

**SECTION III**  
**MARKET RULE 1**  
**APPENDIX H**

**OPERATIONS DURING COLD WEATHER CONDITIONS**

## APPENDIX H

### Operations During Cold Weather Conditions

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### **III.H.1. INTRODUCTION**

This Appendix H addresses system operations during Cold Weather Conditions. Appendix H includes provisions for coordination of the different scheduling timeframes between the gas and electric systems and the formal processes that need to exist among the ISO, owners of gas-fired generation and the natural gas industry during Cold Weather Conditions.

This **Appendix H** addresses the handling of Economic Outages during Cold Weather Conditions.

This **Appendix H** also addresses ISO scheduling during Cold Weather Conditions that will allow natural gas units to receive their commitment status in sufficient time to purchase gas by the gas nomination deadline.

This **Appendix H** will provide electric scheduling certainty necessary to support Day-Ahead gas nominations by owners of natural gas units.

This **Appendix H** defines processes that will enable the ISO to forecast and operate with greater certainty and facilitate higher unit availability during Cold Weather Conditions.

This **Appendix H** includes definitions of key terms, responsibilities of Market Participants and the ISO, as well as rules for outage evaluation, outage requests and reporting.

### III.H.2. DEFINITIONS

For the purposes of this Appendix H, temperatures are the average of the temperatures obtained from the weather services for New England as described in the System Operating Procedure to Create Load Forecast, which is available on the ISO's website at [http://www.iso-ne.com/smd/system\\_operating\\_procedures/](http://www.iso-ne.com/smd/system_operating_procedures/).

**“Effective Temperature”** is equal to: dry bulb temperature – [windspeed X (65-dry bulb temp)/100].

**“Effective Heating Degree Days”** is equal to: 68 – (average of max and min Effective Temperature of the day)

**“Cold Weather Conditions”** means any calendar day when that day's Effective Temperatures are forecast to be equal to or less than zero degrees Fahrenheit for any single on-peak hour and that day's total Effective Heating Degree Days are forecast to be greater than or equal to 65.

**“Cold Weather Watch”** means Days when Cold Weather Conditions are forecast to exist and the 7-Day Capacity Margin Forecast indicates a capacity margin greater than or equal to 1,000 MW.

**“Cold Weather Warning”** means Days when Cold Weather Conditions are forecast to exist and the 7-Day Capacity Margin Forecast indicates a capacity margin less than 1,000 MW. In addition, a Cold Weather Warning will be used for all future days within the 7-Day Capacity Margin Forecast when a capacity margin of less than or equal to 0 MW exists for days not yet declared as a Cold Weather Event.

**“Cold Weather Event”** means Days when Cold Weather Conditions are forecast to exist and the 7-Day Capacity Margin Forecast indicates a capacity margin less than or equal to 0 MW for an Operating Day. Cold Weather Events are declared by 1100 hrs two days prior to the Operating Day. A Cold Weather Warning will be used for all future days within the 7-Day Capacity Margin Forecast when a capacity margin of less than or equal to 0 MW exists, until such time that the ISO declares a Cold Weather Event.

**“Current Year - Annual Maintenance Schedule”** is the maintenance schedule for the cycle that begins on January 1st and covers outages scheduled from the current publication date to the end of the current calendar year. Updates to the Current Year – Annual Maintenance Schedule are provided on a monthly basis and are distributed on or about the 5th day of each month.

**“Economic Request”** means, to the extent permitted pursuant to Market Rule 1 and ISO New England Operating Procedure No. 5, the request by a Market Participant for a Generator Maintenance Outage for the removal of a generating Resource from service for purely economic reasons associated with market conditions. Market Participant requests for such outages may include, but are not limited to, the sale of natural gas available to the Market Participant as fuel for such generating Resource, reducing output temporarily to defer maintenance in response to unanticipated operating difficulties or refueling, or shutting down a generating Resource during a period when the Market Participant does not reasonably expect the generating Resource-specific market revenues to justify operation of the Resource in that period.

**“Economic Outage”** means an outage pursuant to an Economic Request approved by the ISO.

**“Extraordinary Fuel Expense”** is the direct fuel expense (including fuel commodity costs and fuel transportation and delivery costs (including pipeline penalties), but excluding incremental financial assurance costs, if any) on a Cold Weather Event Day that exceeds the Resource’s total energy-related revenues for the day, which includes the net sum of Day-Ahead and Real-Time energy revenues, Real-Time Operating Reserve revenues, the total of all types of Day-Ahead and Real-Time Net Commitment Period Compensation identified in Market Rule 1, Appendix F, and the sum of all Regulation revenues.

**“First Future Year – Annual Maintenance Schedule”** means the maintenance schedule that is published on or about June 15th of each calendar year and covers generating Resource outages scheduled for the next calendar year, which is known as the First Future Year. This schedule is intended to provide Market Participants and the ISO sufficient lead-time to schedule all Planned Outages for the next calendar year. Updates to this schedule are made on a bimonthly basis with distribution on or about the 15th day of the month throughout the remainder of the current year (August, October and December). The December update forms the basis for the January release of the Current Year – Annual Maintenance Schedule.

**“Gas Day”** means a period of 24 consecutive hours beginning at 0900 hrs Central Time.

**“Generator Forced Outage”** is defined in Section III.1.3.

**“ICAP Resource”** includes, for purposes of Appendix H, both listed and partially de-listed Resources. Fully de-listed Resources are referred to in this Appendix H as de-listed Resources.

**“Maintenance Outage”** means an Economic Outage or an outage to perform maintenance that can be deferred beyond the end of the upcoming weekend (i.e. the weekend following the day when the outage request was made), but requires that the generating Resource be removed from service before its next Planned Outage.

**“Maintenance Outage Request Process”** is the process described in Attachment 1 of Appendix H, provided that, in the event that the provisions of ISO New England Operating Procedure No. 5 conflict with applicable provisions of Market Rule 1 (including all Appendices) and Attachment 1 of Appendix H, the Market Rule 1 and Appendix H provisions shall govern.

**“Planned Outage”** means an outage that is scheduled in advance and has a predetermined duration, typically for the purpose of performing annual maintenance. Planned Outages should be scheduled well in advance and must be requested with a minimum of 15 days’ advance notice. These outages are initially coordinated in the First Future Year – Annual Maintenance Schedule and subsequently in the Current Year – Annual Maintenance Schedule. Scheduled Extensions (as defined in NERC GADS) of a generating Resource Planned Outage may be requested up until the Thursday prior to the scheduled return of the generating Resource to service.

**“Return From Economic Outage”** means, with respect to ICAP Resources and de-listed Resources, to become subject thereafter to the provisions of the ISO New England System Rules applicable to Resources that are not on Economic Outage. De-listed Resources that Return From Economic Outage will be compensated in the manner described in the applicable provisions of this Market Rule 1.

**“7-Day Capacity Margin Forecast”** has the meaning specified in Section III.H.3.3(a).

**“Short Term Operable Capacity Margin”** or **“STOCM”** means the measure of the New England Control Area’s projected capacity margin looking ahead 15 days or less. STOCM is calculated as described below, and is used in the evaluation and approval of maintenance outages during Cold Weather Conditions. A positive value indicates a potential surplus of operable capacity above the estimated capacity requirement. A negative value indicates a potential operable capacity deficiency.

STOCM= A+B-C-D-E-F+G where:

STOCM is the forecast daily operable capacity margin, either surplus (+) or deficiency (-).

