6.1, the ISO, in consultation with the Independent Market Monitoring Unit, may determine a Reference Level on the basis of:

(a) the estimated costs of the generating unit, taking into account appropriate input from the Market Participant; or

(b) an appropriate average of competitive bids of one or more similar generating units.

III.A.5.7. Mitigation Measures

III.A.5.7.1. Manual Review Prior to Mitigation. The ISO will manually review a generating Resource's Reference Level before imposition of mitigation where practicable.

III.A.5.7.2. Conditions for Imposition of Mitigation Measures. The ISO may impose a Default Offer as set forth in this Section III.A.5.7 if the following conditions have been met:

(a) A Submitted Offer exceeds an applicable threshold set forth in Sections III.A.5.3 and III.A.5.4 for an available Resource; and the conduct is not explained to the satisfaction of the ISO in accordance with Section III.A.3; and

(b) The market impact thresholds described in Section III.A.5.5 are exceeded.

III.A.5.7.3. Level of Default Offers. A substitute mitigated offer (a "Default Offer") shall be designed to cause a Market Participant to offer as if it faced workable competition during a period when (i) the Market Participant does not face workable competition, and (ii) has responded to such condition by engaging in economic withholding.

In designing and implementing Default Offers, the ISO shall seek to avoid causing a Resource to offer below its marginal cost.

III.A.5.7.4. Implementation.

(a) The Default Offer may establish a mitigated value for one or more components of the offer for a given Resource equal to a Reference Level for that component of the Resource's offer determined as specified in Section III.A.5.6.1.

(b) A Resource subject to a Default Offer shall be paid the LMP or other market clearing price applicable to the output from the Resource. Accordingly, a Default Offer shall not limit the price that a Resource may receive or pay unless the Default Offer determines the LMP or other market clearing price applicable to that Resource.

(c) Mitigation Measures shall not be applied if the price effects of the measures would cause the average day-ahead energy price in the mitigated locations or zones to rise over the entire day.

(d) When Mitigation Measures are applied to Offer Data, mitigation shall be imposed from the first hour in which the impact test is met to the last hour in which the impact test is met, or for the duration of the mitigated Resource's minimum run time, whichever is longer.

(e) The posting of the Day-Ahead schedule, rebidding period and reliability commitment run may be delayed if necessary for the completion of mitigation procedures.

(f) Mitigation that does not affect the LMP or a clearing price in another ISO market may be applied in the settlement process.

(g) A Mitigation Measure imposed in a constrained area in accordance with the conduct thresholds of Section III.A.5.3 and the impact thresholds of Section III.A.5.5 shall remain in effect for the duration of any day in which there is an interval for which such mitigation is deemed warranted.

III.A.5.8. Regulation

The ISO, in consultation with the Independent Market Advisor, will monitor the Regulation Market for conduct that it determines constitutes an abuse of market power. If the ISO, in consultation with the Independent Market Advisor, identifies any such conduct, it may make a filing under Section 205 of the Federal Power Act with the Commission requesting authorization to apply appropriate Mitigation Measures or to revise the Market Rule to address such conduct (or both). The ISO may make such a filing at any time it deems necessary, and may request expedited treatment from the Commission. Any such filing shall identify the particular conduct the ISO, in consultation with the Independent Market Advisor, believes warrants mitigation or revisions to the Market Rule (or both), shall propose a specific mitigation measure for the conduct or revision to the Market Rule (or both), and shall set forth the ISO's justification for imposing that mitigation measure or revision to the Market Rule (or both).

III.A.6. Reliability Agreements

III.A.6.1. Mitigation Agreements. A Market Participant with the authority to submit Supply Offers for any Resources designated pursuant to Section 3 of *Exhibit 2* may initiate with the ISO negotiations for a prospective agreement under the procedures set forth in *Exhibit 2*.

III.A.6.2. Cost-of-Service Agreements. For Resources seeking authority permanently to shut-down and identified by the ISO as necessary for reliability, the ISO will negotiate prospective cost of service agreements under the procedures set forth in Section 3.3 of *Exhibit 2*.

III.A.6.3. Filing with the Commission. All agreements negotiated by the ISO under this Section III.A.6 will be filed with the Commission in such form and manner as the Commission from time to time requires.

III.A.7. Demand Bids

The ISO will monitor Demand Resources as outlined below:

(a) LMPs in the Day-Ahead and Real-Time Energy Markets shall be monitored to determine whether there is a persistent hourly deviation in any location that would not be expected in a workably competitive market.