- A is the Seasonal Claimed Capability of all generating Resources.
- B is the net projected external ICAP Resource purchases minus external ICAP Resource sales.
- C is the forecast load.
- D is the Operating Reserve Requirement as defined in ISO New England Operating Procedure No. 8.
- E is the total of generating Resources actually out-of-service for Planned or Maintenance Outages, or scheduled or known to be out-of-service in the future period of 15 days or less.
- F is a reliability factor to adjust the overall STOCM by considering Forced Outages, changes in load, etc. The reliability factor will be 1,500 MW for day 1 through 7 and 2,000 MW for day 8 through 15 of the short-term look ahead period.
- G is the capacity benefit available from Dispatchable Asset Related Demand resources. (Sum of differences between Dispatchable Asset Related Demand Max Consumption and Min Consumption for all normally on Dispatchable Asset Related Demand (i.e. not pumps)).

### **III.H.3. PROCEDURES**

#### **III.H.3.1 Natural Gas Industry Coordination**

During the Winter Capability Period, the ISO may confer with natural gas pipeline companies to review pipeline conditions for the coming week. These discussions will focus on the weather and temperature forecasts, anticipated demand on the natural gas pipelines and any posted notices issued by the pipeline operators. These conversations will normally take place at least once per week and may be held more frequently if conditions warrant.

#### **III.H.3.2 Reporting Anticipated Generating Resource Availability**

During a Cold Weather Watch, Cold Weather Warning or Cold Weather Event, Market Participants are responsible for reporting to the ISO anticipated availability and other information concerning generating Resources and Dispatchable Asset Related Demand Resources required by the ISO New England Operating Documents, including but not limited to the generating Resource's ability to procure fuel for the pertinent Operating Day and physical limitations that could reduce generating Resource output for the pertinent Operating Day.

#### **III.H.3.3 Cold Weather Condition Evaluation**

- (a) **Develop 7-Day Capacity Margin Forecast.** Each day, the ISO develops a 7-Day Capacity Margin Forecast by 1100 hrs in accordance with the current ISO New England System Rules. In addition to the requirements of the applicable ISO New England System Rules, the 7-Day Capacity Margin Forecast will include the following inputs:
- A review of any notices issued by gas pipeline operators, communications with generating Resources, and an assessment of the potential unit availability impact of actions announced in those notices.
  - A review of forecasted weather conditions to determine if Cold Weather Conditions are forecast and an assessment of the potential impact of such weather conditions on natural gas unit availability.

- A survey of dual fuel units normally operating on natural gas that have switched or are able to switch to their secondary fuel based on information received from each dual fuel generating Resource.

Based on the information gathered above and information provided by individual Market Participants, the ISO will adjust the Short Term Operable Capacity Margin calculation specified in Appendix H to include any anticipated reductions in total operable generating capacity resulting from the Cold Weather Conditions. In the forecast process, the ISO will not change (based on the foregoing information) any data reflecting unit operating limits or unit availability unless requested by a Market Participant for a generating Resource. However, the ISO may change such data reflecting unit operating limits or unit availability, in accordance with other Tariff provisions, ISO New England Operating Procedures or ISO New England Manuals, based upon information provided to the ISO by a Market Participant for a generating Resource.

- (b) **Evaluate 7-Day Capacity Margin Forecast.** Each day during the Winter Capability Period, the ISO will evaluate the 7-Day Capacity Margin Forecast and perform a Cold Weather Conditions analysis for each day of the following seven-day period. By 1100 hrs each day the ISO will post the 7-Day Capacity Margin Forecast and the applicable Cold Weather Condition for each day of the period.

The applicable Cold Weather Conditions are:

- Cold Weather Watch
- Cold Weather Warning
- Cold Weather Event
- No Cold Weather Condition applies

The 7-Day Capacity Margin Forecast will indicate, for each day, the anticipated reductions (MW) in total operable generating capacity resulting from the Cold Weather Conditions and the capacity (MW) of de-listed Resources included as operable generating capacity in the forecast. The ISO may update the 7-Day Capacity Margin Forecast and the Cold Weather Condition for each of day of the seven-day period at any time during the day. This process can result in declaration, reaffirmation or cancellation of the applicable Cold Weather Condition for any day in the forecast period subject to the limitations set forth in Section III.H.3.4(c)(i).

### **III.H.3.4 Cold Weather Condition Actions**

#### **(a) Cold Weather Watch**

##### **(i) Cold Weather Watch Declarations:**

- Cold Weather Watch declarations will be made in advance for the following seven-day period as described in Section III.H.3.3.
- If the ISO declares a Cold Weather Watch for specific days in the next seven-day period or revises an existing Cold Weather Condition to a Cold Weather Watch, the following Special Notice will be prominently posted on the ISO's website:

“ISO New England has issued a Cold Weather Watch for [dates]. Extreme Cold Weather Conditions are forecast. ISO New England forecasts that sufficient capacity is available to meet the forecasted demand and reserve requirements. The 7-Day Capacity Margin Forecast is posted at [http://www.iso-necom/smd/operations\\_forecasting/seven\\_day\\_forecast.html](http://www.iso-necom/smd/operations_forecasting/seven_day_forecast.html).”
- The ISO will notify the Local Control Centers that a Cold Weather Watch has been declared.

(ii) Cold Weather Watch Actions. When a Cold Weather Watch is declared:

- For days for which a Cold Weather Watch has been declared, the ISO will approve new requests for Economic Outages submitted by ICAP Resources if the resulting 7-Day Capacity Margin Forecast for the day will not have a capacity margin less than 1,000 MW.

**(b) Cold Weather Warning**

(i) Cold Weather Warning Declaration

- Cold Weather Warning declarations will be made in advance for the following seven-day period as described in Section III.H.3.3.
- If the ISO declares a Cold Weather Warning for specific days in the coming seven-day period or revises an existing Cold Weather Condition to a Cold Weather Warning, the following Special Notice will be prominently posted on the ISO's website:

“ISO New England has issued a Cold Weather Warning for [dates]. Extreme Cold Weather Conditions are forecast. ISO New England forecasts that sufficient capacity may not be available to meet the forecasted demand and reserve requirements. The 7-Day Capacity Margin Forecast is posted at [http://www.iso-ecom/smd/operations\\_forecasting/seven\\_day\\_forecast.html](http://www.iso-ecom/smd/operations_forecasting/seven_day_forecast.html).”

- The ISO will notify the Local Control Centers that a Cold Weather Warning has been declared.

(ii) Cold Weather Warning Actions.

When a Cold Weather Warning is declared:

- The ISO will request that all dual-fueled generating Resources that normally burn natural gas voluntarily take all necessary steps (within the limitations imposed by the operating limitations of their installed equipment and their environmental and operating permits) to prepare to switch to secondary fuel in anticipation of Cold Weather Event days being declared.
- The ISO will alert Load Response Program Participants that they need to be prepared to activate if and when the ISO reaches the actions of ISO New England Operating Procedure No. 4 at which the Load Response would be called.
- The ISO will apply the procedures used in Master/Local Control Center Procedure #2 for the approval of transmission outage requests received for a day in the period for which a Cold Weather Warning has been forecast or declared.
- The ISO will not approve new Economic Outage requests for ICAP Resources for the period for which a Cold Weather Warning has been declared.

**(c) Cold Weather Event**

**(i) Cold Weather Event Declaration**

- Cold Weather Event Declarations will normally be made no later than 1100 hrs two days prior to the Operating Day unless circumstances require a later notice. Once a Cold Weather Event has been declared for a day of the upcoming seven-day period, it will not be cancelled.
- If the ISO declares a Cold Weather Event for specific days, the following message will be posted on the ISO's website:

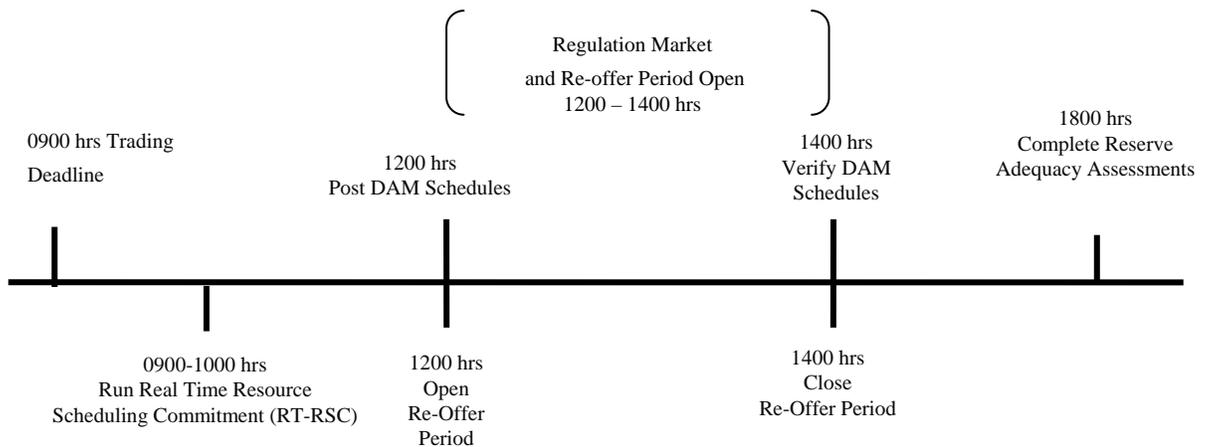
“Cold Weather Event Conditions are forecast to occur. ISO New England forecasts that OP-4 actions may taken to address anticipated capacity deficiencies on [Operating Day(s)]. All Supply Offers, Demand Bids, Increment Offers, Decrement Bids and all External Transactions normally required to be submitted by 1200 hrs on [date] shall be due by **0900 hrs** on [date]. The 7-Day Capacity Margin Forecast is posted at [http://www.iso-ne.com/smd/operations\\_forecasting/seven\\_day\\_forecast.html](http://www.iso-ne.com/smd/operations_forecasting/seven_day_forecast.html).”

- The ISO will notify the Local Control Centers that a Cold Weather Event has been declared.
- (ii) Cold Weather Event Actions. When a Cold Weather Event is declared:
- The ISO will communicate the Cold Weather Event to State Regulators, the Electric/Gas Operations Committee, members of the Markets, Reliability and Participants Committees, and Lead Participants and Designated Entities.
  - Public appeals and other actions of ISO New England Operating Procedure No. 4 will be implemented by the ISO as appropriate.
  - The ISO will communicate the potential for capacity shortage to other Control Areas and Reliability Coordinators, and will request their assistance if necessary.
  - The ISO will implement an alert under the provisions of Master/Local Control Center Procedure #2.
  - The ISO will request that Market Participants with dual-fueled units that normally burn natural gas to voluntarily switch to secondary fuel for Cold Weather Event Days. The ISO will communicate with Market Participants with dual-fueled units that normally burn natural gas to verify whether the Market Participants have switched or are planning to switch to alternate fuel.

- The ISO may request that Market Participants with de-listed Resources Return From Economic Outage on a voluntary basis. Market Participants with de-listed Resources that Return From Economic Outage will receive the compensation described in Section III.8.7 of Market Rule 1 and any other compensation for which they are eligible as provided in Market Rule 1.
- The ISO will not approve new Economic Outage requests for ICAP Resources for the period for which a Cold Weather Event has been declared.
- The ISO will cancel Economic Outages for ICAP Resources for the period that a Cold Weather Event has been declared.
- The ISO will change the Day-Ahead Energy Market Trading Deadline for Cold Weather Event days from 1200 hrs to 0900 hrs of the day prior to the Operating Day. Market Participants are responsible for submitting Supply Offers for the Day-Ahead Energy Market by the 0900 hrs trading deadline. In connection with the submission of Supply Offers for each Cold Weather Event Operating Day, the Lead Participant of a generating Resource may re-declare the Resource's minimum run time and ramp rates to reflect limitations on the Resource's ability to receive gas off the pipeline due to gas pipeline operating limits but such re-declarations shall not exceed the period (generally the pertinent Gas Day) to which the gas pipeline operating limit applies.
- Between 0900 hrs and 1200 hrs the Market User Interface (MUI) will be closed. The actions normally occurring at 1600 hrs as described in Section III.1.10.8(b) of the Tariff and in ISO New England Manual M-11 will occur at 1200 hrs, including the posting of Day-Ahead Energy Market schedules and the opening of the Regulation Market for offers.

- After the submittal of Supply Offers and Demand Bids for the Day-Ahead Energy Market, the ISO will run the a Real-Time Resource Scheduling and Commitment (RT-RSC) Analysis, which will include the following inputs:
  - (i) The ISO Load Forecast
  - (ii) The Reserve Requirement established in accordance with Market Rule 1 and ISO New England Operating Procedure No. 8
  - (iii) External Transactions forecast
  - (iv) Market Participant Supply Offers from generating Resources for the Day-Ahead Energy Market
  - (v) Assumptions with regard to the Real-Time operation of generating Resources that do not submit Supply Offers to the Day-Ahead Energy Market
  - (vi) Generation Requirement for Transmission (GRT) spreadsheet information
  - (vii) Must-Run Generation for VAR, Special Constraint Resources, and local transmission (emergency work)
  - (viii) Available Dispatchable Asset Related Demand Resources
  
- Between 0900 hrs and 1000 hrs the day prior to the Operating Day, Market Participants with gas-fired generating Resources that are determined by this evaluation to be necessary to meet Load Forecast and Reserve Requirements in accordance with Operating Procedure No. 8, will be advised (simultaneously, to the extent feasible) that they will be pool-scheduled in the Day-Ahead Energy Market for a specified minimum set of hours and MW levels.

- The Re-Offer Period described in Section III.1.10.9(a) of the Tariff and normally occurring between 1600 hrs and 1800 hrs will instead occur between 1200 hrs and 1400 hrs. During the Re-Offer Period, a Market Participant with a generating Resource may re-declare the Resource’s ramp rate to reflect limitations on its ability to take gas off the pipeline due to gas pipeline operating limits. Such re-declarations shall apply only to the gas days to which the gas pipeline operating limits apply. The above schedule is illustrated below. More detailed descriptions of the non-Cold Weather Event timeline may be found in ISO New England Manual M-11.



- Market Participants responsible for gas-fired generating Resources that are scheduled in the Day-Ahead Energy Market or that were advised by the ISO that their Resources will be committed for reliability purposes as determined by the RT-RSC shall provide to the ISO as soon as practicable but in no event later than the close of the Re-Offer Period evidence of and confirmation of gas volume nominations sufficient to deliver the energy scheduled for such Resource.

- The information that is received by the ISO about gas-fired Adequacy Assessment process. Best available information will be used in subsequent executions of the Reserve Adequacy Assessment process.
- As part of the Reserve Adequacy Assessment process that takes place between 1400 hrs and 1800 hrs, and as necessary throughout the Operating Day, the ISO will review the then-current gas nomination information as posted on the natural gas pipeline's Electronic Bulletin Board to better understand the overall New England gas supply situation. The ISO will, to the extent reasonably feasible, contact Market Participants responsible for generating Resources as needed to address concerns that result from the ISO's review of nomination information. This information will be used in performing the Reserve Adequacy Assessments.
- In the Reserve Adequacy Assessment process, the ISO will change Operating Limits or Resource availability only in accordance with ISO Operating Documents or if such a change is requested by the Market Participant responsible for the generating Resource.
- The ISO will alert the Load Response Program Participants that they need to be prepared to activate if and when the ISO reaches the actions of ISO New England Operating Procedure No. 4 at which interruptions are called.