(b) The ISO shall compute the average hourly deviation between Day-Ahead and Real-Time Energy Market LMPs, measured as: $(LMP_{\text{real time}} / LMP_{\text{day ahead}}) - 1$. The average hourly deviation shall be computed over a rolling four-week period or such other period determined by the ISO, in consultation with the Independent Market Monitoring Unit.

(c) The ISO shall estimate and monitor the average percentage of each Market Participant's bid to serve load scheduled in the Day-Ahead Energy Market, using a methodology intended to identify a sustained pattern of under-bidding as accurately as deemed practicable. The average percentage will be computed over a specified time period determined by the ISO.

If the ISO, in consultation with the Independent Market Monitoring Unit, determines that: (i) The average hourly deviation is greater than ten percent (10%) or less than negative ten percent (-10%), (ii) one or more Market Participants on behalf of one or more LSEs have been purchasing a substantial portion of their Loads with purchases in the Real-Time Energy Market, (iii) this practice has contributed to an unwarranted divergence of LMPs between the two markets, and (iv) this practice has created operational problems, the ISO may make a filing under Section 205 of the Federal Power Act with the Commission requesting authorization to apply appropriate Mitigation Measures or to revise the Market Rule to address such conduct (or both). The thresholds identified above shall not limit the ISO's authority to make such a filing. The ISO may make such a filing at any time it deems necessary, and may request expedited treatment from the Commission. Any such filing shall identify the particular conduct that the ISO, in consultation with the Independent Market Monitoring Unit, believes warrants mitigation or revisions to the Market Rule (or both), shall propose a specific mitigation measure for the conduct or revision to the Market Rule (or both), and shall set forth the ISO's justification for imposing that mitigation measure or revision to the Market Rule (or both).

III.A.8. Mitigation of Increment Offers and Decrement Bids

III.A.8.1. Purpose. The provisions of this Section III.A.8 specify the market monitoring and Mitigation Measures applicable to Increment Offers and Decrement Bids. An Increment Offer is one to supply energy and a Decrement Bid is one to purchase energy, in either such case not being backed by physical load or generation and submitted in the Day-Ahead Energy Market in accordance with the procedures and requirements specified in the Market Rules and ISO New England Manuals.

III.A.8.2. Implementation.

III.A.8.2.1. Monitoring of Increment Offers and Decrement Bids. Day-Ahead LMPs and Real-Time LMPs in each Load Zone or Node, as applicable, shall be monitored to determine whether there is a persistent hourly deviation in the LMPs that would not be expected in a workably competitive market. The ISO shall compute the average hourly deviation between Day-Ahead and Real-Time LMPs, measured as:

$$(LMP_{\text{real time}} / LMP_{\text{day ahead}}) - 1$$

The average hourly deviation shall be computed over a rolling four-week period or such other period determined by the ISO, in consultation with the Independent Market Monitoring Unit, to be appropriate to achieve the purpose of this Mitigation Measure.

III.A.8.2.2. Mitigation Measures. If the ISO, in consultation with the Independent Market Monitoring Unit, determines that (i) the average hourly deviation computed over a rolling four week period is greater than ten percent (10%) or less than negative ten percent (-10%), and (ii) the bid and offer practices of one or more Market Participants has contributed to a divergence between LMPs in the Day-Ahead and Real-Time markets, then the following Mitigation Measure may be imposed:

The ISO, in consultation with the Independent Market Monitoring Unit, may limit the hourly quantities of Increment Offers for supply or Decrement Bids for load that may be offered in a Location by a Market Participant, subject to the following provisions:

- (i) The ISO shall, when practicable, request explanations of the relevant bid and offer practices from any Market Participant submitting such bids.
- (ii) Prior to imposing a Mitigation Measure, the ISO shall notify the affected Market Participant of the limitation.

(iii) The ISO, will restrict the Market Participant for a period of six months from submitting any virtual transactions at the same Node(s), and/or electrically similar Nodes to, the Nodes where it had submitted the virtual transactions that contributed to the unwarranted divergence between the LMPs in the Day-Ahead and Real-Time Energy Markets.

III.A.8.3. Monitoring and Analysis of Market Design and Rules. The ISO, in consultation with the Independent Market Monitoring Unit, shall monitor and assess the impact of Increment Offers and Decrement Bids on the competitive structure and performance, and the economic efficiency of the New England Markets. Such monitoring and assessment shall include the effects, if any, on such bids and offers of any Mitigation Measures specified in this Market Rule.