### **III.H.3.5 Economic Requests and Economic Outages**

- (1) Economic Requests shall be coordinated through the Generator Maintenance Outage Request Process described in Attachment 1 to Appendix H.

- (2) Notwithstanding any provision of ISO New England Operating Procedure No. 5 or the ISO New England Manuals to the contrary, for a day for which a Cold Weather Watch has been declared, the ISO will not approve new requests for Economic Outages submitted by ICAP Resources if the resulting 7-Day Capacity Margin Forecast for the day will have a capacity margin less than 1,000 MW.
- (3) Notwithstanding any provision of ISO New England Operating Procedure No. 5 or the ISO New England Manuals to the contrary, no new Economic Requests will be granted to ICAP Resources for a day for which a Cold Weather Warning or Cold Weather Event has been declared.
- (4) Notwithstanding any provision of ISO New England Operating Procedure No. 5 or the ISO New England Manuals to the contrary, the ISO will cancel Economic Outages for ICAP Resources for a day for which a Cold Weather Event has been declared and require that the ICAP Resource Return From Economic Outage on the Cold Weather Event days. The ISO may request, that Market Participants responsible for de-listed Resources, on a voluntary basis, Return From Economic Outage. Market Participants responsible for de-listed Resources that Return from Economic Outage will receive the compensation described in Section III.8.7 of the Tariff and any other compensation for which they are eligible as provided in Market Rule 1.

### **III.H.3.6 Last Resort Requirement**

During a Cold Weather Event Day, the ISO may request Market Participants, which are responsible for de-listed Resources that have been granted an Economic Outage, to make efforts consistent with Good Utility Practice to return the de-listed Resources to service, as a measure of last resort to avoid involuntary load shedding. Market Participants that comply with the ISO's request shall be compensated consistent with Market Rule 1, Section III.8.7, as well as paid the Locational Marginal Price for any energy provided, and the Real-Time reserve price for any Real-Time Operating Reserves provided. A Market Participant

responsible for a de-listed Resource that returns to service for the Cold Weather Event Day and incurs Extraordinary Fuel Expense will be eligible to submit a claim for reimbursement of Extraordinary Fuel Expense; provided that the Market Participant submits its claim in accordance with the procedure set forth in Section H.3.7, except that fuel supply contracts need not be submitted to the ISO in advance of the Cold Weather Event, and instead shall be included as part of the documentation submitted in support of the claim.

### **III.H.3.7 Compensation for Extraordinary Fuel Expense during Cold Weather Events**

This provision provides a mechanism by which Market Participants with generating Resources may seek to recover fuel costs incurred during a Cold Weather Event that, due to the cap on energy Supply Offers set forth in Section III.1.10.1A of Market Rule 1, could not have been reflected in the incremental energy offer and consequently were not recovered through the New England Market.

To be eligible to submit a claim for Extraordinary Fuel Expense, the Market Participant responsible for submitting Supply Offers for the Resource must use the following procedure:

- (1) At the start of the winter period (November 15), provide copies to the ISO of the related fuel contracts (if contracts exist) under which fuel is supplied to the ICAP Resource. Updated contracts should be provided as the season progresses. If the Market Participant intends to rely on short-term contracts or spot market purchases in lieu of long-term contracted fuel supplies to meet its obligations, the Market Participant shall provide a letter describing the short-term contractual arrangements. Any relevant changes that apply to the Cold Weather Event Day must be provided prior to the Cold Weather Event Day.
- (2) When a Cold Weather Event is declared, a Market Participant must notify the ISO by the close of the applicable Day-Ahead Energy Market (as noted in Section III.H.3.4(a)) that it expects to submit an Extraordinary Fuel Expense claim.

- (3) Submit Supply Offers into the Day-Ahead and Real-Time markets, subject to all market monitoring and mitigation provisions, including incremental energy offers up to the maximum level accepted in the Market User Interface.
- (4) Submit documentation specifying the Extraordinary Fuel Expense requested and supporting the calculation of the requested amount. The documentation must be submitted to the ISO within 15 calendar days after the Cold Weather Event.

A claim for Extraordinary Fuel Expenses that fails to follow all of the above procedures will be rejected. If a claim is rejected, a Market Participant may resubmit a corrected claim within five calendar days.

The ISO will include payment of the Extraordinary Fuel Expense in the Market Participant's next statement for Non-Hourly Charges issued no earlier than 10 business days after receipt of an accepted claim.

In any case in which the ISO processes payment for Extraordinary Fuel Expense costs, within 15 calendar days of the payment date the Market Participant shall make a filing with the Commission under Section 205 of the Federal Power Act seeking a determination that the payment of the Extraordinary Fuel Expense is just and reasonable. If the Market Participant fails to make a filing within the 15-day period, the ISO will reverse the applicable Extraordinary Fuel Expense credit and provide a refund with interest to the entities that were originally charged for the expense. Any refund will be included in the statement for Non-Hourly Charges issued no earlier than 10 business days after the date by which a Section 205 filing is required to be filed.

A Market Participant's filing shall include all data that is necessary to support its Section 205 filing. At the Market Participant's option, such data may be filed under seal in accordance with the Commission's rules. A redacted copy of the filing shall be served upon the utility regulatory commission of each of the New England states. In accordance with the information disclosure procedure appended as Attachment 2 hereto, upon execution of a Non-Disclosure Agreement

in the form appended hereto as Attachment 3 of Appendix H to Market Rule 1 by (i) a State Public Utility Commission within the geographic limits of the New England Control Area that regulates the distribution or supply of electricity to retail customers and is legally charged with monitoring the operation of wholesale or retail markets serving retail suppliers or customers within its State or (ii) a Market Participant or (iii) the ISO (subject to the ISO New England Information Policy), the Market Participant shall provide the State Public Utility Commission or Market Participant or the ISO, as the case may be, the data that supports the amount that the Market Participant is requesting to be paid. Nothing herein is intended to limit or restrict the rights of any party to the proceeding initiated by the Market Participant's Section 205 filing, including the right to challenge the confidential treatment of data filed under seal by the Market Participant. The ISO will effectuate the Commission's determination of the Extraordinary Fuel Expense by performing any necessary recalculations and making any resulting payments or collecting any resulting refunds within the first statement for Non-Hourly Charges issued at least 30 days from the date of a final and non-appealable Commission order.

Extraordinary Fuel Expense paid to Resources will be charged to each Market Participant based on the Market Participant's daily pro rata share of the sum of the Real-Time Load Obligations for the Cold Weather Event Day, except that the Real-Time Load Obligations for Dispatchable Asset Related Demand will be based on the offered Minimum Consumption for the Cold Weather Event Day.

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## Attachment 1

### MAINTENANCE OUTAGE REQUEST PROCESS DURING COLD WEATHER CONDITIONS

Market Participants must request the ISO's approval to schedule a Maintenance Outage in accordance with this process, which is to be utilized during Cold Weather Conditions. In the event of a conflict between the provisions of ISO New England Operating Procedure No. 5 (OP-5) and the provisions of Market Rule 1 (including Appendix H and Attachment 1 thereto), the provisions of Market Rule 1 shall govern. Maintenance Outages for fully de-listed Resources shall be deemed approved at the time of submission.

#### Data Submission Timing for Maintenance Outage Requests

- 1) A Market Participant requesting to reposition, change duration, add, or delete an outage less than 15 days in advance of the proposed or scheduled start date, must notify the ISO Forecaster as soon as practicable. This includes data for overnight outages, next day outages, and all other outages scheduled to start less than 15 days into the future.
- 2) A Maintenance Outage request for the next day or an overnight Maintenance Outage must be submitted by 0900 of the preceding day. To the extent that a Maintenance Outage request for the next Scheduled Dispatch Period conflicts with the Real-Time Offer for the generating Resource or Dispatchable Asset Related Demand, ISO will confirm the outage with the Market Participant, and work with the Market Participant to submit necessary redeclarations in accordance with the ISO New England Manual for Market Operations (M-11). The ISO will not change Supply Offer data submitted to the Day-Ahead Energy Market.

#### Market Participant Responsibilities

##### Information Requirements

- a) Market Participants must submit schedules for all generating Resource and Dispatchable Asset Related Demand Maintenance Outages in accordance with this process and must provide all information required by this process, in the time frames indicated.

- b) When submitting a Maintenance Outage request, Market Participants must provide the following information for each request:
1. Name of Resource
  2. Seasonal Claimed Capability, Nominated Consumption Limit or amount of reduction
  3. Preferred outage start date and time
  4. Projected outage end date and time
  5. Duration of outage (weeks and/or days)
  6. Desired season for outage placement or listing of acceptable default dates
  7. Description of work to be accomplished during the outage
  8. Flexibility of the outage schedule dates
- c) To the extent practicable, Market Participants will work with the Local Control Centers to provide alternate outage dates when it is determined that Congestion Costs could be eliminated or reduced by doing so. Although a Market Participant will not be provided with specific transmission outage dates (unless the outaged equipment is radial to a generating Resource or Dispatchable Asset Related Demand owned by the Market Participant, or the outaged equipment is non-radial but only affects generating Resources and Dispatchable Asset Related Demand Resources owned by the Market Participant), it is understood that flexibility on scheduling may prevent their generating Resource and Dispatchable Asset Related Demand(s) from being restricted at a later date because of transmission system maintenance.

### **Information Submittal Process**

All Market Participants must submit the required Maintenance Outage Request information as follows:

- Submit Maintenance Outage requests to the ISO Forecaster.
- Have the standard form information available.

Submissions by telephone only to (413) 535-4378.

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## Maintenance Outage Request Processing

The ISO and associated Local Control Center will respond to a Maintenance Outage request for outage duration changes, additions, deletions, and repositioning as follows:

- a) Response time will be based on the following table:

### Response Time

<b>Submission of Maintenance Outage Request for an Outage Start of</b>	<b>Submitted to the following at ISO</b>	<b>Response time by ISO*</b>
7 to 14 days in the future	Generation Coordinator	Within 3 working Days
7 days or less in the future	Generation Coordinator	Within 1 working day
Overnight or Next Day, Submitted by 0900 hrs	Generation Coordinator	By 1100 hrs

\*/ Submissions for fully de-listed Resources are deemed approved by the ISO at the time of submittal.

- b) If the Maintenance Outage request results in the forecast of any actions of OP-4 or OP-7, the ISO will attempt to locate the Maintenance Outage request to an acceptable period, when reliability issues would not be expected to occur.
- c) With prospective outage dates identified (that do not affect system reliability), the ISO will provide the Maintenance Outage request information to the respective Local Control Center.
- d) The Local Control Center will notify the ISO if the Maintenance Outage request poses a local transmission reliability problem. If it does, the ISO will work with the Local Control Center and the Market Participant to resolve the issue.

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- e) In an effort to reduce Congestion Costs, the Local Control Center will compare the Market Participant's Maintenance Outage request against pending transmission outage schedules to identify cases where outage schedules could be adjusted to meet this objective. If a potential schedule adjustment is identified, the Local Control Center will first discuss outage rescheduling with the ISO, and then with the respective Transmission Owner.
- f) After consulting with the Transmission Owner, if additional coordination is needed, the Local Control Center will proceed as follows depending on whether the case involves: (1) an importing area, (2) generating Resource, Dispatchable Asset Related Demand or exporting area involving a single owner, or (3) an exporting area involving multiple Resources owned by multiple companies.

(1) Importing Area

For an importing area, the simultaneous outage of transmission supplying the area along with generation and Dispatchable Asset Related Demand within the area can increase Congestion Costs and, in severe cases, jeopardize system reliability. To relieve this, the following actions will be taken to try to position the transmission, generation and Dispatchable Asset Related Demand outages so that they occur at different times.

- Contact the applicable Lead Market Participant to determine if there is additional flexibility in their outage position.
- Contact the Transmission Owner for additional flexibility in their schedule. (Resource outage information can be discussed with the Transmission Owner, as required.)
- If required, continue to alternately contact the Transmission Owner and the Lead Market Participant until a determination is made on whether or not activities can be positioned to reduce/eliminate Congestion Costs. [Note: If actions above are not sufficient to relieve congestion, ISO will dispatch Resources in accordance with the congestion management process or change the timing of the transmission outage.]

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(2) Generating Resource, Dispatchable Asset Related Demand or Exporting Area Involving a Single Owner

This scenario involves a transmission outage that will restrict the commitment or dispatch of Resources owned by a single company (i.e. a line leaving a generating station). The following actions will be taken as soon as possible to try to change or create outage positions so that Resources and transmission outages occur simultaneously, thereby relieving the potential locked-in Resource.

- Contact the applicable Resource Lead Market Participant to determine if there is additional flexibility in their outage application.
- Contact the Transmission Owner for additional flexibility in their timing of the outage. (Resource outage information can be discussed with the Transmission Owner, as required.)
- If the transmission outage involves a radial circuit to a Resource, this information may be shared with the Resource Company. Additionally, non-radial transmission outage information can be shared with the Resource Company if the transmission outage solely affects that company.
- If required, continue to alternately contact the Transmission Owner and Resource Lead Market Participant until a determination is made on whether or not activities can be scheduled to reduce/eliminate Congestion Costs.
- The Transmission Owner may contact the Resource Company directly to facilitate positioning of outages.

(3) Exporting Area Involving multiple Resources owned by multiple companies

This case involves a transmission outage that will restrict the commitment or dispatch of Resources within an exporting area that contains several Resources owned by different companies. The following actions will be taken to try to change or create outage positions so that Resources and transmission outages occur simultaneously, thereby relieving the potential locked-in Resources.

- Contact the applicable Designated Entities or Lead Participate to determine if there is additional flexibility in their outage position in the order that their outage request was received.

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- Contact the Transmission Owner for additional flexibility in their position. (Resource outage information can be discussed with the Transmission Owner, as required.)
  - If required, continue to alternately contact the Transmission Owner and Resource Company until a determination is made on whether or not activities can be positioned to reduce/eliminate Congestion Costs.
  - If Resources with outage requests are exhausted or no outage requests exist, contact affected Resource Companies randomly, in a manner to be determined by the Local Control Center, without preference to any one Resource Company. Inform each Company that a transmission outage (no details) may result in their Resource being restricted and determine if they desire to coordinate an outage of their unit with the transmission outage.
  - If required, continue to alternately contact the Transmission Owner and Resource Company until a determination is made on whether or not activities can be positioned to reduce/eliminate Congestion Costs. [Note: If actions above do not reduce Resources below levels where units will be constrained, ISO will dispatch Resources in the constrained export area based on its congestion management process or change the position of the transmission outage.
- g) Upon agreement between all parties, the ISO will: 1) perform the final review to confirm that the New England Control Area-wide and Local Control Center reliability requirements are satisfied and that Congestion Costs have been reduced or eliminated; 2) notify the Resources Lead Market Participant if the request is approved as submitted, or approved with modifications in accordance with the principles in Part III Sections I.A.1 & 2; 3) list the outage on the Short-Term (7-day) Schedule sent to the Local Control Centers each day; and 4) if applicable, update short-term transmission outage information on the ISO Web Site.