III.A.8.4. Cap on FTR Revenues. If a holder of an FTR between specified delivery and receipt Locations (i) had an Increment Offer and/or Decrement Bid that was accepted by the ISO for an applicable hour in the Day-Ahead Energy Market for delivery or receipt at or near delivery or receipt Locations of the FTR; and (ii) the result of the acceptance of such Increment Offer or Decrement Bid is that the difference in LMP in the Day-Ahead Energy Market between such

delivery and receipt Locations is greater than the difference in LMP between such delivery and receipt Locations in the Real-Time Energy Market, then the Market Participant shall not receive any Transmission Congestion Credit associated with such FTR in such hour, in excess of one divided by the number of hours in the applicable month multiplied by the amount originally paid for the FTR in the FTR Auction. A Location shall be considered at or near the FTR delivery or receipt Location if seventy-five % or more of the energy injected or withdrawn at that Location and which is withdrawn or injected at another Location is reflected in the constrained path between the subject FTR delivery and receipt Locations that were acquired in the FTR Auction.

III.A.9. [Reserved.]

III.A.10. ADR Review of ISO Mitigation Actions

III.A.10.1. Actions Subject to Review. A Market Participant may obtain prompt Alternative Dispute Resolution (“ADR”) review of any ISO mitigation imposed on a Resource as to which that Market Participant has bidding or operational authority. A Market Participant must seek review pursuant to the procedure set forth in *Appendix D* to this Market Rule, but in all cases within the time limits applicable to billing adjustment requests.¹ Actions subject to review are:

- Imposition of a mitigation remedy.
- Continuation of a mitigation remedy as to which a Market Participant has submitted material evidence of changed facts or circumstances.²

III.A.10.2. Standard of Review. On the basis of the written record and the presentations of the ISO and the Market Participant, the ADR Neutral (as defined in *Appendix D*) shall review the facts and circumstances upon which the ISO based its decision and the

¹ These deadlines are currently specified in the ISO New England Manuals.

² Thus, after a Market Participant has unsuccessfully challenged imposition of a mitigation remedy, it may challenge the continuation of that mitigation in a subsequent ADR Review on a showing of material evidence of changed facts or circumstances.

remedy imposed by the ISO. The ADR Neutral shall remove the ISO's mitigation only if it concludes that the ISO's application of the ISO mitigation policy was clearly erroneous. In considering the reasonableness of the ISO's action, the ADR Neutral shall consider whether adequate opportunity was given to the Market Participant to present information, any voluntary remedies proposed by the Market Participant, and the need of the ISO to act quickly to preserve competitive markets.

III.A.11. Reporting

III.A.11.1. Data Collection and Retention. Market 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 ISO New England Information Policy. This would include a Market Participant's cost information if the ISO deems it necessary, including start up, No-Load and all other actual marginal costs, when needed for monitoring or mitigation of that Market Participant. Additional data requirements may be specified in the ISO New England Manuals. If for any reason the requested explanation or data is unavailable, the ISO will use the best information available in carrying out its responsibilities. The ISO may use any and all information it receives in the course of administering the New England Markets as appropriate in its monitoring and mitigation activities.

III.A.11.2. Periodic Reporting.

III.A.11.2.1. Monthly Report. The ISO will publish a monthly report, which will be available to the public both in printed form and electronically, containing an overview of the market's performance in the most recent period.

III.A.11.2.2. Quarterly Report for Regulators. The ISO will publish a quarterly report that will be made available to appropriate state or federal government agencies, including the Commission and state regulatory bodies, attorneys general and others with jurisdiction over the competitive operation of electric power markets. The content of the quarterly report will be updated periodically through consensus of the ISO and the regulators. The entire quarterly report will be subject to confidentiality protection consistent with the ISO New England Information Policy and the recipients will ensure the confidentiality of the information in accordance with state and federal laws and regulations. The ISO New England Information Policy prevents the inappropriate dissemination of competitively sensitive data to individual Market Participants. The ISO will make available to the public a redacted version.