### **Maintenance Outage Request ISO Reporting**

The ISO shall notify the submitter of the Maintenance Outage request of the decision made by the ISO. The Market Participant is responsible for communicating all outage information with Entitlement Holders. The ISO will aggregate Market Participants' outage information and reflect these projections in the STOCM.

## **ISO Approval**

Immediately prior to removing a generating Resource and Dispatchable Asset Related Demand from service, Market Participants must obtain ISO control room approval for all requests for generating Resource and Dispatchable Asset Related Demand Maintenance Outages, such approval not to be withheld unless the consequences of granting the approval would result in a risk of OP-4 Action 10 or higher or OP-7 or other serious reliability risk. Provision of such authorization does not alter any ICAP credit suspension, which may be applied under other sections of this process. The ISO will inform the appropriate Local Control Center when the generating Resource is starting down and offline.

## **NERC GADS Reporting**

As directed in the ISO New England Manual for Installed Capacity (M-20), Lead Market Participants must categorize and report all generating Resource outages to the ISO in accordance with the NERC Generating Availability Reporting System (GADS) and this process.

## Attachment 2

# COLD WEATHER CONDITIONS CONFIDENTIAL INFORMATION DISCLOSURE PROCEDURE

### DEFINITIONS

For purposes of this Cold Weather Conditions Confidential Information Disclosure Procedure (“Disclosure Procedure”) the following terms shall have the meanings set forth below:

“**Authorized Recipient**” shall mean (i) those State public utility commissions that are entitled to receive Confidential Information from the ISO pursuant to Section 3.3 of the ISO New England Information Policy; (ii) any Market Participant and (iii) the ISO.

“**Competitive Duty Personnel**” shall mean a person whose duties include (i) the marketing or sale of electric power at wholesale; (ii) the purchase or resale of electric power at wholesale; (iii) the direct supervision of any employee with duties specified in subparagraph (i) or (ii) of this paragraph; or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. The duties specified in subparagraphs (i), (ii), (iii), and (iv) of this paragraph are hereinafter collectively referred to as “Competitive Duties.” If any person who has been a “Reviewing Representative” subsequently is assigned to perform any Competitive Duties, that person shall thereafter have no access to Confidential Cold Weather Market Information, shall return all such materials to the “Authorized Recipient”, and shall continue to comply with the requirements set forth in the Non-Disclosure Agreement executed by such person and with this Attachment 2 with respect to Confidential Cold Weather Market Information to which such person previously had access.

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**“Confidential Cold Weather Market Information”** shall mean information that (i) is furnished by a Filing Market Participant in its Section 205 Cold Weather Filing, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Filing Market Participant or prejudice the position of that Market Participant in the New England electricity markets, and (iii) has been designated in writing by the Filing Market Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the Commission has been made aware that the Filing Market Participant seeks confidential treatment for such information. “Confidential Cold Weather Market Information” does not include any information if and to the extent such information (x) is contained in the files of the Commission, or any other federal or state agency, or any federal or state court, prior to its submission by the Filing Market Participant in connection with a Section 205 Cold Weather Filing, unless the information or document has been determined to be protected by such agency or court or is contained in the files of the Commission and has been designated as Critical Energy Infrastructure Information; or (y) is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement; or (z) is labeled as “Non-Internet Public” by the Filing Market Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140.

**“Filing Market Participant”** shall mean a Market Participant that, in accordance with this Appendix H, (1) makes a Section 205 Cold Weather Filing and (2) includes in or produces in support of that filing Confidential Cold Weather Market Information.

**“Information Request”** shall mean a written request for information, in accordance with the terms of this Procedure.

**“Market Participant”** shall mean a participant in the New England Markets that has executed a Market Participant Service Agreement, or on whose behalf an unexecuted Market Participant Service Agreement has been filed with the Commission.

**“Non-Disclosure Agreement”** shall mean an agreement between a Reviewing Representative and the Filing Market Participant pursuant to this Disclosure Procedure, the form of which is Attachment 3 to this Appendix H, wherein the Reviewing Representative is given access to Confidential Cold Weather Market Information for the benefit of an Authorized Recipient.

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**“Non-Disclosure Certificate”** shall mean the certificate annexed to a Non-Disclosure Agreement by which Reviewing Representatives who have been granted access to Confidential Cold Weather Market Information shall certify their understanding that such access to Information is provided pursuant to the terms and restrictions of the Non-Disclosure Agreement, that they are not Competitive Duty Personnel, and that they have read the Non-Disclosure Agreement and agree to be bound by it.

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

**“Reviewing Representative”** shall mean a person who (i) has agreed to be bound by the terms of a Non-Disclosure Agreement by executing a Non-Disclosure Certificate; (ii) has been authorized by an Authorized Recipient in writing to receive Confidential Cold Weather Market Information; and (iii) is an employee or representative of an Authorized Recipient, including but not limited to an attorney, consultant or contractor, whose responsibilities as such an employee or representative of an Authorized Recipient or the Commission require access to Confidential Cold Weather Market Information to evaluate the Filing Market Participant’s Section 205 Cold Weather Filing; provided, however, that consultants or contractors may not initiate requests for Confidential Cold Weather Market Information of the Filing Market Participant. A “Reviewing Representative” shall not include any person who would be classified as “Competitive Duty Personnel.”

**“Section 205 Cold Weather Filing”** shall mean a filing in accordance with Section III.H.3.6 of Appendix H that is made by a Market Participant pursuant to Section 205 of the Federal Power Act.

**“Third Party Request”** shall mean any request or demand by any entity upon a Reviewing Representative or an Authorized Recipient for release or disclosure of Confidential Cold Weather Market Information provided to the Reviewing Representative or Authorized Recipient by the Filing Market Participant. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Cold Weather Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

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**1. SCOPE OF DISCLOSURE PROCEDURE.** This Disclosure Procedure shall govern access to Confidential Cold Weather Market Information from the date of a Section 205 Cold Weather Filing until the earlier of (i) ten business days following the effective date of a Protective Order issued in the proceeding resulting from the Section 205 Cold Weather Filing or (ii) the date of a final, non-appealable Commission order relating to the Section 205 Cold Weather Filing.

**2. FILING CONFIDENTIAL COLD WEATHER MARKET INFORMATION.** Confidential Cold Weather Market Information may include information that has been filed with the Commission by the Filing Market Participant. Confidential Cold Weather Market Information and Notes of Confidential Cold Weather Market Information also may be filed with the Commission by or on behalf of any Authorized Recipient in response or related to the Section 205 Filing, provided that such information is filed under seal in accordance with Section 388.112 of the Commission's Rules and Regulations and the Authorized Recipient has informed the Commission in writing, either in the document which provides such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity, that such information has been identified by the Filing Market Participant as confidential pursuant to this Disclosure Procedure. Any Confidential Cold Weather Market Information and Notes of Confidential Cold Weather Market Information that is filed with the Commission shall be provided to the Filing Market Participant and, upon request, to Reviewing Representatives in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Procedure. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information •• Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, shall also be filed with the Commission. Counsel shall take all reasonable precautions necessary to assure that Confidential Cold Weather Market Information is not distributed to unauthorized persons.