III.A.11.3. Annual Reviews. The INTMMU will present an annual review of the operations of the New England Markets, which will include an evaluation of the procedures for the determination of energy, reserve and regulation clearing prices, NCPC costs and the performance of the Forward Capacity Market and FTR Auctions. The review will include a public forum to discuss the performance of the New England Markets, the state of competition, and the ISO's priorities for the coming year. In addition, the ISO will arrange a non-public meeting open to appropriate state or federal government agencies, including the Commission and state regulatory bodies, attorneys general, and others with jurisdiction over the competitive operation of electric power markets, subject to the confidentiality protections of the ISO New England Information Policy, to the greatest extent permitted by law.

III.A.11.4. Other ISO Communications With Government Agencies.

III.A.11.4.1. Routine Communications. The periodic reviews are in addition to any routine communications the ISO may have with appropriate state or federal government agencies, including the Commission and state regulatory bodies, attorneys general, and others with jurisdiction over the competitive operation of electric power markets.

III.A.11.4.2. Additional Communications. The ISO is not a regulatory or enforcement agency. However, it will monitor market trends, including changes in Resource

ownership as well as market performance. In addition to the information on the market and mitigation provided in the monthly, quarterly and annual reports the ISO shall:

(a) Inform the jurisdictional state and federal regulatory agencies, as well as the Markets Committee, if the ISO determines that a market problem appears to be developing that will not be adequately remediable by existing Market Rules or Mitigation Measures;

(b) If the ISO receives information from any entity regarding an alleged violation of law, refer the entity to the appropriate state or federal agencies;

(c) If the ISO reasonably concludes, in the normal course of carrying out its monitoring and mitigation responsibilities, that certain market conduct constitutes a violation of law, report these matters to the appropriate state and federal agencies; and

(d) Provide the names of any companies subjected to mitigation under these procedures as well as a description of the behaviors subjected to mitigation and any mitigation remedies or sanctions applied.

III.A.11.4.3. Confidentiality. Information identifying particular participants required or permitted to be disclosed to jurisdictional bodies under this section shall be provided in a confidential report filed under Section 388.112 of the Commission regulations and corresponding provisions of other jurisdictional agencies. The ISO will include the confidential

report with the quarterly submission it provides to the Commission pursuant to Section III.A.11.2.2..

III.A.11.5. Other Information Available from ISO on Request by Regulators. The ISO will normally make its records available as described in this paragraph to authorized state or federal agencies, including the Commission and state regulatory bodies, attorneys general and others with jurisdiction over the competitive operation of electric power markets (“authorized government agencies”). The ISO shall promptly make available all requested data and information it is permitted under the ISO New England Information Policy to disclose to authorized government agencies, including, but not limited to, requests pursuant to Section 3.3 of the ISO New England Information Policy. The ISO also will comply with compulsory process, after first notifying the owner(s) of the items and information called for by the subpoena or civil investigative demand and giving them at least ten business days to seek to modify or quash the compulsory process. If an authorized government agency makes a request in writing, other than compulsory process, for information or data whose disclosure to authorized government agencies is not permitted by the ISO New England Information Policy, the ISO shall notify each party

with an interest in the confidentiality of the information. Unless requested pursuant to Section 3.3 of the ISO New England Information Policy, the ISO shall not disclose the information unless or until (a) the authorized government agency has served the ISO with compulsory process as described above, or (b) the interested party or parties have agreed with the requesting authorized government agency to voluntary disclosure of the data or information subject to reasonable and appropriate terms protecting its confidentiality that are satisfactory to those parties.

EXHIBIT 1

MARKET IMPACT AND NCPC THRESHOLDS

1. MARKET IMPACT THRESHOLD

An increase of 200 % or \$100/MW, whichever is lower, in the LMP and 200 % or \$25, whichever is lower, in any other New England Market.

2. NCPC THRESHOLD

An increase of more than 100 % in NCPC Credits due to the Market Participant facing mitigation in a dispatch day, provided that the increase also exceeds \$10/MWh, compared to the NCPC Credits calculated using Reference Levels as determined in Section 4.5 and the physical bid characteristics for the Resource. This calculation is as follows:

$$OR_e = \text{StartupPrice} + \sum_t [\text{NoLoadPrice}_t + (\text{SE}_t \times \text{EBB}_t) - (\text{SE}_t \times \text{LMP}_t)]$$

Where:

OR _e	=	Operating Reserve Energy Market Component
StartupPrice	=	Bid Startup Price (or Reference Level)
NoLoad Price	=	Bid No-Load Price (or Reference Level)
SE	=	Supplied Energy (or Reference Economic Minimum)
EBB	=	Energy Bid Block Prices (or Reference Levels)

LMP = Locational Marginal Price

t = Operating Hour of the Resource associated with one continuous start-up/dispatch period when Energy was Supplied (or as determined by Reference Characteristics)

The ISO, in consultation with the Independent Market Monitoring Unit, shall determine the effect of questioned conduct on prices and NCPC Charges using the best available data and the models and methods outlined in Section III.A.5.5.3 of this *Appendix A*.

EXHIBIT 2

DESIGNATED CONGESTION AREAS AND RELIABILITY AGREEMENTS

1. DESIGNATED CONGESTION AREAS

1.1 Determination of Designated Congestion Areas. Based on its evaluation of historic patterns of the operation of the New England Control Area and forecasted requirements for maintaining the reliability of the New England Control Area, the ISO has named three “Designated Congestion Areas” or “DCAs,” i.e. geographic areas in which Resources owned by a limited number of suppliers are regularly required to be run to relieve transmission constraints. Those DCAs are listed on the ISO’s website and were provided to the Commission in an informational filing on January 28, 2003, in Docket No. ER02-2330-008.

1.2 Procedure. Should the ISO deem it necessary to modify such designations, the ISO will provide written notice to the Markets Committee of the proposed changes(s) to Designated Congestion Areas and an explanation of the factors used by the ISO to review areas and ultimately to arrive at the proposed designations. In the month following such notice, the ISO will be available to discuss the proposal with the Markets Committee and will accept written comments on the proposal. At any regularly scheduled meeting of the Markets Committee to be held the next meeting following the time period for receipt of comments, the ISO will be available to present its proposed final report on change(s) to the Designated Congestion Areas. No later than the 10th day in the month following the presentation of the final report, the ISO will notify the Market Participants and advise the Commission in an informational filing of the change(s) to Designated Congestion Areas.

Notwithstanding the foregoing, the ISO may determine additional Designated Congestion Areas at any time on an emergency basis or as the result of new or changed circumstances; with such prior notice and opportunity for comment as is practicable under the circumstances.

Reserved for future use.

Reserved for future use.

2. NEGOTIATION OF AGREEMENTS WITH RESOURCES IN CONGESTION AREAS

2.1 Designation of Units Likely to Be Called Under Section III.6.2. Annually, or more often, as required, the ISO, in consultation with the Independent Market Monitoring Unit, will designate which Resources (which for purposes of this *Exhibit 2* may include ISO designated portions of a Resource) it determines are likely to be called under Section III.6.2 at any time in the following year and which ones previously designated are no longer likely to be called.

Nothing herein shall prevent the ISO from identifying additional Resources during the year on an emergency basis based on new or changed system information.

2.2 Procedure For Negotiation Of Reliability Agreements. Entities designated pursuant to Section 3.1 above may apply to the ISO for such an agreement (a “Reliability Agreement”). For purposes of this procedure, the Market Participant with the authority to submit Supply Offers for such Resource shall be called the “Reliability Seller.”

2.2.1 Information Required with Application. When seeking a Reliability Agreement, the Reliability Seller shall provide to the ISO with such cost information (for the prior twelve (12) calendar months in the form used by the ISO for market monitoring purposes)⁴ as the ISO determines is reasonably necessary to negotiate and administer the Reliability Agreement. Cost information will include, at a minimum, information to support the proposed Variable O&M Charge. The request shall also designate which of the following four options for a Reliability Agreement the Reliability Seller believes is appropriate for its Resource:

⁴ See Reporting of Generating Unit Fuel Cost and Related Data for ISO, in consultation with the Independent Market Monitoring Unit, New England Market Monitoring & Market Power Mitigation,” http://www.iso-ne.com/smd/market_monitoring_and_mitigation/reporting_of_fuel_cost_and_related_data/. This material includes both a procedure and a sample reporting form.

- Option 1* prospective agreement based on marginal cost, including a wear and tear adder;
- Option 2* prospective agreement for Limited Energy Resource;
- Option 3* prospective agreement to avoid a seasonal shut-down or other capability-reducing action, using an avoided cost adder; and
- Option 4* prospective agreements to avoid a seasonal shut-down or other capability-reducing action, with a hold-harmless payment subject to true-up.