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### **3. DISCLOSURE AND PROTECTION OF CONFIDENTIAL COLD WEATHER MARKET INFORMATION.**

(a) A Filing Market Participant shall be required to disclose Confidential Cold Weather Market Information to a Reviewing Representative who has executed a Non-Disclosure Certificate agreeing to be bound by the terms of the Non-Disclosure Agreement set forth as Attachment 3 of Appendix H in accordance with the terms of such Non-Disclosure Agreement. The Filing Market Participant shall make Confidential Cold Weather Market Information available to the Reviewing Representative within two business days following the Filing Market Participant's receipt of an Information Request from such Reviewing Representative. All Authorized Recipients and Reviewing Representatives shall be required to maintain such Confidential Cold Weather Market Information in confidence in accordance with the provisions set forth in the Non-Disclosure Agreement.

(b) The contents of Confidential Cold Weather Market Information or Notes of Confidential Cold Weather Market Information shall not be disclosed to anyone other than in accordance with this Disclosure Procedure and the Non-Disclosure Agreement and shall be used only in connection with evaluating and presenting positions on and comments to the Commission concerning the Section 205 Cold Weather Filing. Any violation of this Disclosure Procedure and of any Non-Disclosure Agreement or Non-Disclosure Certificate executed hereunder shall constitute a violation of a Commission-approved filed rate.

### **4. LIMITS OF DISCLOSURE PROCEDURE**

(a) Nothing in this Disclosure Procedure or the Non-Disclosure Agreement shall be construed as precluding any party to the proceeding, if any, resulting from a Section 205 Cold Weather Filing from objecting to the use of Confidential Cold Weather Market Information on any legal grounds.

(b) Nothing in this Disclosure Procedure or the Non-Disclosure Agreement shall be deemed to preclude any party to the proceeding, if any, resulting from a Section 205 Cold Weather Filing from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Disclosure Procedure.

(c) None of the parties to the proceeding, if any, resulting from a Section 205 Cold Weather Filing waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Confidential Cold Weather Market Information.

### Attachment 3

## FORM OF NON-DISCLOSURE AGREEMENT

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made as of [\_\_\_\_\_] [OR] [the date set forth in the attached Non-Disclosure Certificate (the “Certificate”)] by and between [\_\_\_\_\_] a [\_\_\_\_\_] corporation, with offices at [\_\_\_\_\_] (the “Filing Market Participant”), and the Reviewing Representative who has executed the attached Certificate. The Filing Market Participant and the Reviewing Representative shall be referred to herein individually as a “Party,” or collectively as the “Parties.”

### RECITALS

**Whereas**, as a result of extreme cold weather and in accordance with Appendix H of ISO New England Inc. Market Rule 1 (Section III of the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3) (“Appendix H”), the Filing Market Participant has made a filing with the Commission under Section 205 of the Federal Power Act (the “Section 205 Cold Weather Filing”) that includes certain Confidential Cold Weather Market Information; and

**Whereas**, the Reviewing Representative desires to access certain Confidential Cold Weather Market Information in connection with its review of the Section 205 Cold Weather Filing; and

**Whereas**, Appendix H requires a Market Participant that makes a Section 205 Cold Weather Filing to disclose Confidential Cold Weather Market Information to any Reviewing Representative who executes a Non-Disclosure Certificate agreeing to be bound by the terms of this Agreement and who maintains the confidentiality of such information pursuant to the terms of this Agreement.

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

**1. Definitions. For purposes of this Agreement:**

- (a) The term “**Appendix H**” shall have the meaning set forth in the Recitals.
- (b) The term “**Authorized Recipient**” shall mean (i) those State public utility commissions that are entitled to receive Confidential Information from the ISO pursuant to Section 3.3 of the ISO New England Information Policy; (ii) any Market Participant and (iii) the ISO.
- (c) The term “**Commission**” shall mean the Federal Energy Regulatory Commission, or its successor.
- (d) The term “**Competitive Duty Personnel**” shall mean a person whose duties include (i) the marketing or sale of electric power at wholesale; (ii) the purchase or resale of electric power at wholesale; (iii) the direct supervision of any employee with duties specified in subparagraph (i) or (ii) of this paragraph; or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. The duties specified in subparagraphs (i), (ii), (iii), and (iv) of this paragraph are hereinafter collectively referred to as “**Competitive Duties**.” If any person who has been a “**Reviewing Representative**” subsequently is assigned to perform any Competitive Duties, that person shall thereafter have no access to Confidential Cold Weather Market Information, shall return all such materials to the “**Authorized Recipient**”, and shall continue to comply with the requirements set forth in this Agreement with respect to Confidential Cold Weather Market Information to which such person previously had access.
- (e) The term “**Confidential Cold Weather Market Information**” shall mean information that (i) is furnished by a Filing Market Participant in its Section 205 Cold Weather Filing, (ii) constitutes trade secrets or commercial or financial information, the disclosure of which would harm the Filing Market Participant or prejudice the position of that Market Participant in the New England electricity markets, and (iii) has been designated in writing by the Filing Market Participant as confidential or proprietary either in the document which provided such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity so that the Commission has been made aware that the Filing Market Participant seeks confidential treatment

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for such information. “Confidential Cold Weather Market Information” does not include any information if and to the extent such information (x) is contained in the files of the Commission, or any other federal or state agency, or any federal or state court, prior to its submission by the Filing Market Participant in connection with a Section 205 Cold Weather Filing unless the information or document has been determined to be protected by such agency or court or is contained in the files of the Commission that has been designated as Critical Energy Infrastructure Information; or (y) is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Agreement; or (z) is labeled as “Non-Internet Public” by the Filing Market Participant, in accordance with Paragraph 30 of FERC Order No. 630, FERC Stat. & Reg. ¶ 31,140.

(f) The term “**Critical Energy Infrastructure Information**” shall mean Critical Energy Infrastructure Information as defined in 18 CFR § 388.113(c)(1).

(g) The term “**Disclosure Procedure**” shall mean the procedure set forth as Attachment 3 to Appendix H.

(h) The term “**Filing Market Participant**” shall have the meaning set forth in the Recitals.

(i) The term “**Market Participant**” shall mean a participant in the New England Markets that has executed a Market Participant Service Agreement, or on whose behalf an unexecuted Market Participant Service Agreement has been filed with the Commission.

(j) The term “**Non-Disclosure Certificate**” shall mean the certificate annexed hereto by which Reviewing Representatives who have been granted access to Confidential Cold Weather Market Information shall certify their understanding that such access to Confidential Cold Weather Market Information is provided pursuant to the terms and restrictions of this Agreement, that they are not Competitive Duty Personnel, and that they have read this Agreement and agree to be bound by it.

(k) The term “**Notes of Confidential Cold Weather Market Information**” shall mean memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses materials described in the definition of Confidential Cold Weather Market Information set forth below. Notes of Confidential Cold Weather Market Information are subject to the same restrictions provided in this order for Confidential Cold Weather Market Information except as specifically provided in this Agreement.

(l) The term “**Reviewing Representative**” shall mean a person who (i) has agreed to be bound by the terms of this Agreement by executing a Non-Disclosure Certificate; (ii) has been authorized by an Authorized Recipient in writing to receive Confidential Cold Weather Market Information; and (iii) is an employee or representative of an Authorized Recipient or the Commission, including but not limited to an attorney, consultant or contractor, whose responsibilities as such an employee or representative of an Authorized Recipient or the Commission require access to Confidential Cold Weather Market Information to evaluate the Filing Market Participant’s Section 205 Cold Weather Filing; provided, however, that consultants or contractors may not initiate requests for Confidential Cold Weather Market Information from the Filing Market Participant. A “Reviewing Representative” shall not include any person who would be classified as “Competitive Duty Personnel.”

(m) The term “**Section 205 Cold Weather Filing**” shall have the meaning set forth in the Recitals.