2.2.2 Reliability Agreement Terms. If the ISO agrees that the Resource is entitled to a Reliability Agreement under Section III.A.6.1 of *Appendix A*, it will negotiate a Reliability Agreement substantially in the form provided in *Exhibit 3*. In general, such agreements shall be effective only prospectively.⁵

2.2.3 Compensation. The Reliability Agreement shall provide that for each applicable operating hour that the Reliability Seller's Resource was designated or used pursuant to Section III.6.2 of Market Rule 1, the Reliability Seller shall be entitled to payment based on the highest of: (i) the LMP for such hour; (ii) the lower of the Supply Offer or the applicable Reference Level; or (iii) its Stipulated Bid Cost.

⁵ In all cases subject to applicable FERC requirements, one example of when an agreement might be effective retroactively would be when the parties had agreed in principle but documentation could not be completed until a short time after the effective date, typically within thirty (30) days. Another example would be where a Resource is subjected to unanticipated bid mitigation that produces revenue less than actual incremental operating costs incurred as the result of the unit being dispatched out of merit order under this rule.

2.2.4 Limit on Supply Offers or Reference Levels. The Reliability Agreement shall provide that Supply Offers shall not exceed the Stipulated Bid Cost, or may provide that the Reference Level for the Resource shall not exceed the Stipulated Bid Cost or other level established in the Reliability Agreement.

2.2.5 Term. For Reliability Agreements other than options 3 and 4 in section 3.2.1, the term shall be one year from the effective date. Such Reliability Agreement shall provide for renewal for additional one-year terms so long as the ISO determines that the Resource continues to be eligible for a Reliability Agreement. For Reliability Agreements to avoid seasonal shut-down, the term shall be as negotiated by the parties, up to one year, with renewal as negotiated by the parties.

2.2.6 Updating Cost Data. Cost data for the Resource shall be updated daily in monthly cost reports in the format required by the ISO under procedures posted on the web at http://www.iso-ne.com/smd/market_monitoring_and_mitigation/reporting_of_fuel_cost_and_related_data/. Except as otherwise provided in the Reliability Agreement with regard to Stipulated Bid Cost, charges incurred by the Resource as a result of a specific request of the ISO, all operating limits, and the actual cost components of Stipulated Bid Costs shall be reestablished as follows: (i) in the case of year-long Reliability Agreements, annually, prior to the execution of the Reliability Agreement and at the time of renewal and (ii) for any part-year seasonal shut-down Reliability Agreements, prior to execution and at time of renewal.

2.2.7 Settlement. The Reliability Agreement shall provide for settlement with the Reliability Seller in accordance with existing NCPC and other settlement procedures.

2.2.8 Variation from Pro-Forma. The Reliability Agreement may vary from the form attached hereto upon application by either Party to FERC under Section 206 of the Federal Power Act⁶ or, if both parties agree, prior to execution, upon the ISO's determination that

⁶ In other words, where a generator does not reach agreement with the ISO, in consultation with the Independent Market Monitoring Unit, on the terms, the Agreement can go into effect, subject to prospective changes to the *pro forma* terms pursuant to FERC order.

alternative provisions are necessary and appropriate and the ISO has obtained the written opinion of the Independent Market Monitoring Unit that the Reliability Agreement does not unreasonably interfere with the competitive and efficient operation of the market.

2.2.9 Stipulated Costs.

Formula. Stipulated costs shall be determined using the generating unit fossil fuel usage and related items for the applicable operating day (or, where applicable, aggregate of days constituting the Agreement’s term), including incremental energy bids and start-up and no-load values as appropriate, as reported to the ISO consistent with its procedures for reporting actual costs for market monitoring purposes, as follows:

$$\begin{array}{l} \text{Stipulated Marginal Cost} \\ \text{("SMC")} \end{array} = \begin{array}{l} \text{Incremental Operating Cost + Wear \&} \\ \text{Tear Adder + Avoided Costs Adder (if} \\ \text{applicable) or Lost Opportunity Cost (if} \\ \text{applicable)} \end{array}$$

Where:

$$\begin{aligned} \text{Incremental Operating Cost} &= (\text{Fuel} + \text{O\&M} + \text{Other}) \times \text{MWh} \\ \text{Fuel} &= (\text{Variable Fuel Use for Generation} \times \text{Fuel Index Price}) + \text{Fuel Cost Ancillaries}^1 \\ \text{O\&M} &= \text{Variable O\&M as specified in the Reliability Agreement} \\ \text{Other} &= (\text{SO}_2 \text{ Allowance Adder} + \text{NO}_x \text{ Allowance Adder} + \text{Operating Permit Adder}) \\ \text{Wear and Tear Adder} &= \text{Incremental Operating Cost} \times 0.10 \\ \\ \text{Stipulated Bid Costs} &= \text{Stipulated Marginal Cost} + \text{Stipulated Start-Up Cost} + \text{Stipulated No Load Cost} \end{aligned}$$