(n) The term “**Third Party Request**” shall mean any request or demand by any entity upon a Authorized Recipient or a Reviewing Representative for release or disclosure of Confidential Cold Weather Market Information provided to the Authorized Recipient or Reviewing Representative by the Filing Market Participant. A Third Party Request shall include, but shall not be limited to, any subpoena, discovery request, or other request for Confidential Cold Weather Market Information made by any: (i) federal, state, or local governmental subdivision, department, official, agency or court, or (ii) arbitration panel, business, company, entity or individual.

## **2. Availability of Confidential Cold Weather Market Information.**

(a) Confidential Cold Weather Market Information shall be made available under the terms of this Agreement only to Authorized Recipients and only through their Reviewing Representatives.

(b) The Filing Market Participant shall make Confidential Cold Weather Market Information available to the Reviewing Representative within two business days following the Filing Market Participant’s receipt of an Information Request from such Reviewing Representative.

(c) Confidential Cold Weather Market Information shall remain available to the Reviewing Representative until the day immediately following the earlier of (i) ten business days following the effective date of a Protective Order issued in the proceeding resulting from the Section 205 Cold Weather Filing or (ii) the date a final Commission order on the Section 205 Cold Weather Filing is no longer subject to appeal. If requested to do so in writing after that date, the Reviewing Representative shall, within fifteen days of such request, return the Confidential Cold Weather Market Information (excluding Notes of Confidential Cold Weather Market Information) to the Filing Market Participant, or shall destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Confidential Cold Weather Market Information, and Notes of Confidential Cold Weather Market Information may be retained, if they are maintained in accordance with Paragraph 3, below. Within such time period the Reviewing Representative, if requested to do so, shall also submit to the Filing Market Participant an affidavit stating that, to the best of its knowledge, all Confidential Cold Weather Market Information and all Notes of Confidential Cold Weather Market Information have been returned or have been destroyed or will be maintained in accordance with Paragraph 3. To the extent Confidential Cold Weather Market Information is not returned or destroyed, it shall remain subject to this Agreement.

### **3. Protection of Confidentiality.**

(a) All Confidential Cold Weather Market Information shall be maintained by the Reviewing Representative and the Authorized Recipient represented by the Reviewing Representative in a secure place. Access to those materials shall be limited to those Reviewing Representatives who have entered into a Non-Disclosure Agreement with the Filing Market Participant by executing a Non-Disclosure Certificate.

(b) Confidential Cold Weather Market Information shall be treated as confidential by the Reviewing Representative and by the Authorized Recipient represented by such Reviewing Representative in accordance with the terms of this Agreement and the Disclosure Procedure. Confidential Cold Weather Market Information shall not be used except as necessary for evaluating and presenting positions on and comments to the Commission concerning the Section 205 Cold Weather Filing. Except as provided in Section 3(c) below, neither Confidential Cold Weather Market Information nor Notes of Confidential Cold Weather Market Information shall be disclosed in any manner to any person except a Reviewing Representative who is engaged in reviewing the Section 205 Cold Weather Filing and who needs to know the information in order

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to carry out that person's responsibilities with respect to such Filing. A Reviewing Representative may make copies of Confidential Cold Weather Market Information, but such copies become Confidential Cold Weather Market Information. A Reviewing Representative may make notes of Confidential Cold Weather Market Information, which shall be treated as Notes of Confidential Cold Weather Market Information if they disclose the contents of Confidential Cold Weather Market Information.

(c) Confidential Cold Weather Market Information and Notes of Confidential Cold Weather Market Information may be filed with the Commission by or on behalf of any Authorized Recipient in response or related to the Section 205 Filing, provided that such information is filed under seal in accordance with Section 388.112 of the Commission's Rules and Regulations and the Authorized Recipient has informed the Commission in writing, either in the document which provides such information, in the transmittal materials accompanying such information, or in a separate document which identifies the information with sufficient specificity and clarity, that such information has been identified by the Filing Market Participant as confidential pursuant to the Disclosure Procedure. Any Confidential Cold Weather Market Information and Notes of Confidential Cold Weather Market Information that is filed with the Commission shall be provided to the Filing Market Participant and, upon request, to Reviewing Representatives in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to the Disclosure Procedure. Such documents containing Critical Energy Infrastructure Information shall be additionally marked "Contains Critical Energy Infrastructure Information · · Do Not Release". For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, shall also be filed with the Commission. Counsel shall take all reasonable precautions necessary to assure that Confidential Cold Weather Market Information is not distributed to unauthorized persons.

(d) The Reviewing Representative shall provide the Filing Market Participant with prompt notice of any Third Party Request or legal proceedings, and shall consult with such Filing Market Participant in its efforts to deny the request or defend against such legal process. In the event a protective order or other remedy is denied, the Reviewing Representative agrees to furnish only that portion of the Confidential Cold Weather Market Information which its legal counsel advises the Filing Market Participant in writing is legally required to be furnished, and to exercise its best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Cold Weather Market Information.

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**4. Attorney Reviewing Representatives.** If the Reviewing Representative is an attorney, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control can be allowed access to the Confidential Cold Weather Market Information without executing a Non-Disclosure Certificate; provided, however, that the attorney supervising such paralegals, secretarial or clerical personnel is responsible for ensuring that persons under such attorney's supervision or control comply with the terms of this Agreement.

**5. Disclosure Among Reviewing Representatives.** The Reviewing Representative may disclose Confidential Cold Weather Market Information to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate agreeing to be bound by the terms of this Agreement. In the event that any Reviewing Representative to whom the Confidential Cold Weather Market Information is disclosed is employed or retained for a position whose occupant is not qualified to be a Reviewing Representative, access to Confidential Cold Weather Market Information by that person shall be terminated. In such circumstances, that person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Agreement.

**6. Remedies.**

(a) **Material Breach.** The Reviewing Representative agrees that release of Confidential Cold Weather Market Information to persons not authorized to receive it constitutes a breach of this Agreement and may cause irreparable harm to the Filing Market Participant. In the event of a breach of this Agreement by the Reviewing Representative, the Filing Market Participant shall terminate this Agreement upon written notice to the Reviewing Representative, and all rights of the Reviewing Representative hereunder shall thereupon terminate; provided, however, that the Filing Market Participant may restore an individual's status as a Reviewing Representative in its sole discretion.

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(b) **Judicial Recourse.** In the event of any breach of this Agreement, the Filing Market Participant shall have the right to seek and obtain all relief otherwise available under law, including without limitation the following types of relief: (i) an order from the Commission or any court of competent jurisdiction requiring any breach to cease and preventing any future breaches; (ii) temporary, preliminary, and/or permanent injunctive relief with respect to any breach; and (iii) the immediate return of all Confidential Cold Weather Market Information to the Filing Market Participant. The Reviewing Representative expressly agrees that in the event of a breach of this Agreement, any relief sought properly includes, but shall not be limited to, the immediate return of all Confidential Cold Weather Market Information to the Filing Market Participant.

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

If to the Filing Market Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(email address)

with a copy to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(email address)

If to the Reviewing Representative: To the address set forth in the Non-Disclosure Certificate.

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**8. Severability and Survival.** In the event any provision of this Agreement is determined to be unenforceable as a matter of law, the Parties intend that all other provisions of this Agreement remain in full force and effect in accordance with their terms. The Reviewing Representative acknowledges that any and all obligations of the Reviewing Representative hereunder shall survive the severance or termination of any employment or retention relationship between the Reviewing Representative and the Authorized Recipient represented by such Reviewing Representative.

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

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

#### FILING MARKET PARTICIPANT

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

Name:  
Title:

## **Annex**

### **NON-DISCLOSURE CERTIFICATE**

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

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

Title:

Representing: \_\_\_\_\_

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

[NOTICE ADDRESS]

Reserved for future use

Reserved for future use