Where:

¹ Note that the cost reporting procedures separately account for fuel and O&M costs related to start-up and no load.

$$\text{Stipulated Start-Up Cost} = (\text{Start-Up Fuel Use} \times \text{Fuel Index Price}) + \text{Fuel Cost Ancillaries} + \text{Start-Up O\&M} + \text{Start-Up Other}$$

$$\text{Stipulated No Load Cost} = (\text{No Load Fuel Use} \times \text{Fuel Index Price}) + \text{Fuel Cost Ancillaries} + \text{No Load O\&M} + \text{No Load Other}$$

Avoided Cost Adder. The Avoided Costs Adder, if applicable, is intended to ensure the availability of a Resource for which it is in the economic interest of the Reliability Seller, absent market power, to shut down for part of the year or take other actions that would reduce the capability or availability of a Resource and that the ISO determines is needed for the reliability and security of the system. Reliability Sellers seeking a Reliability Agreement and claiming the Avoided Costs Adder will be required to establish that the Resource would have shut down for a demonstrable period. The “Avoided Cost Adder” shall be available only for Resources exercising options for Agreements to avoid a seasonal shut down and shall be, at the election of the Reliability Seller, either

(a) Incremental Operating Cost x .10 for each MWh of production, or

(b) For the term of the Reliability Agreement or the avoided shut-down, as determined in the Reliability Agreement, a lump sum equal to Reliability Resource’s actual incremental cost that would have been avoided had it taken the seasonal shut-down, payable in equal monthly installments, net of all market revenues (including ICAP Payments) during the period of the avoided shut-down.

Fuel Cost. Fuel shall be calculated using the applicable daily Fuel Price Index specified in the Agreement.

Lost Opportunity Cost. Lost Opportunity Cost will be available only for generating Resources that are subject to output limitations that significantly restrict expected in-merit operation and

will be negotiated on a case-by-case basis to provide the Resource payments intended to approximate the net revenue the Resource would have obtained had it operated solely in the market.

2.3 Negotiation Of Cost Of Service Agreement. This Section 3.3 provides the means for ensuring that a Resource previously selling under market-based rates will remain available to the New England Control Area for reliability purposes.

2.3.1 Determination of Need.

(a) If the ISO, in consultation with the Independent Market Monitoring Unit, has determined that it requires a particular facility to stay in service for reliability reasons, it may undertake whatever financial arrangements are necessary to ensure that the facility will be available.

(b) The ISO shall make available to the Markets Committee the information on which it has based its reliability determination for the affected Resource prior to finalizing any such financial arrangements.

(c) If the ISO has made such determination and the Reliability Seller is not satisfied with the Reference Level or a Reliability Mitigation Agreement,

(i) the Resource may not be shut down or its maintenance schedules changed except as approved by the ISO;

(ii) the Reliability Seller shall be compensated an amount equal to the cost of continuing to operate the Resource as a reliability Resource; and

(iii) the Reliability Seller shall file for cost-based rates under Section 205 with each party free to take any position it determines appropriate regarding recovery of return of and on investment.

2.3.2 Terms of Service. Service shall be subject to the terms of the pro forma agreement set forth in *Exhibit 4*, including (i) the Resource will be dispatched when the ISO calls on it to run and will not be permitted to submit self-schedules; (ii) the Resource shall not enter into any bilateral agreements unless the ISO has been provided with a written copy of the proposed agreement at least 30 days in advance of its effective date; (iii) revenues earned by the Resource (including ICAP Payments during the ICAP Transition Period) will be offset against payments made to the Resource under the Agreement with the ISO.

2.4 Sunset of Pre-FCM Reliability Agreement Provisions. The following provisions will sunset on June 1, 2010:

Section III.6.4.4(c);

Section III.A.6;

Section III.A.Exhibit 2, including this Section III.A.Exhibit 2, Section 2.4;

Section III.A.Exhibit 3; and

Section III.A.Exhibit 4.

Sheet Nos. 7463 through 7499 are reserved for future use.

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)

[Check applicable box]	<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	$D=B \times C / 1000$	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"
1											
2											
3											
4											
5											
6											
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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.

[Reserved for future use.]

[Reserved for future use.]